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# An examination of the Chinese immigrant social movements during the Chinese Exclusion Era

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**AN EXAMINATION OF THE CHINESE IMMIGRANT SOCIAL MOVEMENTS  
DURING THE CHINESE EXCLUSION ERA**

**A Thesis**

**Submitted to the Graduate Faculty of the  
Louisiana State University and  
Agricultural and Mechanical College  
in partial fulfillment of the  
requirements for the degree of  
Master of Arts**

**in**

**The Department of Sociology**

**by  
Alexander Lu  
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## **ABSTRACT**

This paper further develops a law-centered “political process” model of social movements by analyzing historical changes in American immigration law and the collective behavior of Chinese immigrants and Chinese Americans during the Chinese Exclusion Era. I present an interactive political process framework that considers not only how the broader political environment enables and constrains a movement, but also how challengers respond by actively reshaping the environment. I revisit the political process model’s core concept of “political opportunity structure” by examining legal rules and institutions, generally, and the indeterminacy of law, specifically. I apply this framework to the Chinese community’s initial use of litigation to fight the exclusion laws and their move towards direct action techniques to exploit the ambiguities of the exclusion laws. In this respect, Chinese immigrants mobilized and created legal resources.

## INTRODUCTION

The Chinese Exclusion Act of 1882 was the first federal law to explicitly restrict immigration on the basis of race and ethnicity. Motivated by nativist sentiment and legitimized using a biological-moral conception of race, the “Mongolian race” was declared inferior to Anglos and undesirable as members of the American labor force. The Chinese Exclusion Act and subsequent restrictive immigration laws directed at the Chinese occurred during a period known as the “Chinese Exclusion Era.” In response to restrictive immigration policies, the Chinese immigrant and Chinese-American communities adopted unique forms of collective resistance. In-depth exploration of Chinese mobilization during the exclusion era offers an opportunity to illustrate and further develop broader theoretical knowledge about the relationships between law and social movements. Building on Pedriana’s (2004) attempt to theoretically tie law and legal institutions to the “political process” model of social movements, I argue that the legal construction of race, class, and identity embedded in anti-Chinese immigration law presented key “political opportunities” that both constrained and enabled Chinese mobilization. Ambiguities in the Exclusion Act’s language and enforcement structure encouraged mobilization strategies that exploited legal loopholes and encouraged tactics centered largely on acts of subterfuge. The goal of this paper is to show how the ambiguous language and enforcement structure of the exclusion laws facilitated the unique process of Chinese mobilization to obtain residency, and in showing this, further develop broader theoretical knowledge regarding the relationship between law and social movements.

This paper begins by revisiting the political process model’s core concept, the “political opportunity structure.” I then build on Pedriana’s (2004) theoretical link between law and the political process model and Calavita’s (2000) conceptualization of the indeterminacy of law to show how the legal construction of the “Chinese race” altered the opportunity structure for Chinese mobilization. To illustrate my theoretical argument, I provide an historical-narrative analysis of Chinese immigrant mobilization during the Chinese Exclusion era. My analytic narrative begins by explaining the historical and ideological context of Chinese immigrants in America that led to the establishment of the Chinese Exclusion laws. I then describe the Chinese Exclusion Act of 1882 and subsequent exclusion laws, focusing on the language used to construct race and identity. Next, I detail how immigration agents attempted to enforce the laws and the problems resulting from the ambiguities in the law. Last, I explain how the Chinese mobilized by exploiting the ambiguities in the language and enforcement structure of the laws. I conclude the paper by emphasizing that the anti-immigration laws actually facilitated the mobilization of the Chinese to exploit legal loopholes and engage in acts of subterfuge in ways that used the legal construction of race and class to their advantage.

## THEORY

### **Social Movements and the Political Process Model**

The political process model centers on the notion that institutionalized political structures influence the timing, formation, and possibilities of collective action (McAdam, McCarthy, and Zald 1996; McAdam, Tarrow, and Tilly 2001; Meyer 1999). “Political opportunity structure” (POS) serves as the principle explanatory concept of the political process model. Drawing from Gamson and Meyer (1996), Tarrow (1994: 76-77) defines POS as, “consistent – but not necessarily formal or permanent – dimensions of the political environment that provide incentives for collective action by affecting people’s expectations for success or failure.” Types of POS scholars have studied include (but are not limited to) bureaucratic centralization (Tarrow 1996), polity “openness” (Kitschelt 1986), and electoral realignments (Piven and Cloward 1977). While these types of POS are “stable” dimensions of political opportunity, POS can also be “volatile” in nature, emphasizing changes between movement strategy and availability of opportunities (Gamson and Meyer 1996).

### **Law as Political Opportunity Structure**

Pedriana (2004) argues that law serves as a type of political opportunity because legal rules and institutions can expand or limit the ability of challenger groups to mobilize. He argues that studying law as a political opportunity should not be excluded in the research of specific social movements if law is central to the dynamic relationship between challengers and their broader political environment. Pedriana (2004) argues that legal interpretations of policy can assist in explaining changes in a single movement and its broader political environment over time. A law’s legal interpretation can facilitate or exacerbate a new policy’s value as a resource to challenging groups. Pedriana (2004) found that the women’s movement was both the recipient and creator of political opportunities. A political environment receptive to women’s issues and the sudden expansion of formal-legal rights of female employees from Title VII made the formation of the National Organization for Women (NOW) possible. By challenging the EEOC and major newspapers over help-wanted ads, NOW transformed the institutional environment of the women’s movement in ways that encouraged future mobilization (Pedriana 2004). Using my analytic narrative of the Chinese Exclusion Era, I will demonstrate how Chinese immigrants were encouraged to mobilize, in response to changes in anti-Chinese immigration policy.

Calavita (2000) acknowledges previous literature regarding the indeterminacy of law and the wide role of interpretation in the legal decision making process (Hart 1953, 1961, Hurst 1950, 1964, Galanter 1975, Friedman 1973, 1993, Kairys 1990, Munger 1990, Post 1991, Bix 1993). While the majority of this body of literature has focused on the courts and the power of professionals and judges to create law through decisions, Calavita (2000) focuses on two approaches in her study of the Chinese Exclusion laws. First, she focuses on the administrative discretion in everyday decisions of immigration inspectors and their supervisors in the Treasury Department and Department of

Commerce and Labor. In doing so, Calavita (2000) addresses the importance of discretionary lawmaking in the act of everyday legal decision making. Additionally, Calavita (2000) cites Lipsky's (1980) conclusion that low-level personnel shape public policies in the field when their organization has a relatively small central organization but a large field staff. Sudnow (1965), Emerson and Paley (1992), and Gilboy (1991) have emphasized the administrators' routinization of the decision-making process to facilitate the task of categorization. Calavita (2000) shows that the emerging dilemmas of Chinese immigration inspectors arose from their routinizations and typifications of the Chinese used in their administrative discretion in legal construction.

Second, Calavita (2000) indicates the inevitable indeterminacy of law due to ambiguities in language, "The order of words never exactly reproduces the order of things" (quoting Bourdieu 1984, 481) and the paradox of applying the abstract quality of law to concrete situations, "Particular fact situations do not await us already marked off from each other, and labeled as instances of the general rule" (quoting Hart 1961, 123). Calavita (2000) argues that inspectors and bureaucrats were not only hindered by the difficulties of legal interpretation- insufficiencies in language and the abstract quality of law. They also faced contradictions inherent in the task of enforcement. The dilemma of the inspectors and bureaucrats was a result of the schism and inconsistencies within and between legal ideology and the social reality to which it corresponds (Calavita 2000).

Calavita (2000) found that the immigration inspectors contended with perpetually emerging dilemmas in their decision making. They attempted to routinize and typify Chinese applicants by dichotomizing them as either merchants or laborers and relying on physical markers as indications of class distinctions. Their routinization of the enforcement process not only failed, but backfired as Chinese adjusted to the enforcement routine, eventually exploiting it. The administrators' discretionary lawmaking was hindered by the problematic construction of race, class, and identity embedded in the anti-Chinese immigration laws (Calavita 2000). The inherent ambiguities of the language and enforcement structure provided key political opportunities for the Chinese to engage in legal circumnavigation and acts of subterfuge in order to gain residency.

### **The Interactive Process of Law and Mobilization**

The political process model has effectively explored the structural conditioning of social movements; however, one critique has been ignoring the ability of social movements to actively shape and transform political opportunities, and in turn be reshaped (Pedriana 2004). McAdam (1996) and Gamson and Meyer (1996) acknowledge the relative lack of extensive study on the interactive and relationship between movements and political opportunities. Pedriana (2004) explicates this interactive process by examining the 1960's women's movement as both the recipient and creator of political opportunities in the context of equal employment law.

I build on this interactive process (Pedriana 2004) by exploring the dynamics between anti-Chinese lawmakers and administrators and the Chinese community. Initial laws allowed the Chinese to challenge their discrimination in court. As Chinese litigation increased, so did the determination of anti-Chinese proponents. Further motivated to deter immigration, Chinese opposition passed stricter laws and enforced them with more



scrutiny. Unable to successfully participate in the legal system, the Chinese responded by exploiting legal loopholes and engaging in tactics of subterfuge to obtain residency. Illustrated in Figure 1, the dynamic process of the legal system and Chinese mobilization occurred with each side reacting with greater determination to the opposition's previous response. Unlike Pedriana's (2004) interactive relationship in which the challenger group elicited explicitly beneficial changes in the law, the Chinese mobilization evoked a harsher response embedded in the legal changes. Because the new laws were more scrutinizing, the language and enforcement structure became prone to exploitation, thus resulting in a change in mobilization strategy for the Chinese.

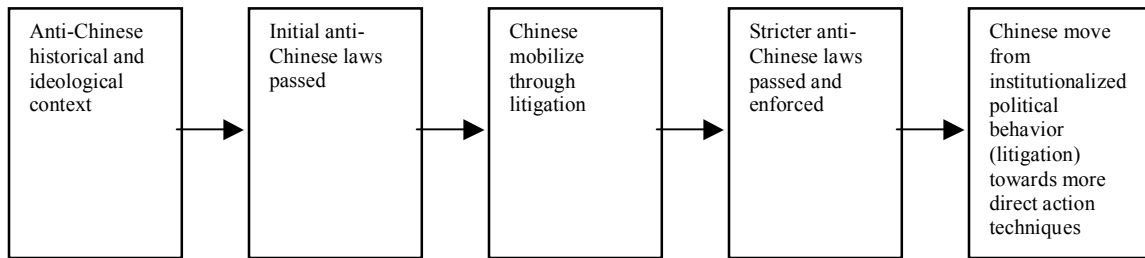


Figure 1: Interactive Model of Chinese Mobilization and Political Environment

### The Chinese Exclusion Era as a Case Study

Though a number of scholars have provided a detailed history of the Chinese Exclusion Era and explored its anti-immigration laws (Calavita 1984, 2000, Chan 1990, Coolidge 1909, Gyory 1998, Janisch 1971, Lee 2003, Miller 1969, Park 2004, Salyer 1995, Sandmeyer 1973, Saxton 1971, Takaki 1971, Tsai 1983, 1986), no one has specifically addressed the concept of law as POS for Chinese immigrants. By analyzing the interactive relationship between 1) the construction, interpretation, and enforcement of the Chinese Exclusion laws, and 2) the collective and organized responses of the Chinese, we might augment our theoretical knowledge of this watershed event in American immigration and legal history.

My analytic narrative lays the historical and ideological context from which the construction of race, class, and identity embedded within the Chinese exclusion laws emerge. I then examine the Chinese Exclusion Act of 1882 and subsequent laws and the use of litigation by the Chinese community. Next, I explore how the federal government responded to Chinese litigious success by passing stricter laws and the resulting problems immigration agents experienced in their interpretations and enforcement. Last, I explain how the ambiguous language and enforcement structures of the anti-Chinese laws provided key political opportunities for the Chinese to mobilize and gain residency.

## HISTORY

### Constructing the Inferiority of the Chinese

Though xenophobia existed, the United States had generally welcomed immigrants as a source of economic support since its formation (Salyer 1995). A number of Chinese were temporary sojourns motivated by the discovery of gold, though many participated in mining, agriculture, and railroad construction, supporting the rise of industrialization (Kung 1962, Lyman 1977, Calavita 1984, Jones 1992). The liberal ideology of the United States as the land of opportunity and a deficiency in labor allowed for a benign immigration policy (Curran 1975, Kettner 1978). Americans who had migrated to the United States to better their lives tended to support the rights of others who chose to follow the same path (Salyer 1995). Hingham (1978) describes Americans as having had a cosmopolitan image of themselves and seeing the conglomeration of nationalities as one of the country's unique characteristics. By participating in the political, economic, and social life of the United States, immigrants could transform from foreigners to Americans (Salyer 1995). Nativist sentiment, however, focused on cultural and religious differences most drastic from the English tradition, particularly of Jews and Chinese (Hingham 1978).

Chinese immigrants were greeted with hostility by other settlers. Stereotypes of the Chinese abounded (Okihiro 1994), propagated by traders, diplomats, and missionaries, describing the Chinese as being ridiculously dressed, superstitious, dishonest, crafty, cruel, and marginal members of the human race (Miller 1969). Stories of bizarre Chinese customs contributed to the construction of a "psychological barrier" against Chinese, perceived by white Americans to be fundamentally different (Saxton 1971).

Industrialists viewed the Chinese as a plentiful source of intelligent and inexpensive labor (Salyer 1995), especially in the construction of the Central Pacific Railroad whose labor force consisted of 90% Chinese immigrants (Takaki 1979). China and the United States signed the Burlingame Treaty of 1868 designed to promote commerce between the two nations, and as Tsai (1983) indicates in a statement made by then Secretary of State William H. Seward, "The essential element of that commerce and trade is . . . the free emigration of the Chinese to the American [continent]" (quoting *New York Times* 1871). The pro-Chinese sentiment instilled within the Burlingame Treaty of 1868 was exceedingly short-lived as forces lobbied for restrictions against Chinese immigration (Salyer 1995).

Responding to the favorable conditions the Burlingame Treaty provided Chinese immigrants, anti-Chinese groups quickly mobilized. A number of factors contributed to the success of anti-Chinese groups. First, California's unstable economy suffered from a severe depression between 1873 and 1878, resulting in reduced wages and extensive unemployment (Saxton 1971). Americans did not view individual Chinese laborers as financial burdens upon the community, rather they worried that the Chinese succeeded *too* well (Salyer 1995). Employers attempted to reassure white workers that the Chinese were merely "birds of passage," soon returning to China and that Chinese entered lower-scale occupations, thus elevating the white workers' own status and occupation. Labor

groups still continued to blame their problems on the Chinese and their capitalist employers (Takaki 1979). Not limited to California, similar labor groups protested Chinese labor in Boston, New York, and Philadelphia (Miller 1969, Takaki 1979).

Second, the “coolie system” prompted many Americans to support Chinese restriction. The coolie system involved poor Chinese workers being taken by force or fraud and subjugated to working under extremely harsh conditions in foreign countries. Though certain countries explicitly participated in the coolie system, Chinese laborers immigrated to the United States voluntarily (Tsai 1986, Chan 1990, Sandmeyer 1973, Okihiro 1994). Despite this, perceptions of all Chinese as coolie labor persisted (Miller 1969). The identification of Chinese with black slaves perpetuated the perception of Chinese as a racial, cultural, and economic threat (Takaki 1979).

“Scientific” theories regarding race were developed by scientists to establish inherent differences between Anglo-Saxon whites and all others (Salyer 1995). Measurements of skull and brain sizes were used to indicate inferior intelligence (Gossett 1965). Human development theories regarding race were also posited. The capacity to engage in representative, democratic government was tied to ancient Germanic tribes and their Anglo-Saxon descendents, which theorists suggested that other races did not have the ability to do. Anti-immigration positions argued that other races should not be allowed in the United States because they were incapable of understanding the American government and could potentially undermine it (Gossett 1965, Saveth 1939).

Associating the Chinese with infectious diseases, both literally and metaphorically became prevalent. Without intervention, Chinese culture would infect, contaminate, and eventually obliterate American culture. Scientists attempted to establish relationships between diseases and race, linking Chinese to illness. The nature of the supposed diseases was ambiguous and undefined, bolstering the fears of Americans (Salyer 1995).

In short, the political environment was shaped by the growing fear and resentment towards the Chinese. White workers viewed Chinese laborers as a threat to their job security. Stereotypes portraying the Chinese as biologically and culturally inferior were exacerbated by support from the scientific community. The Chinese were seen as undesirable and inassimilable, threats to the American way of life. Chinese inferiority had been established in the American historical and ideological context. This sense of nativism would soon permeate the political environment in the form of anti-Chinese legislation.

### **The Incorporation of Chinese Inferiority into Law**

Faced with California’s depression and drought, the Workingmen’s Party, lead by Dennis Kearney, cited economic, cultural, and racial reasons in justifying their anti-Chinese sentiment. The Chinese were used as scapegoats for the workers’ problems. Leaders supported the racist rhetoric because Chinese expulsion served as the key issue in unifying and organizing laborers in California, making labor a more powerful player in state politics (Saxton 1971). Benefiting from the anti-Chinese hostility it promoted, the Workingmen’s Party won one-third of the seats in California’s constitutional convention in 1878. The influence from the Workingmen’s party was reflected in the intense anti-Chinese tone of the newly adopted constitution in 1879. The new constitution promoted: denying Chinese voting rights in state elections, prohibiting employment of Chinese by

private corporations and public works, authorizing removal of Chinese not meeting certain conditions, and empowering cities to relocate Chinese to ghettos or complete eviction (Saxton 1971).

The Chinese community mobilized against discriminatory legislation in the federal courts, exercising their rights under the Burlingame Treaty and the Fourteenth Amendment. Most of the anti-Chinese laws and constitutional provisions were invalidated by the courts, indicating that discrimination violated the most-favored-nation clause of the Burlingame Treaty<sup>1</sup> and the equal protection clause of the Fourteenth Amendment (Salyer 1995).

Despite these legal victories, the Chinese community was not successful in one crucial area. In 1878, a number of Chinese petitioned within the San Francisco federal courts to become naturalized citizens. At question was whether Chinese were encompassed under the federal naturalization statute, which indicated that “any alien, being a free white person” or “of African nativity or . . . African descent” could become a citizen of the United States. When the federal naturalization laws were amended in 1870 to include African Americans, Senator Charles Sumner proposed a bill to delete any reference to “white,” making citizenship possible to all immigrants. Many congressmen, particularly ones from the western states, feared Sumner’s proposal would result in the widespread naturalization and politicization of Chinese. The bill was soundly defeated. Attorneys hired by Chinese to petition for naturalization argued before the circuit court that the category of “white person” was ill-defined in law and could be interpreted to include Chinese. Circuit Court Judge Lorenzo Sawyer disagreed, ruling that a “white person” was someone of the Caucasian race while Chinese belonged to the “Mongolian” race<sup>2</sup>. According to the interpretation of the federal naturalization statute, the Chinese were not considered white, thus they were barred from American citizenship (Janisch 1971).

The Chinese had become the first immigrant group to be denied naturalization. By denying the Chinese the right to citizenship, the legislative and judicial decisions supported the anti-Chinese cause, both pragmatically and symbolically. Without citizenship, the Chinese could not vote, thus could do little politically to combat the anti-Chinese movement. The denial of naturalization symbolized the notion that the Chinese were fundamentally different than whites and racially inferior (Janisch 1971).

In sum, the Workingmen’s movement seized control of California state political power and incorporated anti-Chinese sentiment into the law. In reaction to the discriminatory legal practices, the Chinese mobilized and exercised their rights under the Burlingame Treaty and the Fourteenth Amendment. Despite their litigious success, the Chinese were denied naturalized citizenship and, consequently, the ability to influence politics through voting. Litigation, though, proved to be a powerful tool and would be used accordingly.

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<sup>1</sup> The Burlingame Treaty guaranteed Chinese citizens all of the “privileges, immunities and exemptions in respect to travel and residence” extended by the United States “to citizens . . . of the most favored nation” (Parry 1981).

<sup>2</sup> *In re Ah Yup*, 5 Sawyer 155 (1878).

## The Chinese Exclusion Era: Laws and Litigation

Anti-Chinese sentiment reached its culmination with the Chinese Exclusion Act of 1882, the first policy in American history to exclude immigrants on the basis of race and nationality. The act suspended the immigration of Chinese laborers, both skilled and unskilled<sup>3</sup>, for ten years (United States Congress 1882: Section 1). Chinese laborers who had been in the United States ninety days prior to the act's passing were allowed to remain (United States Congress 1882: Section 13). Though these laborers had the right to exit and return to the United States, they were required to obtain a certificate of identification from the collector of the port before departing and returning (United States Congress 1882: Section 4). Merchants, teachers, students, and travelers were exempt from the exclusion act by the 1880 treaty<sup>4</sup>, but were required to obtain certificates verifying their exempt status. These documents, issued by the Chinese government, were known as "Section 6" or "Canton" certificates, which constituted prima facie evidence of the right of Chinese applicants to enter the United States (United States Congress 1882: Section 6). Most importantly, the act denied all Chinese the privilege of becoming naturalized American citizens (United States Congress 1882: Section 14).

The exclusionists succeeded in restricting their most undesirable class of Chinese; however, the battle was far from over. Just as the Chinese had challenged discriminatory state laws in the federal courts, they did the same to contest their exclusion from the United States (Salyer 1995).

The collector of customs at each port was given the responsibility of enforcing the exclusion laws. The collector and his staff issued certificates of return to departing immigrants and investigated their rights to enter the United States. If entry was denied, the Chinese would often challenge the decision by filing writs of habeas corpus with the federal courts. These petitions often alleged that the Chinese had a right to land, thus they were being held unlawfully. The collector's decisions were reinvestigated by the federal judges, whose decisions usually differed (Salyer 1995).

From the federal courts in San Francisco, Chinese litigants were able to obtain decisions from a series of cases between 1882 and 1884 that mitigated the severity of the act in two ways. First, the "prior resident" class of Chinese was expanded by the court. A number of Chinese had left the United States before the Chinese Exclusion Act had been passed (United States Congress 1882: Section 13), thus they were not issued certificates of return when they departed the United States and were unable to prove their prior residency. Though the secretary of the treasury had directed collectors to accept

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<sup>3</sup> Also included Chinese employed as miners (United States Congress 1882: Section 15)

<sup>4</sup> In 1876, Congress appointed a special joint committee to investigate the nature and effects of Chinese immigration. California senator Aaron Sargent authored a report warning of the economic and moral threat posed by the Chinese immigrants, recommending that the Burlingame Treaty be modified to restrict immigration (Sandmeyer 1973). Anti-Chinese proponents passed the Fifteen Passenger Bill, which dictated a maximum of fifteen Chinese passengers per steamship on each voyage to the United States. President Hayes vetoed the act on the basis that it violated the Burlingame Treaty. He then appointed a commission to renegotiate the Burlingame Treaty (Janisch 1978). The new commission drafted a treaty allowing the United States to limit the future immigration of Chinese laborers if the government considered such immigration threatening to the interest of the United States; however Chinese immigration could not be absolutely prohibited. The immigration restriction did not apply to laborers already in the United States and Chinese of exempt statuses: merchants, teachers, students, and travelers (Salyer 1995).

other forms of proof in such cases, the collector in San Francisco ignored his instructions and refused to allow the Chinese to enter. Believing the collector's interpretation to be in violation of the treaty of 1880, District Court Judge Hoffman ruled in 1883 that laborers able to provide evidence of their prior residency must be allowed to land (Salyer 1995).

Second, the courts loosened the requirements for merchants attempting to enter the United States. Merchants, along with the other exempt classes, were required to provide a Section 6 certificate from the Chinese government as evidence of their exempt status (United States Congress 1882: Section 6). Some merchants had been conducting business in other foreign countries and arrived in the United States without a certificate. Circuit Court Justice Field believed that forcing a merchant to return to China to obtain a certificate was unreasonable and ruled to allow merchants to present other evidence to prove their exempt status (Salyer 1995).

The courts also served as a check to the overzealous enforcement of inspectors in cases where Section 6 certificates were not accepted. The Section 6 certificates were supposed to be accepted as *prima facie* evidence of a merchant's right to land; however, a collector could refuse to accept the certificate if he had evidence that the immigrant was faking his exempt status as a merchant. Because obtaining such evidence was difficult, collectors began denying merchants the right to land simply on the belief that their Section 6 certificates were fraudulent. Several merchants appealed in court, and District Court Judge Hoffman ordered the collector to treat the certificates as valid unless concrete evidence of fraudulent certificates was available (Salyer 1995).

In short, the Chinese were able to combat the Chinese Exclusion Act of 1882 by litigating in the federal courts. Litigation was employed to mitigate the severity of the act's restrictions and check the overly harsh enforcement of immigration inspectors. To the dismay of restrictionists, not only were the Chinese still entering the United States, but they were using the federal courts to assist them. Disappointed with the success of Chinese litigation, Congress adamantly passed more restrictive legislation in an attempt to solve the Chinese problem.

### **The Laws Become Stricter**

The court's interpretations of the exclusion laws resulted in a dramatic increase in the number of Chinese in the United States. Janisch (1971) estimates that the courts were responsible for almost one-third of the Chinese landed within fourteen months the Chinese Exclusion Act's passage. Criticism of the exclusion law's enforcement increased, pressuring Congress to draft legislation that counteracted the decisions of the court. Congress amended the Chinese Exclusion Act in 1884, requiring that *all* merchants and exempt Chinese had to present a Section 6 certificate signed by an American consul. The Section 6 certificate was the *only* evidence accepted as proof of exempt status. The amendment also required that laborers have a certificate of identification issued by the collector to establish their right to land (Janisch 1971).

The court made two other decisions with very important implications. In 1884, the circuit court ruled that even though Chinese could not be naturalized, children born in the United States to Chinese parents were American citizens and not subject to the exclusion laws. The district court in San Francisco ruled that the wives and children

could enter the United States<sup>5</sup> (Salyer 1995). These decisions further encouraged the Chinese to challenge the decisions of the collectors in federal court.

The increase of success in Chinese litigation fueled public opinion against the courts. Outraged by the court's decisions, local community groups demanded the impeachment of the judges and established a committee to report on the court's actions in cases involving Chinese (Janisch 1971). Vigilante groups formed and mounted their own "exclusion campaigns" conducting violent riots in which many Chinese were forced to leave or murdered (Saxton 1971). Congress was again pressured to pass more restrictive legislation. Ironically, Judges Hoffman and Sawyer of San Francisco were among the supporters for stricter legislation, though they did so because they felt overwhelmed by their caseloads (Salyer 1995). Judge Hoffman cautioned that new amended legislation must conform to the Burlingame Treaty (Salyer 1995).

Attempting to protect its citizens, the Chinese government was willing to cooperate with the United States in drafting a stricter exclusion policy. The repeated violence against Chinese immigrants and the United States' inability and unwillingness to protect the Chinese immigrants appalled the Chinese government. China volunteered to prohibit emigration of laborers for twenty years on the condition that the United States would guarantee the protection of the Chinese residing in the United States and provide monetary damages for victims of the white mobs. In addition, China requested that laborers who left the United States be able to return if they owned property or were owed debts of at least \$1000 in value or if they had a wife or parents who were legal residents (Tsai 1983).

Chinese and American diplomats drafted a new treaty incorporating these necessary points. Anticipating China's ratification, Congress quickly passed another exclusion law that exceeded the provisions of the treaty. Protests in Canton delayed ratification in China, though there was no indication that the government disapproved of the treaty. Congress did not wait for confirmation from China and proceeded to pass the Scott Act of 1888 (Tsai 1983, Sandmeyer 1973). Though the 1880 treaty guaranteed that Chinese laborers already residing in the United States at the time of the treaty signing could come and go at will, the Scott Act prohibited the return of any Chinese laborers who left the United States.

After only seven days of passing the Scott Act, a Chinese laborer named Chae Chan Ping arrived in San Francisco after visiting China. He presented his certificate of return, but the collector denied him reentry under the new law. Chae Chan Ping challenged the constitutionality of the law, arguing that it violated his rights under the treaty of 1880<sup>6</sup>. He also argued that Congress had no constitutional power to exclude aliens, specifically ones previously residing in the United States. Though Circuit Court Judge Sawyer agreed that the Scott Act violated the 1880 treaty, he still found the Scott Act constitutional. Sawyer argued that the Constitution stipulated both treaties and congressional acts as supreme law of the land, concluding that the most recent should stand as the latest expression of the sovereign's will (Salyer 1995).

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<sup>5</sup> This did not apply to laborers, even if the laborer was exempted from the restriction act (Salyer 1995)

<sup>6</sup> *In re Chae Chan Ping*, 36 F. 431, 433-34 [C.C. Cal. 1888]

Based on the theory that Congress had the sovereign power to exclude aliens, the Supreme Court affirmed Sawyer's decision<sup>7</sup>. Prior to this, congressional authority to regulate immigration was rooted in the constitutional provision empowering Congress to "regulate commerce with foreign nations." Writing for the Supreme Court, Justice Fields, instead, noted that the Constitution invested Congress with several powers, one of which was to admit aliens to citizenship. This established recognition of the sovereign status of Congress. Field's reasoning was a truly sovereign nation must have "jurisdiction over its own territory," including the power to exclude aliens (Salyer 1995). This doctrine of inherent sovereign powers established a more expansive notion of federal authority. While earlier cases had assumed that the Constitution delegated the only powers Congress could exercise in immigration cases, the new theory merely made loose connections between the Constitution and federal power over immigration. The "inherent sovereign powers" doctrine grew and reinforced the federal government's absolute power over immigration control, thus diminishing both the rights of aliens and the participation of courts in immigration decisions (Legomsky 1987).

In sum, Congress passed stricter legislation, the 1884 amendment to the Chinese Exclusion Act and the Scott Act of 1888, to diminish the litigious success of the Chinese. Judge Sawyer's decision to uphold the constitutionality of the Scott Act and the Supreme Court's affirmation of his decision established the federal government's power to regulate immigration without the Constitution. The federal government was now able to enforce anti-Chinese immigration laws at its own discretion. The Chinese would need to better organize and focus their litigation tactics to be successful.

### The Need for Chinese Social Organization

The increased difficulty of navigating the bureaucratic legal system required the use of social organizations among the Chinese. Most of the Chinese emigrated from Kwangtung Province and found networks of family and service associations, led by the elite merchant class. All of the Chinese in California belonged to one of several family associations (Nee and Nee 1973). A member from the family association, such as an uncle or distant cousin, would meet the new arrival and assist with any difficulties during processing and hire an attorney if necessary. Family associations could be relied upon to provide aid and assistance acclimating (Tsai 1983).

Some Chinese belonged to secret organizations or Triad societies, known as "tongs" by white Americans. In China, the Triad societies were associated with political rebellion and crime. In the United States, they served to oppose local merchant leadership and profited from the organizations' businesses of gambling, opium, and prostitution (Ma 1991, Lyman 1974, Nee and Nee 1973). Though subversive in character, these secret societies provided many of the same benevolent services as the family and district associations (Lyman 1974).

Chinese also belonged to district associations or "huiguan," which promulgated rules and maintained order within the community. Each huiguan sent a representative to an organization named the Chinese Consolidated Benevolent Association, known by white Americans as the Chinese Six Companies. Originally the Chinese Six was to arbitrate disputes within the Chinese community, eventually broadening to become community advocate within the white world. The Chinese Six kept an attorney on

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<sup>7</sup> *Chae Chan Ping v. United States*, 130 United States 581, 603-10 (1889)



retainer to contest anti-Chinese legislation and practices. The Chinese Six Companies was regarded by white Americans to be the principle representative of the Chinese immigrant community. These community organizations gave the Chinese tools to combat the exclusion and discrimination they faced and assisted them in landing.

In 1892, the Chinese Exclusion Act's ten year period of restriction ended, and Congress renewed anti-Chinese legislation by passing the Geary Act, which extended exclusion for ten more years and required all Chinese laborers entitled to be in the United States to apply within one year to register for a certificate of residence from the collector of internal revenue. Laborers failing to register were arrested and brought before the court for a deportation hearing. Laborers had to possess a certificate and prove lawful residency by presenting the testimony of at least one white witness or face a year in a hard labor prison before being deported back to China (Salyer 1995).

The Chinese Six Companies vehemently protested the Geary Act. Though the law only applied to laborers, the Chinese Six predicted that it would eventually be used to harass merchants as well, "The law, if enforced, will subject every Chinese merchant in the United States to blackmail of the worst type. A Chinese merchant who has resided in San Francisco for many years and who may desire to go to New York on business can be stopped at every little hamlet, village, and town on the line of the railroad and arrested on the charge of being a laborer who has failed to register" (Salyer 1995 quoting a letter written by the Chinese Six Companies September 19, 1892). Using direct action, the Chinese Six Companies posted flyers throughout San Francisco, as well as the rest of the United States, advising Chinese to refuse to register. The Chinese Six Companies claimed the law violated both the Constitution and the treaty with China and intended to fight the Geary Act in court, requesting that each member donate \$1.00 for legal fees (Salyer 1995).

Due to the significance of the Geary Act, Chinese litigation could not be conducted at an individual level. Chinese litigation became more focused and organized under the leadership of the Chinese Six Companies, who planned to set up a test case consisting of three Chinese laborers to challenge the constitutionality of the Geary Act. The Chinese Six Companies hired three prominent appellate attorneys whose two main arguments were: 1) Congress had no power to deport Chinese that did not register, and 2) the procedures established for the registration and deportation of Chinese violated the Constitution's due process guarantees. In response to the Chinese Six Companies' consul, the United States attorney argued that Congress had the same sovereign power<sup>8</sup> to expel aliens, giving it complete control over foreign affairs. The United States attorney also argued that aliens, unlike citizens, had no absolute rights under the Constitution. The guarantees under the Constitution were not rights, rather aliens enjoyed privileges that could be revoked at the will of the government. In 1893, the Supreme Court sided with United States attorney's argument and upheld the constitutionality of the Geary Act (Salyer 1995).

The decision in this case, known as *Fong Yue Ting*<sup>9</sup>, removed all aliens, not just the Chinese, from the Constitution's protective shelter, subjecting them to the plenary powers of Congress. *Fong Yue Ting* established the basic principle differentiating immigration law from other branches of administrative law: aliens were recipients of

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<sup>8</sup> This sovereign power was established in the *Chae Chan Ping* case (Salyer 1995).

<sup>9</sup> *Fong Yue Ting v. United States*, 149 United States 698 (1893)

privileges and, unlike citizens, could not invoke the specific rights guaranteed by the Bill of Rights against the government in administrative hearings. The Supreme Court validated the discretion of Congress and administrative officials to establish any procedures deemed necessary in Chinese admission and deportation. Administrative officials wielded their discretion as a weapon against Chinese immigration (Salyer 1995).

In short, the Chinese organized and focused their litigation tactics in response to the Geary Act. A decisive blow to the Chinese movement, the Supreme Court upheld the constitutionality of the Geary Act, which validated Congress and administrative officials to employ any procedures necessary to restrict Chinese immigration. Enforcement of the exclusion laws was now in the hands of administrative personnel. With the courts no longer a viable option, the Chinese would have to alter their mobilization strategy from litigation to direct action if they were to succeed.

## **The Move towards Techniques of Direct Action**

### Administrative Enforcement

The possibilities of success for the Chinese in court hindered the stringent enforcement of the exclusion laws. Exclusionists and policy makers realized that the forum, the courts and administrative agencies, influenced the enforcement of laws. The courts could not be strong gatekeepers because they were confined by certain legal practices and traditions. Administrative officials; however, were not bound by the same legal constraints and were also held more accountable to public opinion, making them better suited to enforce the Chinese exclusion laws (Salyer 1995).

Immigration agents were charged with the responsibility of distinguishing which Chinese were ineligible for admission into the United States, enforcing the exclusion laws with a restrictionist mindset. The Bureau of Immigration's policy stated that the Chinese were to be judged, "excludable until they could be proven otherwise" (Lee 2003 quoting United States Department of Commerce and Labor 1905). Exclusion required immigration agents to face the difficulties of answering questions concerning race, class, citizenship, and standards of proof.

### Detainment

Upon arrival, Chinese were immediately detained until processing was complete. Before 1909, the Pacific Mail Steamship Company was responsible for housing its passengers for the duration of the processing. The Chinese were held in a detention shed of deplorable conditions. The shed was always overcrowded, the quarters consisting of only one room, with six barred windows and one exit. The shed was built to house two hundred people, but often held more than four hundred. Due to poor ventilation, detainees became ill and some even died. Though a vast improvement over the detention shed, the detention barracks at Angel Island were still unbearable. Chinese immigrants waited weeks, months, and in some cases years at Angel Island before their cases were heard. Separated from other family members, detainees were only allowed outside during mealtimes, escorted by armed guards (Lee 2003).

### Paperwork

All Chinese immigrants were required to have certificates and documentation of some sort to establish their lawfulness as residents. The Chinese Exclusion Act of 1882 required laborers who resided in the United States before the act's passage to possess return certificates when returning from temporary trips abroad. Excluded classes in transit across the United States were required to carry identification certificates and evidence of their transit intentions. The Geary Act of 1892 required "registration" of all Chinese in the United States and possession of the registration certificate at all times. Birth certificates were necessary for Chinese to prove native-born status, the only means of acquiring citizenship. Section 6 certificates were evidence of exempt status, eventually becoming the only acceptable proof (Calavita 2000).

### Physical Examinations

Immigrants were required to undergo medical examinations by the United States Public Health Service who were acting on and reinforcing the belief that the Chinese were more diseased than other immigrants (Lee 2003). The immigrants were examined in a line inspection to determine general health and detect signs of mental illness and contagious diseases (Kraut 1994). Examiners focused on parasitic diseases such as uncinariasis (hookworms), filariasis (round worms), and clonorchiasis (liver fluke), claiming them as grounds for exclusion, though easily treatable and posing no serious health threat to the American population (Lee 2003). The exaggerated idea of the Chinese as diseased served as a medical barrier to their entry.

As a means of identification, the Bertillion system was implemented in 1903. The Bertillion system recorded the dimensions and circumference of each subject's forearms, feet, fingers, ears, heads, teeth, hair, and genitalia. Because the system's measurements were supposed to provide exact identification markers, it was used in addition to photographs and physical descriptions. The Bertillion system was also used to verify age and paternity in documentation of life histories. The Chinese viewed the Bertillion system as one of the most humiliating and objectionable practices of exclusion enforcement. Physicians conceded to the unreliability of the examinations, yet immigration officials authorized and encouraged their use (Lee 2003).

Immigration inspectors often used their own judgment in interpreting physical characteristics. Physical traits of the face and body, such as the shape of heads and eyes, were arbitrarily compared among family members to determine relation (Lee 2003). The same type of judgment was used to determine merchant status. Inspectors would make note of calluses, flat fingers, large joints, hard feet, sunburned legs, etc. as evidence of being a laborer. Administrative leaders placed confidence in the inspectors' ability to superficially distinguish laborers (Calavita 2000).

### Interrogation of Exempt Status Members

The Chinese had to prove their qualifications for admission by providing proper documentation and passing inspections verifying their identity. Proving exempt status was difficult because official Chinese records of births, marriages, and divorces were not always available. Inspectors usually suspected the Chinese of fraudulent claims. To determine exempt status, inspectors conducted intense, detailed interrogations as standard practice. Applicants and their witnesses were interrogated separately. If any

discrepancies occurred, inspectors assumed the applicants' claims were fraudulent. Prior to 1902, only testimonies from white witnesses were considered, and Chinese witnesses were usually viewed with skepticism (Lee 2003). Requiring white witnesses was quite problematic because most Chinese lived in Chinese communities, having very little contact with white people.

**Native-born Citizens-** Chinese claiming to be native-born citizens had to illustrate their "American-ness" during interrogations. Associations with white people were seen as very favorable in this regard. Demonstrating command of the English language in answering interrogation questions was considered a valid sign of an individual's claim. Conforming to American customs and dress also established "American-ness." Chinese were required to demonstrate their knowledge of the history and geography of their hometown. Questions asked specific dates and locations of events. Lee Toy Mock's interrogation consisted of questions regarding the 1906 earthquake in San Francisco, "Did it happen while you were asleep or were you awake when it occurred?" "Was it after or before breakfast?" "What time did you have your breakfast?" (Lee 2003). Though the interrogations helped immigration agents expose fraud, the standards were very high and sometimes unrealistic. A number of Chinese Americans had difficulty with the English language test because many resided in segregated communities, having little contact with non-Chinese. Not all American-born children who attended public school and learned English could speak it fluently. Fluency in English, proper documentation, "Americanized" appearance, and well-respected witnesses did not guarantee a Chinese American citizen reentry. In 1924 and 1926, a number of Chinese American citizens living in Hawaii, some of whom were territorial government officials, were detained in San Francisco and thoroughly interrogated despite meeting the criteria for credibility. American citizenship under the Constitution provided little protection for Chinese Americans from the exclusion laws (Lee 2003).

**Family Members-** Cases involving families were heavily scrutinized. The entire family would be questioned about minute details regarding everyday life in the family's home village. This assessment was based on the immigration interrogator's belief that family history and facts concerning relationships and village should be "common knowledge" to everyone involved. Testimonies containing discrepancies indicated to the immigration inspectors that the relationship did not exist, discrediting the entire case. Though interrogations began with standard questions such as, "What are the marriage and birth dates of your family members?" "Where are your grandparents buried?" overzealous and frustrated immigration interrogators would ask more pressing and trivial questions such as, "How many rows of houses are in your village and who lives in the third row?" "How many clocks are kept in the house?" Interrogators even asked couples how many times they had intercourse during a visit. Inspectors would also use intimidation and threats to "draw the Chinese out," which served as a means of indirectly finding the truth. Some interrogations required applicants to create maps of their villages by tracing wooden blocks on paper and marking exact locations of family residences, cultivated land, schools, wells, and ancestral halls, additionally naming the inhabitants of each dwelling. In a number of cases, the questions were too challenging even for close relatives, especially young children prone to shyness, nervousness, and confusion when questioned by the first non-Chinese any of them had ever met. One Angel Island

inspector confessed that his own children could not pass the rigorous interrogations administered to the Chinese (Lee 2003).

Merchants- Chinese claiming merchant status were expected to look like merchants. A merchant's dress and appearance should reflect wealth, education, and refinement. Handwriting was even used as an indication of class. Merchant status was measured by whether or not the person performed physical labor. Interrogators would try to pressure applicants into admitting to performing manual labor, "Do you know how to sew button holes?" Immigrants were advised to answer carefully and not provide any indications of ever having performed manual labor. Applicants were required to provide exact descriptions of business activities, volume of merchandise, photographs of the establishments, and lists of all the partners and their respective shares. Chinese merchants reentering the United States were required to have two white witnesses testify on their behalf. A number of immigration officials admitted that the scrutinizing interrogations resulted in the wrongful exclusion of bona fide exempt status members (Lee 2003).

Women- Women applying for residency were usually suspected of being prostitutes. Like merchants, women had to exude indications of wealth, status, and respectability if they were to dissuade inspectors from assuming them to be prostitutes. Exempt class women were expected to conform to Victorian gender ideals and have physical markers such as bound feet. Independent women were strongly suspected of being prostitutes and had very few opportunities in China to obtain the exempt statuses, so admission of single women was rare. Most Chinese women were dependent on the status of men to gain entry into the United States. Women claiming to be wives of merchants were interrogated heavily. "What presents or ornaments has your husband given you?" "Did he buy that hair ornament in his home village?" "Did you wear it while you served tea?" "Who were the guests that you poured tea for?" Interrogation questions revolved around rigid gender roles. Women had to prove the validity of their relationships with exempt status members and that they were not prostitutes (Lee 2003).

### The Problems of Assumption and Interpretation

Calavita (2000) explains that the notions of race and class, and more generally, attempting to discern identity based on a person's physiology, attire, and manners posed a major dilemma for immigration inspectors. Though Congress enacted the exclusion of "both skilled and unskilled laborers and Chinese employed in mining"<sup>10</sup>, agents had the task of distinguishing who was a laborer and who was not, presuming that the Chinese could be discretely categorized. Acceptable non-laborers were more narrowly defined by Congress as "merchants, students, teachers, or those who are traveling for pleasure or curiosity"<sup>11</sup>, but operational definitions were never delineated. Categorizing professions such as physicians, ministers, military personnel, artists, etc. proved to be problematic. Though the Chinese Exclusion Act of 1882 stipulated that all exempt status members carry a Section 6 certificate issued by the Chinese government, possession did not guarantee entry. Immigration agents were suspicious of the Chinese securing fraudulent documents and were given broad latitude in deciding who was a laborer.

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<sup>10</sup> Chinese Exclusion Act of 1882, Section 1

<sup>11</sup> Ibid.

The occupational categories of merchant and laborer were treated as essential distinctions, intrinsic to the nature of the person (Calavita 2000). These intrinsic distinctions were thought to be discernable through intense scrutiny of the applicants. Inspector discretion was considered critical in sorting because formal definitions were inadequate in covering the variety of actual cases.

Calavita's (2000) conclusion regarding the enforcement of laborer exclusion is that 1) the merchant-laborer class dichotomy was inadequate in sorting people because the boundaries were ambiguous, blurry, and shifting, 2) although shifting and fluid in social reality, race and class were treated as intrinsic and immutable qualities, 3) there exists a contradiction between prevailing assumptions regarding the intrinsic quality of class and the enforcement practices used to deal with the complex and fluid reality, 4) relying on administrative discretion was necessary to accommodate for the varieties in occupation and the assumption that visible markers indicate class and identity.

Indeed, the administrators' enforcement policies were problematic because of the ambiguity embedded in the legal construction of race and class. Realizing the difficulty of enforcing an inherently ambiguous policy, agents routinized and typified their enforcement structure, leaving the system vulnerable and ripe for exploitation. Their high standards not only made entry nearly unattainable to most Chinese, but the process was also excruciatingly humiliating and insulting. With their political tools stripped away and faced with almost certain failure, the Chinese had to rely on direct action techniques like exploitation of the laws and subterfuge to mobilize.

### **Chinese Illegal Immigration**

Despite the immigration restrictions, the overwhelmingly poor economic conditions in South China and the contrasting abundance of available jobs in the United States prompted many Chinese to resort to illegal immigration. Additionally, a number of Chinese already had relatives and wished to join their family members, not only to reunite but also to increase remittances. Chinese illegal immigration was additionally encouraged by the relative ease with which the laws could be evaded. As immigration laws became increasingly harsher and more scrutinizing, many previously legitimate Chinese residents decided to reenter illegally rather than risk rejection upon return (Lee 2003).

The sentiment of Chinese-American residents towards the exclusionary laws also contributed to the success of illegal immigration. Since the exclusion laws were considered unjust and highly discriminatory, navigating around or completely ignoring the laws became culturally acceptable within the Chinese and Chinese-American communities. This belief was prevalent among common laborers, merchants, and community leaders, who were willing to assist fellow Chinese in illegally entering the United States (Lee 2003).

The scrutiny of exclusion laws combined with the determination of the Chinese immigrants to enter the United States resulted in a highly organized and profitable transnational underground business involving prospective immigrants, immigrant agents, professional smugglers, corrupt immigration officials, and certain government officials in China, the United States, and neighboring countries. Also involved, were professional immigration agents who provided expertise and connections to corrupt immigration

officials, perpetuating the illegal immigration business. Loopholes in the laws of the government enforcement policies led to strategies which exploited these inadequacies (Lee 2003, Salyer 1995).

### False Racial Identities

The unguarded Canadian and Mexican borders provided the first opportunity for undetected illegal immigration. Because of the increased intensity of inspections at regular ports of entry, illegal entry from Canada and Mexico increased, which led to strengthened border policing. The illegal immigration business then turned towards more complex routes that began in either Mexico or Canada and continued through Jamaica and entering the United States in Florida, Louisiana, and Mississippi, where the journey embarked to cities in the Northeast such as New York and Philadelphia (Lee 2003).

By comparison, Canadian anti-immigration laws against Chinese were more lenient than those of the United States. Chinese immigrants entering through the Canadian- United States border might have been subject to a head tax, but were permitted to remain in Canada for ninety days without having to pay, at which time the Chinese could plan their entry into the United States. White smugglers aided immigrants illegally by disguising the Chinese as Native American/Canadian Indians in pursuit of trade. The ruse was implemented by dressing a Chinese immigrant in “Indian garb,” given a basket of sassafras, and rowed in a boat across the border (Lee 2003).

Along the Mexican border, a Chinese-Mexican named Jose Chang in Guaymas, Mexico managed an elaborate system for smuggling Chinese into the United States. Chinese immigrants landed in Mexico under the pretense that they had been hired to work in the cotton fields. After bringing the Chinese to his headquarters in Guaymas, falsified letters from the immigrants’ American resident relatives were distributed and preparations for the continuation into the United States were made. The most important aspect of Chang’s strategy was to disguise the Chinese as Mexican residents by cutting off their queues and dressing them in Mexican-style dress. The Chinese (now Mexican residents) were given fraudulent Mexican citizenship documents and taught very basic Spanish, “Yo soy Mexicano” or “I am Mexican” before embarking into the United States (Lee 2003).

These types of racial disguises were not limited to the Canadian and Mexican borders, but also included entrance from Cuba. Chinese arriving from Cuba were painted black to disguise them as part of the African-descended steamship crew. Port cities such as New Orleans, LA and Mobile, AL were popular entry points. In Mobile, AL, a Chinese man known as “Crooked Face” specialized in disguising Chinese immigrants as African Americans became very well known (Lee 2003).

Exploiting the racially marked regional landscape by exchanging the Chinese racial uniform proved to be a successful strategy for entering the United States undetected. Though a number of immigrants succeeded by illicitly sneaking in, they became undocumented immigrants, lacking the necessary government documentation to prove their status as legal residents. This made them vulnerable to arrests, raids, and eventually deportation.

## Paper Identities

Rather than avoiding and dodging immigration authorities, the Chinese chose deception as a more viable option. The Chinese were able to exploit the loopholes in the immigration laws using the exempt-class clause. The United States deemed certain Chinese as desirable, or at least tolerable, but inadequately defined the exempt-class (Calavita 2000). Exempt status did not guarantee residency, but granted consideration under intense interrogation. Chinese would commonly claim false membership as one of the exempt classes and obtain the necessary documentation or witness testimonies to validate their claim. Chinese companies regularly sold partnerships, along with the merchant class status that came with them, to Chinese who would not qualify otherwise. Chinese would also forge their fake merchant documents with the signatures of prominent white citizens such as the postmasters or mayors of their towns. One case of fraudulent student identities involves an attorney in Seattle, Washington who helped one hundred school-aged Chinese males enter using fraudulent students' certificates. These imposter students had fraudulent supporting letters from prestigious private high schools in Seattle and San Francisco, which affirmed their student status and deflected suspicion (Lee 2003).

The exempt status of Chinese-American citizens provided another loophole that was relatively easy to exploit. In 1906, an earthquake and fire occurred in San Francisco, destroying all of the city's birth records. The Chinese quickly took advantage of the situation by employing the nativity strategy. They claimed to have been citizens by birth since their records could no longer be accessed due to the fire. Though some of the Chinese had the proper paperwork, those who did not could claim that their documentation was destroyed in the fire when asked by immigration officials (Lee 2003). This strategy was particularly successful until 1905 because Chinese claiming United States citizenship could be admitted through the court system, which was known to be more liberal than immigration officials in their interpretation of the laws (Salyer 1995).

Because the United States government lacked reliable documentary evidence to verify births and marriages in both United States and China, the Chinese were very successful at using false documentation for children and spouses. The government attempted to track Chinese immigrants and returning citizens using partnership files, entry and departure records, and applicant and witness testimonies in an effort to prevent illegal immigration; however, their efforts had the opposite effect. Additional opportunities of falsifying identity arose, because Chinese applicants who achieved residency in the United States could use the same paper record to create as many sponsored immigration positions as desired (Calavita 2000, Lee 2003, Salyer 1995, Tsai 1986). This system paved the way for future generations of Chinese to apply for admission as paper sons and daughters. Transnational networks of families provided sources of information and documents, allowing identities to be traded regularly among prospective immigrants and residential Chinese in the United States. Immigrant families would claim to have more children than they actually had, allowing them to sponsor relatives or sell the remaining availabilities to others. Prospective immigrants also relied upon family friends, fellow villagers, and acquaintances to obtain false documentation based on family connections when actual family members were not available. The



following example illustrates what is known as the paper son system<sup>12</sup> or “slot fraud.” A man named Wong Tim obtains citizenship and can sponsor his children as applicants. Wong Tim claims to have six sons in China, in reality having two. The two real sons come to the United States while Wong Tim sells the other four slots. One slot is sold to his nephew and the other three are sold to members of his village. All six of these “sons” must now adopt the identity of Wong’s sons in order to pass the immigration interrogations. Wong, after visiting China for a year, might claim to have fathered a seventh child who would also be qualified for citizenship at the appropriate age. Now that Wong’s children have gained citizenship, they can also apply for their “children.” The paper son system established a chain migration pattern allowing multiple generations of Chinese entry to the United States using fraudulent identities.

### Coaching Notes

The false documents ensured the right to apply for admission into the United States; however, they did not guarantee residency. The Chinese immigrants had to prove their claimed identities, both legitimate and fraudulent, by passing intense and scrutinizing interrogations. The interrogations allowed immigration officials the opportunity to uncover and exploit inconsistencies in statements made in the case. The interrogations became increasingly difficult, even for the legitimate applicants to pass (Lee 2003).

The tougher inspection procedure did not halt illegal immigration, instead motivated Chinese to take greater risks and spend more money in attempting to navigate around the exclusion laws. As a result, “coaching notes” were developed to assist the applicant in the interrogation process by providing details of the applicant’s paper family’s history, village life and geography, occupations, and relationships. The “coaching notes” also explicated exact answers to questions regularly asked by immigration officials. Additionally, interaction advice during interrogations was also provided such as remaining calm and not answering more than what was necessary. Detained immigrants relied on outsiders to inconspicuously send coaching books, food, and tools. A number of ingenious methods were employed to deliver the coaching notes. Examples included: Quarters and nickels with Chinese characters carefully inscribed on them, which read, “When immigration officials ask you if your maternal grandmother is living, be sure that you say that she has been dead for more than ten years.” Peanuts whose shells were carefully pried open and glued back together, contained scraps of paper with names and dates written on them. Similar strategies were employed using oranges. Char siu buns, buns filled with delicious marinated, barbequed pork also contained coaching notes inside them. Visitors and kitchen staff smuggled notes in the food and packages on their bodies for delivery to detainees. Corrupt immigrant guards could be bribed to deliver coaching notes during meals and within packages. Because of the intensity of the interrogations, legitimate immigrants also used the coaching notes written by illegal immigrants. Coaching notes were an indication of the dependency of Chinese immigration on fictional life histories, false documentation, and corruption (Lee 2003).

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<sup>12</sup> The “slot fraud” system is usually referred to as the paper son system because more sons immigrated and with better success in attaining residency than daughters.

In sum, illegal immigration became a viable option for the Chinese because of the difficulties and, to an extent, impossibilities of success in legally immigrating due to the severity of the new laws. Because of routinization and typifications, the legal enforcement structure employed by administrative officials was vulnerable to direct action through the use of subterfuge. The Chinese community mobilized by taking advantage of legal constructs of race and class embedded in the discretionary enforcement procedures employed by inspectors.

## ANALYSIS AND CONCLUSION

I began by exploring the historical and ideological context from which the Chinese exclusion laws were derived. Anti-Chinese sentiment developed as a result of perceived health, economic, cultural, and moral threats. The conceptualization of Chinese inferiority was incorporated in the legal construction of the “Mongolian race” and centered within restrictive Chinese immigration laws. Anti-Chinese groups mobilized to hinder the Chinese invasion by passing overtly discriminatory legislation. In turn, the Chinese community mobilized against their discrimination by exercising their rights under the Burlingame Treaty and the Fourteenth Amendment. Litigation became a powerful tool in Chinese mobilization strategy. The passage of the first federal law to restrict immigration on the basis of race, the Chinese Exclusion Act of 1882, and subsequent acts were fought successfully by the Chinese using litigation. In response, Congress passed more restrictive legislation in an attempt to curtail the continuing entry of Chinese, specifically the Geary Act of 1892. The intensity of the Geary Act required the Chinese community to become more organized and focused in their litigation. As a result, the Chinese Six Companies served as the organizational leadership necessary to combat the Geary Act. Unfortunately for the Chinese, the test case of *Fong Yue Ting* resulted in a decision by the Supreme Court that upheld the constitutionality of the Geary Act. The consequence of this decision was the validation of Congress and administrative officials to use any procedures deemed necessary in Chinese admission and deportation without the need of empowerment from the Constitution. Immigration agents were now charged with the enforcement of the exclusion laws. The problem with the enforcement structure was due to the administrative discretion necessary to accommodate for the ambiguities embedded in the laws. Because the exclusion laws were constructed on the basis of Chinese racial and class inferiority, agents were forced to typify and routinize their enforcement structure, making it vulnerable to exploitation. The difficulty for Chinese to enter the United States and the lack of access to political tools – voting and litigation, gave the Chinese very few options with which to mobilize. The vulnerability of the enforcement structure and lack of mobilization options made direct action techniques using subterfuge a sensible route, thus giving rise to illegal immigration.

This paper attempts to further develop a law-centered political process model of social movements by analyzing the dynamic relationship between the Chinese immigrant and Chinese American community and the Chinese Exclusion laws. I show how the Chinese community used litigation to combat the initial discriminatory laws. In response to the success of Chinese litigation, laws became stricter and the mobilizing tool of litigation was eliminated. Faced with further adversity, the Chinese confronted the stricter policies by exploiting the ambiguities in the language and enforcement structure of the exclusion laws through the use of subterfuge to gain residency. This pattern of mobilization shows how the Chinese community was the recipient and the resourceful creator of political opportunities. The created political opportunities were not a result of the broader political environment conceding to the demands of the mobilized Chinese however.

Like Pedriana (2004), my analysis focuses on legal rules and institutions as one specific type of opportunity structure; however, I argue that the indeterminacy of law

(Calavita 2000) facilitated mobilization through exploitation rather than distributing political opportunities. Opportunities of litigation were available for the Chinese, but subsided as their success grew. The more scrutinizing exclusion laws did not provide opportunities; instead opportunities were seized when the Chinese took advantage of the administration's discretionary enforcement and legal construction of the "Mongolian" race. The stricter laws constrained Chinese litigation, but facilitated the use of subterfuge among the desperation of the Chinese.

Law can provide political opportunities, but in the case of the Chinese immigrants, the historical and ideological context from which the Chinese Exclusion laws were grounded and the administrative discretion used in attempting to enforce the legal construction of race gave rise to laws that could be exploited and converted into political opportunities by using subterfuge. The indeterminacy of law was a key political opportunity for the Chinese when litigation was no longer a viable option. By analyzing the role of law, generally, and the indeterminacy of law, specifically, in the case of the Chinese during the Exclusion Era, we can elucidate and better understand Chinese illegal immigration as the mobilization of a desperate, yet resourceful community.

Law as POS serves as a useful and important analytic tool for exploring the interactive relationship between social movements and the political process. This type of framework can help in understanding the changes of a movement over time. The significance of the interactive model I present, Figure 1, lies in *how* law emerged as a form of political opportunity. The Chinese mobilized against the initial exclusion laws using litigation, but subsequent laws were more scrutinizing and could not be fought with litigation, thus the POS was not elicited. The indeterminacy of the laws' language and enforcement structure emerged as a political opportunity because of the inherent vulnerability. Future social movement research ought to consider, not just the changing structure of legal opportunities that enable and constrain movements, but also the inherent indeterminacy of law which can be exploited and transformed into a political opportunity.

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## VITA

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