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# The Narratives of Chinese-American Litigation During the Chinese Exclusion Era

Paul Yin<sup>†</sup>

## INTRODUCTION

From 1882 until 1943, the Chinese Exclusion Era featured a combination of laws and rulings that prevented many Chinese immigrants from entering the United States or becoming citizens. Passed in 1882, the Chinese Exclusion Act marked the first time that the United States restricted immigration on the basis of race and nationality.<sup>1</sup> For over sixty years, Chinese immigrants and Chinese Americans were effectively excluded from assimilating into mainstream American society.<sup>2</sup>

However, rather than passively accepting their fates as second class citizens, the Chinese in America were politically active and highly litigious.<sup>3</sup> Between 1880 and 1900 alone, they brought some twenty appeals before the United States Supreme Court.<sup>4</sup> During those same years, the Federal District Court of Northern California and the state circuit court heard over 9,600 corpus cases brought by Chinese petitioners.<sup>5</sup> To put that figure into context, the 1880 census reported that there were just over 105,000 Chinese people in the United States.<sup>6</sup> Contrary to the perception of

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1. JUDY YUNG, UNBOUND VOICES: A DOCUMENTARY HISTORY OF CHINESE WOMEN IN SAN FRANCISCO 10 (1999). In the decades that followed the Chinese Exclusion Act, Congress passed laws that restricted immigration from Japan, India, Mexico and southern and eastern Europe. ERIKA LEE, AT AMERICA'S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA 32-33 (2003).

2. In this paper, I use the term "Chinese immigrants" to refer to Chinese people who came to the United States as immigrants, and the term "Chinese Americans" to refer to those who were born in the United States. When referring to all Chinese persons living in the United States I will refer to the Chinese community, or use the term "Chinese in America." These terms are similarly used in LEE, *supra* note 1, at 258-59.

3. See IRIS CHANG, THE CHINESE IN AMERICA: A NARRATIVE HISTORY xii (2003); SCOTT WONG & SUCHENG CHAN, CLAIMING AMERICA: CONSTRUCTING CHINESE AMERICAN IDENTITIES DURING THE EXCLUSION ERA 4 (1998) (explaining that Chinese community spokespersons sought equal treatment with other groups in America, defended their presence in America and turned democratic ideals back on their critics).

4. CHARLES J. MCCLAIN, IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA 3 (1994).

5. LEE, *supra* note 1, at 47.

6. Lucy E. Salyer, *Wong Kim Ark: The Contest Over Birthright Citizenship*, in IMMIGRATION

Chinese immigrants as “unwilling to adapt to the American lifestyle,” the sheer number of cases brought into courts by the Chinese in America evinced their strong desire to assimilate into the United States, and participate in American society on an equal footing.<sup>7</sup>

Unfortunately, until recently, the efforts of these Chinese litigants have been overlooked by scholars who preferred to assess blame for the passage of the Chinese Exclusion Act. Historians commonly point to organized labor, which sought to unite workers of different ethnic backgrounds in order to gain labor concessions.<sup>8</sup> Other studies blame national politicians for targeting a powerless and unfamiliar group of new immigrants in order to garner votes, or rationalize the Exclusion Acts as a product of racial antagonisms in the late nineteenth and early twentieth century America.<sup>9</sup> Each of these studies have missed the fact that, far from home and burdened by discriminatory laws and harassment by local authorities, the Chinese in America throughout the nineteenth and early twentieth centuries continually pressed the courts for legal means to reunite their families and ultimately stay in America.

This Article attempts to capture some of the personal narratives and stories of the Chinese community during the Exclusion Era, including how they challenged the exclusionary laws in the courts, or sought to enforce rights that they believed inhered by residence or birth in the United States. Other narratives will show the difficulties faced by the Chinese community in their efforts to enter the United States, and the further difficulties of staying. Yet, even as the laws became more restrictive and the political process and courts less welcoming, Chinese litigants continually brought their claims to court and challenged their exclusion from American society. In this Article, I argue that the narratives of the Chinese in America reflect their desire for citizenship and struggle for equal treatment before the law. Despite statements by politicians and judges suggesting otherwise, many of the Chinese in America ultimately desired to assimilate into and stay in the United States.

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STORIES 56 (David A. Martin & Peter H. Schuck eds., 2005).

7. See MCCLAIN, *supra* note 4, at 279 (arguing that regular recourse to the courts is evidence that nineteenth-century Chinese immigrants understood and adapted to American institutions).

8. See WONG & CHAN, *supra* note 3, at 5 (stating that “Euro-American politicians, missionaries, labor leaders, and journalists argued that the Chinese degraded American labor by working for wages well below the standards needed to sustain an American family”); ESTELLE T. LAU, PAPER FAMILIES: IDENTITY, IMMIGRATION ADMINISTRATION, AND CHINESE EXCLUSION 15 (2006) (explaining that the reinforcement of the distinctions between Americans and Chinese immigrants allowed politicians to reframe labor issues, by bridging the partisan divide between workers of different nationalities).

9. See ANDREW GYORY, CLOSING THE GATE: RACE, POLITICS, AND THE CHINESE EXCLUSION ACT 1–2, 10 (1998) (referring to *Plessy v. Ferguson*, 163 U.S. 537 (1896), decades of state sponsored segregation); MILTON R. KONVITZ, THE ALIEN AND THE ASIATIC IN AMERICAN LAW 11 (1946) (explaining that “[a]ll but one of some eight anti-Chinese measures passed by Congress were passed on the eve of national elections and for avowed political purposes,” i.e., to gain the support of Californian voters).

Part I of this Article examines how Chinese immigrants challenged laws that excluded them from entering the United States. In doing so, I explain the various local and state-sponsored anti-Chinese laws that preceded the 1882 Chinese Exclusion Act and the reactions of the Chinese community. I also discuss how, following the passage of the Chinese Exclusion Act, litigants were able to narrow the applicability of the exclusion laws and mitigate its effect on Chinese immigrants for a period of time. In addition, Part I discusses how the exclusion laws were especially harsh towards Chinese women, and how the immigration process was more often than not degrading towards them.

In Part II, I examine how the Chinese community confronted some of the difficulties and obstacles they faced in the United States. Upon arrival, the Chinese in America were subjected to discriminatory laws that hindered their ability to learn, work, and live in the United States. I discuss how even immigration laws that were neutral on their face actually had discriminatory effects against Chinese women and burdened Chinese immigrants who sought to raise a family in the United States. I also present the narratives of litigants and community leaders who fought for the right to become American citizens.

#### I. THE RIGHT TO ENTER

During the mid-nineteenth century, Chinese workers first began to immigrate to the United States to take part in the California Gold Rush.<sup>10</sup> In 1868, in light of new relations with China, Congress unanimously ratified the Burlingame treaty.<sup>11</sup> One provision recognized “the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects.” Another provision guaranteed that “Chinese subjects visiting or residing in the United States, shall enjoy the same privileges, immunities, and exemptions in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation.”<sup>12</sup>

Despite the promise of the Burlingame treaty, however, efforts quickly began to limit the freedom of Chinese immigrants to enter and work in the United States. Proponents for anti-Chinese laws and Chinese exclusion justified their actions in a number of ways. Some framed the future of the United States as a winner-take-all, Chinese vs. Anglo-Saxon debate. In 1879, Senator James G. Blaine, a front-runner for the Republican presidential nomination,<sup>13</sup> framed the purported choice during a Senate floor debate: “The question lies in my mind thus: either the Anglo-Saxon

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10. GYORY, *supra* note 9, at 6.

11. *Id.* at 26.

12. MCCLAIN, *supra* note 4, at 30.

13. Blaine eventually lost the Republican nomination in 1880 to James Garfield. GYORY, *supra* note 9, at 5.

race will possess the Pacific Slope or the Mongolians will possess it.”<sup>14</sup> Other politicians promoted the idea that Chinese immigrants were inassimilable into American society, or even worse, undesirable. During the floor debates for the Chinese Exclusion Act, one representative argued that the Chinese were, “[a]lien in manners, servile in labor, pagan in religion, they are fundamentally un-American.”<sup>15</sup> Another similarly asserted that the Chinese “are not a desirable population. . . . They are not good citizens.”<sup>16</sup>

While some Chinese immigrants inevitably gave up and returned to China, others remained and made the United States their home. In the face of discriminatory laws, the Chinese community refused to be marginalized. Instead, they actively demanded equal rights through the media, the political process, and most importantly, the courts.

#### A. Early Anti-Chinese Measures

The 1880 California Constitution stated: “No native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this state.”<sup>17</sup> This clause, which singles out the Chinese among all other nationalities, was not unique to the time. Prior to national campaigns against Chinese immigrants, California – and in particular San Francisco,<sup>18</sup> which was a main point of entry for Chinese immigrants – was a hotbed for anti-Chinese propaganda and measures.<sup>19</sup>

In 1852, the California legislature passed the California Foreign Miners Tax, which ensured that “[n]o person who is not a native or natural born citizen of the United States . . . shall be permitted to mine in any part of this State, without having first obtained a license to do so according to the provisions of this Act.”<sup>20</sup> The reference to non-natives or those who were not natural born citizens was a euphemism for Chinese immigrants who bore the brunt of the law.<sup>21</sup> In order to obtain the required mining

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14. *Id.* at 3 (explaining how statutory references to “Mongolians” were euphemisms for people of Chinese descent).

15. *Id.* at 5.

16. *Id.*

17. WONG & CHAN, *supra* note 3, at 7.

18. MCCLAIN, *supra* note 4, at 43 (explaining that by 1870 about 12,000 Chinese persons, or one-fourth of California’s Chinese population, lived in San Francisco).

19. *Id.* at 9–10.

20. THE COLUMBIA DOCUMENTARY HISTORY OF THE ASIAN AMERICAN EXPERIENCE 15–16 (Franklin Odo ed., 2002) [hereinafter THE COLUMBIA DOCUMENTARY].

21. Similarly, laws directed at those “ineligible for citizenship” were also legal euphemisms used to disguise laws that applied solely to the Asian immigrants in America, as they were the only racial group ineligible to become naturalized citizens. Lee A. Makela, *The Immigration Act of 1924*, in ASIAN AMERICAN POLITICS: LAW, PARTICIPATION, AND POLICY 51, 52 (Don T. Nakanishi & James S. Lai eds., 2003)

license, each Chinese immigrant had to pay a fee of three dollars per month.<sup>22</sup> Those who chose to mine without the license risked penalties of up to three months in prison and a fine of up to \$1000.<sup>23</sup>

In addition to this new burden imposed on Chinese workers, the legislature also passed a “commutation tax.” The act required that the owners of all vessels arriving at California ports to post a five hundred dollar bond for each foreign passenger, or in the alternative, pay a five-dollar fee.<sup>24</sup> In practice, the five-dollar fee was usually added as a surcharge onto the price of passage for Chinese immigrants.<sup>25</sup> Thus, within a short time, the California legislature had placed barriers on the ability of Chinese immigrants to both immigrate to and work in the United States. Oddly, the Chinese community did not oppose the enactment of the two taxes. Their failure to challenge these discriminatory laws was a marked departure from their vigorous protests in subsequent cases.<sup>26</sup>

In 1858, the California legislature passed “An Act to Prevent the further Immigration of Chinese or Mongolians to this State.”<sup>27</sup> The bill flatly prohibited the immigration of any Chinese into the state through any of its ports.<sup>28</sup> The law was quickly challenged, and declared unconstitutional by the California Supreme Court in an unpublished decision.<sup>29</sup>

Just a few years later, California passed “An Act to protect Free White Labor against competition with Chinese Coolie Labor, and to Discourage the Immigration of the Chinese into the State of California.” The act instituted the “Chinese Police Tax,” a tax of \$2.50 per month on all Chinese residents in the state, and made employers of Chinese residents equally liable.<sup>30</sup> Lin Sing, a Chinese merchant, initially refused to pay the tax; however, upon a threatened property seizure, Lin Sing paid the five-dollar tax and then proceeded to sue the Tax Collector.<sup>31</sup> The California Supreme Court again declared the law unconstitutional, reasoning that Chinese immigrants could not be taxed on the basis of their nationality.<sup>32</sup> Although these favorable rulings did not stem the calls for Chinese exclusion, the Chinese in America had begun to show their willingness to

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22. MCCLAIN, *supra* note 4, at 12.

23. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 16.

24. MCCLAIN, *supra* note 4, at 12.

25. *Id.*

26. *See id.* at 13 (suggesting that the Chinese community was willing to bear the taxes because they mistakenly hoped to defuse animosity against the Chinese immigrant population).

27. *Lin Sing v. Washburn*, 20 Cal. 534 (1862).

28. *Id.*; MCCLAIN, *supra* note 4, at 18.

29. MCCLAIN, *supra* note 4, at 18.

30. *Id.* at 26–27. However, the tax did not apply to Chinese who were “operating businesses, who had licenses to work in the mines, or who were engaged in the production or manufacture of sugar, rice, coffee, or tea.” *Id.*

31. *Id.* at 27; *Lin Sing*, 20 Cal. at 535.

32. *Lin Sing*, 20 Cal. at 578

enforce their rights in court.

*B. Initial Challenges to the Exclusion Acts*

By 1882, social and political forces resulted in the passage of the first Chinese Exclusion Act, which banned the immigration of Chinese laborers, both skilled and unskilled, for a period of ten years.<sup>33</sup> The Act allowed for laborers who were already in the United States the right to leave and return, provided they possessed a certificate of identification.<sup>34</sup>

Of course, the effect the law had on laborers who had legally left the United States prior to the passage of the exclusion law was unclear. The first day that the Act came into force, Ah Sing, who worked as a cabin waiter, and other Chinese crewmen aboard the *City of Sydney* were detained aboard their ship by customs officials.<sup>35</sup> According to the government, Ah Sing and the other Chinese crewmen did not possess the proper certificate of identification, and were thus unable to enter the United States.<sup>36</sup> Chew Heong, a laborer, was similarly outside of the United States when the Exclusion Act was passed. Upon re-entry, he too was detained for not having the proper certificate of re-entry.<sup>37</sup> In each case, the federal courts found that the Exclusion Act could not apply retroactively, and ordered the government to release the petitioners and allow them to enter the United States.<sup>38</sup>

Due to the success of Chinese litigants in federal courts, the U.S. government often tried to keep cases away from federal judges. This situation occurred in *In re Jung Ah Lung*.<sup>39</sup> Like many immigrants, Ah Lung had immigrated to California in 1876, hoping to establish a new life in the United States. After working for a couple of years in San Francisco, he moved to New York to open his own laundry business. Ah Lung left the United States to visit China in 1883, taking the proper certificate of re-entry as required under the exclusion laws.<sup>40</sup> Upon his return to the United States, Ah Lung claimed that his return certificate had been stolen by pirates, but he was still detained for lacking a certificate of re-entry.<sup>41</sup> Amazingly, he was able to corroborate his story using copies of the customs registry, the testimony of a missionary from China who witnessed the pirate attack, and

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33. See GYORY, *supra* note 9, at 6–16 (explaining the social and political forces that led to the Chinese Exclusion Acts).

34. MCCLAIN, *supra* note 4, at 149.

35. MCCLAIN, *supra* note 4, at 151.

36. *In re Ah Sing*, 13 F. 286, 287–88 (C.C.D. Cal. 1882).

37. *Chew Heong v. United States*, 112 U.S. 536, 538 (1884).

38. *Id.* at 560; *Ah Sing*, 13 F. at 290; *see also In re Ah Tie*, 13 F. 291, 294 (C.C.D. Cal. 1882) (“A chinese [sic] laborer on an American vessel cannot be held to lose his residence here, so as to come within the purview of the act, by such temporary entry upon a foreign country as may be caused by the arrival of the vessel on her outward voyage at her port of destination . . .”).

39. 124 U.S. 621 (1888).

40. KONVITZ, *supra* note 9, at 9.

41. MCCLAIN, *supra* note 4, at 169.

two individuals who identified Ah Lung as a regular churchgoer when Ah Lung lived in San Francisco.<sup>42</sup>

Despite the corroborating evidence, the U.S. district attorney argued that the court had no jurisdiction to hear Jung Ah Lung's habeas corpus petition because the port authorities had the final say on Ah Lung's entry decision.<sup>43</sup> The district court quickly dispensed of the district attorney's argument and reaffirmed the court's duty to review the lawfulness of detentions by executive officers.<sup>44</sup> On appeal, the Supreme Court found that the certificate was not the sole determinant of a Chinese laborer's right to re-entry, and ruled that Jung Ah Lung was entitled to re-enter the United States.<sup>45</sup>

As a result of litigation instituted by Chinese immigrants, the courts had ruled that the Exclusion Act could not be applied retroactively, that secondary evidence could be used to establish prior residence, and that the Exclusion Acts were, for the most part, inapplicable to Chinese merchants.<sup>46</sup> Thus, while new Chinese laborers were still unable to enter the United States legally, a Chinese immigrant who had already settled in the United States would most likely be allowed to return, leaving the Chinese Exclusion Act much weaker than Congress had initially intended.<sup>47</sup>

### C. Amendments to the Exclusion Acts

In 1888, Congress moved to overturn court decisions that they believed were too favorable to Chinese immigrants. The Scott Act of 1888 provided that no Chinese laborer, irrespective of former residence in the United States, could enter the United States.<sup>48</sup> When the Act was passed, there were at least 20,000 outstanding certificates of re-entry belonging to Chinese immigrants.<sup>49</sup> Many of them, whose right to re-enter the United States had been revoked overnight, had lived in the United States for many years, married and started families here.<sup>50</sup> In addition to ignoring these realities (or perhaps purposely), the Act also made no concessions for those who owned property or even the hundreds of Chinese laborers who had visited home and were en route back to the United States at the time of the bill's passage.<sup>51</sup>

One of the Chinese immigrants en route to America was Chae Chan

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42. *Id.* at 170.

43. *United States v. Jung Ah Lung*, 124 U.S. 621, 625–26 (1888).

44. *Id.* at 622–23.

45. *Id.* at 634.

46. MCCLAIN, *supra* note 4, at 169–72.

47. *Id.* at 171.

48. *Id.* at 192.

49. KONVITZ, *supra* note 9, at 19. Other estimates put the number of outstanding certificates at 30,000. See MCCLAIN, *supra* note 4, at 194.

50. KONVITZ, *supra* note 9, at 19.

51. See MCCLAIN, *supra* note 4, at 194.



Ping. Chae first arrived in the United States in 1875, and lived there continuously until June 1887, when he returned to visit China.<sup>52</sup> On September 7, 1888, before the Scott Act was even introduced, Chae Chan Ping boarded a ship to return to San Francisco. By the time Chae docked, the Scott Act had been passed and he was denied entry, despite his possession of the previously valid re-entry certificate.<sup>53</sup>

Chae Chan Ping, with the support of the Chinese community, quickly moved to challenge the constitutionality of the Scott Act, and specifically, whether Congress could nullify the re-entry certificates.<sup>54</sup> Though the court acknowledged the questionable motives of Congress in passing the Scott Act, it disclaimed any role as “a censor of the morals of other departments of the government,” and upheld the constitutionality of the Act.<sup>55</sup> The Supreme Court’s ruling meant that Chinese laborers were effectively separated from their families in China, or risked deportation upon their return.<sup>56</sup> Chae Chan Ping himself was deported a few months later, forever banned from returning to the country that had been his home for twelve years.<sup>57</sup>

A mere four years later, Congress passed the Geary Act, which provided for imprisonment and hard labor before deportation of anyone found in violation of the exclusion laws.<sup>58</sup> The Act required any Chinese laborer residing in the United States to carry a certificate of residence, or risk deportation.<sup>59</sup> Opposition to the Geary Act, like the Scott Act before it, was quickly organized by Chinese leaders. In New York, a city with a burgeoning Chinese population, the Chinese Equal Rights League was formed.<sup>60</sup> Chinese laborers were asked to boycott the registration requirement and donate one dollar each to a legal defense fund.<sup>61</sup> At least 80,000 laborers, constituting 15% of the Chinese laborers in New York, participated in the boycott by refusing to register for the certificate of residence.<sup>62</sup>

When the Chinese community decided to challenge the constitutionality of the Geary Act, Fong Yue Ting, Wong Quan, and Lee Joe all volunteered to act as plaintiffs.<sup>63</sup> Each of the young men had lived in

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52. *Id.* at 195.

53. Chae Chan Ping v. United States, 130 U.S. 581, 582 (1889).

54. *Id.* at 589.

55. *Id.* at 602–03, 609.

56. See generally YUNG, *supra* note 1, at 113–14 (explaining how men often immigrated alone and sent money back to their families in China).

57. IMMIGRATION STORIES, *supra* note 6, at 16.

58. *Id.* at 16.

59. *Id.* at 16–17.

60. MCCLAIN, *supra* note 4, at 205–06.

61. IMMIGRATION STORIES, *supra* note 6, at 17.

62. *Id.* at 17.

63. MCCLAIN, *supra* note 4, at 208–09 (describing how litigation was planned by the counsel for the Chinese immigrants).

New York for years and worked as laundrymen.<sup>64</sup> Each of them believed that the new Geary Act was unconstitutional because it granted the federal government power to expel long-time residents of the United States. However, in a 6-3 decision, the Supreme Court ruled otherwise, declaring that “[t]he right of a nation to expel or deport foreigners, who have not been naturalized or taken any steps towards becoming citizens of the country, . . . is as absolute and unqualified as the right to prohibit and prevent their entrance into the country.”<sup>65</sup>

Although Fong Yue Ting, Wong Quan, and Lee Joe were all deported following the decision, their efforts were not wasted. Due to the boycott, 80,000 other Chinese immigrants remained unregistered with the federal government and lacked the proper certificates of residence.<sup>66</sup> The Attorney General and Secretary of the Treasury, realizing that their departments lacked the funds to enforce the Geary Act, instructed their officers not to enforce it.<sup>67</sup> A few years later, in *Wong Wing v. United States*, the Court held that the sections of the Geary Act which provided for a term of imprisonment and hard labor for Chinese deportees were unconstitutional.<sup>68</sup> Thus, Chinese immigrants, through their political activism and efforts in the courts rendered the most pernicious parts of the Geary Act moot.

#### D. The Presumptive Exclusion of Chinese Women

Another defining feature of the early Chinese immigrant community in the United States was its marked gender disparity.<sup>69</sup> While historians attribute much of the disparity to Chinese culture or typical immigration patterns,<sup>70</sup> there is no question that discriminatory federal and state laws, as well as exclusion laws specifically targeting Chinese women, created greater obstacles for Chinese immigrant women who wished to come to the United States.<sup>71</sup>

Sadly, the main impetus for many of the early exclusion laws targeting Chinese women was the stereotype that they were all prostitutes. President

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64. IMMIGRATION STORIES, *supra* note 6, at 17.

65. *Fong Yue Ting v. United States*, 149 U.S. 698, 707 (1893). Interestingly, the majority failed to address the fact that Chinese immigrants actually had no right to become naturalized citizens, or take any affirmative steps towards becoming citizens. *See also* *In re Ah Yup* 1 F. Cas. 223, 223–25 (C.C.D. Cal. 1878) (holding that immigrants of Chinese descent were not white, thus barring them from citizenship).

66. IMMIGRATION STORIES, *supra* note 6, at 17.

67. *Id.* at 20.

68. 163 U.S. 228, 236–38 (1896).

69. *See* YUNG, *supra* note 1, at 99 (explaining that in 1850, the gender ratio within the California Chinese community was 39 to 1).

70. *See* LEE, *supra* note 1, at 92–93, 114–16 (explaining how some other factors contributing to the male-female disparity might have included patriarchal cultural values that discouraged Chinese women from traveling abroad, traditional patterns of male sojourning and transnational family structures).

71. *See* Sucheng Chan, *The Exclusion of Chinese Women*, in *ENTRY DENIED* 94–97 (1991).

Ulysses Grant asserted that all Chinese immigrant women were “brought for shameful purposes, to the disgrace of the communities where settled and to the great demoralization of the youth of those localities.”<sup>72</sup> Of course, like all stereotypes, the idea that all Chinese women were prostitutes was greatly overstated. The percentage of Chinese women in San Francisco engaged in prostitution fell drastically between 1860 and 1880.<sup>73</sup> By 1880, married women outnumbered prostitutes among Chinese immigrant women.<sup>74</sup>

Yet, the stereotype of Chinese women as prostitutes continued to subject thousands of Chinese immigrant women to humiliating questioning or detention by immigration officials. For example, one early California statute banned the entry of “lewd and debauched women.”<sup>75</sup> The statute also allowed immigration officials who identified “lewd and debauched women” to condition the release of their detainees upon the payment of a bond, from which the officer would receive commission.<sup>76</sup>

In August, 1874, Chy Lung and twenty other Chinese women were detained aboard their ship for being “lewd and debauched women.”<sup>77</sup> They were among ninety three other Chinese women who were traveling to the United States to meet their husbands.<sup>78</sup> During the trial it became clear that the only difference between the detainees and those who were allowed to enter was the fact that Chy Lung and the other twenty women were childless.<sup>79</sup> The Supreme Court admonished the State of California for empowering the immigration official with so much power, and ordered Chy Lung and the other women to be released.<sup>80</sup> Unfortunately, the lower court’s ruling and the California statute were only overturned on federalism grounds, leaving the door open for similarly arbitrary federal laws.<sup>81</sup>

In 1875, Congress passed the Page Law, which prohibited the immigration of any Asian woman for the purpose of prostitution.<sup>82</sup> The Page Law was remarkable for a number of reasons. First, while the intent of the law seemed to institute a standard of morality, it must be noted that the statute imposed a heightened standard of proof upon Asian women. The law mandated that “in determining whether the immigration of any subject of China, Japan or any Oriental country . . . it shall be the duty of the consul-general or consul of the United States . . . to ascertain whether such

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72. GYORY, *supra* note 9, at 71.

73. YUNG, *supra* note 1, at 124.

74. *Id.* at 154.

75. *Chy Lung v. Freeman*, 92 U.S. 275, 276 (1875).

76. *Id.* at 276–78.

77. *Id.* at 276.

78. Transcript of Record at 1, 7, *Chy Lung v. Freeman*, 92 U.S. 275 (1875).

79. *Id.* at 7.

80. *See Chy Lung*, 92 U.S. at 278, 281.

81. *Id.* at 278–79.

82. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 12.

immigrant has entered . . . for lewd and immoral purposes.”<sup>83</sup> Second, politicians targeted the wrong source of the problem. Most Chinese prostitutes were the victims of human trafficking, usually imported as indentured servants and then forced into prostitution as payment for their passage.<sup>84</sup> Finally, the Act gave too much discretion to immigration officials who relied heavily on stereotypes of traditional Chinese gender roles.

For example, in 1885, Jow Ah Yeong, a merchant’s wife, attempted to re-unite with her husband in San Francisco.<sup>85</sup> The immigration official noted that both Jow Ah Yeong and her daughter had bound feet, “a mark of respectability,” and proceeded to let them enter the United States.<sup>86</sup> In 1899, Customs official John P. Jackson asserted that he could tell if someone was a “decent Chinese woman” by the “badge of respectability of bandaged and small feet.”<sup>87</sup> On the other hand, several Chinese women believed that only those who did not arrive in first class were suspected of being prostitutes, while others claimed the suspicion applied to all Chinese women arriving under the age of sixty.<sup>88</sup>

Even couples who arrived together were subjected to highly detailed and embarrassing questioning.<sup>89</sup> Any discrepancy in a couple’s testimony was enough for an immigration official to deny entry, or prolong the immigration process.<sup>90</sup> Judy Yung, who personally interviewed many women who went through the immigration process, found that Chinese women were often asked hundreds of detailed questions about their family background and life in China.<sup>91</sup> It was not uncommon to have interrogations that lasted for more than one day.<sup>92</sup> Jew Law Ying and Yung Hin Sen, both of whom were able to legally immigrate to the United States, recalled that they were asked minute details regarding their wedding day, the village where they lived, which neighbors lived where and even which direction their house faced.<sup>93</sup>

Thus, for a female Chinese immigrant, there were many difficulties

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83. *Id.* at 38; *see also* Chan, *supra* note 71, at 105 (explaining that there is evidence that the Page Law was quite effective in restricting Chinese female immigration).

84. For more details and stories about the trafficking of Chinese women, *see* YUNG, *supra* note 1, at 124–53. Ironically, a major contributing factor to the expansion of the prostitution business in general, was the fact that, under the exclusion laws, wives left behind in China could not immigrate to the United States. The result was an impoverished male bachelor society whom increasingly resorted to gambling and prostitution. YUNG, *supra* note 1, at 125.

85. LEE, *supra* note 1, at 94–95.

86. *Id.* at 95.

87. *Id.*

88. *Id.* at 96.

89. *Id.*

90. *Id.*; *see also* YUNG, *supra* note 1, at 33–35 (explaining the lengths to which Chinese immigrants practiced and memorized their life story beforehand in order to avoid deportation).

91. YUNG, *supra* note 1, at 15

92. *Id.*

93. *Id.* at 57–84.

with immigrating to the United States that were not presented to their male counterparts. Discriminatory laws or their arbitrary enforcement by immigration officials meant there was much greater possibility that a Chinese woman would be detained or denied entry at the ports by customs officials than compared to her male counterpart.<sup>94</sup>

## II. THE RIGHT TO STAY

Despite frequent litigation, and some key victories by Chinese immigrants in federal court, there is no question that the Chinese Exclusion Acts achieved their stated goal. In 1882, prior to the enactment of the Exclusion Act, nearly 40,000 Chinese entered the United States.<sup>95</sup> By 1887, only ten Chinese immigrants were admitted, with thousands leaving every year.<sup>96</sup> In 1904, Congress permanently halted Chinese immigration by extending the Chinese Exclusion Acts indefinitely.<sup>97</sup>

Moreover, Congressional amendments gave immigration officials, many of whom harbored a strong disdain for the Chinese, the final say in immigration decisions.<sup>98</sup> These changes to the Exclusion laws, as well as the lessened judicial oversight of immigration decisions, resulted in the drastic increase of deportations by immigration officials.<sup>99</sup>

The Chinese immigrants who were not deported on the other hand, were subjected to a life of loneliness, unequal treatment and condemnation. As a result, for the Chinese in America, the focus of their litigation began to shift away from efforts to get into the United States and towards enforcing their right to *stay* in the United States, and being accorded the same rights as other citizens.

Supreme Court Justice Field, in his dissent in *Chew Heong v. U.S.*,<sup>100</sup> described the Chinese population living in the United States as thus:

They have remained among us a separate people, retaining their original peculiarities of dress, manners, habits, and modes of living, which are marked as their complexion and language. They live by themselves; they constitute a distinct organization with the laws and customs which they have brought from China. Our institutions have made no impression on them during the more than thirty years they have been in the country . . .

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94. See also Sucheng Chan, *The Exclusion of Chinese Women, 1875–1943*, in ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA, 1882–1943 94, 109–139 (Sucheng Chan ed., 1994) (explaining how the Exclusion Laws were the largest cause of the gender disparity within the Chinese community).

95. LEE, *supra* note 1, at 43.

96. *Id.* at 44.

97. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 128.

98. MCCLAIN, *supra* note 4, at 219 (1994); see also LEE, *supra* note 1, at 51–65, 225–26 (describing how the immigration service also began to deport Chinese immigrants through a procedural process that bypassed judicial hearings or by flatly ignoring judicial decrees).

99. See KONVITZ, *supra* note 9, at 55 (explaining that from 1921 to 1925, there were 26,427 deportations, but in the following five years, the number increased to 64,123).

100. *Chew Heong v. United States*, 112 U.S. 536 (1884).

They do not and will not assimilate with our people.<sup>101</sup>

Over the course of his career, as cases filed by Chinese litigants matriculated through the federal courts, Justice Field would be proven wrong. Rather than passively accept an existence as second-class citizens, the Chinese in America demanded equal treatment before the law. As early as 1853, Chinese leaders had already met with the California legislature to protest the treatment of Chinese immigrants in the United States.<sup>102</sup> Three decades before the passage of the Chinese Exclusion Act, the Chinese community had already recognized that they did not “occupy that same position as the persons and property of other foreigners.”<sup>103</sup>

The Chinese in America countered their unequal treatment by forming interest groups to advocate for political causes and litigating against discriminatory laws. They wrote articles and letters, and even started their own newspapers to protest their mistreatment.<sup>104</sup> Their activism, willingness to litigate, and desire to be treated equally before the law showed that the Chinese in America had a strong desire to stay in and assimilate into the United States.

#### A. Citizenship Rights

Shortly after the passage of the Chinese Exclusion Acts, Chinese immigrants who had lived or grown up in America began to seek the right to become citizens of the United States. Many Chinese immigrants arrived when they were young, and had begun to raise families and establish livelihoods within the United States. Citizenship would simply ensure their right to remain within their communities. As Chief Justice John Marshall once said, “A naturalized citizen becomes a member of society, possessing all the rights of a native citizen, and standing, in the view of the Constitution, on the footing of a native.”<sup>105</sup>

##### 1. The Loss of Naturalization Rights

In 1790, only two years after the adoption of the Constitution, Congress passed “An Act to establish an [sic] uniform Rule of

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101. *Id.* at 550.

102. See MCCLAIN, *supra* note 4, at 13–16 (discussing the efforts of the early “Chinese Six Companies” to convince the California legislature to reject the passage of additional taxes on Chinese miners).

103. See *id.* at 16 (citing a demand by Chinese leaders to a California legislative committee that “some settled and certain policy should be pursued towards their people [so] their persons and property may in fact [emphasis in original] as well as in law, occupy the same position as the persons and property of other foreigners”).

104. See WONG & CHAN, *supra* note 3, at 3, 48 (referencing the publishing of periodicals in the *North American Review* and *Overland Monthly* and Wong Chin Foo’s publication of a Chinese newspaper entitled the *Chinese American*); see also MCCLAIN, *supra* note 4, at 3 (describing the letters found by the author indicating that leaders of the Chinese community sought lobbyists to speak on their behalf to the California legislature).

105. See MCCLAIN, *supra* note 4, at 145.

Naturalization.”<sup>106</sup> The Act specified that only “free white persons” who resided within the United States for at least two years could become naturalized American citizens.<sup>107</sup> It was not until after the Civil War that the right to become a naturalized citizen also became extended to African Americans.<sup>108</sup>

However, whether or not Chinese immigrants could become naturalized citizens was left undecided until 1878, in *In re Ah Yup*.<sup>109</sup> There, under a strict interpretation of the statutory language, it was established that the Chinese in America were ineligible for naturalization because they were not “free white persons.”<sup>110</sup> In 1882, Congress codified this decision by explicitly prohibiting federal courts from naturalizing persons of Chinese descent as citizens.<sup>111</sup>

With the passage of this provision, many long-time residents of Chinese descent had effectively become barred from their countries and livelihood. Two poignant examples of the effect that this provision had on Chinese immigrants are seen through the lives of Yung Wing and Wong Chin Foo. Both were well-educated and talented immigrants who desired to participate in American society on equal footing with their white counterparts. Both, however, had their citizenship revoked, despite having been naturalized citizens prior to the Chinese Exclusion Acts.<sup>112</sup>

Yung Wing was a Chinese intellectual and American citizen, but had his citizenship revoked pursuant to the ruling in *In re Ah Yup*.<sup>113</sup> Born in Macau and educated in a missionary school, Yung converted to Christianity at a young age. He continued his education in the United States and eventually matriculated into Yale University.<sup>114</sup> During his sophomore year at Yale, Yung Wing won first place in English Composition for two of the three terms. More importantly, Yung Wing began to feel as if the United States was his “adopted country,” and became a naturalized citizen in 1852.<sup>115</sup>

Following his graduation, Yung returned to China with the goal of convincing the Chinese government to adopt the American educational system, and thereby compete with Western superpowers.<sup>116</sup> He was eventually chosen to head the Chinese Educational Mission to the United States, and opened a school in Connecticut for Chinese students to study in

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106. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 13.

107. *Id.*

108. *Id.* at 11.

109. 1 F. Cas. 223 (C.C.D. Cal. 1878).

110. THE COLUMBIA DOCUMENTARY, *supra* note 20 at 12.

111. WONG & CHAN, *supra* note 3, at 51.

112. *Id.* at 30, 52.

113. *Id.* at 20, 28.

114. *Id.* at 22.

115. Edmund H. Worthy, Jr., *Yung Wing in America*, 34 PAC. HIST. REV. 265, 270–71 (1965).

116. WONG & CHAN, *supra* note 3, at 22–23.

the United States.<sup>117</sup>

In 1875, Yung Wing married Mary L. Kellogg, with whom he eventually had two sons. Though his various business dealings and political appointments required him to travel around the globe, he and his family chose to settle down in the United States. Unfortunately in 1898, during one of his business ventures, Yung Wing's citizenship was revoked.<sup>118</sup> Over forty years after he had first become naturalized, he was suddenly unable to return to his family. Even though he had made the United States his home, Yung Wing was deemed to be ineligible for citizenship under the Chinese Exclusion Acts.<sup>119</sup>

Wong Chin Foo was also living proof that the Chinese immigrants were not "clannish," "imassimilable," or unwilling to join mainstream society, as their detractors purported.<sup>120</sup> Wong Chin Foo, like Yung Wing, was educated in the United States. Following a period of government service in China, Wong returned to the United States and sought to dispel the cultural misunderstandings that fueled the anti-Chinese sentiments.<sup>121</sup>

In 1876, Wong gave a series of eighty speeches to educate Americans about Chinese culture, tradition and customs. He was described as an "intelligent, cultured gentleman, who speaks English with ease and vivacity, and has the power of interesting his audiences."<sup>122</sup> Though the anti-Chinese fervor persisted, and in fact led to the passage of the Chinese Exclusion Act, Wong did not lose hope. In 1884, he convened with fifty naturalized Chinese citizens for the purposes of forming a political association to "obtain representation and recognition in American politics."<sup>123</sup> He began his own newspaper entitled the *Chinese American*, wrote and published news articles, and helped organize the first Chinese civil rights organization in America, the Chinese Equal Rights League.<sup>124</sup> A pamphlet published by the League in 1892, perhaps, best embodied why Wong believed citizenship was a right Chinese immigrants were entitled to:

Our interests are here, because our homes, our families, and all of our interests are here. America is our home through long residence. . . . We, therefore, appeal for an equal chance in the race of life in this our adopted home – a large number of us have spent almost all our lives in this country and claimed no other but this as ours. Our motto is: Character and fitness should be the requirements of all who are desirous of becoming citizens of the American Republic.<sup>125</sup>

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117. *Id.* at 25–26.

118. Worthy, Jr., *supra* note 115, at 265, 277–83.

119. *Id.* at 283.

120. WONG & CHAN, *supra* note 3, at 42.

121. *Id.* at 44.

122. *Id.* (citing HARPER'S WEEKLY, May 26, 1877, at 405).

123. *Id.* at 48.

124. *Id.* at 48–52.

125. *Id.* at 53.



Unfortunately, Wong's plea fell on deaf ears. In 1898, Wong's passport was recalled and revoked by order of the U.S. State Department. The explanation given for the revocation was simply that no passports could be given to any "Chinese holding naturalization papers that were issued before March 6, 1882 or at any other date."<sup>126</sup>

## 2. Birthright Citizenship

Though immigrants like Wong Chin Foo and Yung Wing had their citizenship revoked, their opponents were soon faced with another dilemma. Even if the Exclusion laws barred Chinese immigrants from becoming naturalized citizens, few believed it could be applied to the children of Chinese immigrants, i.e., Chinese Americans. After all, most Americans understood citizenship to be a right conferred as a matter of one's birth. Under the common law of *jus soli*, or the "law of the soil," anyone born within a nation's territory was its citizen.<sup>127</sup> Moreover, the Fourteenth Amendment explicitly granted citizenship to "all persons born or naturalized in the United States."<sup>128</sup>

One of the earliest recorded cases involving the deportation of a Chinese American involved a fourteen-year-old boy from Mendocino, California, named Look Tin Sing.<sup>129</sup> Though Look's parents had lived in California for twenty years, with his father employed as a merchant, the district attorney claimed that Look Tin Sing owed his allegiance to the Emperor of China and was therefore ineligible for citizenship.<sup>130</sup> The court rejected this argument and declared that Look Tin Sing was a citizen of the United States who had the right to enter the United States. The court, in addition to citing the Fourteenth Amendment's plain language, also reasoned that American common law had long ensured "that birth within the dominions and jurisdiction of the United States of itself creates citizenship."<sup>131</sup>

Though a favorable decision was reached for Look Tin Sing, the right of entry for Chinese Americans would not be ensured until more than a decade later when the Supreme Court rendered their seminal decision in *United States v. Wong Kim Ark*.<sup>132</sup> Born in 1873, Wong Kim Ark spent his entire life in the United States, save for two visits he made to China.<sup>133</sup> He lived and worked as a cook in San Francisco, while his parents, who had resided in the United States for a number of years, ran a mercantile

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126. *Id.* at 52.

127. IMMIGRATION STORIES, *supra* note 6, at 51–52.

128. LEE, *supra* note 1, at 103.

129. *In re Look Tin Sing*, 21 F. 905 (C.C.D. Cal. 1884).

130. MCCLAIN, *supra* note 4, at 163.

131. *Look Tin Sing*, 21 F. at 909–11.

132. *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

133. Transcript of Record at 6–7, *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) (No. 132).

business located in the Chinatown district.<sup>134</sup>

In 1895, when Wong Kim Ark returned from his second trip to China, he was denied entry into the United States and detained aboard another ship. The customs official declared that although Wong Kim Ark was born in the United States, he was of Chinese descent, and therefore not entitled to enter the United States.<sup>135</sup>

Wong Kim Ark proceeded to file a writ of habeas corpus and his family hired a prominent attorney to represent him. The attorney argued before the court that Wong Kim Ark had dutifully paid his taxes as a citizen. Moreover, as this was Wong Kim Ark's second re-entry into the United States, he had already been treated and recognized as a citizen of the United States.<sup>136</sup> The Supreme Court agreed, and ruled that "a child born in the United States, of parents of Chinese descent . . . becomes at the time of his birth a citizen of the United States."

Unfortunately, the ruling in *Wong Kim Ark* failed to effectively protect Chinese Americans from discriminatory deportations. In fact, Chinese Americans traveling abroad faced the same risks as Chinese immigrants, and were often treated the same by immigration officials. In 1904, Ju Toy, like Wong Kim Ark before him, was denied admittance into the United States and detained aboard a ship. Though little is stated on the record about Ju Toy's personal life or history, it is clear that the immigration official believed that Ju Toy was not born in the United States, and as a result, not entitled to remain in the United States.<sup>137</sup> However, Ju Toy never received a chance to argue the merits of his case. The Supreme Court ruled that since Congress had delegated the enforcement of the Exclusion Act to the immigration officers, the decision of an immigration official at the port was conclusive and unreviewable by the federal courts, even if the habeas claim was based on citizenship.<sup>138</sup>

The result of the *Ju Toy* decision is more clearly seen in the case of *Tang Tun v. Edsell*.<sup>139</sup> On June 22, 1906, Tang Tun returned to the United States with his new bride, only to be denied entry at the port of Sumas in the state of Washington. Tang Tun, claiming that he was born in the United States, quickly filed a habeas petition to challenge his detention. Tang Tun introduced evidence to show that he was born in Seattle in 1879, and was employed by a well-known Chinese mercantile business named Wa Chong & Company from 1897 to 1905.<sup>140</sup> The district judge that heard his case found ample evidence to confirm Tang Tun's claims, and reversed the

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134. IMMIGRATION STORIES, *supra* note 6 at 66; LEE, *supra* note 1, at 103.

135. Wong Kim Ark, 169 U.S. 649 (1898).

136. LEE, *supra* note 1, at 103-04.

137. Transcript of Record at 1-5, United States v. Ju Toy, 198 U.S. 253 (1905) (No. 535).

138. KONVITZ, *supra* note 9, at 44.

139. Tang Tun v. Edsell, 223 U.S. 673 (1912).

140. *Id.* at 674.

immigration official's decision.<sup>141</sup> In fact, multiple Seattle residents, both white and Chinese, who had lived in Seattle for a number of years and had been familiar with Tang Tun and his father, testified as to the accuracy of Tang Tun's life history.<sup>142</sup> Upon appeal however, the Supreme Court reversed the district court's decision and upheld the initial decision of the immigration official. The court reasoned that since Congress had given the immigration officers final say regarding immigration decisions, the federal court had no basis for judicial review.<sup>143</sup>

With their rulings in *Ju Toy* and *Tang Tun*, the Supreme Court essentially disclaimed judicial supervision of immigration decisions and closed the door to one of the most popular and accessible methods by which Chinese Americans could enforce their legal right to stay in the United States.<sup>144</sup>

### B. *Facially Neutral Discriminatory Laws*

For the Chinese Americans who were able to remain in the United States during the Exclusion Era, prospects for settling into their local communities were bleak. Due to the discriminatory immigration policies promulgated by Congress, courts, and individual states, Chinese communities became disproportionately male.<sup>145</sup> Even laws that were neutral on their face had pernicious effects on the gender balance in the Chinese community.

In 1900, San Francisco's Chinese population consisted of 2,136 females and 11,818 males.<sup>146</sup> In New York the ratio of Chinese males older than fifteen to Chinese females older than fifteen was "3,961 to 100 in 1910, 1,562 to 100 in 1920, 1,402 to 100 in 1930, and 896 to 100 in 1940."<sup>147</sup> The combined effects of the gender imbalance and seemingly neutral laws, that in reality had discriminatory effects, left many Chinese in America unable to marry, bring one's spouse over from China, or ultimately start a family in the United States.

Shortly after the passage of the Chinese Exclusion Act in 1882, the U.S. federal courts ruled that a wife held the same legal status as her husband. As most Chinese immigrants within the United States at the time were male laborers, an excluded class, the ruling meant that most Chinese men could not legally bring their wives to join them in the United States.<sup>148</sup>

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141. Transcript of Record at 20–28, *Tang Tun v. Edsell*, 223 U.S. 673 (1912) (No. 45).

142. *Id.* at 44, 71–75.

143. *Tang Tun*, 223 U.S. at 681–82.

144. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 155.

145. WONG & CHAN, *supra* note 3, at 65 (explaining how most Chinese immigrants in the United States were single males); *see also* Section I.D (discussing the exclusion of Chinese immigrant women).

146. YUNG, *supra* note 1, at 154.

147. WONG & CHAN, *supra* note 3, at 65.

148. *Id.* at 64; *see also* YUNG, *supra* note 1, at 113–23 (describing the "split-household" arrangements that resulted from the ruling and recalling an interview with a wife whose husband had

Thus, the only Chinese women who were allowed to enter the United States were those married to “domiciled merchants.”<sup>149</sup>

Although this ruling was often used to prevent Chinese immigrant women from entering the United States, Tsoi Sim was able to use it to her advantage. Tsoi Sim lawfully entered the United States when she was three years old, and lived in San Francisco, where she eventually married a . citizen.<sup>150</sup> On April 20, 1901, Tsoi Sim was arrested for being a “Chinese manual laborer” who failed to carry the requisite certificate of residence. While this should have led to her deportation under the Exclusion Acts, Tsoi Sim argued that because she was married to a U.S. citizen, her status had changed and the Exclusion laws did not apply to her.<sup>151</sup>

The Ninth Circuit agreed with Tsoi Sim, reaffirming the principle that the residency status of a woman was fixed to her husband’s. The court further asserted that it could not have been the intention of Congress to separate a wife from her husband.<sup>152</sup> Ironically, the ensuing decades would prove just the opposite. Nearly twenty years later, Congress passed the Immigration Act of 1924, which prohibited the immigration of Chinese women who were married to U.S. citizens.<sup>153</sup> Some Chinese women were ultimately allowed to stay in the United States under certain exempt classes – which included teachers, merchant wives, students, government officials, and those claiming citizenship under the Fourteenth Amendment – however, the burden was on the individual applicant to prove that she was legally entitled to stay in the United States.<sup>154</sup>

While the Immigration Act of 1924 kept Chinese immigrant men from bringing their wives or families to the United States, other laws were enacted to prevent men of Chinese descent from marrying or raising families. One of the most well-known laws was the Cable Act of 1922. The Cable Act stripped female American citizens of their citizenship if they married aliens ineligible for naturalization.<sup>155</sup> As Asians were the only race ineligible to become naturalized citizens at the time of the Cable Act’s passage, the Cable Act’s purpose was to deter women from marrying Asian immigrants.<sup>156</sup> Additionally, during the Exclusion Era, fourteen states specifically outlawed marriages between whites and Chinese.<sup>157</sup>

Despite these laws, Chinese women still managed to find ways to

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left her behind in China).

149. WONG & CHAN, *supra* note 3, at 77.

150. Tsoi Sim v. United States, 116 F. 920 (9th Cir. 1902).

151. *Id.* at 922.

152. *Id.* at 924.

153. YUNG, *supra* note 1, at 11.

154. *Id.* at 10–11.

155. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 179.

156. *Id.*

157. WONG & CHAN, *supra* note 3, at 65.

legally enter and stay in the United States.<sup>158</sup> As Chinese women entered the workforce, their focus shifted towards confronting the social inequalities of the day.<sup>159</sup> Jane Kwong Lee was perhaps the ideal candidate to do so. Born in China and educated in a missionary school, Lee immigrated to the United States as a college student. Following her graduation from graduate school, Lee became a community worker at the San Francisco YWCA and helped develop its community outreach program.<sup>160</sup> Despite her obvious ability and educational attainment, Jane Kwong Lee felt fortunate to find her position with the YWCA. Prior to working there, Jane Kwong Lee found that her opportunities were limited by her gender and race— a common problem among the Chinese in America.<sup>161</sup>

### C. Laundry Litigation: The Right to Work

During the Exclusion Era, local authorities increasingly enacted discriminatory laws against Chinese-owned businesses and laborers. Barriers to finding work were perhaps just one of the many contributing factors to the declining population of the Chinese community.<sup>162</sup> Due to their systematic exclusion from typical occupations, Chinese workers in large cities such as New York often began their own laundry businesses.<sup>163</sup>

However, because of the perception of laundries as a public nuisance, and the fact that many people treated Chinese workers as second-class citizens, Chinese-owned laundries were often targeted by local officials hoping to gain easy political points.<sup>164</sup> Therefore, by examining how Chinese laborers were persecuted by local governments and their various tactics to respond to discriminatory laundry ordinances, we may understand

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158. See YUNG, *supra* note 1, at 177 (explaining that between 1900 and 1930, the Chinese female population in San Francisco more than doubled, while the number of Chinese males stayed the same).

159. See *id.* at 177–79 (describing the ways in which Chinese women in America “focus[ed] their energies on helping China become a modern nation-state even as they worked to change their unfavorable image and treatment in America”).

160. To read Jane Kwong Lee’s auto-biographical essay *Devoting My Needs to What Needed to Be Done*, see YUNG, *supra* note 1, at 224–41.

161. See *id.* at 225, 237 (describing how despite being college-educated and bilingual, Jane Kwong Lee was initially only able to find work as a seamstress, house cleaner or fruits and shrimp peeler).

162. See LAU, *supra* note 8, at 22 (explaining that in the aftermath of the Chinese Exclusion Act, the Chinese population in the United States declined 15% per decade—compared with a growth rate of 81% and 67% the previous decades).

163. WONG & CHAN, *supra* note 3, at 67; see also GYORY, *supra* note 9, at 7 (describing how by 1870, the Chinese made up one quarter of San Francisco’s population and one-third of San Francisco’s workforce); LEE, *supra* note 1, at 26–27 (reasoning that due to having been expelled from mining, industrial and agricultural jobs, Chinese men “established an economic niche for themselves in laundries, restaurants, and domestic service”). By the 1920s, 48% of Chinese in the United States worked in small businesses, laundries, restaurants, or stores. *Id.*; see also *id.* at 273 n.8 (citing statistics that only 20% worked in agriculture, manufacturing or skilled crafts).

164. See generally MCCLAIN, *supra* note 4, at 98–101 (explaining how politicians responded to the growing racial antipathy among some San Francisco Caucasians).

how strongly many Chinese immigrants desired to remain in and assimilate into the United States.

In the early 1880s San Francisco city supervisors began to target Chinese laundries under the auspices of safety regulations. Of course, by explicitly passing ordinances that targeted all buildings “used by Chinese as laundries,” and zoning off Chinatown area laundries for special requirements, it became clear that safety was not the main impetus for the new regulations.<sup>165</sup> *The Evening Post*, a local paper, described the Chinese community in San Francisco as an actively litigious one, saying, “every law which may work to their prejudice they call to their aid all the resorts which our legal system provides.”<sup>166</sup>

Though some of the more explicit anti-Chinese ordinances were overturned, the federal court found that those ordinances which purported to ensure the public health, safety, or peace were within the police power of municipal bodies.<sup>167</sup> San Francisco supervisors, emboldened by the courts, proceeded to set forth new ordinances with extensive certification and licensing requirements. These ordinances often granted a high degree of autonomy to local officials, which allowed facially neutral safety ordinances or certification requirements to be implemented in a discriminatory manner.<sup>168</sup> For the Chinese in America, the enactment of these ordinances threatened their ability to work in the United States, which was exacerbated when combined with threats of deportation and numerous arrests of friends and neighbors.<sup>169</sup>

In 1885, the Supreme Court finally had an opportunity to review the enforcement of one of San Francisco’s ordinances. Order 1569 required all existing wooden laundries to obtain supervisory permits in order to continue operating.<sup>170</sup> *The Daily Examiner* reported in 1883 that thirty Chinese applicants were refused permits due to the fact that their buildings were all constructed of wood, and therefore dangerous.<sup>171</sup> However, circumstantial evidence suggested that safety was merely a pretense for shutting down Chinese-owned laundries. After all, ninety percent of the houses in San Francisco were made of wood, and 310 of the 320 laundries in the city were constructed of wood.<sup>172</sup>

Yick Wo, who had owned and operated his laundry in San Francisco

165. *Id.* at 100–03.

166. *Id.* at 104 (quoting the July 18, 1882 edition of San Francisco’s *The Evening Post*).

167. *See In re Quong Woo*, 13 F. 229, 231 (C.C.D. Cal. 1882) (“All business must be so conducted as not to endanger the public safety and health.”).

168. *See* MCCLAIN, *supra* note 4, at 106–07 (“The measure left too much discretion in officials and in the board of supervisors, prescribing no standards that the Chinese laundrymen could conform to and represented an attempt by a municipal legislature to turn an essentially harmless business into a public nuisance.”)

169. LEE, *supra* note 1, at 228–34.

170. MCCLAIN, *supra* note 4, at 111.

171. *Id.* at 326 n.86.

172. *Yick Wo v. Hopkins*, 118 U.S. 356, 359 (1886).

for over twenty-two years, was arrested for violating Order 1569. His attorney argued that Yick Wo had previously complied with numerous tax, health, fire and police regulations that had already been instituted by San Francisco officials.<sup>173</sup> In this case, however, he was one of more than 200 Chinese laundry operators who had attempted to comply with the new ordinance but had been denied a permit by the city supervisors. On the other hand, eighty non-Chinese laundry operators had been granted permits despite owning similarly situated laundries.<sup>174</sup> The Supreme Court declared that the unequal administration of Order 1569 was, in fact, a violation of the Fourteenth Amendment to the Constitution, and ordered Yick Wo to be released.<sup>175</sup> His case helped to establish that the discriminatory enforcement of a racially neutral law was also a violation of the Fourteenth Amendment.<sup>176</sup>

Chinese laundry owners also resorted to political processes to enforce their rights. In March 1933, the New York City Council proposed an ordinance that would charge a license fee of twenty five dollars per year on all public laundries, plus a security bond of \$1,000. As the majority of Chinese-owned laundries were small hand laundries that were operated by one or two partners, the ordinance would have put most Chinese laundry owners out of business. Chinese laundry owners founded the Chinese Hand Laundry Alliance (CHLA) to challenge the ordinance, eventually persuading the City Council to drop the fees to ten dollars per year, and the bond to one hundred dollars.<sup>177</sup> Soon afterwards, their membership grew to over three thousand, and the CHLA continued to advocate for Chinese immigrant rights and promote political participation among its members.<sup>178</sup>

#### D. *The Right to Attend School*

During the 1850s, Chinese and Chinese American students were also often excluded from California public schools.<sup>179</sup> At the time the state only required that “every school . . . must be open for the admission of all *white* children between five and twenty-one years of age, residing in the district.”<sup>180</sup> It was not until 1880 that the California legislature extended the right to attend public schools to “all children between six and twenty-one years of age residing in the district.”<sup>181</sup>

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173. *Id.* at 358.

174. *Id.* at 374.

175. *Id.* at 373–74.

176. MCCLAIN, *supra* note 4, at 124–25. *But see* Gabriel J. Chin, *Unexplainable on Grounds of Race: Doubts about Yick Wo*, 2008 U. ILL. L. REV. 1359 (challenging the idea that the Yick Wo was decided on the basis of equal protection).

177. WONG & CHAN, *supra* note 3, at 66–68.

178. *See id.* at 68–87.

179. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 70.

180. *Tape v. Hurley*, 66 Cal. 473, 474 (1885) (emphasis added).

181. *Id.*

Despite this change in the law, the San Francisco School Board instructed the principal of a local school to deny admission to Mamie Tape, a Chinese American student.<sup>182</sup> Tape's parents sued the school board, superintendent and the teacher who excluded their daughter. The California Supreme Court ruled in the Tapes' favor.<sup>183</sup> Their victory was short-lived, however, when the school board established a separate school for "Orientals," thereby circumventing the court's ruling.<sup>184</sup> Mary Tape, Mamie's mother, wrote a letter to the board of education. In the letter published in the newspaper, *The Alta*, Tape pointed out that her daughter's playmates were "all Caucasians ever since she could toddle around." She asked, "If she is good enough to play with them! Then is she not good enough to be in the same room and [study] with them!"<sup>185</sup> Perhaps expressing the frustrations of many Chinese immigrants, Mary Tape further pointed out that "It seems no matter how a Chinese may live and dress so long as you know they are Chinese. Then they are hated as one. There is not any right or justice for them."<sup>186</sup>

Although the Tapes were unable to send Mamie to her school of choice, their lawsuit at the very least forced San Francisco's Board of Education to open public schools for Chinese students, thereby ensuring that Chinese children would not lack an education.

Martha Lum, was nine years old when she entered her first day of school at Rosedale Consolidated High School in Mississippi.<sup>187</sup> During recess, the school's superintendent pulled Martha from school, informing Martha that she was no longer welcome at the school, solely on the grounds that she was Chinese and not white.<sup>188</sup> Her father, Gong Lum, sued the school, the board of trustees, and school officials on behalf of Martha, hoping to force Rosedale Consolidated to admit his daughter.<sup>189</sup> Although there was a "colored school" in nearby Bolivar County, Gong Lum, who was a grocer by trade, claimed that Bolivar's teachers were underpaid, and that its books and buildings were inferior to Rosedale's.<sup>190</sup> However, citing Section 207 of the Mississippi State Constitution, which provided that "[s]eparate schools shall be maintained for children of the white and colored races," the Mississippi Supreme Court sided with the school district.<sup>191</sup> The court noted that the Bolivar school met the Section 207

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182. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 70.

183. *See Tape*, 66 Cal. at 475 (holding that although Tape's right to attend the school had been violated, the school board and superintendent were improper defendants, thereby concluding that the teacher alone was in violation of California law).

184. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 70; YUNG, *supra* note 1, at 173-74.

185. YUNG, *supra* note 1 at 171, 174.

186. *Id.* at 175.

187. *Gong Lum v. Rice*, 273 U.S. 78, 80 (1927).

188. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 212.

189. *See Gong Lum*, 273 U.S. at 81.

190. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 211.

191. *Gong Lum*, 273 U.S. at 82.



requirement and additionally, had followed the precedent set by *Plessy v. Ferguson*.<sup>192</sup>

Though both the Tapes and Gong Lum had failed to get their children into schools of their own choosing, their efforts showed the great lengths that the Chinese in America were willing to go to ensure a proper education for their children. More importantly, their actions showed that the Chinese in America did not stand by idly when they felt that their rights were being violated, but instead, quickly asserted their rights in public forums and in federal courts.

#### CONCLUSION

In 1943, the Chinese Exclusion Acts were finally repealed, allowing the Chinese to immigrate to the United States under the quota established in the 1924 Immigration Acts.<sup>193</sup> Franklin Roosevelt expressed the hope that, “[b]y the repeal of the Chinese exclusion laws, we can correct a historic mistake.”<sup>194</sup>

Unfortunately, for the Chinese in America, the damage had already been done. From the enactment of the Exclusion Acts until its repeal, countless Chinese immigrants and Chinese Americans had been deported and denied the opportunity to return to their communities, livelihoods, and homes. The Chinese population in the United States had fallen drastically, and the fortunate ones who had been able to stay and settle down were faced with discriminatory laws in their schools and workplaces.

However, the narrative of the Chinese in America is not necessarily a tragic one. On the contrary, by understanding how they strategically chose their cases and advocated for equal protection, we may begin to understand just how strongly they believed in the American justice system. Indeed, with the passage of each successive amendment to the Chinese Exclusion Acts, Chinese immigrants raised new grounds to challenge its validity in the courts. Furthermore, their personal narratives show that more often than not, the Chinese in America were able to mitigate the applicability or enforcement of the harshest laws. Even when they were confronted with discriminatory work and school environments, they were able to enact small concessions or win key victories in court.

What the Chinese community’s collective narrative ultimately shows is that by virtue of their participation in American political and judicial

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192. *Id.* at 83–84.

193. THE COLUMBIA DOCUMENTARY, *supra* note 20, at 281. *But cf.* KONVITZ, *supra* note 9, at 28. It is often pointed out that the quota system perpetuated prior discrimination against Chinese in the following two ways: First, a person of Chinese descent always counted against the Chinese quota, whether or not they were actually citizens of China, and second, while most foreign wives of American citizens were “non-quota” immigrants, Chinese wives of American citizens counted against the quota. Still, it can be recognized that for Chinese immigrants, the quota system was an improvement over the explicit exclusion promulgated under the Chinese Exclusion Acts. *Id.*

194. WONG & CHAN, *supra* note 3, at 76.

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processes, the Chinese in America proved that they belonged in the United States, and were determined to remain here as equals.