

# A Roundtable on Lucy Salyer, *Under the Starry Flag: How a Band of Irish Americans Joined the Fenian Revolt and Started a Crisis over Citizenship*

*Paul A. Kramer, David Brundage, Amy S. Greenberg, Daniel Margolies, Torrie Hester,  
and Lucy Salyer*

## Roundtable Introduction

*Paul A. Kramer*

Lucy Salyer's highly accomplished *Under the Starry Flag* arrives at an exciting moment for scholars drawn to the intersections between U.S. foreign relations history and the history of U.S. immigration and naturalization regimes, and contributes to the project of interweaving these fields in fresh and decisive ways. While migration politics was never absent from the writing of U.S. diplomatic histories—it was central to the history and historiography of U.S.-Japan relations, and early scholarship of the U.S. refugee regime, for example—what might have seemed to be a natural and necessary subject for historical inquiry, with transformative potential for both historiographies of U.S. foreign relations and immigration, developed slowly. What was, for a long time, the relative marginality of immigration within the canons of U.S. diplomatic history, and the relative bracketing of inter-state negotiation and conflict within U.S. immigration history, might well have surprised the legions of migrants whose fortunes—then and now—have sparked significant inter-state tension and deliberation, even as the wranglings and clashes of states in an unequal world have profoundly shaped migrants' prospects for mobility, safety, rights and freedom.

Thanks to works like Salyer's, historians' migrations between U.S. foreign relations history and immigration history are, by this point, varied and vibrant, surrounding and rendering obsolete the barriers that previously kept these fields apart. Especially over the past decade or so, the collective intellectual labor of historians of U.S. foreign relations and historians of immigration—and the many scholars who self-consciously bridge these areas—have in diverse ways interlaced these fields, revealing the immigration/foreign relations nexus as an historically consequential and intellectually generative focal point, and charting the way forward for future investigations. As the reviewers below make clear, Lucy Salyer's excellent new book makes a pivotal contribution to this effort. Narratively compelling and analytically acute, it tells the story of transatlantic Fenian revolutionary politics in pursuit of Irish freedom from British colonial rule and, especially, controversies over its violent filibustering efforts in Canada, as a lens onto fraught, Anglo-American struggles between the incompatible citizenship regimes of assertive empire-

states. In particular, Fenian militance raised the question of whether and to what degree revolutionaries who had naturalized to U.S. citizenship merited the diplomatic protection of the U.S. state, and the broader principle of the right to expatriate. As Salyer shows, the charged issue of whether naturalized immigrants had fully shed their previous allegiances, duties and rights, or remained permanently attached to "home" states, like it or not, was of vast and enduring significance for Irish-diasporic politics, U.S. citizenship, British subjecthood, and the international order.

The reviewers, gifted historians of the many subject areas Salyer's book elegantly joins—Irish diaspora, U.S. immigration and deportation policy, U.S. international and imperial law, U.S. continental empire—rightly praise Salyer's deep research in diplomatic archives, court records, and transatlantic newspaper sources, her meticulous practice of immigration-legal history (a field whose dynamism owes a tremendous debt to Salyer's earlier, pathbreaking *Laws Harsh as Tigers*, on Chinese exclusion), and her adeptness in tracing out the implications of transnational, Fenian exile politics, and contests over the rights of naturalized migrants, for the historical development of the U.S. citizenship regime and the U.S.'s changing role in the world. David Brundage foregrounds the book's important work on the "politics of exit" as an historical thematic and its contribution to an internationalized history of Reconstruction politics, while taking issue with aspects of her depiction of Fenian revolutionary politics. Amy Greenberg focuses on the failed Fenian invasion of Canada as an instance of 19<sup>th</sup> century filibustering, and the book's account of transformations of U.S. citizenship and its inter-state ramifications, while asking for richer material on U.S. public support for the Fenians and links to Reconstruction. Torrie Hester emphasizes the ways Salyer's book connects the politics of voluntary expatriation to Reconstruction politics, and situates it in the context of emerging historiographies of foreign policy legalism, and the historical crossings of immigration and foreign relations. Daniel Margolies highlights the ties between expatriation and U.S. continental empire—the settler-colonialist utility of expatriated Europeans-become-Americans—Irish participation in the Civil War, and the ways U.S. policymakers' defenses of naturalized European immigrants brought the nation's simultaneous rejection of African Americans' citizenship claims into sharp relief.

Salyer's thoughtful reply engages the reviewers' comments and critiques; like them, she also draws

connections between the questions at the book's heart, about the construction of citizenship through naturalization law and policy, and shifting balances of power between states and political subjects over the terms of political membership, and present-day struggles over citizenship in the United States and elsewhere as rising political forces seek to build authoritarian regimes on the basis of deliberately, sometimes violently, fissured and fractured conceptions of political belonging, strategies that include the splitting off of naturalized from native-born citizens. As she points out, expatriation—associated in her book with republican freedom and the transatlantic campaign against colonial oppression—has also been a formidable weapon of the powerful and an instrument for weakening the rights of both citizens, naturalized and native-born, and non-citizen migrants. While these deeply troubling realities may shape many readers' encounters with the book, scholars might not be unreasonable to hope that its impressive crossing of immigration history, legal history and the history of U.S. foreign relations will also inspire future border-crossing scholarship that will outlast—and help make sense of—our alarming present.

**Review of Lucy E. Salyer, *Under the Starry Flag: How a Band of Irish Americans Joined the Fenian Revolt and Sparked a Crisis over Citizenship***

David Brundage

Lucy Salyer, a distinguished scholar of American immigration and legal history, has written a superb study of a fascinating topic. *Under the Starry Flag* focuses on the high-profile British trials of several Irish-American members of the Fenian Brotherhood, a transatlantic organization that sought Irish independence from Britain by force of arms. They had been arrested in Ireland in 1867 while attempting to provide military aid to a Fenian uprising. Their defense argued that, although they had been born in Ireland, they had subsequently become naturalized U.S. citizens and therefore could not be prosecuted for treason in the British Isles.

Though the men were convicted, the international crisis that they triggered led to a major, though little-remembered, transatlantic political battle, “the great expatriation fight of 1868” (215). The result of this battle was a significant piece of congressional legislation, the 1868 Expatriation Act, and various international treaties that established—at least for a time and for Europeans—the essential right to change one's citizenship or allegiance. Salyer savors the irony of unintended consequences. “Bent on freeing Ireland,” she writes, “the Fenians sparked a revolution in the law of citizenship instead” (6).

This brief précis of Salyer's argument may make her book sound like a somewhat arcane policy history of a long-dead set of issues. After all, in today's world the great battles around immigration in the United States and elsewhere revolve around the politics of *entry*, not *exit*. Think Donald Trump's 2017 Muslim ban, the draconian family-separation policies at the U.S. southern border, or the role that concerns about immigration played in Britain's June 2016 vote to leave the European Union. It is Salyer's accomplishment in this work to show the relevance of this forgotten history to these contemporary issues and debates while simultaneously crafting a highly engaging story around a fascinating and diverse group of characters.

Thoroughly researched in an impressive range of primary sources (diplomatic correspondence, court proceedings, and an array of newspapers on both sides of the Atlantic), *Under the Starry Flag* is also elegantly structured as a three-part drama. Part 1 (“The Fenians and

the Making of a Crisis”) consists of four chapters that set up the nature of the problem. Here Salyer describes the Great Irish Famine and assesses the “exit revolution” (24) of the years between 1815 and 1924, when 55 million Europeans and a smaller but growing number of Asians emigrated from their homelands to a variety of destinations, the most important of which was the United States. She also analyzes the origins and politics of Fenianism and then discusses the Fenians' claim to American citizenship (“*Civis Americanus Sum*”).

This part of the book also introduces the reader to the two most memorable of her various dramatis personae, the Fenian John Warren and the U.S. minister to the United Kingdom, Charles Francis Adams. Part 1 also relates the long history of U.S.-British conflict on the question of naturalization, a conflict going back to the War of Independence: while political leaders in the United States had long insisted that there was an inherent right of expatriation, British authorities held fast to a doctrine of perpetual allegiance, or as they often put it, “Once a subject, always a subject” (3).

The three chapters of part 2 (“Citizenship on Trial”) constitute the dramatic heart of the work. They detail the voyage from New York to Ireland of the *Jackmel*, renamed *Erin's Hope* by the rebel Fenians on board, and describe the frustrating series of events that led to their imprisonment in Dublin. Once in prison, Warren and the others used their letters to family and friends, reprinted in the increasingly important transatlantic press, and their defense strategy in their trials in highly dramatic ways (“All the World's a Stage” is the title she gives to the chapter on the trials) to pressure American diplomats like Adams to take up a defense of their rights as naturalized American citizens.

Part 3 (“Reconstructing Citizenship”) consists of five chapters that complete the arc of the narrative and explain how the crisis over expatriation was resolved. Salyer analyzes the nature of the debates in Congress that led to the 1868 legislation with clarity and economy, and she introduces us to new historical figures who are nearly as compelling as Warren and Adams: Francis Lieber and his fellow “publicists” (experts in the emerging field of international law), who did much of the intellectual legwork that prepared the way for the expatriation treaties signed first with Prussia and finally Britain itself. Eschewing a triumphal ending for her book, Salyer provides an absolutely essential epilogue, demonstrating how the politics of race soon undermined the logical extension to emigrants from Asia of the newly recognized freedom to change one's citizenship or allegiance.

In addition to its intrinsic value as a highly effective dissection of an important and little-known policy battle, Salyer's work makes an important contribution to a fascinating recent trend in migration studies: the move away from a traditional focus on the politics of entry to what some have called the “politics of exit.”<sup>1</sup> Like David Sim, whose fine study *A Union Forever: The Irish Question and U.S. Foreign Relations in the Victorian Age* (Cornell University Press, 2013) should be seen as part of this trend as well, she sees diasporic Irish nationalism as a useful angle of vision on this topic. Sim also examined the expatriation crisis and its resolution in legislation and treaty-making, but while *A Union Forever* took a long view, examining Irish nationalist activity and its impact on U.S.-British relations from the 1840s through the early twentieth century, *Under the Starry Flag* narrows in on a very short period in the late 1860s and early 1870s. In so doing, it makes a fundamental contribution to another emerging trend, the transnational history of the Reconstruction era.

Over the last three decades, Reconstruction historiography has featured a great deal of innovative work, much of it focused on the active role played by freed people

in shaping Reconstruction's political, social, and economic outcomes. More recently, research by historians of gender and of childhood has kept the field at the forefront of exciting and creative work.<sup>2</sup> But for all its excitement, Reconstruction historiography has been surprisingly impervious to one of the most important recent developments in U.S. history, what some have called the "transnational turn." It is not entirely clear why this has been the case: perhaps, as Andrew Zimmerman has suggested, the political issues that dominated Reconstruction have simply appeared "too narrowly national to reward an international approach."<sup>3</sup>

One of the most important aspects of Reconstruction, however, was the debate it generated over a variety of profoundly important questions relating to citizenship. Who is a citizen? What rights and obligations come with citizenship? How does citizenship interact with ideas about race and gender? What Salyer does so effectively in this book is to demonstrate the international import of these questions. She connects the traditionally *domestic* focus on Reconstruction-era citizenship legislation (e.g., the 1866 Civil Rights Act, the Fourteenth and Fifteenth Amendments, etc.) to the *international dimensions* of citizenship. Part 3 of her work, "Reconstructing Citizenship," draws out the connections particularly well: after an authoritative discussion of the debate over citizenship rights for African Americans and women, for example, she observes that "into this swirling debate on citizenship and rights stepped the Fenian Brotherhood" (134).

Given the centrality of the Fenians to Salyer's story, however, it must be noted that her analysis of their movement is a weakness—the only real one—in the book. Long seen as insular, fanatical, and hopelessly romantic, the Fenian Brotherhood was in fact a profoundly transnational phenomenon. The movement was founded nearly simultaneously in Dublin and New York in 1858-59, and the Irish Republican Brotherhood (as the organization was known in Ireland) eventually established a presence on all six continents. The Fenians' radically democratic character and their critical impact on the later development of trade unionism and land reform movements on both sides of the Atlantic are also notable features of their history. None of this would be apparent to readers of *Under the Starry Flag*. Despite Salyer's generally sympathetic treatment of their efforts, Warren and his comrades appear, as in the older historiography, mainly as fanatical opponents of England, not as forward-looking transnational revolutionaries.<sup>4</sup>

Even more important for the purposes of this review, in the long run the Fenians *were* successful. Scholars of Irish nationalism, whatever their views about the merits of the so-called physical force tradition that proponents espoused, have generally agreed that a direct line can be drawn from the Fenians to the 1916 Easter Rising, the Irish Revolution of 1918-23, and beyond. As the University College Dublin political scientist Tom Garvin, generally a sharp critic of the Fenians' political legacy, has put it, "in so far as such things can be dated, the Irish revolution started with the founding of the IRB in 1858."<sup>5</sup> Given, as Salyer makes clear in her epilogue, the profoundly limited and short-lived character of the "revolution in the law of citizenship" that is her focus, her framing of the Fenians' contribution to this history may be somewhat off the mark. Their greatest impact, in other words, may have been precisely "in freeing Ireland."

None of the comments above should be taken as disputing the important contribution that Lucy Salyer's *Under the Starry Flag* makes to the transnational history of Reconstruction and to the forgotten history of expatriation. It is a volume of the utmost significance.

Notes:

1. See Nancy L. Green, "The Politics of Exit: Reversing the Immigration Paradigm," *Journal of Modern History* 77, no. 2 (June 2005): 263-89.
2. See Catherine A. Jones, *Intimate Reconstructions: Children in Postemancipation Virginia* (Charlottesville, VA, 2015) for an example of the innovative work currently reshaping the field.
3. See Andrew Zimmerman, "Reconstruction: Transnational History," in *Interpreting American History: Reconstruction*, ed. John David Smith (Kent, OH, 2016), 171-96. See also, however, the essays collected in David Prior, ed., *Reconstruction in a Globalizing World* (New York, 2018), 94-120.
4. The transnational dimensions of the Fenians are highlighted in James McConnel and Fearghal McGarry, "Difficulties and Opportunities: Making Sense of the Fenians," *History Ireland* 16, no. 6 (November/December 2008): 10-11; and Fearghal McGarry, "A Land Beyond the Wave: Transnational Perspectives on Easter 1916," in *Transnational Perspectives on Modern Irish History*, ed. Niall Whelehan (New York, 2015), 165-88. For my own effort to make sense of the Fenian Brotherhood's history in the United States, see David Brundage, *Irish Nationalists in America: The Politics of Exile, 1798-1998* (New York, 2016), 88-110.
5. Tom Garvin, *Nationalist Revolutionaries in Ireland, 1858-1928*, repr. (Dublin, 2005), 5.

### Review of Lucy E. Salyer, *Under the Starry Flag: How a Band of Irish Americans Joined the Fenian Revolt and Sparked a Crisis over Citizenship*

Amy S. Greenberg

Lucy Salyer's delightful narrative history of the ill-fated American Fenian movement runs to just 224 pages of text, yet it manages to pack two important historical arguments into a dramatic transnational tale featuring foreign invasions, "freedom fighters," Bowery B'hoys, the Burlingame Mission, the Fourteenth Amendment to the Constitution, illegal weaponry, a "crack-brained harlequin and semi-lunatic" Fenian booster, and one exceptionally irritated Civil War-era minister to the Court of St. James. But that's not all: readers are also treated to capsule portraits of over a dozen ordinary foreign-born Americans trapped in an international order that denied the right of an individual to expatriate or exchange the citizenship of one country for another. *Under the Starry Flag* is at once expansive and detailed, testifying to the author's deep knowledge of the complex history of American migration, her impressive research skills, and her ability to draw connections between seemingly disparate topics. In short, there's a lot here, and most of it holds together.

This is narrative history, so the story must come first. It goes something like this: In June 1866, a liberty-loving band of Irish-born Civil War veterans launched three invasions of Canada in the hopes of freeing Ireland from British tyranny. The Fenians, as they were known, were not successful, and twenty-five were sentenced in Toronto to death by hanging. Those who escaped imprisonment regrouped, and the following year forty-five intrepid recruits, commanded by the Five Points Democrat James Kerrigan (a veteran of the U.S.-Mexican War, the Civil War, and the Canadian invasions), smuggled a small brigantine with a hold full of guns and ammunition out of U.S. waters and steered it toward Ireland. They reached Sligo a month later and hovered off the coast, waiting to join an uprising that never materialized. A few men, including Kerrigan, escaped back home; the rest were captured and charged with treason. The British, like other Europeans, espoused a doctrine of "perpetual allegiance" (63) regarding nationality. In their view, naturalized Irish Americans remained British subjects, and the United States had no say in their fates.

Americans, by contrast, insisted that national allegiance was voluntary. In the mid-nineteenth century

all a man had to do to become an American citizen was file a declaration of intent and three years later appear before a state or federal court of record to renounce any other national "allegiance or fidelity" (26), swear to uphold the constitution in front of two witnesses who could attest to his character, and vouch that he had been in the country at least five years. For a married woman the situation was even more straightforward; her citizenship and her children's citizenship followed that of her husband.

The Irish American prisoners in Canada and Ireland demanded protection as "American citizens" from the American consulate and complained bitterly to newspaper reporters about their suffering while in custody. Although nineteenth-century citizens discussed rights in a way that sounds familiar today, their conception of citizenship was as much about duty as rights: citizenship entailed reciprocal obligations that tied the state and the citizen together. In this context, the obligation of the United States to protect Civil War veterans, both at home and abroad, was manifest, and its failure to meet that obligation was galling to the Fenians.

Although the minister to the Court of St. James, Charles Francis Adams, had done a brilliant job on behalf of the Union keeping Britain neutral during the Civil War, his final years at his post were blighted by the Fenian controversy. According to Salyer, the fate of the prisoners became an international cause célèbre that in 1868 motivated the U.S. Congress to define, for the first time, America's responsibilities to citizens abroad. Soon thereafter, the United States began negotiating treaties with other nations in order to codify an international right of expatriation. So, although the Fenians failed to liberate Ireland, their efforts to spread liberty were not entirely in vain. As the book's dustjacket tells us, "the small ruckus created by these impassioned Irish Americans provoked a human rights revolution that is not, even now, fully realized." The American Fenians all went free.

And in 1870 they invaded Canada for a fourth time.

Given our nation's love affair with Irish American identity, the timeless allure of gun smuggling, and a legitimate connection to the Civil War, it's surprising how little attention the Fenian movement has received among scholars writing trade history. But the Fenians have never quite fit into reigning historical paradigms. As the brief summary above may suggest, they don't fit perfectly into a narrative about the international codification of nationalism either. In order to create a comprehensible story that places the Fenians in a moderately sympathetic light, Salyer deviates from strict chronology, beginning with the attempted invasion of Ireland, which she contextualizes with a brilliant thirteen-page summary of 350 years of Irish history, followed by an exploration of the nativist backlash against Irish Catholic refugees of the potato famine—a backlash that is perhaps best summed up by the sadly eternal warnings of an exasperated Protestant minister in 1855 that "there are limits to our national hospitality" (28).

From there, Salyer explores the Irish American experience in the U.S. Civil War, and the failure of military service to turn Irish Americans into "real" citizens in the eyes of the native-born. The nostalgia for Ireland among veterans who were still marginalized in their adopted country is hardly surprising, and given the series of misfortunes that afflicted them, their plan to return to Ireland as liberators, however unrealistic, makes psychological sense. It is only at this point in Salyer's narrative that the Fenians launch the three invasions of Canada that in reality predated the trip to Ireland. Their 1870 invasion of Canada is resigned to the epilogue.

However poorly Irish Americans were treated in the United States, and however heroic the Fenians imagined themselves to be, their military adventures were neither well planned nor successful. A less-kind narrator could

credibly describe the American Fenians as rabble-rousers, miscreants, or murderers. The Fenians invaded Canada in the hope of gaining "a base of operations from which we can not only emancipate Ireland, but also annihilate England" (41).

That goal made no more sense then than it does now. The first of the three 1866 invasions consisted of a few hundred disorganized men who attempted to invade New Brunswick from Maine. It was, not surprisingly, a total failure. In the second, a thousand American men crossed the Niagara River from Buffalo, where they were rebuffed by Canadian volunteers, including two companies of college students called up in the middle of their exams. The Battle of Ridgeway, as it was known, officially ended two days later, when a mass of tired and hungry Fenians retreated by canal boat back across the Niagara. Once on American soil, they were arrested and charged with violating U.S. neutrality laws. In the third 1866 Canadian invasion, a few days after the Battle of Ridgeway, a force of under a thousand Fenians crossed into Quebec from Vermont and was easily repelled by Canadian forces.

All this might have seemed comical had innocent people not died. Nine Canadians were killed and twelve more seriously wounded defending their country from American invaders in June 1866. "This Fenian filibustering was murder, not war," declared an Irish-Canadian politician who, according to Salyer, "had fled Ireland in 1848 to escape prosecution for his participation in the Young Ireland nationalist movement." He was, she adds, "no fan of Fenianism in 1866." Why would he be? It is hard to imagine that any Irish-Canadian would support an Irish nationalism that expressed itself by killing Canadians. "What had Canada or Canadians done to deserve such an assault?" he asked (50). It is a good question.

One group of scholars who have written quite a bit about the Fenians are historians of filibustering. It is the four invasions of Canada that matter to the history of American territorial expansion, but here too, the Fenians have proven difficult to fit into reigning narratives. It has become a truism of territorial expansionism that Canada faded as an object of U.S. territorial lust after the implementation of British reforms passed in the wake of the Rebellions of 1837–8. In the 1840s and 1850s, it was Southern dreams of a Caribbean empire that drove filibustering, and when that impulse died during the Civil War, filibustering supposedly died as well.

One of the historiographical contributions of Salyer's volume is to make it clear that Canada never lost its allure for Northern expansionists. Whether they wanted Canadian territory to force the British to free Ireland or simply to widen the boundaries of the United States, there is a great deal of evidence that both British diplomats and ordinary Canadians believed, through the end of the nineteenth century, that the United States posed a threat to Canadian sovereignty. Like generations of earlier filibusters, the men who invaded Canada were shocked when they were arrested back in the United States for violating U.S. neutrality laws, because they believed the nation was behind their efforts to spread "freedom" through the Americas. It is no coincidence that James Kerrigan was also a veteran of William Walker's Nicaragua filibuster.

The other major contribution of the book is its subtle transnational argument about expatriation and citizenship. Salyer's Fenian narrative is dramatic and grounded in impressive archival research, but the true value of this volume lies in its explication of how international law impacted the millions of immigrants who arrived in the United States in the middle decades of the nineteenth century. Salyer asks "where one nation's power began and another's ended, not only in controlling territorial boundaries but also in policing membership in the nation-state. How far could nations reach in demanding allegiance

from subjects living beyond their borders? How far should the United States go to protect rights of citizens—especially naturalized Americans—against the claims of other states as they traveled abroad?” (53).

Although an immigrant's path to American citizenship was remarkably straightforward in the middle of the nineteenth century, the alchemy of turning a foreigner into a citizen only worked if other nations accepted it. China threatened emigrants with the death penalty. Foreign-born Americans from France and the German states were considered by their countries of origin as deserters from compulsory military service. Some of those who returned to Europe in the 1860s were jailed; some who remained in the United States were punished for their “desertion” with seizures of property.

For many foreign-born Americans, the expatriation crisis of the Fenians “became nothing less than a referendum on the cultural and legal status of the naturalized citizen in America” (137). In our own era of policed borders, the right of expatriation seems quaint, but the conclusion to *Under the Starry Sky* reveals how laws about expatriation mutated into the exclusionary immigration laws of the twentieth century, with particularly draconian effects on married women, whose citizenship continued to be defined by the status of their husbands.

Salyer packs a great deal into a short book, but more evidence about the extent of public support for the Fenians would have been welcome. The citation to a claim that “angry letters and petitions poured into Congress and rallies spread throughout the United States” in support of the Fenians lists a single page in a nineteenth-century publication about Charles Francis Adams as “minister to England and a Know-Nothing” (266). Fifteen pages later, readers learn that “boisterous rallies erupted throughout the nation in the winter of 1868 as the Fenian battle cry ignited among a large swath of the foreign born” (139), but Salyer doesn't detail where the rallies occurred or how many people attended. The idea that a significant portion of the American public cared or was even aware of the Fenians is undercut by some of Salyer's evidence. She notes that Thomas Nast's 1868 cartoon attacking the Democratic Party, “This is a White Man's Government,” which shows three white men clasp hands while standing on the back of a freedman, is a critique of an “unholy alliance between the foreign-born and the violent, unreconstructed South that keeps African Americans pinned down” (141). But the cartoon reveals no awareness of the Fenian movement. The Irish character is represented exactly as he would have been in the 1850s, down to the hat that reads “5 Points.”

Nor is Salyer's effort to link the legal struggle of the Fenians with that of freedpeople in the 1860s entirely successful. She argues that Radical Republicans made the cause of expatriation possible by “providing the vocabulary and a political climate that placed citizenship and its rights at the forefront of the nation's agenda” (139). Some foreign-born Americans appear to have adopted the political language of the Radical Republicans in order to assert the right of expatriation, but it is also true that the Fourteenth Amendment to the Constitution is explicitly domestic in character.

These quibbles aside, it will be the rare reader who doesn't come away from this book with a better understanding of both the international context of nineteenth-century U.S. migration law and how not to liberate Ireland from British rule.

Few people (even generally cynical historians) would have predicted that the naturalization regime would be challenged in contemporary American politics any more than that the legitimacy of birthright citizenship (guaranteed by the Fourteenth Amendment) would come under assault as a feature of the contemporary politics of white nationalism and racism. But as Lucy Salyer's new book makes clear, the struggle over naturalization regimes, the right to and permanence of expatriation, and even the Arendtian right to have citizenship rights all developed in fraught and fluid circumstances. These issues have long been interwoven with questions of national consolidation and self-definition, emerging U.S. global power, individual mobility, and the very definition and permanence of the label of “citizen” in the realms of international law and diplomatic interest.

This fascinating book turns on the development of questions of power and choice in the debate over nationality and expatriation and their meaning on a global scale. One of its key strengths is its emphasis on expatriation—not in the exclusionary way the term is sometimes used, but in its sense as a right, or “the ability to choose one's nationality” (33). It is especially useful to read this impressively researched history with an eye to the present moment, wherein the suffering and carnage produced by war, crime, narco-violence, and climate change has again resulted in mass migration and strains on systems of mobility and on the permanence and individual choice of expatriation. Expatriation was both a tool and a new right with a special resonance and potential for citizenship empowerment at a critical moment in the history of the United States in the world.

Questions about the extent of Fenian citizenship protections were central to the new Reconstruction-era consideration of the connections between citizenship rights and the federal government, as articulated and defended by politicians like Charles Sumner, Charles Francis Adams, and others. Salyer describes what Republicans in Congress considered to be a postwar revolution of rights. This revolution introduced new rights for African Americans and spurred agitation for extending these rights to women and the foreign-born, among others. In her telling, the expansive new readings of the right of voluntary expatriation were “intoxicating” (142).

Salyer places expatriation into the constellation of rights articulated during Reconstruction as the background for the Expatriation Act of 1868, the first statement that “individuals had the inherent right to change their political allegiance, and the government had the obligation to protect its adopted as well as native citizens when they travelled outside of the United States” (3). She observes the ways in which the contemporary political culture has allowed the transformation of the expatriation regime and membership in the state to be loosened from its origins in the Reconstruction-era revolution in individual rights, and she calls our attention to the needs and objectives of immigrants in the reunited polity during the development of new political and legal models for the state apparatus of control. One of the things lost with the general misunderstanding of the depth of the revolutionary nature of Reconstruction was this sense of the expansive potential of expatriation to empower immigrants in new ways in their new setting.

Much of the Fenian literature has emphasized the assaults on Canada by Thomas W. Sweeny, William R. Roberts, and General John O'Neil. Salyer pushes beyond the view of the Fenians as a “dismal failure militarily” (2) to present a subtle global approach to the Fenian movement.

That approach contextualizes Irish immigration within the broader impact that American sociopolitical development had on the international legal order and puts the thorny issues raised by naturalization questions at the heart of trans-Atlantic diplomacy. Fenian internationalization of the Irish independence movement on the basis of a foreign-born citizen's potentially tenuous new foothold in American sovereignty provides a useful vehicle to explore historical efforts to control citizens and migrants stretching back to the eighteenth century, when European countries tended to view exiting subjects as deserters. As the British insisted during the Fenian controversy, "once a subject, always a subject" (64).

This book provides a fresh new reading of the Fenians through the lens of expanding conceptions of expatriation as well as resistance to the "doctrine of perpetual allegiance," which was wrapped up in imperial subjecthood (63). Salyer explores the political and diplomatic context for disrupting efforts to remove the protections of citizenship and to deny its protections and claims. She also examines the dangers produced by what she calls the "jurisdictional tangle" created by the massive migration of peoples from Europe to the various settler colonial entities (5). Although they are not a focus of this book, it is interesting to consider the numerous ways in which notions of permanence and replacement, along with eliminationist thinking, functioned in settler colonial ideologies and how these might have been underscored (if not actually catalyzed) by increased migration and the consequent jurisdictional moves to redefine solidity in expatriation.

Salyer decenters the story by starting in Ireland with a history of the Irish loss of independence as a consequence of British political and economic policies. She chronicles the declining fortunes, familial struggles, and rebellious sentiments of Clonakilty, Ireland, which was the hometown of John Warren, one of the American Fenians who found himself at the center of the international furor over expatriation after he was caught by the British trying to run guns from New York to Ireland aboard a ship rechristened the *Jacmel*. When the potato famine hit, Clonakilty was a "scene of sad carnage" (12). A quarter of the Irish population—Warren among them—left for new settlement abroad in just eleven years. It was a mass refugee exodus with profound implications.

In the United States, the Irish faced the usual array of immigrant challenges, but they were also confronted with the rampant nativism of the Know-Nothing movement and the strong anti-Catholicism of the American Party. At the same time, ambitious imperialists like William Henry Seward saw no political logic in making distinctions between "native born" and adopted migrant Americans.

Salyer points out that the question of absorption and assimilation had been fundamental since the early republic. The United States, it turns out, initially had a rather lax approach to the institutionalization of expatriation. In lieu of a law defining it, the nation relied on essential claims and a vague expression of an American doctrine that remained ill-defined. An emphasis on the inviolability of naturalization developed in the early nineteenth century alongside the rise of politically and economically induced migration. This fostered a strong sense of the claims of citizens—a sense that went beyond the well-known resistance to British claims over sailors as subjects that animated the War of 1812. Contradictions and flaws remained in the system which reflected the deeper logic of the American state. In the 1850s, for example, protections were granted to migrants fleeing the Hungarian revolution, but at the same time, the Dred Scott decision denied citizenship to African Americans. In this sense, the certainty with which the Civil War settled some of the questions produced by evolving and expanding definitions of national citizenship and the challenge to the atmosphere of nativist discrimination

helped to encourage the Fenians to assert themselves in the struggle for Irish independence.

After the Civil War, the goal of Irish-American Fenians was the independence of Ireland. Salyer mentions the war but does not emphasize it as a causal factor or detail the experience of individuals in it beyond a mention of the martial skills they developed (and bragged about). This subject was not her focus, but it might have been interesting to explore it in more depth. While outside the thrust of her argument and peripheral to her interests—and perhaps best the subject of another book—the specific impact of the wartime experience on the worldview of the Irish Americans who became Fenians does seem as if it might have been a fruitful angle to explore. If the sources exist, it would be interesting to trace the development and transformation of insurrectionary ideas acquired in the course of military service, especially as the sources of Fenian resistance are asserted but not detailed.

The same approach could be interesting in considering those Irish Americans involved in the war who did not join the Fenians or perhaps did not even sympathize with the movement. Exploring the specific impact of the war on attitudes toward and aptitudes for combat and leadership on the part of Irish Americans on both sides seems worthwhile, as it was at least as much a revolution and a (reactionary) national liberation movement of global impact as it was a civil conflict. It could be especially useful to think about the apparent contradictions of supporting Unionism in the American conflict but national liberation in Ireland and about how such contradictions might have been reflected in Confederate immigrants like Fenian sympathizer Patrick Cleburne, among others. Considering how deftly Salyer combines diplomatic, immigrant, and legal histories in other ways, she might very well be able to bridge the persistent gap between so much inward-facing Civil War work and such compelling global connections.

In the United States, the Fenian Brotherhood was preparing for 1865 to be the "year of action" (40). The Fenians were entering a global world of resistance to British imperial order, as Salyer points out, from the 1857 Sepoy revolt to unrest among the Maoris and the Jamaicans. She also points out that the diplomatic climate was already fraught, given the memory of British support for the Confederacy and violations of neutrality. The British, for their part, fought any attempt to breach their sovereignty. To counter Fenian actions they turned to an admixture of felony and treason charges and arrested Americans alongside Irishmen. "Irish Americans produced the money, the men, the organizational structure, and the energy behind Fenianism in America; the only thing 'Irish' about the movement, concluded the London Times, was the craziness of the scheme" (47). The Fenians also met with harsh treatment in the United States. Those who attacked Canada in the Battle of Ridgeway were arrested by General George Meade for violating American neutrality laws. President Grant later made it explicit that any group attacking Canada would, in the wake of the Naturalization Treaty, place itself outside American protection.

Salyer examines the *Jacmel* crisis and other issues, like the U.S. government's claims against the United Kingdom for damages done during the Civil War by British-built warships like the *Alabama*—issues that the public and American officials connected at the time. She also draws attention to the delicate diplomacy straddle of Charles Francis Adams, to whom the Fenians looked for protection. In the delicate situation in the immediate postwar era, the Fenians demanded protection via what Salyer describes as "a particularly nineteenth-century understanding of citizenship as nestled within a network of allegiances and obligations" (59). She argues that a naturalized citizen's appeals to protection operated as appeals to imperial power. In this sense, the Fenians represented a burgeoning world

of complexities for globetrotting Americans making rights claims as well as becoming ensnared by them. International law, she notes, had not caught up with social realities.

There were other issues animating U.S. interests. “Seward, like the reading public, linked the *Alabama* claims with the Fenian crisis,” but he also saw them as “part of his broader mission of making the United States a more powerful player in the global arena” (99). The heart of the book is the trial of John Warren in 1867, which turned on questions about his status as an alien and his claims to state protection. Both the trial and the issue of expatriation ultimately hinged on jurisdictional aspects of citizenship. In this way, the Fenian controversy prefigured much of the coming conflict over status, mobility, and rights regimes, which came to dominate any understanding of individual connections to territorial sovereignty in the realm of global politics and political economy. Salyer’s narrative culminates, in some ways, in the move to self-determination in expatriation, widely accepted by the time of the 1868 Expatriation Act, which passed overwhelmingly. As Salyer argues, “the expatriation protests, fanned by the Fenian trials abroad, had forced the American government’s hand, pushing it to declare its dedication to the principle of expatriation and—at least on paper—to protect naturalized and native-born citizens no matter where they roamed” (174).

The expatriation issue was as impossible to separate from domestic politics as it was from at first seemingly unrelated issues of international affairs; similarly, there was no clear line between the parties that sought naturalized votes while fearing that “the naturalization process left [immigrants] personally unchanged” (148). The issue was further complicated by the fact that foreign-born naturalized Americans not uncommonly adopted the racial and gender prejudices of native-born Americans. “Whiteness critically shaped what it meant to be a citizen in the United States” (150), Salyer writes gracefully, and “race remained threaded throughout the claims for the rights of the foreign-born” (151). The book ends with an important and chilling broadening and transformation of the story of expatriation from the Fenian example, with political philosopher and jurist Francis Lieber and others advocating policies to protect the dominance of the “Cis-Caucasian race” (219) through exclusion, first of Chinese and then of Europeans deemed insufficiently white and Protestant.

This final section of the book, which deals with the complexities produced by the issue of expatriation as a part of a “new international order,” is perhaps the most effective and relevant in terms of broader lessons and historical significance. Salyer explores the implications and slippages of the expatriation issue in the German and Chinese contexts, as the United States negotiated treaties and sought to internationalize its understanding of expatriation while also changing the terms of the equation. The relationship with China foregrounded expatriation in ways often overlooked. Of course, tragically, the expatriation issue did not overcome what Salyer describes as “a critical limit to the right of expatriation: the right to leave did not guarantee the right to enter. . . . Race continued to be one ‘filter’ for citizenship” (203). Expatriation became a “tool of the state, used by totalitarian and democratic governments alike (although not to the same degree) to prune and manage their citizenry” (222).

By the beginning of the twentieth century, state attention turned to the process of deterritorialization, reversing naturalization and stripping citizenship for a variety of domestic political reasons as well as state objectives. As Salyer notes wryly, “controlling entry rather than exit became the key focus of the modern nation-states, their inherent sovereign power to police their territorial borders viewed as essential to what it meant to be a modern

state” (219). Modern state-building adopted the logic of white supremacy and exclusion, and expatriation itself became almost moot.

Ironically, expatriation was less critical with the jurisdictional recapitulation of the state outside its borders, which was a feature of twentieth-century U.S. empire. Alongside the trajectory created by the federal state’s expansion of its interests in the regulation of citizenship and broadening of its powers to strip citizens of their status and rights was a congruent trajectory representing the state’s expansion of constitutional protections to citizens abroad as the presumption against extraterritoriality was reshaped in service to burgeoning imperial hegemony. Salyer’s well-written and clearly argued book fits well into the recent scholarly writing on deportation as foreign policy, immigration control, and restriction, and on the shaping of citizenship regimes as a function of the expansive spatiality of modern states in the world system.

### Review of Lucy Salyer, *Under the Starry Flag: How a Band of Irish Americans Joined the Fenian Revolt and Sparked a Crisis over Citizenship*

Torrie Hester

Lucy Salyer’s *Under the Starry Flag: How a Band of Irish Americans Joined the Fenian Revolt and Sparked a Crisis over Citizenship* takes up the understudied history of expatriation. The narrative opens with the story of forty-one men boarding a ship called *Erin’s Hope* in New York City on their way across the Atlantic to Ireland in 1867. Their mission, kept secret from the U.S. and British governments, was to join a larger Fenian movement fighting for Irish independence. They failed miserably, but they ignited an international controversy over expatriation and naturalization.

*Under the Starry Flag* is a stunning accomplishment by a historian whose work on Chinese exclusion has long been a mainstay in the study of race, migration, and U.S. immigration policy. Salyer knits together the journey of the men of *Erin’s Hope* with the story of the diplomats who navigated the subsequent escalating diplomatic tensions over expatriation. She captures the responses to the crisis from international legal scholars and politicians—a crisis that redrew boundaries of national membership, resolved diplomatic disagreements that had lasted for almost a century, and changed international law. As the Trump administration works to expatriate naturalized U.S. citizens, understanding the history of individual rights and state power at the heart of *Under the Starry Flag* could not be more important.

In the twenty-first century we associate expatriation with expulsion and the forced loss of citizenship, but Salyer examines an era when expatriation was controversial for very different reasons. During the nineteenth century, expatriation was tied into nation- and empire-building and, for some migrants, the radical-for-the-time process of choosing one’s citizenship. When the *Erin’s Hope* set sail in 1867, expatriation had long been viewed as central to the U.S. nation-building project. The government recognized it as a first step to building the larger population that the nation required to grow and flourish. Citizens were a critical resource, and expatriation would create more of them.

The United States was an outlier among nation-states and empires when it came to expatriation. Great Britain, for example, had viewed the expatriation policy of the United States as predatory since 1776. Expatriation for British officials translated into a loss of citizens and was viewed as costing Great Britain imperial labor resources. Most centralized states and empires in Europe viewed

expatriation similarly and, like Great Britain, enforced “perpetual allegiance,” which denied a person’s right to renounce citizenship.

Newly naturalized Irish Americans took advantage of U.S. policy. They viewed expatriation as a means to respond to British imperialism. Salyer writes that expatriation spoke “to their [Irish emigrants’] sense of loss—of being involuntarily thrust from their homeland by the cruel English. But the *right* of expatriation—the ability to choose one’s nationality” was “made all the more powerful by the experience of exile” (33). For some, like the crew of *Erin’s Hope*, expatriation also provided space to advocate for changes in their country of birth.

Salyer identifies the aftermath of the *Erin’s Hope* voyage as a key—if little known—event that shaped the history of U.S. citizenship. The Fenian Brotherhood organized in the United States to fight for Irish independence, and it motivated the crew of *Erin’s Hope* to sail to Ireland and join the larger independence movement. But British officials arrested the men who went ashore in Ireland, including key leaders John Warren, a naturalized U.S. citizen, and William Nagle, a U.S. citizen by birth and son of noted Irish rebel David Nagle.

After their arrest, Nagle and Warren talked to reporters and drummed up public sentiment in the United States to help secure their release. The crew of *Erin’s Hope* quickly refashioned themselves from a liberating force into political prisoners.<sup>1</sup> Advocates in the United States held rallies and published newspapers articles describing the plight of Warren, Nagle, and the rest of the Fenians from the *Erin’s Hope*. They mobilized supporters across naturalized populations, including people of German, French, Austrian, and Polish heritage. They hoped the large public campaign would convince the U.S. government to demand that the British authorities recognize the Fenians’ U.S. citizenship, which would shield them from the charges the British leveled against them.

Their efforts worked. With tight elections around the corner, congressmen introduced several laws to protect the foreign-born and gain their votes in the process (157, 159). Nathaniel P. Banks proposed the first U.S. law to codify the nation’s practice of expatriation, which became the Expatriation Act of 1868. The international ethnic nationalism of the Fenians, Salyer documents, pushed Congress to formalize the U.S. nation’s expatriation policy. It also forced the State Department to negotiate with officials from Great Britain to obtain the release of the imprisoned crew of the *Erin’s Hope*.

*Under the Starry Flag* places the Fenian crisis in the context of Radical Reconstruction and here is where Salyer connects the Fenian crisis to the larger history of U.S. citizenship. That the foreign-born, like African Americans, saw expanded rights of citizenship during the years of Reconstruction was not a coincidence. Salyer argues that Radical Republicans “may not have claimed the cause of expatriation as their own, but they helped make it possible” by providing “the vocabulary and a political climate that placed citizenship and its rights at the forefront of the nation’s agenda” (139). After officials arrested and imprisoned the crew of *Erin’s Hope*, for example, “the Fenians demanded reconstruction rights for naturalized citizens” (139).

Race was also central to the Fenians’ and their supporters’ ability to put the rights of the foreign-born on the congressional agenda during Radical Reconstruction. The Fenians’ whiteness, Salyer argues, was central to their ability to leverage capital in the United States. Whiteness was also central to their success in Congress. Congress responded to their advocacy because the men of Irish, German, French, Austrian, and Polish heritage could vote. They did not face racist restrictions that denied them that right.

Salyer’s work encourages further examination of immigration in Reconstruction. Congress passed the Expatriation Act of 1868 within days of the ratification of the Fourteenth Amendment (3). What is also true, and beyond the scope of Salyer’s book, is that lawmakers wrote the Civil Rights Act of 1870 to apply to immigrants as well as African Americans. The research of legal scholar Thomas Joo shows that fifteen years later, the Supreme Court turned to that Civil Rights Act to protect the property rights of Chinese immigrants in one of the era’s major civil rights cases.<sup>2</sup> Future scholarship can deepen our understanding of why and how lawmakers included immigrant rights in some of the key legislation passed by the Radical Republicans.

The Reconstruction-era rights of naturalized citizens soon contracted. Domestic lawmakers did not do this, nor did the courts or vigilantes inflicting violence, as was the case for African American rights. Instead, as Salyer documents, diplomats constrained the newly articulated rights of naturalized citizens by limiting the protections they could claim abroad. State Department officials did so to contain disputes and prioritize the interests of businesses and the foreign policy elite (214–15). Salyer’s work on this issue should inspire more research into the interplay between diplomacy and the end of Reconstruction.

Methodologically, Salyer’s book is the outcome of a concerted effort to bring together immigration and diplomatic histories. SHAFR has encouraged this approach over the last several years. An increasing number of panels at SHAFR’s annual conferences focus on immigration and diplomacy, and one of its plenary sessions at the 2015 session was entitled “Immigration and Foreign Relations: 50 Years since the Hart-Cellar Act.” *Under the Starry Flag* is an important addition to a growing body of work at the intersection of these two disciplines—a body of work that includes books by Donna Gabaccia, Hidetaka Hirota, Meredith Oyen, Paul Kramer, Arrissa Ho, Kelly Lytle Hernández, and María Cristina García.<sup>3</sup>

Salyer draws on an impressive set of sources that combine immigration and diplomatic history and includes, among other items, immigrant newspapers and U.S. and British diplomatic records. Her analysis moves seamlessly from the level of the nation-state to international relations. This approach enables her to illustrate, for example, that the 1868 expatriation law passed by the U.S. Congress did little to deal with overseas jurisdiction, but it set up the incentive for diplomats, both U.S. and foreign, to solve the crisis.

*Under the Starry Flag* also fits in with the exciting scholarship examining foreign policy legalism. International law had for decades failed to provide a way through disagreements between the United States, with its policy on expatriation, and other countries, with their policies of perpetual allegiance. Tensions and conflicts worsened, wrought by massive expansions in global capitalism and migration throughout the nineteenth century (60). An entire chapter explores the work of international lawyers, like American Francis Lieber, who changed “the debate about expatriation.”<sup>4</sup> This part of Salyer’s research complements work done by scholars like Benjamin Coates and Martti Koskenniemi, who examine the role of legal scholars in shaping international law in the nineteenth century. Salyer shows that international lawyers like Lieber helped convince policymakers in nations still practicing perpetual allegiance to change their policies and allow most of their citizens the right to expatriate.

The conflict over expatriation led directly to the dramatic expansion of international law. The number of diplomatic treaties increased sevenfold over the nineteenth century (189). Treaties resolving disagreements over expatriation and naturalization and the Fenian crisis drove most of the additions to international law. Between 1868 and 1872, the U.S. government signed one naturalization treaty after another with countries around the world.

These treaties resolved the Fenian crisis and ensured that conflicts over expatriation as a step toward naturalization would not continue.

Salyer's many contributions to the field also include the revelation of how diplomatic efforts to resolve the conflicts over expatriation led to the expansion of international law into trade agreements, dispute resolution, and migrant protections. The Anglo-American Treaty that diplomats negotiated to end the Fenian crisis included provisions that also resolved the *Alabama* claims and remaining territorial and fisheries disputes in North America (214–15). Many of the treaties that secured the right of people to expatriate also included protections for migrants. The Burlingame Treaty with China, for example, "provided one of the few legal shields for Chinese immigrants in the United States against discriminatory laws, entitling them to the same 'privileges, immunities and exemptions' extended to other foreign nationals" (200).

Within Salyer's treatment of international law is a small but critical contribution to women's history. This contribution does not come from a focus on the social history of women. In fact, most of the people in Salyer's book are men—the Fenians on *Erin's Hope* and those who invaded Canada were all men; the diplomats and lawmakers from the United Kingdom and the United States were all men.<sup>5</sup> However, near the end of the monograph, Salyer examines a particular issue that would be of great importance for women's history.

Britain, like the United States, writes Salyer, "joined what was becoming a worldwide trend of 'marital denationalization,' stripping women who married foreigners of their nationality in order to achieve uniform international rules" (208). Historians such as Candice Bredbenner and Linda Kerber have written about this issue, but Salyer illuminates the role that the expatriation crisis played in the trend.<sup>6</sup> At the end of the Fenian crisis, she notes, the British parliament ended perpetual allegiance. To do so, they expanded the individual rights of immigrants in British law—except for married women. British lawmakers introduced marital denationalization into domestic law, and diplomats subsequently included it in the new Anglo-American treaty.

Salyer argues that domestic and international law granted men and single women the choice to expatriate but at the same time "strip[ped] married women of any choice whatsoever when it came to nationality" (210). Lawmakers' and diplomats' resolution of the crisis over expatriation, therefore, made gender into "a filter" for new individual rights (203). Salyer's ability to make this argument derives from her skill at using the national and international scales of analysis and from her strength as a historian of both U.S. and British law. Her argument is a model for scholars who write about history driven by men and are using gender as a category of analysis to understand the impact of the history on women's lives and power.

In the book's epilogue, Salyer writes that expatriation, "once praised as a natural right wielded by the individual," had become the "tool of the state" by the twentieth century, "used by totalitarian and democratic governments alike (though not to the same degree) to prune and manage their citizenship" (220). In 2019, the Trump administration is turning to expatriation once again to "prune" citizens, creating nativist and racially motivated policies that constitute an "invisible" wall. Salyer's work on expatriation recalls a different time, when the U.S. government worked hard to protect and reinforce the rights of immigrants in the United States and those that became U.S. citizens.

#### Notes:

1. They argued, writes Salyer, "that they had done nothing wrong." They had not actually done any fighting. They also told people back in the United States that "what happened to them

could happen to any American. And American honor and national status hung in the balance" (93).

2. Thomas W. Joo, "Yick Wo Re-Visited: Nonblack Nonwhites and Fourteenth Amendment History," *University of Illinois Law Review*, no. 5 (2008): 1427–40.

3. Donna R. Gabaccia, *Foreign Relations: American Immigration in Global Perspective* (Princeton, 2012); Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard States and the Nineteenth-Century Origins of American Immigration Policy* (Oxford, UK, 2017); Meredith Oyen, *The Diplomacy of Migration: Transnational Lives and the Making of U.S.-Chinese Relations in the Cold War* (Ithaca, NY, 2016); Paul A. Kramer, *The Blood of Government: Race, Empire, the United States, and the Philippines* (Chapel Hill, NC, 2006); Arissa Oh, *To Save the Children of Korea: The Cold War Origins of International Adoption* (Palo Alto, CA, 2015); Kelly Lytle Hernández, *Migra!: A History of the U.S. Border Patrol* (Berkeley, CA, 2010); María Cristina García, *Seeking Refuge* (Berkeley, CA, 2006); and García, *The Refugee Challenge in Post-Cold War America* (Oxford, UK, 2017).

4. See also John Fabian Witt, *Lincoln's Code: The Laws of War in American History* (New York, 2012).

5. Salyer does include some social history of Warren's wife and some social history about women generally, but it is secondary to the main thrust of the book and the people at the heart of it.

6. Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley, CA, 1998); Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York, 1998); and Kerber, "The Meanings of Citizenship," *The Journal of American History* 84, no. 3 (1997): 833.

### Author's Response

Lucy Salyer

Years ago, I set out to write a big history of American citizenship policies, tentatively entitled "Pledging Allegiance: The Troubled History of American Citizenship." Originally, *Under the Starry Flag* was to be chapter 1 of "Pledging Allegiance," analyzing the transformation of U.S. citizenship law during Reconstruction, with the passage of the Fourteenth Amendment. But the "chapter" soon grew into its own book. As I began to investigate the little-known Expatriation Act of 1868, which came to legal life at the same time as the Fourteenth Amendment and sparked tremendous public interest, I became hooked by a story full of fascinating characters that was more international in scope and profound in its significance. Americans at the time heralded the Expatriation Act, and the numerous treaties secured to protect that right, as "one of the greatest and most important triumphs of American diplomacy" (3), yet "the right of expatriation" rings few bells of recognition today. Why the right of expatriation (that is, the right to migrate and change one's citizenship) mattered so much in the nineteenth century and why it is largely forgotten—yet still vital—today is the central puzzle I sought to solve.

The project posed challenges as I cast my net wider to place American developments in citizenship policy in a global context. I traveled on unfamiliar terrain, moving from domestic to international law, from domestic to foreign policy, and from American to foreign archives. I sought to write an engaging narrative history which would be analytically rich, a task that proved much more difficult than expected. It was daunting to step into new fields of history, several of which are represented by the scholars here who have reviewed *Under the Starry Flag* with such depth and gracious attention. I appreciate the opportunity to respond to their various queries and observations.

One set of questions raised by the reviewers focuses on the Fenians, the transnational organization of freedom fighters formed in 1858 to free Ireland from British control. As the reviewers' excellent synopses of the basic storyline reveal, the Fenians served as the catalyst that resulted in fundamental changes in national and international policies

on citizenship, leading Britain and other European countries to abandon theories of “perpetual allegiance.” Just who the Fenians were, what made them tick, and how significant their movement was in the long run are questions that have long sparked scholarly controversy.

Dan Margolies suggests I might have paid more attention to how the Civil War shaped their “worldview” and “insurrectionary ideas,” and to “think about the apparent contradictions of supporting Unionism in the American conflict but national liberation in Ireland.” How, in other words, could the Fenians oppose the secession of the Confederate South which claimed the right to govern itself, much like the Irish demanded an independent republic? The Civil War *was* transformative for many Irish American Fenians, as Christian Samito details in his excellent book, *Becoming American Under Fire: Irish Americans, African Americans and the Politics of Citizenship during the Civil War Era* (Cornell University Press, 2009). But, in Samito’s analysis (with which I agree), Fenians did not see Unionism and Irish national liberation as contradictory. They revered the Union as a republican refuge and “included the exportation of American values abroad as part of their mission.” The Civil War and the fight to liberate Ireland from England’s grasp were both part of the “global struggle for republicanism.”<sup>1</sup> To be sure, Fenians such as Patrick Cleburne could be found in the Confederate ranks, and Fenian ardor for the Union cause waned as Irish American casualties rose and President Lincoln declared emancipation as a central objective of the war. But historian David Gleeson calls Irish American Confederates “reluctant secessionists,”<sup>2</sup> and the majority of Irish nationalists continued to see their fight to preserve the Union and their battle for an independent Ireland as vitally linked.

But how should we characterize the Fenians and their legacy? Here, two of the reviewers sharply differ, David Brundage arguing that I shortchange the Fenians in depicting them as “fanatical opponents of England, not as forward-looking transnational revolutionaries,” while Amy Greenberg says “a less kind narrator could credibly describe the American Fenians as rabble-rousers, miscreants, or murderers.” Greenberg also questions “the idea that a significant portion of the American public cared or was even aware of the Fenians,” finding the evidence provided in particular footnotes as too thin to make those claims.

That most Americans (at least those who read the papers and followed politics) *knew* about the Fenians is undeniable, that claim built not on a single footnote but on the accumulation of evidence throughout the book. To add to that evidence, a quick search on the *New York Times* database for articles on “Fenian” and “Fenians” between 1865 to 1869 yields 1,976 hits, an impressive number for a newspaper that was not particularly fond of the Fenians.<sup>3</sup> What newspaper could resist covering the exploits of the filibustering Fenians – invading Canada on numerous occasions, for example – in an era when editors competed to sell papers? But Greenberg raises a second, crucial question: Did Americans really *care* about the Fenians? Where’s the proof that Americans rallied to their cause?

Newspapers, congressional documents, diplomatic correspondence and presidential speeches—and, indeed, the passage of the Expatriation Act—all attest to growing concern about the American Fenians’ treatment by Britain, prompted by the rising pressure of foreign-born Americans to act.<sup>4</sup> The Boston *Pilot* reported that “the feeling throughout the land is very generally awakened” by the treatment of Irish American prisoners abroad, recording meetings popping up in the East—in such cities as Portland, Maine; Manchester, New Hampshire; Norwich, Connecticut; Elmira, New York; Washington, D.C.—but also in Midwestern cities, home to large numbers

of German as well as Irish immigrants: Cleveland, Toledo, Cincinnati, Terra Haute, and Milwaukee. “One of the largest and most enthusiastic” meetings ever held at the State House in Springfield, Illinois, drew a crowd of American citizens, anxious to speak, on December 23, 1867, and “men of all nationalities” crowded a meeting at St. Louis to protest against “perpetual allegiance” as “an odious and barbarous relic of feudalism and a standing menace and insult to the Republic.” Even on the “frontier of Civilization,” in Mankato, Minnesota, the “utmost excitement prevailed.”<sup>4</sup> Exact numbers of those in attendance (an important question raised by Green) are difficult to ascertain, but the meetings were packed, if the news accounts are to be trusted. “Every crook and cranny” of Mechanic Hall in Salem, Massachusetts, “was filled to suffocation” in late December 1867, reported the *Pilot*, while other major newspapers reported crowds of 7,000 at a Coopers Union rally in New York, “one of the largest meetings ever convened at Fanueil Hall,” and an “immense mass meeting” in Buffalo, New York.

Each meeting ended with an adoption of resolutions, reprinted in the newspapers and forwarded to Congress, denouncing British treatment of Irish American Fenians, declaring that “each man has the unqualified right to transfer his allegiance,” and demanding that Congress and the President take action.<sup>5</sup> Secretary of State William Seward referred to these rallies in his diplomatic correspondence with Charles Francis Adams and the British government, saying “the people are appealing to this government throughout the whole country, Portland to San Francisco and from St. Paul to Pensacola” as a result of the trial of American Fenian John Warren (p. 157). Congress and the President did take action (detailed in Chapter 6) as did diplomats in the U.S., Great Britain, and German states, the subject of chapters 7 and 8.

Perhaps the question is not whether Americans cared about the Fenians, but *why* they cared. Many Americans held a skeptical view of the Fenians, similar to Green’s, the *New York Times* condemning the crimes of “thoughtless, misguided Irishmen” and “lawless ruffians” who violated American neutrality by invading Canada.<sup>6</sup> But even critics of the Fenians worried a great deal about U.S. power in the world and the threat that competing emigration policies and citizenship regimes posed to the nation’s growth. As Margolies points out, while the Fenians are interesting in themselves as a potent transnational movement, they are central in my book as “a useful vehicle to explore historical efforts to control citizens and migrants stretching back to the eighteenth century.” Perhaps that is the reason that I don’t give the Fenian movement its full due, as David Brundage points out, failing to follow its ultimate success as witnessed in the Irish Revolution of 1918-23, a story which he tells so powerfully in his masterful history of Irish nationalism.<sup>7</sup> Even in the era I study, the Fenians had already achieved important victories, their powerful appeal in Ireland driving the Gladstone administration to pass new measures, such as the disestablishment of the Anglican Church in Ireland, in the hopes of pacifying the Irish (176). I agree that the book could do more to highlight their important legacy.

But, while the Fenians are central to the narrative, the main analytical point lies elsewhere, as Torrie Hester and Dan Margolies observe, in revealing a key moment when major powers redefined their “citizenship regimes” and concepts of “allegiance,” fundamentally altering both domestic and international law to endorse the concepts of the right to emigrate and to change one’s nationality. What fascinated me, as I explored the battle over the rights of the foreign-born during Reconstruction (an understudied topic in need of greater investigation, as Hester notes), was the global nature of the fight and the intersection of domestic and foreign politics over what Margolies refers to as “power

and choice” and “their meaning on a global scale.”

The phrase *civis Americanus sum* (“I am an American citizen!”), used as a rallying cry by Fenians and the title of chapter 4, neatly captures how state power and individual choice became conflated. The phrase came from Roman law (*civis Romanus sum*), referring to the claim that Roman citizenship protected the individual as he traveled throughout the Roman Empire, and had been updated by the British government (*civis Britannicus sum*) as a tool of empire in the 19th century, used to shield British subjects from other powers’ interference. In the Fenians’ hands, “I am an American citizen!” simultaneously declared the power of the individual to choose citizenship (a claim directed both at the British and fellow Americans at home) and the power of the state to have their citizens recognized as such by other countries. State and individual empowerment became entwined and the interests of the state and immigrants aligned. That is one reason critics of the Fenians cared about their cause. The British stance—the “monstrous monarchical assumption” of “once a subject always a subject”—threatened the U.S. government’s power to define its citizenry, an essential aspect of national sovereignty and the country’s future growth which depended on immigration. Strategically, as the “centre of immigration in the world, . . . it has become indispensable for us, as a great nation, to have this right recognized,” concluded a typical editorial (157).

Others, particularly the growing international community of international law experts, saw the Fenians as a side story, just one more reason that new nation states should come together to form a modern international law to remove barriers to free trade and free migration. The simultaneous campaign to modernize international law, and its connection to the expatriation battles, was one of the most exciting and unexpected aspects of the research project. As Torrie Hester observes, the naturalization treaties became an entering wedge for future international agreements of all sorts, the Anglo-American Naturalization Treaty of 1870 opening the door for the Treaty of Washington of 1871. I share Torrie Hester’s call for more research on “foreign policy legalism” as well as the roles diplomats play in immigration policy.

Still, no matter how much individual proponents and congressional acts declared expatriation to be an inalienable and natural right, not everyone could declare “I am an American citizen!” nor expect that the government would rush to defend her. Expatriation turned out to be a white man’s right, the right to choose American citizenship denied to “non-white” immigrants (particularly Asians) and to married women. Increasingly, as the reviewers observe, expatriation became more about losing than choosing citizenship, especially as nation states turned their focus to guarding their gates and restricting immigrants’ entry.

All of the reviewers note the resonance of the issues in *Under the Starry Flag* for contemporary battles over migration, citizenship, and national borders. The crisis over expatriation in the mid-nineteenth century—with its rhetoric celebrating the God-given individual right to migrate and choose one’s political home—seems startling radical in the context of today’s focus on building walls ever higher and renewed scrutiny of the loyalty and citizenship claims of the foreign born in such programs as “Operation Second Look.”<sup>8</sup> Perhaps the connecting thread is the importance of the states’ strategic interests in shaping immigration and citizenship policy. In the mid-nineteenth

century, the U.S. embraced the right of expatriation as key to asserting its power in the world and to its need for more immigrants to fuel its growth. Individual rights and state power could align in claims of *civis Americanus sum*, but often they did not right. The right of expatriation—as embodying the right to migrate as well as the right to choose one’s citizenship—increasingly collided with the state’s increasing claims of a right to police its territorial and political borders as critical to the very definition of its sovereignty.

But the expatriation crisis of the 1860s also leaves a less cynical legacy: the government also acted because foreign-born Americans combined to demand, with their voting power and their impassioned rhetoric appealing to long-standing principles of American citizenship, that it defend their rights. Rights claims, backed by popular political pressure, can make a difference though, of course, it depends on the times. With the passage of the Expatriation Act of 1868, foreign-born Americans helped to lay a foundation for later assertions of migration and expatriation rights. In the midst of the “rights revolution” of the 1960s, Justice Hugo Black in the landmark case *Afroyim v. Rusk* (1967) turned to the Fenian-inspired law to hold Congress had no unilateral power to strip Americans of their citizenship. “In our country the people are sovereign,” Black concluded (223). If, in the Trump era, the *Afroyim* doctrine is under attack, it’s all the more important to recall that the U.S. has not always been about building walls and to revive the now-forgotten “American doctrine” of the right of individuals to choose their homes.<sup>9</sup>

#### Notes:

1. *Becoming American Under Fire: Irish Americans, African Americans and the Politics of Citizenship during the Civil War Era* (Cornell University Press, 2009), 120, 122. See also Susannah Ural Bruce, *The Harp and the Eagle: Irish-American Volunteers and the Union Army, 1861-1865* (New York, 2006).
2. David T. Gleeson, *The Green and the Gray: The Irish in the Confederate States* (University of North Carolina Press, 2018), 10.
3. See, especially, chapter 5, notes 75 and 76, and chapter 6 in *Under the Starry Flag*.
4. See note 76, p. 265-66; notes 61, 62, 63 at p 270 in *Under the Starry Flag*.
5. “American Citizenship,” *New York Times*, Dec. 8, 1867, p. 1; “Immense Mass Meeting,” *New York Herald*, Dec. 8, 1867, p. 7; “Rights of American Citizens Abroad,” *Bangor Daily Whig*, Dec. 31, 1867; “Mass Meeting of Fenians at Buffalo,” *New York Herald*, Jan. 23, 1868.
6. “Manchester Execution—Rights of American Citizens Abroad,” *New York Times*, Nov. 25, 1867, p. 4; “The Fenian Invasion,” *New York Times*, June 4, 1866, p. 4.
7. David Brundage, *Irish Nationalists in America: The Politics of Exile, 1798-1998* (Oxford, 2016).
8. Seth Fred Wessler, “Is Denaturalization the Next Front in the Trump Administration’s War on Immigration?” *New York Times*, Dec. 19, 2018; “Denaturalization Efforts by USCIS,” American Immigration Lawyers Association, Jan. 16, 2020, <https://www.aila.org/advocacy/issues/all/featured-issue-denaturalization-efforts-by-uscis>
9. Matt Ford, “Will the Supreme Court Defend Citizenship?” *The Atlantic*, May 2, 2017, <https://www.theatlantic.com/politics/archive/2017/05/supreme-court-citizenship-maslenjak/525000/>.