



### **PLAGUE, FEAR, AND POLITICS IN SAN FRANCISCO'S CHINATOWN**

BY GUENTER B. RISSE

*The Johns Hopkins University Press, Baltimore, MD, 2012. 371 pages, \$39.95.*

Reviewed by Jon Sands

More than a century ago, from 1900 to 1904, bubonic plague broke out in San Francisco—the first time it ever appeared in the continental United States. The port city panicked. Public health officials scrambled to deal with the escalating number of cases. Politicians urged caution, while worrying about perceptions. Businesses calculated costs. The public screamed for something to be done, and pointed at the ethnic neighborhood and the race that was supposedly responsible for the outbreak. Quarantines were imposed and vaccinations required, and those affected filed suits. The state decried federal intervention. A governor suffered an ignoble loss; another politician seized the opportunity. Some careers ended bitterly; others took advantage of the situation and flourished. Through it all, for four years, the death toll mounted. In the recent Ebola scare, one sees the same irrational fears, prejudices, and suspicion of science. This makes Guenter Risse's definitive study of San Francisco's Chinatown plague all the more timely and relevant.

Risse's explains his purpose in writing *Plague, Fear, and Politics in San Francisco's Chinatown*: "Located at the intersection of powerful American ideologies—race and xenophobia, dread of disease, and modern sanitation—this study seeks to enhance our understanding of a singular episode in American public health history: the appearance and management of bubonic plague in San Francisco's Chinatown between 1900 and 1905." He takes these topics and builds towards the crisis, providing ample background of the emerging epidemiology, Chinese immigration, urban politics and the Progressive movement, and the atmosphere of widespread racial prejudice. Past studies of this plague have focused on discrete

aspects of it, such as public health, politics, immigration, or the legal response. Risse is the first writer to be comprehensive, exploring all facets of the plague, digging into personal accounts, even using the archives of Chinese accounts and Chinese personal letters to tell their side. His treatment is successful.

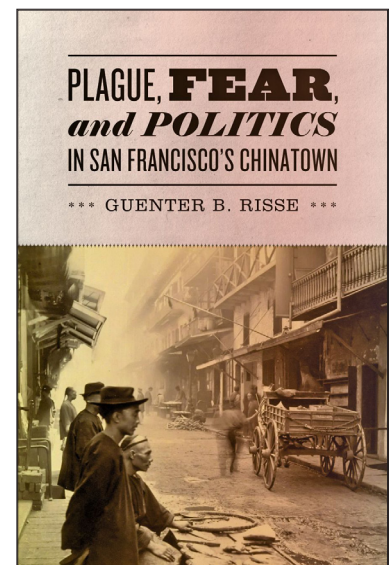
The bubonic plague that came to Chinatown had erupted in China decades before and circled the Pacific. An international watch tracked the spread. At that time, scientists knew it was bacterial and suspected vermin of spreading it, but they did not know that it was actually transmitted by fleas on rats. Ships from Hong Kong and Australia brought it to Honolulu in the late 1890s. Health officials there responded by burning the homes of the afflicted and quarantining people. As the new century begun, public health officials all along the West Coast watched and waited, none more anxiously than Joseph K. Kinyoun, the federal marine public health officer in San Francisco. He was a rising star in the field of public health, one of the new bacteriologists, as they were called, with a doctorate in the field, a professorship at Georgetown University, and the inventor of a sterilizer to be used aboard ships. Public spirited, he was determined to take all preventive measures, by all means possible. He didn't have to wait long.

On March 6, 1900, Wong Chut King died in the basement of a flophouse. Risse believes, from the sketchy details we have, that King "fit the traditional stereotype of a thrifty, hardworking Chinese migrant whose California dream of riches remained tragically unfulfilled." He worked in a rat-infested lumberyard, close to the docks, which took old timber from whatever source, including ships. He had come from a small hamlet in southwest China 15 years before, leaving behind his wife and elderly parents. The lament of another migrant could easily apply to Wong Chut King: "toiling in pain, east and west, all in vain; what can a person do with a life full of mishap? My belly is full of frustration and grievance; when life is at low ebb, I suffer dearly." He fell ill, and despite the best efforts of a traditional

Chinese healer, who noted swollen lymph nodes and suspected a sexual disease, his condition worsened. The city's public health officials were notified.

San Francisco's Chinatown where King expired was roughly 12 blocks long and had between 25,000 and 35,000 residents. It was akin to a ghetto. The housing in the cramped district was aging and decrepit, a result of racist codes barring Chinese from owning property. The tenements' white landlords had little interest in new construction, but wanted only to jam in people and raise rents. Sewage and waste removal were inadequate. Squalor was prevalent. The poor residents were beset by gangs, high crime, and the traffic from areas that served as a red light zone. Not only was Chinatown unsanitary, but it was close to the waterfront, which had dire consequences.

After examining bacterial samples, public health officials concluded that King's death had resulted from bubonic plague. City health officials, with urging from Kinyoun, acted quickly: They placed a quarantine around Chinatown. But it was a quarantine for Chinese only; white people could come and go. Moreover, Kinyoun was adamant that an experimental, dangerous vaccine should be mandated. The actions were taken against a backdrop of half a century of racial prejudice against the Chinese. Legislation limited immigration, prevented natural-



ization, barred voting, curtailed business and employment, and dehumanized in countless other ways. Popular sensational accounts of Chinatown's depravity, filth, and unsanitary conditions made the decision to impose the quarantine seem clear.

The Chinese Counsel, community leaders, and others protested. Kinyoun, speaking for the scientific and public health establishment, took the lead in explaining the necessity for the quarantine. The white business establishment was ambivalent. Eager that business continue as usual, they hesitated in their support. State politicians, especially the Republican governor, Henry T. Gage, decried the heavy-handed federal interference in what was a local affair. With the quarantine in place, the Chinese sought legal recourse. In early May 1900, they filed suit in federal court.

In *Wong Wai v. Williamson*, 103 Fed. Rep. 1 (1900), the plaintiff, a businessman, in what was essentially a class action, sought to enjoin the quarantine on equal protection grounds. Writing for a panel of three federal judges, Circuit Judge William W. Morrow ruled that the actions of the health officials violated the Fourteenth Amendment, because they singled out a group of people solely on the basis of their race. In an era that was grudging if not downright hostile to equal protection, this was notable. The court stressed that the city and federal officials had failed to provide a factual basis for limiting the quarantine to the Chinese. The fact that state officials opposed to the quarantine, albeit for commercial reasons, helped.

Undaunted, Kinyoun and the city officials tried again, this time imposing a quarantine that was geographic, focusing on Chinatown proper and supposedly all residents. Anyone leaving had to be checked and city officials had to grant permission. City officials also embarked on plans to publicly fumigate and sanitize the quarter, while plotting to possibly raze it and evacuate and detain the Chinese.

As the quarantine was enforced, the afflicted, now numbering in the scores, continued to die. As the number of victims increased, the Chinese leadership favored the implementation of modern public health measures and agreed to the sanitization effort. The Chinese residents were not so welcoming. Many, understandably, sought traditional medical healers rather than Western medicine. Public

health doctors were stymied. Reporters, in the heyday of yellow journalism, descended upon Chinatown to pen lurid stories about the conditions. The partisan newspapers viewed the quarantine as granting them license to rail against whatever shibboleths and conspiracy theories were circulating.

Within days it became apparent that the quarantine leaked. It leaked whites, some of whom lived in the area and others of whom had businesses or brought in overpriced provisions. They were permitted to come and go as they pleased. Angry, the Chinese leaders again went to federal court.

In *Jew Ho v. Williamson*, 103 Fed. Rep. 10 (1900), the same court again struck down the quarantine. Considering extensive evidence of discrimination, Judge Morrow again concluded that the Due Process Clause of the Fourteenth Amendment was being violated, as enforcement of the quarantine was being directed only against Chinese and other Asians.

Public health officials, convinced that only a racial quarantine and enforced vaccination of the group that seemed vulnerable to the plague would be effective, were furious. Kinyoun feared a spread of the plague throughout the state and country. Notifying Washington, D.C. that he was invoking his authority to control train traffic under interstate regulations, he imposed a virtual quarantine on all Asians, refusing to allow them to travel unless they presented themselves to authorities to request special travel certificates. Six Chinese people requested and were denied certificates. The Chinese went back to court, seeking an order to show cause. The prospect of a federal court's holding a federal official in contempt was averted when, in definitely a different ethical age, Kinyoun visited the judge on another matter and used the opportunity to assure him that he was only acting in the best interests of public health and had no animosity toward the Chinese. The action was dismissed.

In the meantime, Governor Gage, worried about the isolation of his state, railed against usurping federal authorities. Although businesses initially supported his position, he soon became embarrassing in his rants. By 1901, with more Chinese people becoming sick, Gage denied the

existence of any plague at all, and he accused Kinyoun of injecting cadavers with bubonic plague to make it seem as if a plague had broken out. Seeking to squelch plague fears, he sought legislation for a gag order on the press to prevent any reports on the pestilence. The bill failed. However, a bill was enacted that put a gag order on the medical profession. Gage was not above backroom deals. With the support of railroad interests, he engaged in secret talks with the public health officials in Washington. In exchange for a relaxation of strict federal oversight and the replacement of his now archenemy Kinyoun, who had become a symbol of public health concerns, Gage agreed to cooperate with public health officials. A deal was struck, and Kinyoun, to his dismay, was removed. Bitter, but unrepentant, Kinyoun continued to insist on the correctness of his actions. As soon as Kinyoun was gone, Gage reneged on the deal. He continued to deny that there was plague; he even convened his own hand-selected state commission to declare that no plague existed. But the number of dead was fast approaching 100, and other states started to talk about imposing quarantines on California goods.

Gage soon became too much of an embarrassment for the Republican establishment. At the Republic state convention to nominate the gubernatorial candidate for 1902, Gage was unceremoniously replaced with the mayor from Oakland, George Pardee, a German-born medical doctor, who promised cooperation. Risse details the backroom cigar smoke billowing onto the convention floor. Pardee easily won election and began cooperating with public health efforts.

By 1903, the public health officials in San Francisco began to get control over sanitation. Extermination campaigns reduced the rat population. Sewage and trash removal was improved. Housing was replaced or remodeled. An education campaign, in cooperation with the Chinese community, preached cleanliness. By 1903 to 1904, the plague was brought under control. There was a total of 121 cases, with 113 deaths, all but a handful of which were of Chinese people.

Risse's comprehensive study takes in the "phenomena of politics, race, sanitation, and disease." It also manages to include immigration, economics, journal-

ism, and urban development. His study revises earlier approaches in being sympathetic to the plight of Chinese leaders and the Chinese community, their reliance on folk medicine, and their suspicion of whites who preached Western medicine. Risse is nuanced in showing how communities, institutions, and individuals saw the plague—as a health crisis, a scientific or public health opportunity, a dire economic threat, and a political opportunity. Yet Risse cannot be all things to all readers and he centers his approach on public health. He examines how public health efforts initially failed through their own biases and their reliance on the latest science, namely risky vaccinations. He understandably does not put the lawsuits or legal theories in the center. They are peripheral to Risse, and he discusses them only to the extent that they affected the public health efforts.<sup>1</sup> At the time, state power and civil liberties were being defined. Indeed, as the plague outbreak was ending, the Supreme Court, in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), held that compulsory vaccinations were reasonable. But, even lacking an extensive discussion of legal matters, Risse's history of the reactions of institutions, communities, and individuals, of their prejudices and biases, and of their search for solutions, will be profitable for those confronting today's epidemiological crises and public health challenges.

In 1906, an earthquake devastated San Francisco. In the destruction and squalor that resulted, along with the subsequent rebuilding effort, plague briefly broke out again. The public health services, learning from its previous experience, sprung into action quickly with sanitation efforts and treatment in hospitals for the ill. The plague afflicted 160 persons, with 78 deaths. Not one of them was Chinese.

Thirty-six years after that, when Japanese acts of aggression swept through the Pacific and embroiled the United States in a world war, the plague of prejudice also broke out again. This time, another Asian group—Japanese-Americans rather than Chinese-Americans—became the object of fear and politics. As the military arrested Japanese-Americans, forced them from their homes, and relocated them to concentration camps, no federal court came to their rescue. At that time, unlike in San

Francisco, the courts allowed the plague of prejudice to infect the Constitution. ☉

### Endnote

<sup>1</sup>A reader interested in further pursuing the constitutional analysis of public health concerns versus individual rights in the San Francisco plague cases should consult Charles McClain, *Of Medicine, Race, and American Law: The Bubonic Plague Outbreak of 1900*, 13 *Law & Social Inquiry* 447 (1988).

## CAPITAL MARKETS, DERIVATIVES AND THE LAW: EVOLUTION AFTER CRISIS (SECOND EDITION)

BY ALAN N. RECHTSCHAFFEN

Oxford University Press, New York, NY, 2014. 456 pages, \$225.00.

### Reviewed by Christopher Faille

In finance, a derivative is any asset that has a value derived from an underlying asset, index, or rate. For example, the value of a stock option is derived from the value of the underlying stock. For another example, the value of many derivatives is derived from the interest rate offered by the leading London banks to one another, this interest rate being called the London Interbank Offered Rate, or Libor.

How big is the derivatives market? That depends on how one counts. Still, in the second quarter of 2012 (a decent benchmark, because it was an important moment in talks among the world's various central bankers and financial regulators over what are known as the Basel Accords), the Bank for International Settlements said that total *over-the-counter* derivatives had reached \$639 trillion gross, or \$25 trillion in net outstanding.

### Words and Numbers

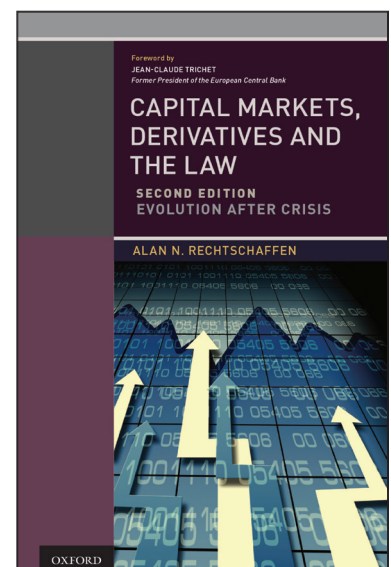
Those are big numbers, surrounded by words that, to some readers of this review, will seem much more mysterious than they ought to be. So I'll start with the words. The Bank for International Settlements (BIS), which provides those big numbers, is an organization jointly controlled by the most important central banks in the world, and is immensely influential in the monetary policy of participating countries. The Switzerland-centered BIS is in turn the institution behind the Basel Accords, which is a continuing effort to coordinate banking

supervision policies, especially with reference to risk management.

The numbers concern a particular sort of derivatives, the sort that are not standardized and traded on exchanges. Yes, some derivatives *are* exchange-listed. But many more, and much larger volumes, are traded off exchanges, in transactions tailored by the particular parties, and these are known as over-the-counter, or OTC, deals. Further, the OTC derivatives are the ones that tend to become the subjects of political and regulatory controversy, whereas their exchange-listed cousins have a reputation as being plain-vanilla, that is, boring.

Gross versus "net outstanding" OTC derivatives? To get a grip on this, simply think of yourself as a football gambler. In the upcoming Super Bowl, you have wagered \$40,000 that the NFC team will win the ring, beating the spread, and \$39,000 that it will not. In gross terms, you have \$79,000 worth of wagers on your hands. Measured as net outstanding, you have made only a \$1,000 directional wager on the NFC.

Does the gross figure even matter? No and yes. No: if you have confidence that everyone on the opposite side of your bets is creditworthy, then you are confident that the \$1,000 figure is the only one that matters. You will either win or lose that amount. But yes, the gross figure matters, because you can't be sure who is creditworthy. In the event that a major pro-AFC gambler defaults and declares bankruptcy minutes after the AFC team loses by more than the spread, you will be unable to collect your winnings except at some heavily discounted value, and the parties on the other side of your straddle, those to whom *you* are the



pro-AFC sucker, will demand their money immediately.

Much the same is true with derivatives, especially of the OTC variety: The gross figure doesn't matter, except in moments of crisis, when it matters a great deal.

Thus, both the numbers with which we began—\$639 trillion gross, \$25 trillion in net outstanding—matter, and together they indicate just how consequential the derivatives markets are in the financial world. By contrast, the combined gross domestic product of *every nation in the world* in 2012 was roughly \$71 trillion.

### **Fear of Dominos**

Further, these huge numbers generate a fear of a domino effect, whereby various banks and other systemically important institutions could fail one after another after another, because they hold the opposite sides of the same derivatives deals, so that each is dependent upon the creditworthiness of the others.

The lesson that many United States and European lawmakers took from the crises of 2007-2008 was that derivatives, especially OTC derivatives, are dangerous things that must be controlled. This was perhaps especially so for a sort of derivative known

as a “swap,” the exchange of the right to receive one cash flow for the right to receive another. For example, in a currency swap, one bank or hedge fund or other institution may promise another a five-year stream of payments of \$1,000 in U.S. money in return for a five-year stream of payments of the number of euros that could purchase \$1,000 in U.S. money according to the market dollar/euro exchange rate on the day the deal is struck. In this case, the underlying of the derivative is the exchange rate itself, with one side betting that it will move in favor of the euro, the other that it will move in favor of the dollar.

A level of official suspicion about the derivatives market in general, about OTC derivatives more particularly, and swaps most particularly of all, led to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 (2010).

Much of the book under review is concerned with the Dodd-Frank Act, especially those portions of it that address the use and (as the legislators see it) the misuse of OTC derivatives. Indeed, this is a second edition of a book first published in 2009 without the subtitle. This edition came into existence—and is worth treating as a new book for purposes of review—largely because Dodd-

Frank rendered the earlier work obsolete.

Alan N. Rechtschaffen, an adjunct professor of law at New York University, quotes former Senator Christopher Dodd on the consequences of the act that bears his name: “[O]ver-the-counter derivatives will be regulated by the SEC and the CFTC, more transactions will be required to clear through central clearing houses and traded on exchanges, un-cleared swaps will be subject to margin requirements, swap dealers and major swap participants will be subject to capital requirements and all trades will be reported so that regulators can monitor risks in this vast, complex market.”

*Capital Markets, Derivatives and the Law* is a thoughtful, well-informed, and for the most part clearly written guide to the complexities of Dodd-Frank, of the fiduciary obligation to manage risks, and of the sorts of litigation that arise from the world of regulation and its struggles with the realities of derivatives, and of private civil litigation at the federal and state level, under common law principles or under statute. I recommend it as a handy volume for anyone who addresses such issues in any capacity on a regular basis. ☺