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THE WAR AGAINST CHINESE RESTAURANTS

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ABSTRACT

Chinese restaurants are a cultural fixture—as American as cherry pie. Startlingly, however, there was once a national movement to eliminate Chinese restaurants, using innovative legal methods to drive them out. Chinese restaurants were objectionable for two reasons. First, Chinese restaurants competed with “American” restaurants, thus threatening the livelihoods of white owners, cooks, and servers and motivating unions to fight them. Second, Chinese restaurants threatened white women, who were subject to seduction by Chinese men taking advantage of intrinsic female weakness and nefarious techniques such as opium addiction.

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The efforts were creative. Chicago used anti-Chinese zoning, Los Angeles restricted restaurant jobs to citizens, Boston authorities denied Chinese restaurants licenses, and the New York Police Department simply ordered whites out of Chinatown. Perhaps the most interesting technique was a law, endorsed by the American Federation of Labor for adoption in all jurisdictions, prohibiting white women from working in Asian restaurants. Most measures failed or were struck down. The unions, of course, did not eliminate Chinese restaurants, but Asians still lost because unions achieved their more important goal by extending the federal immigration policy of excluding Chinese immigrants to all Asian immigrants. The campaign is of more than historical interest today. As current anti-immigration sentiments and efforts show, even now the idea that white Americans should have a privileged place in the economy, or that nonwhites are culturally incongruous, persists among some.

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INTRODUCTION

This Article explores a lost chapter in the history of racial regulation in the United States. For roughly thirty years, in the last

decade of the nineteenth century and the first decades of the twentieth, a national movement sought to use the law to eliminate Chinese restaurants from the United States. These efforts, described as a “war,”¹ are largely unknown.²

Chinese restaurants were considered “a serious menace to society” for two reasons.³ First, by employing Chinese workers and successfully competing with other restaurants, white union members

1. See PROCEEDINGS OF THE SIXTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES’ INTERNATIONAL ALLIANCE AND BARTENDERS’ INTERNATIONAL LEAGUE OF AMERICA 107 (1911), reprinted in 20 THE MIXER AND SERVER (Jere L. Sullivan ed., 1911) (noting application of union in Billings, Montana “to finance a crusade in opposition to Asiatic invasion, concurred in and remittance made”); *After the Chinese: An Effort to Expel Them from the Principal Cities of Montana*, DAKOTA FARMERS’ LEADER (S.D.), Feb. 3, 1893, at 3 (“[L]abor organizations of Butte, Anaconda and Missoula waged war against the employment of Chinese, and threats of boycott were made against citizens employing them in any capacity or patronizing Chinese laundries or restaurants. . . . Already all but one Chinese restaurant have [sic] been closed.”); D.F. Beauchamp, *Bugle Call for War on “Unfair” Eating Houses Is Sounded*, MIXER & SERVER, Mar. 15, 1909, at 59, 59 (“Ogden sounded the first note in the battle against Chinese and Japanese restaurants, which will be relentlessly waged henceforth in Ogden.”); O.M. Boyle, *News of the Labor World*, S.F. CALL, Mar. 19, 1910, at 7 (“The cooks’ helpers union, local No. 110, is still quietly engaged in carrying on the war against Asiatic employes [sic]. It hopes in a short time that employers will supplant the Japanese and Chinese in kitchens of restaurants, cafes and hotels. The organization is carrying out the wish of the San Francisco labor council in this matter.”); *Labor Declares War on Chinese Restaurants*, WASH. TIMES, Feb. 16, 1913, at 7 (stating that “[a]ll members of the city government who vote for licenses for Chinese restaurants will be placed on the political unfair list of organized labor, and a campaign will be conducted against [sic] them by the Central Labor Union”); *May Declare Boycott: Cooks and Waiters’ Unions Opposed to Chinese Restaurants*, ST. PAUL GLOBE (Minn.), Mar. 22, 1902, at 7 (“The Cook and Waiters’ Union has decided to make war on the Chinese restaurants that are running in Minneapolis”); O.O. McIntyre, *New York Day By Day*, WASH. HERALD, May 2, 1918, at 6 (reporting that the New York district attorney’s office “has declared war to the death on the chop suey caravansaries.”); *Montana*, OMAHA DAILY BEE, June 6, 1891, at 11 (“A movement is on foot in Butte to carry on a war against Chinese restaurants.”).

2. For example, there are a number of recent, excellent histories of Asian Pacific America and of Chinese food in the Americas in which the war against Chinese restaurants goes unmentioned. See generally YONG CHEN, *CHOP SUEY, USA: THE STORY OF CHINESE FOOD IN AMERICA* (2014); LILY CHO, *EATING CHINESE: CULTURE ON THE MENU IN SMALL TOWN CANADA* (2010); ANDREW COE, *CHOP SUEY: A CULTURAL HISTORY OF CHINESE FOOD IN THE UNITED STATES* (2009); *EATING ASIAN AMERICA: A FOOD STUDIES READER* (Robert Ji-Song Ku et al. eds., 2013); SHELLEY SANG-HEE LEE, *A NEW HISTORY OF ASIAN AMERICA* 131–33 (2014); ERIKA LEE, *THE MAKING OF ASIAN AMERICA: A HISTORY* (2016) [hereinafter LEE, *A HISTORY*]; HAIMING LIU, *FROM CANTON RESTAURANT TO PANDA EXPRESS: A HISTORY OF CHINESE FOOD IN THE UNITED STATES* (2015); ANNE MENDELSON, *CHOW CHOP SUEY: FOOD AND THE CHINESE AMERICAN JOURNEY* (2016); Heather Ruth Lee, *Entrepreneurs in the Age of Chinese Exclusion, Transnational Capital, Migrant Labor and Chinese Restaurants in New York City, 1850–1943* (2014) (unpublished Ph.D. dissertation, Brown University).

3. REPORT OF PROCEEDINGS OF THE THIRTY-THIRD ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR HELD AT SEATTLE, WASHINGTON NOV. 10-22, INCLUSIVE 1913, at 370 (1913).

claimed the restaurants denied “[their] own race a chance to live.”⁴ Second, Chinese restaurants were characterized as morally hazardous to white women. One observer noted that “[b]eer and noodles in Chinese joints have caused the downfall of countless American girls”⁵ Accordingly, Americans recognized “the necessity for stamping out” the “iniquitous Chinese Chop Suey joints”⁶

The effort failed; “there are more Chinese restaurants in the United States than McDonald’s, Burger King, and KFC restaurants combined.”⁷ But the campaign, unsuccessful in its nominal goal, helped propagate the idea that Chinese immigrants were morally and economically dangerous, and contributed to the passage of the Immigration Acts of 1917⁸ and 1924,⁹ which almost completely eliminated Asian immigration to the United States.

The movement against Chinese restaurants was led by labor unions. Part I discusses the early important techniques of riot and boycott. These methods were at best partially successful. Accordingly, as Part II explains, opponents of Chinese restaurants turned to a range of other legal methods to eliminate Chinese restaurants. Protection of white women from sexual exploitation emerged as a key rationale for suppression. Concern with the moral dangers of Chinese immigrants in America dramatically escalated in 1909 after Elsie Sigel, granddaughter of a Union Army general, was murdered by a New York Chinese restaurant worker who had “seduced” her. The case made the problem of moral contagion presented by Chinese restaurants a prominent national issue. A major legal method of suppressing Chinese restaurants was the white women’s labor bill, which prohibited white women from working for or patronizing Chinese restaurants. Police-enforced segregation was another

4. *Card to the Public*, TONOPAH BONANZA (Nev.), Jan. 17, 1903, at 6.

5. *Chinese Restaurants in Madera*, MADERA MERCURY (Cal.), Jan. 20, 1912, at 2.

6. *Minneapolis Labor After the Chinese*, LAB. WORLD (Minn.), Nov. 19, 1904, at 1.

7. Bethany R. Berger, *Birthright Citizenship on Trial: Elk v. Wilkins and United States v. Wong Kim Ark*, 37 CARDOZO L. REV. 1185, 1254–55 (2016) (citing JENNIFER 8. LEE, *THE FORTUNE COOKIE CHRONICLES: ADVENTURES IN THE WORLD OF CHINESE FOOD* 9, 209 (2008)); see also *Let’s Eat Chinese Tonight*, 38 AM. HERITAGE No. 8, at 98 (1987). As one indication of the traditional status of Chinese food in the United States, in her confirmation hearing, Supreme Court Justice Elena Kagan discussed the custom of Jewish people eating Chinese food on Christmas. Adam Chandler, *Why American Jews Eat Chinese Food on Christmas*, ATLANTIC (Dec. 23, 2014), <https://www.theatlantic.com/national/archive/2014/12/why-american-jews-eat-chinese-food-on-christmas/384011> [<https://perma.cc/XJQ2-HB4M>].

8. Immigration Act of 1917, Pub. L. No. 64-301, 39 Stat. 874 (amended 1952).

9. Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153 (amended 1968).

regulatory technique. Opponents of Chinese restaurants also employed discriminatory licensing and enforcement measures.

Part III.A discusses the end of the war. For the most part, the legal efforts to suppress Chinese restaurants failed and Chinese restaurants became an accepted, even traditional, feature of American society. Yet, the unions achieved their larger goal. Congress enacted laws restricting not just Chinese but all Asian immigration, with the aim of permanently ending Asian competition with white labor in the United States.¹⁰ The Article concludes by exploring the implications of this episode for American race law.¹¹

I. LABOR UNIONS AND THE CHINESE RESTAURANT THREAT

A. *Union Opposition to Chinese Restaurants*

The Supreme Court has suggested that “the freedom to compete—to assert with vigor, imagination, devotion, and ingenuity whatever economic muscle [a business] can muster” is essential to “economic freedom and our free-enterprise system”¹² Yet, those who fear they may lose out may be less eager to compete and let the most meritorious prevail. Workers already established in a labor market may prefer to exclude rather than compete with new entrants, such as immigrants. There is evidence that immigration, at least in the United States, enhances overall wealth; that is, a dynamic and growing economy benefits the country as a whole, albeit not necessarily equally across demographic groups.¹³ Nevertheless, until well into the twentieth century, unions preferred exclusion to competition, at least with respect to Asians.¹⁴

10. See *infra* notes 324–28 and accompanying text.

11. See *infra* notes 366–73 and accompanying text.

12. *United States v. Topco Assocs.*, 405 U.S. 596, 610 (1972).

13. See NAT’L ACADS. OF SCIS., ENGINEERING, & MED., *THE ECONOMIC AND FISCAL CONSEQUENCES OF IMMIGRATION* (Francine D. Blau & Christopher Mackie eds., 2017); see also Alex Nowrasteh, *The Fiscal Impact of Immigration* (Cato Inst., Working Paper, July 23, 2014), <https://object.cato.org/sites/cato.org/files/pubs/pdf/working-paper-21-fix.pdf> [<https://perma.cc/8EUW-QP7F>] (“The economic benefits of immigration are unambiguous and large, but the fiscal effects are dependent upon the specifics of government policy over a long time period”).

14. See Brian Burgoon, Janice Fine, Wade Jacoby & Daniel Tichenor, *Immigration and the Transformation of American Unionism*, 44 INT’L MIGRATION REV. 933, 941 (2010) (“[O]rganized labor passionately advocated Chinese exclusion”); *id.* at 942 (“With the AFL’s strong support, the Immigration Act of 1924 ultimately erected formidable barriers to southern and eastern Europeans and reinforced Asian exclusion.”); Arthur Mann, *Gompers and the Irony of Racism*, 13 ANTIOCH REV. 203, 207–08 (1953) (discussing AFL’s role in Asian immigration restriction, and noting “[t]hroughout their activities against the Asiatic, the AFL led by Gompers and

For most of U.S. history, the country was open to unlimited numbers of immigrants.¹⁵ Although criminal conviction, disease, and certain other characteristics disqualified a prospective immigrant, there were no numerical limitations on immigration until 1921.¹⁶

The open-border policy applied to all races except Asians.¹⁷ Particularly in the western United States, political, moral and economic considerations led to a perceived “Yellow Peril,” the danger that untold numbers of racially dangerous Asians would come to the United States and undermine its basic character.¹⁸ Thus, unlike immigration in general, Asian immigration was tightly controlled. In the late nineteenth century, U.S. law also resolved the fate of other nonwhite racial groups like Native Americans and African Americans.¹⁹

Congress passed the Chinese Exclusion Act in 1882,²⁰ but that did

interested Californians, insisted on the inborn inferiority of the Yellow Man”).

15. Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 COLUM. L. REV. 1833, 1834 (1993) (“Neither Congress nor the states attempted to impose quantitative limits on immigration [until 1921].” (emphasis added)).

16. Act of May 19, 1921, Pub. L. No. 67-5, § 2, 42 Stat. 2.

17. Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273, 281 (1996) [hereinafter Chin, *The Civil Rights Revolution*] (“Asians were the only group whose immigration was restricted on the basis of race.”).

18. Gabriel J. Chin, *Segregation’s Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1, 18–38 (1998) (discussing the racial motivation for Asian exclusion).

19. Gabriel J. Chin & Daniel K. Tu, *Comprehensive Immigration Reform in the Jim Crow Era: Chinese Exclusion and the McCreary Act of 1893*, 23 ASIAN AM. L.J. 39, 41 (2016) (“As the great historian Oscar Handlin explained: By the end of the [nineteenth] century the pattern of racist practices and ideas seemed fully developed: the Orientals were to be totally excluded; the Negroes were to live in a segregated enclave; the Indians were to be confined to reservations as permanent wards of the nation . . .” (quoting OSCAR HANDLIN, *RACE AND NATIONALITY IN AMERICAN LIFE* 48 (1957)) (alteration in original)). Many believed the United States was intrinsically a white country, that is, that it should be run for the benefit of whites. Thus, Senator John Perceval Jones of Nevada argued in favor of the Chinese Exclusion Act:

Does anybody pretend to tell me that it is a blessing to this country that [African Americans] are here? It is no fault of ours that they are here; it is no fault of theirs; it is the fault of a past generation; but their presence here is a great misfortune to us today, and the question of the adjustment of the relations between the two races socially and politically is no nearer a settlement now than it was the day Sumter was fired upon. . . [The Chinaman’s] race is socially more incongruous to ours and less capable of assimilation with us than is the negro race. . . . What encouragement do we find in the history of our dealings with the negro race or in our dealings with the Indian race to induce us to permit another race-struggle in our midst?

13 CONG. REC. 1744–45 (1882).

20. Act of May 22, 1882, ch. 126, 22 Stat. 58; see Chin, *The Civil Rights Revolution*, *supra* note 17, at 281.

not end hostility toward Chinese immigrants.²¹ A key reason the anti-Chinese movement did not declare victory was that Chinese exclusion statutes were facially temporary. Because Congress had to reconsider the question periodically, Chinese exclusion was a continuing political issue until it was made permanent in 1902.²² Even then, the issue was not resolved. By 1902, Japanese and other Asian immigrants were migrating to the United States, and their racial assimilability—and therefore their right to immigrate—became prominent public policy questions.²³

Chinese immigrants in the United States had limited opportunities for employment. Some jobs required licenses that were limited to U.S. citizens, a status Chinese immigrants could never achieve because of racial restrictions on naturalization.²⁴ Even without the force of law, social discrimination restricted employment opportunities.²⁵ Accordingly, many Chinese workers were employed in services and by

21. For example, the Supreme Court found such discrimination against Chinese laundries in San Francisco unconstitutional in *Yick Wo v. Hopkins*, 118 U.S. 356, 363 (1886).

22. Act of Apr. 29, 1902, Pub. L. No. 57-90, 32 Stat. 176; see Chin, *The Civil Rights Revolution*, *supra* note 17, at 281.

23. Reflecting the pan-Asian nature of the issue, in 1907 the Japanese and Korean Exclusion League renamed itself the Asiatic Exclusion League. See PROCEEDINGS OF THE ASIATIC EXCLUSION LEAGUE 11 (1907). There was, of course, respectable scholarly support for racially selective immigration. See Thomas C. Leonard, *Eugenics and Economics in the Progressive Era*, 19 J. ECON. PERSP. 207, 209–10 (2005) (noting that Edward A. Ross, a founding member of the American Economic Association, believed that while inferior, “Latins, Slavs, Asiatics and Hebrews[] were better adapted to the conditions of industrial capitalism and thus would outbreed the superior Anglo-Saxon race”).

24. See, e.g., *In re Hong Yen Chang*, 24 P. 156, 157 (Cal. 1890) (denying admission to the California state bar based on Chinese race), *abrogated by* 344 P.3d 288, 291 (Cal. 2015).

25. See, e.g., LEE, A HISTORY, *supra* note 2, at 76 (Chinese were “[s]hut out from other jobs because of racial discrimination”); PROCEEDINGS OF THE ASIATIC EXCLUSION LEAGUE 3 (June 1909) (reporting that some merchants “have changed their Asiatic help for whites [as] soon as the latter was obtainable”); Priscilla Spires Wegars, *Chinese in Moscow, Idaho, 1883-1909*, 52 HISTORIAN 82, 96–97 (1989) (describing hotels and restaurants advertising white-only employees); Nathaniel Hilger, *Upward Mobility and Discrimination: The Case of Asian Americans* 11 (Nat’l Bureau of Econ. Research, Working Paper 22748, 2017), <http://www.nber.org/papers/w22748.pdf> [<http://perma.cc/N3DY-DHC2>] (“Asians faced similar or greater historical discrimination than blacks in pre-war CA in citizenship and suffrage, due process, employment, labor unions, land ownership and leasing, housing markets, public education, and of course internment and expropriation during WWII.”).

small businesses,²⁶ such as restaurants and laundries.²⁷

Because Americans seemed to like Chinese food, the restaurant business was promising. The popularity of “chop suey” and other Americanized or American–Chinese dishes resulted in “the subsequent sprouting of Chinese restaurants.”²⁸ Their numbers grew rapidly in the late nineteenth and early twentieth centuries.²⁹ In 1870, with 63,000 Chinese residents in the United States, Chinese restaurants employed only 164 Chinese persons.³⁰ By 1920, despite a decline in the overall Chinese population,³¹ over 11,400 workers were employed by

26. LEE, A HISTORY, *supra* note 2, at 76 (“By the early twentieth century, restaurants were a mainstay for many immigrant families, who opened up chop suey houses catering to non-Chinese clientele across the country. As Chinese moved across the United States, so did Chinese laundries and restaurants.”); RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 240 (1989) (“By 1920, 58 percent of the Chinese were in services, most of them in restaurant and laundry work”); Samantha Barbas, “I’ll Take Chop Suey”: *Restaurants as Agents of Culinary and Cultural Change*, 36 J. POPULAR CULTURE 669, 673–74 (2003) (noting that the Chinese “had been forced out of the general labor market by hostile labor unions, exclusionary legal policies, and racial discrimination, and segregated into an ethnic labor niche. The new work opportunities . . . centered primarily around service occupations, such as laundry and restaurant work, based in Chinatowns and catering to largely Chinese customers”); Siegen K. Chou, *America Through Chinese Eyes*, 24 CHINESE STUDENTS MONTHLY 81, 83 (1928) (“Restaurant and laundry business is synonymous with the Chinese”); Huping Ling, *Family and Marriage of Late-Nineteenth and Early-Twentieth Century Chinese Immigrant Women*, 19 J. AM. ETHNIC HIST. 43, 47–48 (2000) (noting that Chinese individuals worked at laundries, restaurants, and boarding houses in the early 1900s).

27. David E. Bernstein, Lochner, *Parity, and the Chinese Laundry Cases*, 41 WM. & MARY L. REV. 211, 211 (1999) (“From the 1860s to the early twentieth century, Chinese laundrymen throughout the American West suffered from violence, boycotts, and hostile regulation of their occupation by local governments.”); see Joan S. Wang, *Race, Gender, and Laundry Work: The Roles of Chinese Laundrymen and American Women in the United States, 1850-1950*, J. AM. ETHNIC HIST., Fall 2004, at 58, 58.

28. B.L. SUNG, THE STORY OF THE CHINESE IN AMERICA 202–03 (1967); see also ANNUAL REPORT OF THE COMMISSIONER GENERAL OF IMMIGRATION TO THE SECRETARY OF LABOR 403 (1920) (“The bureau, of course, is well aware of the fact that throughout this district as well as the whole country Chinese restaurants and similar enterprises are growing in number, size, and evident prosperity”); Andrew P. Haley, *The Nation Before Taste: The Challenges of American Culinary History*, 34 PUB. HIST. 53, 74 (2012) (describing the growth of Chinese restaurants in various U.S. cities); W.V. Hill, *Cleveland, Ohio*, MIXER & SERVER, Aug. 15, 1919, at 63, 63 (“Chinese restaurants were springing up like mushrooms”).

29. Haiming Liu, *Chop Suey as Imagined Authentic Chinese Food: The Culinary Identity of Chinese Restaurants in the United States*, 1 J. TRANSNAT’L AM. STUD. 1, 2 (2009); see JOHN JUNG, SWEET AND SOUR: LIFE IN CHINESE FAMILY RESTAURANTS 43 (2010); Barbas, *supra* note 26, at 674–76.

30. TAKAKI, *supra* note 26, at 79; Barbas, *supra* note 26, at 676; Ivan Light, *From Vice District to Tourist Attraction: The Moral Career of American Chinatowns, 1880-1940*, 43 PAC. HIST. REV. 367, 385 (1974).

31. This of course was due to the exclusion policy.

Chinese restaurants in the United States³²—the industry had grown substantially, and had become a much more important source of employment for Chinese workers.

There was always some complexity in the relationship between the American public and Chinese restaurants. Though both the white and Chinese communities patronized them, Chinese restaurants were nevertheless regarded as exotic and potentially dangerous. In 1887, an aficionado wrongly predicted that “visions of kittens and rats would keep the Chinese restaurant from being largely patronized.”³³ Newspapers reported that chop suey joints served dog meat,³⁴ rats,³⁵ garbage,³⁶ and human children.³⁷ Nevertheless, while there were many suggestions that Chinese restaurants were “not so good either in a moral or a culinary way,”³⁸ few claimed that the food was intrinsically unpalatable.

Unions opposed Asian immigration in general and Chinese restaurants in particular. The Cooks’ and Waiters’ Union is an ancestor of the modern-day UNITE-HERE. Its members competed directly with Chinese restaurants, and the union was a powerful force; by 1903, its membership exceeded 50,000.³⁹ It was affiliated with the American Federation of Labor (AFL), which by 1914 claimed nearly two million

32. See Light, *supra* note 30, at 385.

33. Allen Forman, *The Chinese in New York*, SALT LAKE EVENING DEMOCRAT, Apr. 9, 1887, at 3.

34. *Society Eats Dog Hash*, BOURBON NEWS (Ky.), Oct. 13, 1905, at 3; see also *Cat Chop Suey*, CAUCASIAN (N.C.), Sept. 19, 1907, at 1 (reporting on Chicago’s Chinese restaurants).

35. MONROE CITY DEMOCRAT (Mo.), Oct. 18, 1906, at 3.

36. See *Faction War over Chink Trouble*, BISBEE DAILY REV. (Ariz.), Oct. 8, 1909, at 8; *Liber Charge Preferred Against Woman*, WEEKLY JOURNAL-MINER (Ariz.), Oct. 27, 1909, at 5.

37. *A Sensation at Clifton: Former Bisbee Man Brings Story of Finding Child’s Arm in Chinese Restaurant—Officers Raided Place*, BISBEE DAILY REV. (Ariz.), Sept. 12, 1913, at 1. This rumor turned out to be false. *Sensation Was a Poor Canard: Clifton Story of Finding of Arm Child in a Restaurant Is Denied by City Clerk—Says It Was a Joke*, BISBEE DAILY REV. (Ariz.), Sept. 20, 1913, at 2.

38. See *A Chinese Restaurant*, ROCHESTER DEMOCRAT & CHRON., July 23, 1904, at 6; *Chopstick Dinners, A Fad with Would Be Bohemians*, DAILY BOOMERANG (Wyo.), Mar. 3, 1901, at 4; *In Washington’s Chinatown*, SUNDAY STAR (D.C.), Aug. 6, 1905, at 6 (“The local Chinatown is not a motley, ill-assorted colony of celestials like that in Mott street, New York, but an orderly and well-regulated community. Lawlessness and disorder by Chinamen are unknown quantities there, and the police therefore rarely, indeed, have occasion to invade its quaint precincts for the purpose of arresting some offender.”).

39. MIXER & SERVER, Apr. 15, 1903, at 20, 20.

members.⁴⁰ The unions passionately supported Chinese Exclusion⁴¹ and expansion of the exclusion policy to all Asian races.⁴² A report in *The Mixer and Server*, a national union publication, explained:

View this matter from every angle, without heat or racial prejudice, and the fact stares us in the face that there is a conflict between the American wage-earner and the workers or employers from the Orient. Our Government has been compelled to close its doors to Asiatics in recognition of this fact.⁴³

In his famous essay *Meat vs. Rice: American Manhood Against Asiatic*

40. REPORT OF PROCEEDINGS OF THE THIRTY-FOURTH ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR, HELD AT PHILADELPHIA, PENNSYLVANIA NOVEMBER 9 TO 21, INCLUSIVE 1914, at 45 (1914) [hereinafter THIRTY-FOURTH ANN. CONVENTION].

41. See REPORT OF PROCEEDINGS OF THE THIRTY-EIGHTH ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR, HELD AT ST. PAUL, MINN. JUNE 10 TO 20, INCLUSIVE 1918, at 110-13 (1918). An editor of *The Mixer and Server* once wrote:

The American Federation of Labor was one of the first great organizations to appreciate and recognize the havoc which had been wrought by the competition of Asiatics, and it required . . . them to go unqualifiedly on record for Asiatic exclusion. They have allowed no opportunity to escape, they have been advocating and still continue to advocate, the exclusion from America of all Asiatic workers, for such workers are a menace to any peoples with ideals such as have become a part of the life of Americans.

Jere L. Sullivan, *Between Ourselves*, MIXER & SERVER, Apr. 15, 1916, at 2, 2. *The Mixer and Server* published many articles on the dangers of Asian immigration. See, e.g., *America or Japan, Which Will Rule?*, MIXER & SERVER, July 15, 1913, at 4; *Chinese and Japanese in the United States*, MIXER & SERVER, Aug. 15, 1915, at 4; *Japan's Social Evil*, MIXER & SERVER, Mar. 15, 1907, at 19; *The Chinese Must Not Come*, MIXER & SERVER, Nov. 15, 1905, at 9; *The Chink and the Jap*, MIXER & SERVER, July 15, 1905, at 3; *The Yellow Peril*, MIXER & SERVER, Jan. 15, 1906, at 36.

42. PROCEEDINGS OF THE FIFTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES' INTERNATIONAL ALLIANCE AND BARTENDERS' INTERNATIONAL LEAGUE OF AMERICA 147 (1909), reprinted in 18 THE MIXER AND SERVER (1909); PROCEEDINGS OF THE THIRTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES' INTERNATIONAL ALLIANCE AND BARTENDERS' INTERNATIONAL LEAGUE OF AMERICA 93-94 (1905), reprinted in 14 THE MIXER AND SERVER (1905) (accepting resolution to extend terms of Chinese Exclusion Act to Japanese and Koreans); REPORT OF PROCEEDINGS OF THE THIRTY-FIRST ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR, HELD AT ATLANTA, GEORGIA NOVEMBER 13 TO 25, INCLUSIVE 1911, at 306 (adopting resolution "[t]hat we reaffirm our previous declaration that the Chinese Exclusion Act should be made to apply to all races natives [sic] of Asia"); REPORT OF PROCEEDINGS OF THE THIRTY-THIRD ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR, HELD AT SEATTLE, WASHINGTON NOV. 10-22, INCLUSIVE 1913, *supra* note 3, at 304-05 (resolving that "the provisions of the present Chinese exclusion law be so extended as to apply to all Asiatics"); Paul Scharrenberg, *California State Federation of Labor; San Francisco, Cal., October 15, 1915*, MIXER & SERVER, Mar. 15, 1916, at 29, 29.

43. *Chinese Problem Again Comes Up*, MIXER & SERVER, July 15, 1916, at 4, 4; see also, e.g., Wm. F. Kavanagh, *Jersey City, N.J.*, MIXER & SERVER, May 15, 1904, at 76, 76 ("[S]uch dishes as chop suey can only be digested by those who are opposed to organized labor.").

Coolieism, Which Shall Survive?,⁴⁴ Samuel Gompers, AFL president and a leader of the exclusion movement,⁴⁵ put the conflict in decidedly culinary terms, symbolized by the foods each group customarily consumed. Unions saw the lower wage scales in Chinese restaurants as a threat,⁴⁶ but rather than trying to unionize Chinese restaurants and their employees, unions sought to eliminate the “unfair” competition by driving the restaurants out of business. In this, the interests of unions sometimes dovetailed with the business interests of restaurant owners who would profit from the closure of their competitors.⁴⁷

B. Boycotts

Asians were generally barred from union membership. The Cooks’ and Waiters’ Union excluded even U.S. citizens of Asian ancestry because it was “true to one principle—nothing doing with either Chinks, Japs or other Asiatics.”⁴⁸ To fight the “iniquitous chop suey joints,” unions demanded contract terms that discharged Asians

44. SAMUEL GOMPERS & HERMAN GUTSTADT, *MEAT VS. RICE: AMERICAN MANHOOD AGAINST ASIATIC COOLIEISM, WHICH SHALL SURVIVE?* (1902).

45. Mann, *supra* note 14, at 207–10.

46. For example, in 1905, a Chinese cook in San Francisco earned from \$25.00 to \$35.00 monthly working fourteen to sixteen hours, seven days a week. A.E. Yoell, *Oriental vs. American Labor*, 34 ANN. AM. ACAD. POL. & SOC. SCI. 247, 250 (1909). Some white cooks worked “merely” ten to thirteen hours, six days per week, earning in a week what a Chinese cook earned in a month. *Id.* Accordingly, the demands of the union in San Jose in 1905 included “a day of rest each week, the exclusion of Chinese labor and the recognition of the union.” Joseph J. O’Brien, *San Jose, Cal., MIXER & SERVER*, Feb. 15, 1904, at 70, 70. “The bulk of the cooks [in hotels and boarding houses] are Chinese, but the local is determined to drive them out.” *Id.* at 71.

47. *One of the Tendencies*, DAILY HONOLULU PRESS, Sept. 12, 1885, at 2 (“Ask the restaurant keeper and he will tell you ‘We cannot compete with the Chinese restaurants.’”).

48. See PROCEEDINGS OF THE SIXTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES’ INTERNATIONAL ALLIANCE AND BARTENDERS’ INTERNATIONAL LEAGUE OF AMERICA, *supra* note 1, at 94–95; see also Charlotte Garden & Nancy Leong, “So Closely Intertwined”: *Labor and Racial Solidarity*, 81 GEO. WASH. L. REV. 1135, 1141–59 (2013) (discussing racial exclusion policies in unions). There were labor unions made up of Chinese, such as the Mon Sang Association in Chicago. See Susan Moy, *Chinese in Chicago: The First One Hundred Years*, in ETHNIC CHICAGO: A MULTICULTURAL PORTRAIT 398 (Melvin G. Holli & Peter d’A. Jones eds., 4th ed. 1995).

from their jobs,⁴⁹ barred union members from working with Asians,⁵⁰ and prohibited Asian owners from displaying union house or bar cards.⁵¹ Anti-Chinese sentiment inspired some union creativity; reportedly, “[t]he first union label was used by San Francisco Cigarmakers in opposing the product of Chinese Cigarmakers.”⁵²

Early methods of eliminating Chinese competition also included threats and violence.⁵³ In what one observer called “race wars,” unions drove Chinese workers and enterprises out of Portland, Tacoma, and various towns and cities in Idaho and Montana.⁵⁴ In some places, such

49. *See Boycott Raised*, L.A. HERALD, Feb. 16, 1903, at 2f (reporting that Asian cooks were barred from unionized hotels and restaurants in Sacramento); *Exclusion That Excludes*, MIXER & SERVER, Nov. 15, 1905, at 30, 30 (noting that in Vallejo and Santa Rosa, waiters’ and bartenders’ unions “served ultimatums upon the employers of Asiatic labor in the saloons and restaurants that they must either employ none but white union labor or be placed on the unfair list”); Frank Holt, *What Our Organizers Are Doing*, MIXER & SERVER, May 15, 1909, at 14, 14 (“As a result of their activities there is not an Oriental working in any of the bars, restaurants, or lodging houses of the city, and the Jap in San Jose is practically being eliminated.”); A.W. Oaks, *Victoria B.C.*, MIXER & SERVER, July 15, 1913, at 35, 35 (noting that one negotiating term of union in Victoria, British Columbia, as “a demand for white cooks, as this has been a strong Chinese cook city heretofore. . . . So you see we are sending a few Chinks back, back, back to old China town; and that is not the finish”).

50. *After the Chinese: An Effort to Expel Them from the Principal Cities of Montana*, *supra* note 1; *see also* Boyle, *supra* note 1; O.M. Boyle, *News of the Labor World*, S.F. CALL, Feb. 28, 1907, at 9 (“All but one of the restaurants in Palo Alto employ Japanese or Chinese cooks and dishwashers. These eating houses have been notified by their union patrons that they will take no more meals at them unless white help is substituted for the Mongolians.”); Edward Flore, *Decision No. 1177*, MIXER & SERVER, Nov. 15, 1922, at 9, 9 (noting declaration that “no member of our International Union be permitted to work with Asiatics”).

51. PROCEEDINGS OF THE EIGHTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES’ INTERNATIONAL ALLIANCE AND BARTENDERS’ INTERNATIONAL LEAGUE OF AMERICA 95 (1915), *reprinted in* 24 THE MIXER AND SERVER (1915).

52. *The Union Label: Why We Favor It and Why It Is Opposed*, 16 TOBACCO WORKER 11, 12 (Nov. 1912); *see* Justin Seubert, Inc., v. Reiff, 164 N.Y.S. 522, 524 (N.Y. Sup. Ct. 1917) (noting that “[i]f the manufacturer deals in ‘Chinese, tenement house, or scab cigars,’ or if his name appears upon a box containing such cigars, the label may be refused, at the option of the local union”).

53. *See generally* JEAN PFAELZER, *DRIVEN OUT: THE FORGOTTEN WAR AGAINST CHINESE AMERICANS* 99 (2007) (describing the history of ethnic cleansing of Chinese Americans in California and the Pacific Northwest).

54. HARRY W. LAIDLER, *BOYCOTTS AND THE LABOR STRUGGLE: ECONOMIC AND LEGAL ASPECTS* 75 (1913) (“The greatest success of any boycotts waged during [1883–85] was found in those conducted in the Western States against the Chinese. . . . These boycotts, however, often involved more than mere boycotting. . . . In Portland, Oregon . . . [t]he agitation led to the discharge of 400 Chinese in 40 firms. . . . In Tacoma, Washington more than 700 Chinese were escorted from the city by prominent citizens. In Idaho and Oregon the workers threatened to hang any coolie who came their way.”).

as Selma, California,⁵⁵ and Silverton, Colorado,⁵⁶ unions targeted restaurants in particular.

Boycott was another important union tool. Boycotts were often explicitly connected to immigration restriction. For example, in the course of debating a resolution to extend Chinese exclusion to other Asian races, one delegate to the Socialist National Convention of 1910 captured the history when, speaking of the 1880s, he noted “[t]he Chinese must go,” and explained that “[w]e instructed our men to boycott the Chinese laundries, Chinese restaurants, Chinese servants of all kinds. We fought the Chinamen and their exclusion took place.”⁵⁷

Boycott was national union policy. At the 1914 AFL convention, a New Jersey delegate introduced the following resolution:

WHEREAS, Chinese restaurants and Chinese laundries give no employment to American labor; therefore be it

WHEREAS, Chinese are not eligible to citizenship; and

WHEREAS, American laundries and American restaurants give employment to American labor; therefore be it

RESOLVED, That this, the Thirty-fourth Convention of the American Federation of Labor, requests its affiliated membership to give their patronage to American laundries and restaurants.⁵⁸

The convention modified the resolution, approving an exhortation to “patronize union restaurants and laundries” and reminding members

55. See, e.g., *Anti-Chinese Agitation: Two Restaurant-Keepers Ordered To Leave Selma*, REC.-UNION (Cal.), Aug. 21, 1893, at 1; *Driving out Celestials*, SALT LAKE TRIB., Aug. 20, 1893, at 2.

56. *Ban on Yellow Men*, SALT LAKE TRIB., Feb. 13, 1902, at 7; see also *Chinese Want Protection*, SPOKANE DAILY CHRON., Feb. 12, 1902, at 5 (noting that the U.S. Secretary of State wrote to the governor seeking protection for Chinese).

57. PROCEEDINGS: NATIONAL CONGRESS OF THE SOCIALIST PARTY 96 (1910). Another example of the connection between restaurant competition and immigration policy occurred at the 1909 convention of the California Federation of Labor. At the same meeting where they resolved “that the terms of the Chinese Exclusion Act should be enlarged and extended so as to permanently exclude from the United States and its insular territory all races native of Asia other than those exempted by the present terms of that Act,” they cataloged the forms of competition by Asian workers, noting, among other occupations, that “[c]ooks have a problem to look after in these dear Jap boys and sly Chinese,” and that “[t]here are about twenty Chinese restaurants in San Francisco, employing about 180 Chinese, and seventy Jap restaurants with about 300 employes [sic].” PROCEEDINGS OF THE TENTH ANNUAL CONVENTION OF THE CALIFORNIA STATE FEDERATION OF LABOR 14, 55 (1909).

58. THIRTY-FOURTH ANN. CONVENTION, *supra* note 40, at 294.

of existing support for systematic Asian exclusion.⁵⁹ Because Chinese workers were generally excluded from membership, the resolution as passed was tantamount to a national boycott.

Other unions also endorsed boycotts. In 1915, the Hotel and Restaurant Employees International Alliance and the Bartenders International League voted to boycott “Japanese and Chinese Restaurants and Chinese Laundries,” and decreed that establishments employing “Asiatics” could neither hire white union members nor display union credentials.⁶⁰ Notably, some members argued that the wiser course would be to invite Chinese workers into the union.⁶¹ But the prevailing sentiment was that the union should “chase the slant-eyed celestials and the little brown skinned fellows back to the place where they belong.”⁶²

The Mixer and Server and other media reported boycotts in cities

59. *Id.* at 469.

60. PROCEEDINGS OF THE EIGHTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES’ INTERNATIONAL ALLIANCE AND BARTENDERS’ INTERNATIONAL LEAGUE OF AMERICA, *supra* note 51, at 155–56.

61. One delegate argued: “[O]rganize the Asiatics, put them into unions and you will have a chance to determine the question of wages, hours and conditions, otherwise the problem will be with you indefinitely and as difficult to solve as it seems to be now.” *Id.* at 156; *see also* Charles E. Sands, *Correspondence: Springfield, Mass.*, MIXER & SERVER, Aug. 15, 1919, at 66, 67 (“We must either . . . drive them out of business or we must accept them as members. The Chinese waiters and cooks of New York City, I understand, a short time ago were on strike for the 12-hour work day for six days a week, . . . so it seems, no matter what creed or color the working men or women are, they are up against the same problems.”).

62. PROCEEDINGS OF THE EIGHTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES’ INTERNATIONAL ALLIANCE AND BARTENDERS’ INTERNATIONAL LEAGUE OF AMERICA, *supra* note 51, at 156; *see also, e.g.*, EILEEN V. WALLIS, *EARNING POWER: WOMEN AND WORK IN LOS ANGELES 1880-1930*, at 75 (2010) (noting that Waitresses Union Local No. 98 “made discrimination against Asians a key part of its activities” and endorsed a boycott of Japanese restaurants); Paul Scharrenberg, *California State Federation of Labor*, MIXER & SERVER, Mar. 15, 1916, at 28, 29 (reprinting resolution that “the California State Federation of Labor again records itself as opposed to the patronizing or employing of Asiatics in any manner; and in favor of an extension to the Chinese Exclusion law so as to bar all Asiatics”); *Thoroughly Rout Typo Insurgents*, L.A. HERALD, Aug. 19, 1911, at 10 (reporting that “[a] resolution was adopted . . . that all members of the union should refuse to patronize Chinese laundries, restaurants and other establishments”).

across the country,⁶³ including in Phoenix, Tucson,⁶⁴ and Willcox, Arizona;⁶⁵ San Francisco, California;⁶⁶ Brockton, Massachusetts;⁶⁷ Duluth, Minneapolis,⁶⁸ and St. Paul, Minnesota;⁶⁹ Butte, Billings, and Deer Lodge, Montana;⁷⁰ Tonopah, Nevada;⁷¹ Cleveland, Ohio;⁷² El

63. There was also at least one major boycott targeting Japanese restaurants. *See Japanese in the City of San Francisco, Cal.: Message from the President of the United States Transmitting the Final Report of Secretary Metcalf on the Situation Affecting the Japanese in the City of San Francisco Cal.*, S. DOC. NO. 59-147, at 7 (2d Sess. 1906) (“A boycott was maintained in San Francisco from October 3 to October 24 by members of the Cooks and Waiters’ Union against Japanese restaurants . . .”). However, it was part of a larger effort; according to the report, the Japanese and Korean Exclusion League had requested “all affiliated unions to enforce the penalties imposed by their laws for patronizing Japanese or Chinese.” *Id.* at 8.

64. F.N. Odgers & G.E. Stevens, *Correspondence: Tucson, Ariz.*, MIXER & SERVER, June 15, 1916, at 56, 56 (noting that “the blighting effect of low wages and the rapid decaying process which sets in on the vitals of a community wherever the Oriental hand of avariciousness and cheap living gets its grip”).

65. *Boycott Them*, DAILY TOMBSTONE, Mar. 15, 1886, at 3 (“There are today three Chinese restaurants in Willcox, all doing good business, while the two hotels in the town, conducted by ladies of our own race and color, are driven to the wall. Close the Chinese restaurants and our hotels would at once do a better business and could afford a better service.”).

66. *Special Message on Jap Question*, SANTA FE NEW MEXICAN, Dec. 18, 1906, at 1 (“The unions of San Francisco from October 3 to October 24, maintained a boycott against Chinese restaurants in San Francisco, showing the feeling among the working class.”).

67. Thomas J. Durnin, *What Our Organizers Are Doing: Fall River, Massachusetts*, MIXER & SERVER, Nov. 15, 1911, at 22, 22; *see also Refuse To Make Arrests*, BOS. DAILY GLOBE, Nov. 22, 1911, at 10. Circulars were also sent out to “each and every member of organized labor” asking them to avoid patronizing the restaurants. Thomas J. Durnin, *What Our Organizers Are Doing: Holyoke, Massachusetts*, MIXER & SERVER, Dec. 15, 1911, at 16, 17; Thomas J. Durnin, *What Our Organizers Are Doing: Lowell, Massachusetts*, MIXER & SERVER, Jan. 15, 1912, at 17, 17; *see also Labor Declares War on Chinese Restaurants*, *supra* note 1.

68. SHERRI GEBERT FULLER, CHINESE IN MINNESOTA 19 (2004).

69. *Boycott Against Chinese Stopped*, INDIANAPOLIS J., Apr. 22, 1902, at 4; *see also More Pickets Enjoined: Wong Chong Gets an Order*, MINNEAPOLIS J., Apr. 19, 1902, at 6; *Organized Labor Is Enjoined by Court*, LAB. WORLD, Dec. 26, 1903, at 1; *Threatens To Sue: Ye Sing May Fight Boycott in the Courts*, MINNEAPOLIS J., Mar. 24, 1902, at 7.

70. *After the Chinese: An Effort To Expel Them from the Principal Cities of Montana*, *supra* note 1, at 3 (noting a movement to drive out the Chinese from Butte); *Local Comment*, THE NEW NORTH-WEST (Mont.), Apr. 30, 1892, at 5 (“The two remaining Chinese restaurants have at last been frozen out of Deer Lodge.”); *Waiters Form Union*, BILLINGS GAZETTE (Mont.), Feb. 22, 1907, at 7 (“[I]t is understood that the main object of the association will be to do all in their power to discontinue the Chinese restaurants throughout the city.”). *See generally* Stacy A. Flaherty, *Boycott in Butte: Organized Labor and the Chinese Community, 1896-1897*, 37 MONTANA: MAG. OF W. HIST. No. 1 34, 34 (Winter 1987); Larry D. Quinn, “Chink Chinaman”: *The Beginning of Nativism in Montana*, 58 PAC. NW. Q. No. 2, 82-87 (1967) (discussing the white population’s reaction to Chinese people in Montana).

71. *Card to the Public*, *supra* note 4.

72. *Park v. Locals Nos. 106, 107, 108 & 167 of the Hotel & Rest. Emps. Int’l All.*, 22 Ohio N.P. (n.s.) 257, 259 (Ct. C.P. Cuyahoga Cty. 1919).

Paso, Texas;⁷³ Ogden, Utah;⁷⁴ and Casper, Wyoming.⁷⁵ There were probably others that did not make the news.

Chinese restaurants were typically inexpensive,⁷⁶ and union members were tempted to patronize them, boycotts notwithstanding. One union official lamented “[see]ing union men, sneaking in the side doors of Chinese restaurants.”⁷⁷ Leaders warned that patronizing “Asiatic” businesses encouraged them to remain in the United States, and therefore that eating Chinese food meant “the continuation indefinitely of a terrible struggle against these barbarians.”⁷⁸ Unions imposed fines to compel compliance,⁷⁹ but, as one union organizer reported, “a lot of union men seem to have, I am sorry to say, a fancy for Chop Suey.”⁸⁰

Litigation in Cleveland, Ohio, made clear that the boycotts of Chinese restaurants were unlike other sorts of labor action; not

73. E.D. Skinner, *El Paso Boasts New Union*, MIXER & SERVER, Dec. 15, 1913, at 49, 49; E.D. Skinner, MIXER & SERVER, July 15, 1914, at 71, 72.

74. W.M. Kuglin, MIXER & SERVER, Oct. 15, 1903, at 54, 54 (promising “a hot chase after the scalp of Chinks and Japs”).

75. R.E. Croskey, MIXER & SERVER, May 15, 1916, at 23, 23.

76. See CHEN, *supra* note 2, at 127–29 (discussing affordability and generous portions of Chinese restaurant meals); LIU, *supra* note 2, at 53 (“Chop suey’s marketability was due to its modest price.”); R.E. Croskey, MIXER & SERVER, May 15, 1916, at 23, 23; *Luxurious and Inexpensive Chinese Restaurant Now Night Club ‘Yellow Peril’*, BROOK. DAILY EAGLE, Oct. 31, 1928, at 2, 3 (noting “ridiculously” low prices); *Oppose the Chinese: Asiatic Immigration League Members Give Views*, WASH. EVENING STAR, Aug. 21, 1908 at 4 (noting that advocate of immigration restriction stated “that Chinese prices in America are too low for competition by Americans”); *Salt Lake City and Neighborhood*, INTERMOUNTAIN CATH. (Utah), Mar. 26, 1903, at 8 (noting that Chinese restaurants “are more cheaply conducted than the others”).

77. Thomas J. Durnin, *What Our Organizers Are Doing: Norwich, Connecticut*, MIXER & SERVER, Jan. 15, 1919, at 22, 23.

78. *Chinese Problem Again Comes up*, MIXER & SERVER, July 15, 1916, at 4, 4; see also A.C. Beck, *What Our Organizers Are Doing: Salt Lake City, Utah*, MIXER & SERVER, Aug. 15, 1913, at 23, 23 (noting that workers in Salt Lake City patronized Chinese restaurants).

79. *No Love for the Heathen*, REC.-UNION (Cal.), Jan. 29, 1892, at 1 (noting that Butte, Montana unions fined any member “who patronizes Chinese restaurants, laundries, or stores, or any establishment where Chinese help is employed”); see also, e.g., Delia A. Hurley, *What Our Organizers Are Doing: Brockton, Massachusetts*, MIXER & SERVER, May 15, 1917 at 23, 23 (noting a \$5 to \$15 fine); J.P. McGinley, *What Our Organizers Are Doing: Casper, Wyoming*, MIXER & SERVER, July 15, 1914, at 37, 38 (noting a \$5 fine); Thomas J. Durnin, *What Our Organizers Are Doing: Lowell, Massachusetts*, MIXER & SERVER, Jan. 15, 1912, at 17, 17 (noting a \$2 to \$10 fine).

80. Fred Harding, *What Our Organizers Are Doing: Toronto, Ontario*, MIXER & SERVER, Apr. 15, 1908, at 19, 19; see also M.P. Scott, *What Our Organizers Are Doing: Vallejo, California*, MIXER & SERVER, Jan. 15, 1908, at 27, 27 (reporting that in Vallejo, California, while fines were imposed “the movement is none too strong, and it is going to be a pretty hard problem to enforce”).

designed to recruit new union members or to persuade businesses to sign a contract, these boycotts instead sought to render Asian workers unemployed or to shutter Asian businesses.⁸¹ In 1919, Cleveland unions recognized the seriousness of “the Chinese situation,” observing growth from “one small [Chinese restaurant] twenty years ago to all of 25 at the present time”⁸² Union members picketed two new Chinese restaurants, the Golden Pheasant and the Peacock Inn,⁸³ and the latter responded with a lawsuit.⁸⁴ Judge Foran enjoined the picketers, finding that they were encouraging patrons to eat elsewhere because the restaurants were operated by “Chinamen and members of the yellow race, and that Americans should not patronize a Chinese restaurant, but should confine their patronage and support to restaurants operated by Americans or by white persons.”⁸⁵ The court scolded the unions, noting “that all men, even including Chinamen residents of the United States, stand equally before the law,”⁸⁶ and reasoning that because the picketing was not an attempt to unionize the workers, and because it was “admitted that Chinamen [could] not belong to any local of defendants’ international union” as they were not citizens,⁸⁷ the unions’ real aim was to “compel[] the management to discharge Chinese waiters and employ white waiters, and in default of so doing, compel the restaurant to cease doing business.”⁸⁸

81. See generally J.W.O., *The Boycott as a Weapon in Industrial Disputes*, 116 A.L.R. 484 (originally published in 1938) (discussing permissible and impermissible types and methods of boycotts).

82. Hill, *supra* note 28, at 63, 63.

83. *Id.*

84. *Park v. Locals Nos. 106, 107, 108 & 167 of the Hotel & Rest. Emps. Int’l All.*, 22 Ohio N.P. (n.s.) 257, 259 (C.P. Ct. Cuyahoga Cty. 1919).

85. *Id.* at 261. Judge Foran was uniquely qualified to decide the case because he was a member of Congress when the Chinese Exclusion Act was revised and previously served as president of the Coopers International Union. *Foran, Martin A.*, CASE W. RES. U.: ENCYCLOPEDIA CLEV. HIST., <https://case.edu/ech/articles/f/foran-martin-a/> [<https://perma.cc/3N4Y-X4L7>].

86. *Park*, 22 Ohio N.P. (n.s.) at 289.

87. *Id.* at 263–64. While Chinese people were wholly excluded, the court noted that African Americans could join segregated locals: “In other words, while the colored brother may belong to the same church, he is not permitted to worship in the same pew.” *Id.* at 264.

88. *Id.*; see also *id.* at 279 (“In the instant case, or the case now at bar, it is admitted freely and candidly that the purpose is to drive the Peacock Inn restaurant out of business”); W.H. Curtis, *Correspondence: Sumpter, Ore.*, MIXER & SERVER, Jan. 15, 1904, at 62, 62 (“A problem that is to confront the labor organizations of this country is the question of how to prevent the employment of Chinese cooks in the hotels and restaurants of this country.”); Hill, *supra* note 28, at 63, 63 (asking a Chinese restaurant to employ union help). Similarly, during the Minneapolis boycott of 1902–03, “[t]he Chinese proprietors say that they were directed to employ union men

Even when not enjoined, nonviolent boycotts were rarely wholly successful. Chinese immigrants were interested in the restaurant business and in being employed, and the public wished to patronize the establishments. Accordingly, market forces created substantial headwinds for the unions, as Judge Foran observed:

[T]he law of competition in business controls business relations as immutably as the law of gravitation controls matter. If a Chinaman can furnish better food at less cost than a white man, he will be patronized, and I know of no law that will compel or force any patron to pay a higher price for inferior food merely because it is prepared and served by a white man.⁸⁹

Since there was no law reserving the food business to whites, the unions sought to create one.

II. CHINESE RESTAURANTS AND THE LAW

A. *White Women's Morality and Chinese Restaurants*

When boycotts failed, unions invoked another rationale for their objections to Chinese restaurants—that the establishments harmed white women.⁹⁰ As such, they sought to persuade policymakers and law enforcement that the establishments should be eliminated or restricted using legal methods.

Chinese restaurants were associated with depravity. Chinese restaurants and Chinatowns were often tourist attractions.⁹¹ Middle- and upper-class whites visited Chinatown restaurants out of “morbid curiosity”⁹² for an evening of “slumming.”⁹³ Thus, the *Chicago Tribune*

only but that this is impossible as Mongolians are barred from labor organizations.” *Court's Order Is Sweeping*, LAB. WORLD, Dec. 26, 1903, at 1.

89. *Park*, 22 Ohio N.P. (n.s.) at 264.

90. We do not have a strong conclusion on whether the desire to protect white women was genuine or manufactured for political purposes, both because it is hard to get in the minds of the actors, and it is not clear that it matters. Even if unions and politicians sincerely believed Chinese restaurants posed a danger to white women, that belief was undoubtedly influenced by racism and by their belief that suppressing Chinese restaurants would be to their financial and political advantage.

91. See generally Barbara Berglund, *Chinatown's Tourist Terrain: Representation and Racialization in Nineteenth-Century San Francisco*, 46 AM. STUD. 5, 5 (2005) (“Chinatown also became a popular tourist destination for the city's visitors and a local place of amusement for its residents.”).

92. WILLIAM MCADOO, *GUARDING A GREAT CITY* 171 (1906).

93. CHEN, *supra* note 2, at 105; see also JUNG, *supra* note 29, at 39; Barbas, *supra* note 26, at 671–73 (stating that “slummers” visited San Francisco and New York Chinatown as early the

reported on an 1891 trip to New York's Chinatown, where English visitors admired the "cleanliness of the kitchen and the cookery" of the restaurant—but according to the article, they had only "seen the curious and clean side of Chinatown."⁹⁴ The visitors were then taken to the "dives of Chinese immorality" where "sternness and pity mingled in their faces" at the sight of young white girls smoking opium "face to face" with Chinese men.⁹⁵ So-called lobbygows escorted and promised protection to Chinatown tourists, even hiring residents to act out stereotypical vices.⁹⁶

Newspapers offered lurid reports that Chinese restaurants were fronts for opium dens,⁹⁷ and that Chinese men used opium "as a trap for young girls."⁹⁸ There were regular reports of young girls being rescued from opium dens.⁹⁹ This statement from a Congressional hearing on opium regulation is representative:

In the Chinatown in the city of Philadelphia there are enormous quantities of opium consumed, and it is quite common, gentlemen, for these Chinese or "Chinks," as they are called, to have as a concubine a white woman. There is one particular house where I would say there are 20 white women living with Chinamen as their common-law wives. The Chinamen require these women to do no work, and they do nothing at all but smoke opium day and night. A great many of the

1870's); Haley, *supra* note 28, at 74; Light, *supra* note 30, at 383; *Barred from Chinatown*, N.Y. DAILY TRIB., Oct. 25, 1910, at 7 (stating that the "rubber neck" men who come to visit Chinatown were barred by police); *Elsie Sigel's Death Warning Against Fatal Lure of Chinese*, SPOKANE PRESS, June 26, 1909, at 1, 6 [hereinafter *Fatal Lure of Chinese*]; John Jung, *The Sour Side of Chinese Restaurants*, CHINESE AM. F., July 2013, at 17, 18 n.5; *Opposes "Slumming": Maj. Sylvester Takes Issue with New York Police*, WASH. POST, Nov. 1, 1910, at 16. *See generally Claws of the Dragon Losing Grip on New York's Famous Chinatown*, SUN (N.Y.), June 15, 1913, at 3 (discussing New York's Chinatown no longer presenting the spectacles it once had).

94. *Through the Slums: Lady Henry Somerset Visits the Dens of New York*, CHI. DAILY TRIB., Nov. 29, 1891, at 2.

95. *Id.*

96. *See* Light, *supra* note 30, at 389–90.

97. *See Citizens May Take the Law in Their Own Hands*, S.F. CALL, Dec. 27, 1899, at 9; *Conceal Opium in Chop Suey Bowls*, WEEKLY J.-MINER (Ariz.), Mar. 4, 1914, at 4; *Girls Frequent Opium Den*, L.A. TIMES, Nov. 23, 1908, at 14; *Mrs Gooey Says White Girls Frequent Local Opium Dens*, E. OREGONIAN, Nov. 8, 1909, at 1.

98. *Rescued from Opium Den*, DAILY ARDMOREITE (Okla.), Nov. 26, 1908, at 2; *see Even Doctors Are Victims*, BOS. DAILY GLOBE, Mar. 6, 1911, at 8 (stating that "numbers of Boston young women who patronize Chinese restaurants because of a taste for chop suey . . . [became] confirmed opium smokers" in the "Chinese dives" on Harrison Avenue); *White Girl Is Held Captive*, BOS. DAILY GLOBE, Sept. 7, 1909, at 14 (recounting the recovery of a white girl kept as a prisoner in Chinatown).

99. *See, e.g., Rescued from Opium Den*, *supra* note 98.

girls are girls of family, and the history of some of them is very pathetic. You will find those girls in their younger days went out with sporty boys, and they got to drinking. The next step was cigarettes. Then they go to the Chinese restaurants, and after they go there a couple of times and get a drink in them they want to “hit the pipe.” They do it either out of curiosity or pure devilishness.¹⁰⁰

The idea of white female victimization became a media trope. In 1899, the play *King of the Opium Ring* by Charles E. Blaney and Charles A. Taylor was performed at the Columbus Theater and the Academy of Music in New York.¹⁰¹ Later produced around the United States and Canada, it featured a clown who rescued a young white woman from the balcony of a Chinese restaurant.¹⁰² Similarly, popular novelist Frank Norris exploited “the reputed Chinese fondness for slave girls. . . . One of his white women characters, accompanied by her fiance, is kidnapped in broad daylight in a Chinese restaurant.”¹⁰³ Movies depicted similar scenes,¹⁰⁴ and renowned “realistic” artists painted Chinatown vistas.¹⁰⁵ Thus, there was a popular perception that Chinese restaurants were purveyors of vice,¹⁰⁶ and served as late-night

100. *Importation and Use of Opium: Hearing on H.R. 25240, H.R. 25241, H.R. 25242, and H.R. 28971 Before the H. Comm. on Ways and Means*, 61st Cong. 71 (1910–1911).

101. MARVIN LACHMAN, *THE VILLAINOUS STAGE: CRIME PLAYS ON BROADWAY AND IN THE WEST END* 155 (2014).

102. DALLES DAILY CHRON. (Or.), Oct. 6, 1900, at 4.

103. Judy M. Tachibana, *Outwitting the Whites: One Image of the Chinese in California Fiction and Poetry, 1849–1924*, 61 S. CAL. Q. 379, 385 (1979).

104. See Daniel Czitrom, *The Politics of Performance: From Theater Licensing to Movie Censorship in Turn-of-the-Century New York*, 44 AM. Q. 525, 541 (1992) (describing films depicting Chinatown, such as *LIFTING THE LID* (Biograph 1905) and *THE DECEIVED SLUMMING PARTY* (Biograph 1908)).

105. See John X. Christ, *A Short Guide to the Art of Dining, Slumming, Touring, Wildlife, and Women for Hire in New York's Chinatown and Chinese Restaurants*, 26 OXFORD ART J. 73, 73 (2003).

106. See Light, *supra* note 30, at 368; see also *Assails Board*, BOS. DAILY GLOBE, Feb. 1, 1901, at 6 (quoting statements made before the Massachusetts Legislature, including “They have suffered to exist for a long time Chinese resorts [sic], frequented by both sexes, where scenes of the most revolting character are nightly enacted under the eye of the police, with no effort on the part of the board to stop this everlasting evil.”); *Barred from Chinatown*, *supra* note 93 (discussing a prohibition on visitors to Chinatown due to its vices); *Girl Exposes Opium Den*, INDIANAPOLIS STAR, Feb. 22, 1910, at 5 (describing the drugs and alcohol provided by a Chinese restaurant used as an opium den); *Girls Drink Beer at All Hours in Chop Suey Houses*, CHI. DAILY TRIB., May 16, 1914, at 1 (discussing a 1914 investigation of 26 Chinese restaurants in Chicago); *The Chinese Restaurants*, BOS. DAILY ADVERTISER, Aug. 12, 1899, at 4. *But see Reform Chinatown Here; No Fights, No Opium Now; All Games Are Innocent*, WASH. POST, Mar. 25, 1917, at F2 (describing the Chinatown of the past while commenting on its recent reform).

substitutes for closed saloons.¹⁰⁷ Narratives that opium use went hand in hand with Chinese restaurants served that purpose, too. In an era when many Americans lawfully used over-the-counter patent medicines containing opiates or cocaine,¹⁰⁸ Congress passed the Smoking Opium Exclusion Act of 1909,¹⁰⁹ reminding the public that the Chinese and their habits were distinctively problematic, presenting a danger to the larger community.¹¹⁰

A modern analyst might approve of the evidence that otherwise rigid racial and gender codes of the time were relaxed in Chinese restaurants.¹¹¹ Nevertheless, while Chinese restaurants generated patronage by flaunting exoticism and offering freedom, the implication of something naughty, or worse, caused some to fear for the

107. See *To Make War on Restaurant Drinks*, EL PASO HERALD, Oct. 5, 1913, at 4-B; see, e.g., *Chop Suey Dealer Is Fined*, OMAHA SUNDAY BEE, Oct. 16, 1910, at F8 (reporting fine for selling liquor after eight o'clock); *Three Killed and Nine Wounded in Political Riots at Rock Island*, EL PASO HERALD, Mar. 27, 1912, at 5 (quoting the mayor of Rock Island, Illinois as stating "The whole trouble from its inception may be traced to the fact that I favored the law against disorderly saloons and chop suey joints.").

108. DAVID F. MUSTO, *THE AMERICAN DISEASE: ORIGINS OF NARCOTIC CONTROL* 3 (3d ed. 1999) ("Opiates and cocaine became popular—if unrecognized—items in the everyday life of Americans.").

109. Act of February 9, 1909, Pub. L. No. 60-221, 35 Stat. 614 (prohibiting the importation and use of opium for non-medical purposes); see CHERYL L. CHAMBERS, *DRUG LAWS AND INSTITUTIONAL RACISM: THE STORY TOLD BY THE CONGRESSIONAL RECORD* (2011) (tracing the correlation between America's drug laws and racial discrimination); see, e.g., *Dreamers Who Hit the Pipe*, WASH. POST, Mar. 7, 1909, at M1; *Fight on Opium Led by America*, CHI. DAILY TRIB., Apr. 19, 1909, at 1; *Opium Barred After April 1*, N.Y. TIMES, Mar. 28, 1909, at 3; *Opium Barred by New Statute*, S.F. CHRON., Mar. 28, 1909, at 39; *Opium Barred Except for Medical Usage*, L.A. TIMES, Mar. 28, 1909, at 12; *Opium Riots Spread*, L.A. TIMES, Dec. 29, 1908, at 11; *Riot Against Opium Edict*, WASH. POST, Dec. 28, 1908, at 4; *Scent Trouble Over Opium Law*, S.F. CHRON., Mar. 21, 1909, at 21; *State Officers are After Opium*, S.F. CHRON., Apr. 24, 1909, at 7.

110. One commentator argued that "America's first anti-narcotic law was passed with racist animus, fueled by media distortion and the willingness of lawmakers to scapegoat people of color." Richard Dvorak, *Cracking the Code: "De-Coding" Colorblind Slurs During the Congressional Crack Cocaine Debates*, 5 MICH. J. RACE & L. 611, 644–45 (2000).

111. CHEN, *supra* note 2, at 105 ("The ambience [sic] was not the only reason that attracted [African Americans] to the Chinese restaurant; it was one of the few public places that welcomed them."). As one newspaper reported: "Whites, blacks, and Mongolians mingled without sign of prejudice." *Two Mott Street Restaurants: Open All Night—Free Tea and Cigarettes, and Mixed Company*, SUN (N.Y.), Feb. 28, 1892, at 21; see also *In Washington's Chinatown*, *supra* note 38 ("Another of the original chop suey and yet quo mein restaurants in Chinatown is familiarly known as Moy's. . . . These resorts do a rushing business after the bells have tolled the midnight hour, and often a motley array of customers are to be found in them while the city sleeps—men, women and boys, black, white and yellow and all shades of morality, some drunk, some sober and others who eat great quantities of yet quo mein in their efforts to get sober, as that dish is said to have quite a sobering effect on the whiskey-soaked rounder of the night.").

restaurants' young white patrons.¹¹²

Labor unions exploited the fear that “iniquitous Chinese Chop Suey joints” were sources of moral contagion for young white women, and therefore urged “the necessity [of] stamping them out.”¹¹³ One union-friendly narrative asserted that the restaurants were intrinsically immoral both for driving down wages and as a source of “distressing temptation” for “hundreds of young women.”¹¹⁴ In 1912, one observer cautioned against such temptation, noting that “[b]eer and noodles in Chinese joints have caused the downfall of countless American girls,”¹¹⁵ not long after the *Bridgeport Herald* reported in 1904 that “[m]any a young girl received her first lesson in sin in Chinese

112. See Berglund, *supra* note 91, at 17 (“In the tourist literature, Chinese restaurants, for example, were portrayed as violating norms of public health as well as various food taboos.”); Light, *supra* note 30, at 383 (discussing concern among whites regarding the depravity of social conditions in Chinatown); *300 Arrested as N.Y. Police Raid 30 Joints*, WASH. HERALD, Apr. 15, 1918, at 8 (“Many young girls evidently not out of their ‘teens were found in the raid. In most of these cases as soon as the police entered the men escorts of the girls deserted them.”); Hurley, *supra* note 79, at 23, 23 (noting “the demoralizing effect the behavior permitted in those places is liable to have on the community.”). The sponsor of an anti-Chinese restaurant measure reported:

I have been called upon to attend many young girls who have become addicted to the use of drugs. Questioning disclosed the fact that the ‘habit’ had been contracted in so-called Chinese restaurants, operating in this state. He also stated that he believed [t]he moral features of the bill should receive the support of each and every person interested in safeguarding young womanhood.

J.P. McGinley, *What Our Organizers Are Doing: Great Falls, Montana*, MIXER & SERVER, Apr. 15, 1915, at 29, 30 [hereinafter McGinley, *What Our Organizers Are Doing: Great Falls, Montana*]; see also *Police Capture 178 In Chop Suey Raids*, N.Y. TIMES, Apr. 15, 1918, at 8 (quoting an assistant district attorney as stating “there are many persons left in this city who believe that the Sabbath should be observed. Chop suey restaurants at 2 o’clock or later in the morning are not fit places for young girls 16 or 17 and there were several of this age detained”); J.P. McGinley, *What Our Organizers Are Doing: Helena, Montana*, MIXER & SERVER, Mar. 15, 1915, at 32, 32 [hereinafter McGinley, *What Our Organizers Are Doing: Helena, Montana*] (stating “this bill, if enacted into law, will go a long way towards decreasing the popularity of the Chinese restaurants in the State”).

113. *Minneapolis Labor After the Chinese*, *supra* note 6; see also Emanuel Koveleski, *What Our Organizers Are Doing: Superior, Wisconsin*, MIXER & SERVER, Aug. 15, 1909, at 41, 42 (“As far as the restaurants in Duluth are concerned, conditions are deplorable. I find more Chinese running restaurants in this city and white women working for them than I ever seen in all my career.”). Chinese restaurants reportedly employed children. See MINUTES OF THE NEWARK CONFERENCE OF THE METHODIST EPISCOPAL CHURCH 65 (1911); REPORT FROM THE MASSACHUSETTS STATE CHILD LABOR COMMITTEE, in PROCEEDINGS OF THE SEVENTH ANNUAL CONFERENCE OF THE NATIONAL CHILD LABOR COMMITTEE 167–69 (1911) (stating that Chinese restaurants sometimes used children as “night messenger[s]” for immoral purposes); *Redskins Hot After Scalp*, L.A. TIMES, July 9, 1903, at 13 (stating that “in many instances [Chinese restaurants] employed as waiters on table, Indian boys”).

114. *Minneapolis Labor After the Chinese*, *supra* note 6.

115. *Chinese Restaurants in Madera*, *supra* note 5.

restaurants.”¹¹⁶ Similarly, the *Chicago Tribune* reported police statistics showing that “more than 300 Chicago white girls” had succumbed “to the influences of the chop suey ‘joints’” and concluded that “[v]anity and the desire for showy clothes led to their downfall,” as they smoked, drank, and “permitted themselves to be hypnotized by the dreamy, seductive music that is always on tap.”¹¹⁷

Just as concerns about the moral peril of interracial relationships drove legal policy regarding African Americans, some Americans feared early Chinese restaurants because of the perceived danger of interracial relationships stemming from understandings about the particularly intense sexuality of Chinese men.¹¹⁸ But because of the Chinese exclusion policies, there were many more Chinese men than women in the United States.¹¹⁹ By some accounts, there were more than twenty-five Chinese men for every one Chinese women in 1890.¹²⁰ Hence, it is not surprising that there was a demand for commercial sex in America’s Chinatowns,¹²¹ or that Chinese men sometimes married white women¹²²—a practice frowned upon even in jurisdictions that did

116. *Chinese Dens of Iniquity That Are Well Protected by the Authorities*, BRIDGEPORT HERALD (Conn.), Aug. 28, 1904, at 11.

117. *Suey “Joints” Dens of Vice*, CHI. DAILY TRIB., Mar. 28, 1910, at 2.

118. “Chinese men were thought to lust after White women, ‘seeking to assuage their perilous hunger by luring these women behind the partitions of their laundries or restaurants into their private lairs, then seducing them with wine and opium so that they could have sexual relations with them.’” Sandra Ka Hon Chu, *Reparation as Narrative Resistance: Displacing Orientalism and Recoding Harm for Chinese Women of the Exclusion Era*, 18 CAN. J. WOMEN & L. 387, 394 (2006) (quoting Tania Das Gupta, *Families of Native People, Immigrants, and People of Colour*, in CANADIAN FAMILIES: DIVERSITY, CONFLICT AND CHANGE 146, 160 (N. Mandell & A. Duffy eds., 2d ed. 2000)). Unions emphasized this danger to their advantage. As Professor Mann notes:

Gompers raised the sexual bugaboo, an always potent weapon in racial bigotry. He wrote: ‘Time was when little girls no older than twelve years were found in Chinese laundries under the influence of opium. What other crimes were committed in those dark and fetid places when these little victims of the Chinaman’s wiles were under the influence of the drug is too horrible to imagine.’ The Chinese, in fact, love to ‘prey upon American girls,’ and prefer them to their own kind, whom they willingly leave behind in the old country.

Mann, *supra* note 14, at 209.

119. See MCADOO, *supra* note 92, at 171; Sucheng Chan, *The Exclusion of Chinese Women, 1870–1943*, in ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA 1882–1943, at 95–146 (Sucheng Chan ed., 1991).

120. See Light, *supra* note 30, at 375; see also TAKAKI, *supra* note 26, at 239 (noting the near-absence of Chinese women in America, even in Chinatowns).

121. THE COMMONWEALTH OF MASS., REPORT OF THE COMMISSION FOR THE INVESTIGATION OF THE WHITE SLAVE TRAFFIC, SO CALLED, H.R. 228, at 16 (1914) (“Certain white prostitutes solicit exclusively in Chinese restaurants, and cater only to Chinese patrons.”); Light, *supra* note 30, at 370.

122. John Kuo Wei Tchen, *Quimbo Appo’s Fear of Fenians: Chinese-Irish-Anglo Relations in*

not prohibit interracial marriage by statute.¹²³ Purporting to explain the phenomenon that “[i]n Hop Alley, several Chinese have white wives,” the *St. Louis Post* reported that “respectable girls and women” might often visit Chinese restaurants “on sight-seeing expeditions,” or upon giving into “the chop suey habit,” and meet Chinese husbands as a result.¹²⁴ According to a Massachusetts government study, a marriage certificate to a Chinese husband was “a frequent excuse” for a white woman’s presence in a Chinese restaurant,¹²⁵ and a required one if she was to stay the night in New York’s Chinatown in 1909.¹²⁶ Retired New York police commissioner William McAdoo claimed that “the so-called Chinese wives are probably, taken altogether, the most wretched, degraded, and utterly vile lot of white women and girls that could be found anywhere.”¹²⁷ It “gave a girl a bad name” just to work in a Chinese restaurant.¹²⁸

New York City, in *THE NEW YORK IRISH* 125, 129 (Ronald H. Bayor & Timothy J. Meagher eds., 1996) (“Chinese Irish marriages were sufficiently noticeable in New York City to merit regular comment in the city’s newspapers . . .”).

123. See Huping Ling, “Hop Alley”: Myth and Reality in the *St. Louis Chinatown, 1860s–1930s*, 28 *J. URBAN HIST.* 184, 209 (2002) (noting “nationwide antagonism against the interracial sexual relationships between European Americans and Chinese”); *Committee Kills Bills Presented on Miscegenation: Detroit Negroes Elated over Failure of House to Get Vote*, *THE BROAD AX* (Utah), Mar. 22, 1913, at 2 (“Agitation which resulted in the determination to press the inter-racial marriage prohibition [in Michigan] began immediately after the Jack Johnson-Lucile Cameron union, and received a local impetus when a Chinese restaurant keeper married a White girl.”); see also *Another ‘Friend’ of Hing To Be Deported*, *ARIZ. REPUBLICAN*, Oct. 2, 1909, at 3; *Believe Admirer of White Wife May Have Slain Chinamen*, *PITTSBURGH PRESS*, Sept. 4, 1913, at 1 (“[W]ealthy Chinese restaurant man, found hacked to death in his bed yesterday, was the victim of a disappointed sweetheart of his young white wife . . . [They met when she] was working [as a mission worker] in the Chinese section when Elsie Sigel was murdered in New York.”); *Detroit Chinaman and White Girl to Marry*, *DETROIT FREE PRESS*, Mar. 27, 1907, at 8 (“Charlie Jinwing, First Celestial to Sell Chop Suey Here, Inaugurates Another Innovation by Securing License to Wed Miss Evelyn G. Clark.”); *Finds Wife a Chinaman’s Bride; Charges Bigamy*, *ST. LOUIS POST-DISPATCH*, June 7, 1907, at 4 (“When told that . . . her daughter had married a Chinaman, Mrs. McGraw fell back in her chair with a groan.”); *In Washington’s Chinatown*, *supra* note 38 (“This celestial is not the only citizen of Chinatown who married a white wife. Several others have taken unto themselves Caucasian brides, and have half-breed children. . . . Most of these white wives are said to follow their husband’s example and become hitters of the opium pipe.”).

124. *St. Louis Police Will Regulate Chinese Resorts*, *ST. LOUIS POST-DISPATCH*, June 21, 1909, at 3.

125. *THE COMMONWEALTH OF MASS.*, *supra* note 121, at 16.

126. *Fatal Lure of Chinese*, *supra* note 93.

127. *MCADOO*, *supra* note 92, at 171.

128. *Free Labor Bureau Helps Young Girls*, *LAB. WORLD* (Minn.), Mar. 9, 1912, at 1. But sexual immorality was not limited to Chinese men. The 1914 Wisconsin Vice Committee reported that “couples who are desirous of indulging in immoral practices [enter Chinese restaurants because] they serve as convenient meeting places for those who are as yet ashamed to enter wine rooms and saloons. . . . The appearance of innocence . . . lead[s] inexperienced young people to

Not all white women visiting Chinatowns went for amusement or vice.¹²⁹ Christian missionaries entered to evangelize, but sensational newspaper reports claimed that female missionaries often succumbed to “the fatal lure of Chinese.”¹³⁰ One clergyman explained: “I know the possible dangers of social intercourse between the races . . . so our Chinese school is watched very strictly.”¹³¹ The oldest Chinese mission worker in New York stated that she did not “believe in young girls teaching Chinamen” because the Chinese continue to “hold a fascination for young American girls after they once come in contact”¹³² Some worried young female missionaries would end up like other white women who “consort[ed] with the Mongolians for a thimbleful of [opium].”¹³³ *Munsey’s Magazine* published “Woman’s Love of the Exotic” suggesting the public perception of the issue:

A DANGEROUS ASSOCIATION [I]n the beginning, [they] were probably religious in their cast of thought; and they went down to Chinatown, at first, with the sincerest and most innocent motives. . . . In time, familiarity brought about a new feeling, and made the interest a personal interest, quite as much as a religious one. The very fact that white men despise Chinese, and often ill-treat them, stirred what may be called a maternal instinct in the women who made themselves responsible for the welfare of their charges. Just as a mother loves most tenderly her most misshapen and ill-favored child, so these girls felt their hearts moved by the thought that their ‘converts’ had all the world against them. Then, again, the personality of the Orientals, with their insidious ways and fawning manners, made the appeal still stronger. Add to this the fact that religious emotion is very closely related to one that is physical, and we find a combination which explains why so many of these young women went astray, and why in

enter . . . meeting [them] with the strongest sexual temptations.” STATE OF WIS., REPORT AND RECOMMENDATIONS OF THE WISCONSIN LEGISLATIVE COMMITTEE TO INVESTIGATE THE WHITE SLAVE TRAFFIC AND KINDRED SUBJECTS 57 (1914).

129. See MARY TING YI LUI, *THE CHINATOWN TRUNK MYSTERY: MURDER, MISCEGENATION, AND OTHER DANGEROUS ENCOUNTERS IN TURN-OF-THE-CENTURY NEW YORK CITY* 111–43 (2005).

130. *Id.* at 42–44; I.L. NASCHER, *THE WRETCHES OF POVERTYVILLE: A SOCIOLOGICAL STUDY OF THE BOWERY* 134 (1909); *Fatal Lure of Chinese*, *supra* note 93 (“The police say the Chinamen go to Sunday school only to learn English and to associate with well bred white girls. . . . The high caste Chinamen flock to the Sunday school that has the prettiest teacher.”).

131. *St. Louis Police Will Regulate Chinese Resorts*, *supra* note 124. Similarly, a Kansas City detective thought that “[s]ociety should . . . prevent young white girls from wrecking their lives by attempting to Christianize Orientals.” *Follow Trail Set By the Black Book*, WASH. TIMES, Sept. 8, 1913, at 2.

132. *Fatal Lure of Chinese*, *supra* note 93.

133. NASCHER, *supra* note 130, at 134.

their converts they ultimately found lovers.¹³⁴

In June 1909, a tragic crime made concerns about the Chinese restaurant threat to white women even more acute. As is recounted in Professor Ting Yi Lui's award-winning book *The Chinese Trunk Murder*, Leon Ling, a New York Chinese restaurant worker, murdered Elsie Sigel, a young white missionary from a prominent family.¹³⁵ In part because Ling was the subject of an unsuccessful national manhunt, the crime became a prolonged sensation,¹³⁶ and created an intense demand for a governmental response to the problem of Chinese restaurants.

Ms. Sigel was described as a Christian missionary seduced by her Chinese pupil.¹³⁷ Lurid headlines such as *Was Strangled by Her Chinese Lover: Granddaughter of General Sigel Slain in the Slums of New York* captured public attention.¹³⁸ Unfortunately for Chinese restaurants, not only was Ling a restaurant worker, but Ms. Sigel's body was found in a trunk in Ling's room above another Chinese restaurant.¹³⁹ The subsequent "wave of suspicion" put Chinese restaurants across the country in the spotlight.¹⁴⁰ Police and an alert citizenry often identified Asian men, more or less at random, as Leon Ling, and officers in all parts of the United States raided Chinese businesses looking for Ling or intercepting white female visitors.¹⁴¹ Describing a case of mistaken identity, a Connecticut newspaper reported that "[t]o be a Chinaman these days is to be at least a suspect of the murder of Elsie Sigel."¹⁴²

134. *Id.*

135. See LUI, *supra* note 129, at 2–5 & n.2; see also *St. Louis Police Will Regulate Chinese Resorts*, *supra* note 124 (asking the chief of police what he would do in light of "attention [being] called to the Chinese problem in American cities by the murder of Elsie Sigel").

136. See LUI, *supra* note 129, at 197.

137. See *Fatal Lure of Chinese*, *supra* note 93; *Girl Found Murdered in Chinatown's Room a Sigel*, WYO. SEMI-WEEKLY TRIB., June 6, 1909, at 1.

138. *Was Strangled By Her Chinese Lover*, S.F. CHRON., June 19, 1909, at 1.

139. The restaurant was in Midtown Manhattan, not Chinatown, however. See *Fatal Lure of Chinese*, *supra* note 93; *Girl Found Murdered in Chinatown's Room a Sigel*, *supra* note 137.

140. See, e.g., *Police Search Joints for Suspected Chinese*, BRIDGEPORT EVENING FARMER (Conn.), June 21, 1909, at 1 (noting that Bridgeport police were "scouring the Chinese joints of the city to-day . . . in a search for Leon Ling").

141. See LUI, *supra* note 129, at 12–16; see also *Thinks Elsie Sigel To Blame*, WYO. STOCKGROWER & FARMER, July 7, 1909, at 4 ("It is a mistake to send attractive young women down to the slums to teach these classes in mission schools.").

142. *These are Hard Days for Chinese*, BRIDGEPORT EVENING FARMER (Conn.), June 22, 1909, at 1; see also *Missing Chinese Reported Found in Many Places: New York Police Hear Rumors of Capture from All Parts of United States*, WATERTOWN LEADER (Wis.), June 25, 1909, at 6.

Soon after the murder, an Oregon newspaper stated “that the Sigel revelations have disgusted the Americans, and at present it is considered bad form to eat in a Chinese restaurant.”¹⁴³

The press followed the case for years. In 1911, the *Washington Post* and *The New York Times* made obligatory references to the Sigel murder in articles reporting on the capture of the then-notorious opium smuggler “Boston Charlie,”¹⁴⁴ a case that was related to the Sigel murder only in that both cases involved Asians.¹⁴⁵

The press coverage of the Sigel murder also resulted in calls for race-based regulation under the guise of protecting young women like Elsie Sigel.¹⁴⁶ For example, the *Washington Times* commented that “[e]very State in the Union should pass laws that would prohibit a white girl from ever crossing a Chinaman’s threshold.”¹⁴⁷

1. *The White Women’s Labor Law.* The moral peril of white women working in Chinese restaurants was recognized early on. In 1899, reporters posed the question, “[c]an any means be devised to prevent the employment of white girls in Chinese restaurants?”¹⁴⁸ But after Elsie Sigel’s murder in 1909, there was a national movement to keep women out of Chinese restaurants. State governments in Arizona, Iowa, Massachusetts, Montana, Oregon, and Washington, as well as city governments in Los Angeles, Pittsburgh, and San Francisco, considered legislation or decrees banning white women from patronizing Chinese restaurants or being employed there. A similar bill also became law in Saskatchewan, Canada.¹⁴⁹

143. SUNDAY OREGONIAN, July 18, 1909, at 2; see also *Chop Suey Profits Lessen*, LOGANSPORT PHAROS TRIB. (Ind.), Aug. 23, 1909.

144. *Alleged Opium Chief Held*, WASH. POST, Jan. 31, 1911, at 3; *Hold Chinaman as Head of Opium Ring*, N.Y. TIMES, Jan. 31, 1911 at 1; see also, e.g., *Elsie Sigel Case Is Recalled: Murder of Girl by Chinaman Brought To Mind by Chink’s Arrest*, DAILY MISSOULIAN (Mont.), Sept. 3, 1911, at 7 (reporting, after immigration arrest, that “[a]lthough the authorities declined to explain what connection, if any, the arrest had with the Sigel case, it was reported today that the police had found an important clue”).

145. The *Washington Post* stated that a “batch of letters” seized along with Charlie did not have “any bearing on the murder of Elsie Sigel by Leon Ling” *Alleged Opium Chief Held*, *supra* note 144.

146. *Protection of Young Women Urged by Research Workers*, S.F. CHRON., Oct. 23, 1916, at 3.

147. *Follow Trail Set by the Black Book*, *supra* note 131.

148. *Children’s Society*, REC.-UNION (Cal.), May 9, 1899, at 4.

149. Constance Backhouse, *The White Women’s Labor Laws: Anti-Chinese Racism in Early Twentieth-Century Canada*, 14 L. & HIST. REV. 315, 326–30 (1996). The Supreme Court of Canada upheld the law. *Quong Wing v. The King*, 49 S.C.R. 440 (1914).

The national nature of the effort is reflected in a resolution at the 1913 AFL convention, pledging the organization's "best endeavors to secure the passage of a law prohibiting the employment of white women or girls" in Chinese and Japanese restaurants across the United States, because "the evils arising from [such] employment . . . constitute, both morally and economically, a serious menace to society."¹⁵⁰ Notably, the resolution's text reflected the dual economic and moral concern about Chinese people. In addition, it suggested that the menace was not presented by Chinese restaurateurs alone; Leon Ling was Chinese, yet somehow other Asians were equally worthy of regulation.

It is not clear that such employment bans, proposed before the Nineteenth Amendment and therefore in many jurisdictions without the participation of female citizens, were agreeable to the women theoretically in need of protection.¹⁵¹ Reports at the time tended to show women were interested in such employment. An article in the *Arizona Republican* in 1916 reported that a wealthy woman "advertised for a cook and in thirty days one replied. In the same column of the paper was an ad for a girl cashier in a Chinese restaurant and forty answered in one day."¹⁵² Whether in the best interests of white women or not, the idea turned into legislation or other action in a number of jurisdictions.

The Pittsburgh City Council passed an ordinance in 1910 banning all women from Chinese restaurants as patrons or employees, and

150. REPORT OF PROCEEDINGS OF THE THIRTY-THIRD ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR HELD AT SEATTLE, WASHINGTON NOV. 10-22, INCLUSIVE 1913, *supra* note 3, at 370; *see also* THIRTY-FOURTH ANN. CONVENTION, *supra* note 40, at 90 (noting that "[t]his question is one that should be considered by state legislatures and city councils, where organizations in the Pacific and intermountain states are doing their utmost to carry out the purposes contained in this resolution"); *Resolutions Acted on by Convention at Fairbault*, LAB. WORLD (Minn.), July 28, 1917, at 2 (noting recent AFL resolution "that the executive council of the Federation be instructed to work out some plan that will prevent the employment of white women in 'chop suey' or 'noodle' houses").

151. As Professor Mae Quinn noted, anxiety about urbanization with its concomitant intermingling, coupled with the changing roles of young women in American society led to innovative efforts to regulate female behavior. Mae C. Quinn, *From Turkey Trot to Twitter: Policing Puberty, Purity, and Sex-Positivity*, 38 N.Y.U. REV. L. & SOC. CHANGE 51, 68-76 (2014). There was reason to suspect that some allegedly protective or paternalistic labor legislation was not meant to protect women from exploitation or their own misjudgment, but rather to reserve the best opportunities for men. *See* Frances Olsen, *From False Paternalism To False Equality: Judicial Assaults On Feminist Community, Illinois 1869-1895*, 84 MICH. L. REV. 1518, 1534 (1986).

152. *Rich: Why Try To Be Popular*, ARIZ. REPUBLICAN, Mar. 25, 1916, at 8.

restricting their hours of operation.¹⁵³ A supporter argued that regulation was necessary, as a slippery moral slope awaited many girls, who may have been “enticed into the restaurants on the plea of getting something to eat, and because of the novelty of the situation,” but ultimately became “persuaded to stay until it [was] too late for a girl to go” back to a home with strict rules.¹⁵⁴ Notably, the police disagreed. The captain of detectives stated that “[they] never had any trouble with those restaurants,” and that “the Chinese give us less trouble than any other class.”¹⁵⁵ Nevertheless, the City Council passed the measure 49 votes to 2.¹⁵⁶

But in a masterful message, the mayor vetoed the bill noting that the restrictions on female patrons and operating hours were “not imposed on any other restaurant in the city,” and therefore they were “plainly directed against the Chinese as a race,” and potentially invalid under *Yick Wo v. Hopkins*¹⁵⁷ alone.¹⁵⁸ He also criticized the arbitrary grounds on which the director of the Department of Public Safety could deny or revoke a license, including the preliminary requirement that the applicant be “of good moral character,” and the fact that a license could be revoked based on “the visit of disreputable persons to said restaurant or chop suey houses.”¹⁵⁹

Massachusetts saw a protracted effort to keep women out of Chinese restaurants. In 1910, Representative Donovan introduced the

153. MUNICIPAL RECORD: PROCEEDINGS OF COMMON COUNCIL OF THE CITY OF PITTSBURGH, Dec. 27, 1910, at 6–7, *reprinted in* 43 MUNICIPAL RECORD: MINUTES OF THE PROCEEDINGS OF THE COMMON COUNCIL OF THE CITY OF PITTSBURGH FOR THE YEARS 1910–1911, at 409, 414–15 (1911); *Chop Suey Ordinance Passed*, GAZETTE TIMES (Pittsburgh), Dec. 28, 1910, at 1.

154. *Mrs. Masters Is Fighting the Chinese Restaurants*, PITTSBURGH PRESS, Sept. 12, 1910, at 1.

155. *Id.* at 2.

156. *See* MUNICIPAL RECORD: PROCEEDINGS OF COMMON COUNCIL OF THE CITY OF PITTSBURGH, *supra* note 153, at 7; MUNICIPAL RECORD: PROCEEDINGS OF SELECT COUNCIL OF THE CITY OF PITTSBURGH, Dec. 14, 1910, at 3, *reprinted in* 43 MUNICIPAL RECORD: MINUTES OF THE PROCEEDINGS OF THE SELECT COUNCIL OF THE CITY OF PITTSBURGH FOR THE YEARS 1910–1911, at 263, 265 (1911); *Chop Suey Ordinance Passed*, *supra* note 153.

157. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (finding unconstitutional discrimination against Chinese laundries).

158. MUNICIPAL RECORD: PROCEEDINGS OF SELECT COUNCIL OF THE CITY OF PITTSBURGH, Jan. 9, 1911, at 3–4, *reprinted in* 43 MUNICIPAL RECORD: MINUTES OF THE PROCEEDINGS OF THE SELECT COUNCIL OF THE CITY OF PITTSBURGH FOR THE YEARS 1910–1911, *supra* note 156, at 283, 285–86.

159. *Id.* at 286; *see also Mayor Magee Gives Advice to Councils*, GAZETTE TIMES (Pittsburgh), Jan. 10, 1911, at 2.

“yellow peril bill,”¹⁶⁰ prohibiting all women under twenty-one from entering Chinese restaurants as patrons or employees, and requiring a non-Asian male escort for older women.¹⁶¹ The bill passed a first and second reading,¹⁶² despite legislators observing that the law applied to Chinese women married to Chinese men, and therefore forbade a Chinese woman from dining with her husband.¹⁶³ Attorney General Dana Malone, agreeing with those legislators, opined that the bill “if passed, would be unconstitutional and void,”¹⁶⁴ causing the House to reject the bill 117 to 53.¹⁶⁵ Persistent legislators reintroduced the bill in 1911,¹⁶⁶ at which point the Massachusetts Supreme Judicial Court issued an advisory opinion unanimously finding the law unconstitutional.¹⁶⁷ The bill was withdrawn the next day.¹⁶⁸

Montana legislators encountered federal resistance after considering a ban. The Montana Senate approved a bill supported by the Montana State Federation of Labor,¹⁶⁹ a group eager to drive Chinese restaurant competition away,¹⁷⁰ entitled “An Act to prohibit the employment of females, except of the Asiatic Race, in restaurants, eating houses, laundries, and other similar occupations controlled and

160. *Yellow Peril Bill in Bay State*, TELEGRAPH, Mar. 22, 1910, at 3.

161. See JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS 224 (1910) (providing a bill introduced by Mr. Donovan on Jan. 27, 1910); *City Solicitor Appeared at Hearing in Boston Today*, LOWELL SUN, Feb. 25, 1910, at 13.

162. JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS, *supra* note 161, at 687–88, 838; *House Adopts Donovan Bill*, BOS. DAILY GLOBE, Mar. 22, 1910, at 7.

163. See Letter to the Editor, *No Exception Made*, BOS. DAILY GLOBE, Feb. 28, 1910, at 8.

164. *Opinion of April 11, 1910, on the Constitutionality of the Proposed Act Forbidding Women Under Twenty-one To Enter Chinese Restaurants*, in THE COMMONWEALTH OF MASS., REPORT OF THE ATTORNEY GENERAL FOR THE YEAR ENDING JANUARY 18, 1911, at 18 (1911). Many legislators joined the Attorney General’s opinion. *Dr. Eliot Opposes Actors*, N.Y. TIMES, Feb. 26, 1910, at 8.

165. JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS, *supra* note 161, at 1015; *Donovan Bill Killed*, BOS. DAILY GLOBE, Apr. 23, 1910, at 8.

166. BOS. DAILY GLOBE, Jan. 15, 1911, at 51.

167. *In re Opinion of the Justices*, 94 N.E. 558, 560 (Mass. 1911); see JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS 748–51 (1911); *Chinese Restaurants*, SUN (N.Y.), Apr. 27, 1911, at 8; *Prohibited by Constitution*, BOS. DAILY GLOBE, Mar. 23, 1911, at 15.

168. JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS, *supra* note 167, at 779. Representative Donovan pursued the idea for a third time in Boston in 1913. *Asks Mayor To Limit Chinese*, BOS. DAILY GLOBE, Apr. 6, 1913, at 8.

169. The Montana State Federation of Labor at its 1915 convention proposed “to prohibit the employment of white women with, by or for males of the Chinese or Japanese races” McGinley, *What Our Organizers Are Doing: Helena, Montana*, *supra* note 112, at 32.

170. The delegates emphasized the proposal’s economic impact, noting that “this bill, if enacted into law, will go a long way towards decreasing the popularity of the Chinese restaurants in the State.” *Id.*

conducted by persons of the Asiatic Race, and providing penalties for the violation thereof”¹⁷¹ by a vote of 31 to 0 with 9 abstentions.¹⁷² The House committee reviewing the bill recommended concurrence in the Senate bill on March 2, 1915,¹⁷³ but the next day, the full House reported to the Senate that the committee had recommended rejecting the bill and the House agreed.¹⁷⁴ As it turns out, an intervenor from the federal government, U.S. Secretary of State William Jennings Bryan, had written to the House opposing the bill.¹⁷⁵ An April 1915 report in *The Mixer and Server* explained that the “wheels of opposition” to Montana’s bill “did not stop until they reached the ‘big house’ in Washington, D.C., from whence returned an administration mandate signed by ‘Grape Juice’ Bryan, to the effect ‘[t]hat legislation of that character was very objectionable to the “royal” dignitaries from the Orient”¹⁷⁶

Other jurisdictions gave more passing consideration to similar bills, including Arizona,¹⁷⁷ Oregon,¹⁷⁸ Washington,¹⁷⁹ and Wyoming.¹⁸⁰

171. SENATE JOURNAL OF THE FOURTEENTH LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA 607 (1915). The title of the bill left little to the imagination as to its content, which made it “unlawful for any person . . . to employ in any restaurant, eating house, laundry or other occupations owned, conducted or controlled by persons of the Asiatic race, any female as a servant, waitress or employee therein within the State of Montana, except females of the Asiatic race.” F.S. Williams, *Chinese Problem Again Comes up*, MIXER & SERVER, July 15, 1916, at 4, 4.

172. Senate Journal of the Fourteenth Legislative Assembly of the State of Montana, *supra* note 171, at 527.

173. HOUSE JOURNAL OF THE FOURTEENTH LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA 584 (1915).

174. SENATE JOURNAL OF THE FOURTEENTH LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA, *supra* note 171, at 607.

175. McGinley, *What Our Organizers Are Doing: Great Falls, Montana*, *supra* note 112, at 30.

176. *Id.*

177. *Special Session of the Arizona Legislature Appears a Certainty*, EL PASO HERALD, May 7, 1912, at 5 (reporting that some Arizona legislators supported a prohibition). A 1916 report from Arizona in *The Mixer and Server* claimed, “Arizona should have such a law on its statute books” and that it “must come sooner or later.” Williams, *supra* note 171.

178. Oregon Senate Bill 183 failed, 13-14. *White Help with Chinese*, 16 OR. VOTER 399, 399 (1919). Oddly, according to the Journal of the Oregon Senate, on February 20, 1919 the “bill failed to pass” with 14 yeas, 13 neas, 2 absences, and 1 excused. OREGON LEGISLATIVE ASSEMBLY, PROCEEDINGS OF THE SENATE, JOURNALS OF THE SENATE AND HOUSE 256 (1919).

179. *An Act Prohibiting the Employment of Females of the White or Caucasian Race by Chinese, Japanese or Other Mongolians, and Providing for the Punishment Thereof*, S. 146, 13th Leg., Reg. Sess. (Wash. 1913); see also *Thousands Greet Governor Lister*, MORNING OREGONIAN, Jan. 16, 1913, at 7 (statement by Governor recommending enactment of bill).

180. *Official City Council Proceedings*, ROCK SPRINGS MINER (Wyo.), Sept. 9, 1918, at 8 (noting “petition signed by a number of reputable citizens of the town requesting the council to pass an ordinance preventing girls under twenty from working in Chinese restaurants” and directing the city attorney to draft an ordinance).

In California, leaders in Los Angeles¹⁸¹ and San Francisco¹⁸² appear to have been troubled by white women working in Chinese restaurants, although no laws appear to have been passed. There is one report of a ban imposed by judicial action. Iowa District Court Judge Lawrence De Graff reportedly issued an order enjoining the owner of a Chinese restaurant from serving women. However, he quickly reversed himself, finding that it was “not equitable to enjoin the owner of a chop suey restaurant to prevent women from partaking of Chinese meals there.”¹⁸³

The Pittsburgh ordinance and Massachusetts legislation excluded women as patrons as well as employees, while the other proposed legislation applied only to female employees. No laws were proposed to ban only female customers while allowing women to be employed in Chinese restaurants. It is not clear why jurisdictions chose one version or other, but even the narrower measure is consistent with fears of Chinese sexual exploitation, economic protectionism, or both. A legislature primarily concerned with seduction could easily conclude that employees were at vastly greater risk because of the economic relationship and the amount of time spent in the company of Asians. Similarly, a legislature focused solely on economic issues could

181. In September 1912, the *Los Angeles Times* reported that police chief and future mayor Charles E. Sebastian promised to “recommend to the Police Commission that an order be issued barring all white female help from oriental eating places” on penalty of license revocation. *Segregation Orders: Police May Prevent White Women from Working for Chinese or Japanese Restaurateurs*, L.A. TIMES, Sept. 4, 1912, at 117. Two years later, the *Los Angeles Herald* reported that “[t]he police commission gave its unanimous approval today to the plan of Chief of Police Sebastian to exclude white girls as cashiers or waitresses from restaurants and cafes run by Japanese or Chinese.” *Bar White Girls as Jap Waitresses*, L.A. HERALD, Mar. 10, 1914, at 3. *But see To Draw Race Line: Councilman Complains of Conditions in Oriental Cafes and Would Put White Men in Charge*, L.A. TIMES, Sept. 29, 1917, at 19 (“[W]hen the Japanese or Chinese proprietors play to the trade of Americans and employ white girls to assist them there should be a stop to the practice.”).

182. San Francisco officials considered, but do not appear to have enacted, legislation preventing white women from working in Chinese and Greek restaurants. *May Prohibit White Chop Suey Waitresses*, S.F. CALL, Oct. 4, 1913, at 3. Interestingly, the City Attorney found that the legislation aimed at Greek restaurants was unconstitutional “class discrimination,” but that validity of similar legislation aimed at Chinese restaurants “would be a debatable question,” reasoning that if “such places as generally operated are against the welfare of white women, it is more than probable that the constitutionality of the legislation as to them would be upheld on the ground of a reasonable exercise of the police power.” Percy V. Long, City Att’y of the City & Cty. of S.F., City Att’y of S.F., Opinion Letter on Employment of Females in Greek and Chop Suey Restaurants (Sept. 29, 1913), as reprinted in OFFICIAL OPINIONS OF PERCY V. LONG, CITY ATTORNEY OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, at 426, 427–28 (1917).

183. *Women May Eat Chop Suey*, BEE: OMAHA, Oct. 11, 1911, at 2.

conclude that denying Chinese restaurants access to an English-speaking workforce might effectively impair their ability to operate.

2. *Emergency Police Authority To Protect White Women.* By the 1920s, it seemed clear that legislation expressly targeting Chinese restaurants was unconstitutional. At the time, Professor William Bennett Munro wrote that “[t]he provisions of an ordinance must apply equally to all persons in the same category,” explaining that “it would not be a discrimination to provide that all restaurants shall be closed on Sundays while hotel dining rooms are permitted to remain open for the use of bona fide guests,” but finding “a clear case of discrimination” in a provision “stipulate[ing] that all Chinese restaurants shall remain closed while other restaurants are privileged to remain open.”¹⁸⁴

However, emergency police authority kept white women from patronizing or working in Chinese restaurants. Most prominently in the wake of the Sigel murder, but also on other occasions, police simply ordered white women and girls out of Chinese restaurants or neighborhoods. In 1909, the head of the Washington, D.C. police department issued orders forbidding all “young white girls” from entering Chinese restaurants,¹⁸⁵ and in the same year, the probation officer in Kalispell, Montana, ordered that “all white girls under twenty years of age working in the Chinese restaurants of that city to surrender their positions.”¹⁸⁶ Following the Sigel murder, New York police vowed to end the “slumming” expeditions and the tourist attractions of Chinatown.¹⁸⁷ In 1910, the New York deputy police commissioner announced that he was going to “force white women away from Chinatown and keep them away,”¹⁸⁸ and went after opium joints where tourists “were taken to be shown a white woman rolling opium pills in company with a decrepit Chinese,” and a “chop suey restaurant where white girls ate in company with Chinese residents of the neighborhood.”¹⁸⁹

184. WILLIAM BENNETT MUNRO, *THE GOVERNMENT OF AMERICAN CITIES* 118 (4th ed., 1926).

185. *Officers Keep Eye on Restaurants*, WASH. TIMES, Aug. 6, 1909, at 13.

186. HARLOWTON NEWS (Mont.), Aug. 13, 1909, at 1 (stating the move “will be heartily endorsed by every one who knows of the degrading influences surrounding any establishment operated by an Oriental”).

187. *See First-Vice Attack Made on Chinatown*, N.Y. TIMES, Oct. 24, 1910, at 1.

188. *Raids by Driscoll Fill Night Court*, N.Y. TIMES, Oct. 26, 1910, at 18.

189. *First-Vice Attack Made on Chinatown*, *supra* note 187. Officers also noted white women

The commissioner also reinstated a midnight curfew, at which point whites were “to be driven out of” the Chinese quarter and “the restaurants and other places kept by Chinese [were] to be closed.”¹⁹⁰ Policeman patrolled each block, asking all visitors where they were going and asking those without satisfactory explanations to leave.¹⁹¹

Newspapers reported an escalation of such efforts on April 14, 1918 when the New York Police Department carried out chop suey raids all over the city,¹⁹² to fulfill the district attorney’s declaration of “war to the death on the chop suey caravansaries.”¹⁹³ The *Washington Herald* reported that police and detectives entered “[t]hirty chop suey restaurants in New York’s tenderloin, from Broadway and Forty-Second Streets, through the upper West Side as far north as 110th Street . . . in one of the most spectacular raids ever made here.”¹⁹⁴ Officers blocked the Chinese restaurants’ doors,¹⁹⁵ and asked approximately one thousand people why they were there.¹⁹⁶ Of those questioned, 178 were ordered to the police station for further investigation,¹⁹⁷ including women failing to show a wedding ring to prove they were married to their male companions.¹⁹⁸ The price of freedom for such detainees was a promise that “he or she would not be found in the Chinese restaurants after hours” in the future.¹⁹⁹ The raid led to no arrests, as the district attorney reportedly wanted to collect evidence to prosecute “the real owners of certain Chinese restaurants,”²⁰⁰ in order to vindicate local parents who had sent him one hundred letters claiming that their daughters had “been lured to

residing with Chinese men and prepared a list for “Tenement House Inspectors.” *Id.*

190. *New York Closes Chinatown to Night Tourist*, TOLEDO NEWS BEE, Oct. 24, 1910, at 5.

191. *Barred from Chinatown*, *supra* note 93.

192. *Police Capture 178 in Chop Suey Raids*, *supra* note 112.

193. The *Washington Herald* reported that “James E. Smith, assistant district attorney of the county of New York . . . has declared war to the death on the chop suey caravansaries.” McIntyre, *supra* note 1. District Attorney Smith claimed that he realized that the “chop suey places are the worst dives in the city” and that he did not “care a snap about the protest that may be made after these raids.” *Police Capture 178 in Chop Suey Raids*, *supra* note 112.

194. *300 Arrested as N.Y. Police Raid 30 Joints*, *supra* note 112.

195. *Chop Suey Uplift*, N.Y. TRIB., Apr. 17, 1918, at 12.

196. *300 Are Captured in Chop Suey Raids*, THE SUN (N.Y.), Apr. 15, 1918, at 14; *300 Arrested as N.Y. Police Raid 30 Joints*, *supra* note 112; *Police Capture 178 in Chop Suey Raids*, *supra* note 112.

197. *Police Capture 178 in Chop Suey Raids*, *supra* note 112.

198. *300 Arrested as N.Y. Police Raid 30 Joints*, *supra* note 112.

199. *Police Capture 178 in Chop Suey Raids*, *supra* note 112.

200. *300 Are Captured in Chop Suey Raids*, *supra* note 112.

chop suey houses” and were “evilily treated or menaced.”²⁰¹

By April 16, 1918, the Chinese restaurant owners retained counsel for a legal battle described as “[a]n up to date tong war.”²⁰² Prosecutors determinedly planned to charge restaurant owners with maintaining a public nuisance, among other tactics, and urged the board of aldermen to require licenses of chop suey restaurants.²⁰³ Meanwhile, counsel for the restaurants insisted that “[i]t was illegal to order persons who were dining peaceably in these restaurants to leave.”²⁰⁴

It may seem odd that the police could force women out of Chinese restaurants when the legislatures that created the police could not. The concept of emergency power may explain this anomaly. Even today, there is a plausible argument that the police can order people to “move on” at their whim, and arrest them if they do not.²⁰⁵ Of course, the police are free to act unilaterally, even forcibly, to protect lives and property in emergencies.²⁰⁶ Even today, authorities can discriminate on the basis of race when necessary to meet a pressing exigency.²⁰⁷ In those circumstances, police orders are specific and temporary, while laws are normally general and permanent—or at least open ended—and thus represent a greater intrusion.

In addition, the war against Chinese restaurants was fought in a largely premodern era of law. Because many of the provisions of the Bill of Rights did not yet apply to the states, the police were much freer. In that era, the police regularly made “arrests on suspicion,”²⁰⁸ that is,

201. *Id.*

202. *Raided Chop Suey Men Hire Counsel*, SUN (N.Y.), Apr. 16, 1918, at 6.

203. *Chop Suey Uplift*, *supra* note 195; *Raided Chop Suey Men Hire Counsel*, *supra* note 202; *Swann to Proceed Against Owners of Chop Suey Places*, N.Y. TRIB., Apr. 17, 1918, at 9. According to the *New York Tribune*, “[t]he explanation from [District Attorney] Swann and his office are ingenious and various. . . . There seems no reason why Mr. Swann’s chop suey uplift campaign shouldn’t keep right on forever.” *Chop Suey Uplift*, *supra* note 195.

204. *Raided Chop Suey Men Hire Counsel*, *supra* note 202.

205. See generally Stephen E. Henderson, “Move on” Orders as Fourth Amendment Seizures, 2008 BYU L. REV. 1 (evaluating the constitutionality and arguments in favor of “move on” orders).

206. *E.g.*, *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (holding that police can enter a home without a warrant based on a reasonable belief that someone inside needs assistance).

207. *E.g.*, *Johnson v. California*, 543 U.S. 499, 512 (2005) (holding that temporary racial segregation in prison may be acceptable in an emergency, for example, after or to avoid a race riot, although general segregation of prisons is impermissible).

208. William O. Douglas, *Vagrancy and Arrest on Suspicion*, 70 YALE L.J. 1, 13 (1960); see, *e.g.*, *Chambers v. Florida*, 309 U.S. 227, 238 (1940) (describing “the dragnet methods of arrest on suspicion without warrant” where dozens of young African American men were taken into custody and interrogated based on a crime committed by one unknown person).

without probable cause or reasonable suspicion.²⁰⁹ New York police captain Alexander Williams is credited with the famous assertion that “[t]here is more law in the end of a policeman’s nightstick than in a decision of the Supreme Court.”²¹⁰ These factors may explain why the police believed they had broad authority to force compliance with what they deemed important rules of conduct.²¹¹ If white women and girls placed themselves at great and immediate risk by consorting with Chinese people, the police had the authority to order them away or arrest them.

B. Discrimination Against Chinese and Chinese Restaurants

While laws expressly targeting Chinese restaurants or Chinese people as such were unconstitutional, the door was left open for facially neutral measures.²¹² Those opposed to Chinese restaurants could identify the characteristics of Chinese restaurants and target them, either through substantive law or enforcement priorities.²¹³ In several ways, opponents did both.

1. *Explicit Citizenship-Based Business and Employment License Discrimination.* An easy way to eliminate Asian restaurateurs would have been to require citizenship for licensure or employment. This was

209. See, e.g., *Chinese Woman Allowed To Go*, OGDEN STANDARD (Utah), July 17, 1917, at 7 (reporting that a Chinese woman was acquitted of vagrancy after an arrest for visiting the Alhambra Café at 2:00 AM and then going to the room of a male “childhood friend” along with another Chinese man).

210. YALE BOOK OF QUOTATIONS 810 (Fred R. Shapiro ed., 2006).

211. Cf. RISA GOLUBOFF, VAGRANT NATION: POLICE POWER, CONSTITUTIONAL CHANGE, AND THE MAKING OF THE 1960S (2016) (discussing police authority, and its curtailment, in the mid-twentieth century).

212. The Court in *Quong Wing v. Kirkendall*, 223 U.S. 59 (1912), upheld a licensing ordinance which applied to small hand laundries but not large, and only to laundries operated by men. That is, the ordinance seemed to target Chinese laundries, but the Court did not invalidate the law, perhaps because counsel failed to pursue this argument.

213. A Connecticut law limiting the hours of women and children in restaurants, cafes, and certain other establishments and prohibiting their employment between 10:00 PM and 6:00 AM may be an example. *An Act Concerning the Hours of Employment of Minors and Women*, 1917 Conn. Pub. Acts 2433. Authorities reported that “[a]s a practical proposition, the law affected the restaurants only . . . [and] with the exception of the Chinese restaurants, there were very few where women were employed at night,” and concluded that “[t]he effect of the law has been salutary and has justified the expectations of those in favor of it.” STATE OF CONN., REPORT OF THE DEPARTMENT OF FACTORY INSPECTION FOR THE TWO YEARS ENDING SEPT. 30, 1918, at 12 (1918). The Connecticut Supreme Court upheld the law without addressing the possible invidious motivations for it. *Doncourt v. Danaher*, 13 A.2d 868, 871 (Conn. 1940) (citing *Radice v. New York*, 264 U.S. 292 (1924)).

in some sense facially neutral because white people could be noncitizens too. As Asians were ineligible for naturalized citizenship, however, this would likely have been an insurmountable barrier to licensure or employment for those not born in the United States.²¹⁴ Some steps were taken in this direction, but they ultimately faced legal barriers.

In a textbook example, four Chinese restaurants in Portland, Oregon, were denied liquor licenses on the ground that the owners were “not citizens and under the charter cannot be permitted to sell liquor.”²¹⁵ Similarly, in 1906, the Chicago City Council considered a bill requiring citizenship-based special licenses of “chop suey” restaurants,²¹⁶ making it unlawful “for any person to keep, conduct or manage any place in this city where any fruit, ice cream or chop suey is sold . . . unless a license therefor is first obtained.”²¹⁷ The *Chicago Tribune* reported “that the Chinese would be barred permanently as they cannot become citizens,” but an alderman replied that the city “could get along without any chop suey places.”²¹⁸ In 1918, another similar proposal was considered,²¹⁹ but it does not appear that either the 1906 or 1918 proposal resulted in laws restricting licenses to citizens. By 1922, the Chicago Municipal Code required those seeking restaurant licenses to have “good character and reputation,” and have premises “suitable for the purpose,”²²⁰ leaving ample room for discretion, but imposing no requirement that applicants be citizens.

214. For older noncitizen licensing cases, see G.V.I., *Constitutionality Of Discrimination Against Aliens In Legislation Relating To Licenses*, 39 A.L.R. 346 (1925).

215. *Licenses of Chinese Taken*, MORNING OREGONIAN, Dec. 22, 1911, at 18. Newspapers reported that the “Chinese places fought” back, but it was the white-owned Pekin Restaurant that challenged the denial. See *Chinese Places Fought*, MORNING OREGONIAN, Jan. 20, 1912, at 7; *Licenses to Be Given*, MORNING OREGONIAN, Jan. 11, 1910, at 16 (stating that Pekin’s lawyer said it was owned by whites).

216. *Law Will Check Chinese*, CHI. DAILY TRIB., Apr. 28, 1906, at 5.

217. PROCEEDINGS OF THE CITY COUNCIL, CHICAGO, ILLINOIS REGULAR MEETING, MAR. 5, 1906, at 2836–37 (1906); see also PROCEEDINGS OF THE CITY COUNCIL, CHICAGO, ILLINOIS REGULAR MEETING, FEB. 5, 1906, at 2504 (1906) (proposing an ordinance requiring the licensing of places where fruit, non-intoxicating liquor, tobacco, or chop suey are sold).

218. *Law Will Check Chinese*, *supra* note 216; see also *Chop Suey for Citizens: Chicago Ordinances May Drive Chinese and Greeks Out of Business*, EVENING STATESMAN (Wash.), May 8, 1906, at 8 (reporting on the ordinance).

219. The full report states that “Chicago’s Chinese colony was given a severe jolt when it was announced at the city collector’s office that many of them owning chop suey restaurants and other eating places would have to go out of business through inability to obtain licenses.” *Chicago Law To Bar Chinese Restaurants*, BEMIDJI DAILY PIONEER (Minn.), Apr. 12, 1918, at 1.

220. The Chicago Municipal Code of 1922 § 3452 (Samuel Adams Ettelson ed., 1922).

Around the same time, Massachusetts legislators, apparently inspired by a union report, proposed to limit victualer's licenses—that is, licenses to sell food²²¹—to citizens.²²² But the legislation failed,²²³ reportedly after it “received an unfavorable report from the committee on legal affairs: they claim that the bill aims at Chinese restaurants and as the Chinese are not citizens and cannot become citizens that the bill is unfair.”²²⁴

State laws and municipal ordinances requiring citizenship to operate a restaurant were probably doomed long before they were enacted. As early as 1880, a California court invalidated a statute providing that “[n]o license to transact any business or occupation shall be granted . . . to any alien not eligible to become an elector.”²²⁵ In *Asakura v. City of Seattle*,²²⁶ a 1924 case involving a Japanese immigrant, the Supreme Court invalidated a Seattle ordinance restricting pawnbroker licenses to citizens,²²⁷ shutting the door on other similar measures.

Another attempt to eliminate Chinese restaurants was to prohibit employment of Chinese workers. In 1914, Arizona enacted the Anti-Alien Employment Act, which prohibited businesses from employing more than 20 percent noncitizens in their workforces.²²⁸ Because Chinese restaurants typically employed Asians,²²⁹ and Asians were ineligible for naturalization, the law could have closed most or all Chinese restaurants. Therefore, the March 1914 issue of *The Mixer and*

221. *Commonwealth v. Lavery*, 73 N.E. 884, 884 (Mass. 1905) (affirming conviction for “assuming to be a common victualer” without a license because “the keeping of a place where [the public] may purchase food . . . [is] carefully regulated by statute, which makes it unlawful for any one to engage in these employments without first obtaining a license.”).

222. This union report explained that “[t]he Chinese question here is indeed a serious one,” Delia A. Hurley, *What Our Organizers Are Doing*, MIXER & SERVER, Nov. 15, 1917, at 16, 19, and two months later a bill was introduced providing that “only persons who are citizens be granted victualers’ licenses,” JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE COMMONWEALTH OF MASSACHUSETTS 76 (1918).

223. JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE COMMONWEALTH OF MASSACHUSETTS, *supra* note 222, at 462.

224. Charles E. Sands, *Correspondence*, MIXER & SERVER, Apr. 15, 1918, at 59, 59.

225. *People v. Quong On Long*, 6 PAC. COAST L.J. 116, 117 (Cal. Super. Ct. 1880).

226. *Id.* at 332.

227. *Asakura v. City of Seattle*, 265 U.S. 332, 343 (1924); *see also* *Poon v. Miller*, 234 S.W. 573, 576 (Tex. Civ. App. 1921) (holding that a citizenship requirement in a statute that barred a Chinese person from receiving a license to sell fish was void).

228. *Raich v. Truax*, 219 F. 273, 275 (D. Ariz. 1915), *aff'd*, 239 U.S. 33 (1915).

229. *See New Tong Murders; 500 Chinese Seized*, N.Y. TIMES, Sept. 19, 1925, at 1 (noting Chinese companies’ complaints that deportations “would cripple their businesses, as a shortage of Chinese cheap labor could not be filled with white help”).

Server foresaw victory for the Cooks' and Waiters' Local 631 of Phoenix, Arizona, noting that union members were "able, through their systematic work, to close a few Chinese restaurants, and now have American restaurants instead" ²³⁰ The report predicted that "before long every restaurant in Phoenix will be conducted by white people instead of the Chinks." ²³¹ Chinese restaurant workers sued, ²³² but before their case could be heard, a federal court struck down the statute based on a suit by an Austrian restaurant worker. ²³³ In a decision upheld by the Supreme Court, the district judge found that the right to labor was property and that the law violated equal protection. ²³⁴

2. *Discriminatory Administrative Discretion To Deny Licensing.*

The growth of the regulatory state on federal, state, and local levels meant that government permission was required to engage in increasingly more activities. Just as Chinese laundries were discriminated against, as reflected by *Yick Wo*, ²³⁵ Chinese restaurants were also targeted. Court decisions and newspaper reports across the country reflect administrative policies to deny licenses to Chinese restaurants. ²³⁶

For example, Chicago imposed restrictive zoning. In 1911, a lawmaker was interested in excluding Chinese restaurants from Wabash Avenue, but the city's lawyers concluded that a ban could not rest on "[t]he presumption that opium smoking and gambling will be indulged in," ²³⁷ and pointed to "the celebrated California laundry

230. F. Sesma, *What Our Organizers Are Doing: Phoenix, Arizona*, MIXER & SERVER, Mar. 15, 1914, at 34, 35.

231. *Id.*

232. *Phoenix Aliens Bring Test Fight Against "80" Law: Chinese Restaurant Proprietors Apply for Temporary Injunctions Claiming That New Statute Violates Treaties*, BISBEE DAILY REV. (Ariz.), Jan. 3, 1915, at 3.

233. *Arizona's New Alien Law Void*, EL PASO HERALD, Jan. 7, 1915, at 7.

234. *Raich v. Truax*, 219 F. 273, 275 (D. Ariz. 1915), *aff'd*, 239 U.S. 33 (1915). The November 1915 Supreme Court decision presumably invalidated a similar Los Angeles ordinance passed in August, 1915 "designed to do away with the employment of Orientals in saloons and restaurants and give their places to citizens . . ." *Citizens' Hands Across the Bar: Only American Employees in Saloons, Says Police Commission*, L.A. TIMES, Aug. 4, 1915, at II-1.

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

236. Of course, blanket denial of licenses was not a universal policy. In Havre, Montana in 1905, unions requested that the city issue no licenses to Chinese; city officials refused for fear of lawsuits. *From the Standpoint of the Optimist*, HAVRE HERALD (Mont.), May 12, 1905, at 1.

237. *Opinion of Dec. 6, 1911*, reprinted in 4 OPINIONS CORP. COUNS. AND ASSISTANTS, FROM APR. 1, 1911, TO DEC. 31, 1912, at 486 (1914) (issuing opinion by Corporation Counsel, senior

cases”²³⁸ in support of the idea that particular races could not be singled out. Yet just two weeks later, the city council voted to order city commissioners “to refuse the issuance of permits for contraction or remodeling of any building or buildings by any Chinaman” in the district near Wabash Avenue and Twenty-Third Street, noting an “inva[sion]” of Chinese residents in that neighborhood, and concluding that would “materially affect and deprecate the value of property in said vicinity.”²³⁹

In El Paso, a union campaign against Chinese restaurants bore fruit after “[u]nion men [were] appointed at the head of five departments in the city.”²⁴⁰ According to the AFL’s journal, this was the “clear reason why” in 1915 “six Chinese restaurants [were] replaced by Americans.” In Brockton, Massachusetts, unions also turned to regulators to oppose the renewal of the licenses of Chinese restaurants.²⁴¹ In short, where Chinese restaurants needed the permission of the bureaucracy to operate, taking control of that bureaucracy provided unions and their supporters leverage in the fight against their competitors.

The courts seemed to accept regulatory findings that Chinese restaurants were problematic. An illustrative example came about after the city of Pittsburgh denied incorporation to a Chinese club and restaurant. In an 1891 decision rejecting an appeal of the denial, the Pennsylvania trial court explained that incorporation was only authorized “where there is a worthy object, which cannot well be accomplished without incorporation” and “[c]onsidering who the subscribers are, and the purposes set forth in the articles of association, there would be great danger of the association being perverted to purposes injurious to the community.”²⁴² Similarly, in 1932 the New

legal officer of City of Chicago).

238. *Id.*

239. JOURNAL OF THE PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF CHI. FOR COUNCIL YEAR 1911–1912, at 2035–36 (1912).

240. R.A. Goodding, *Correspondence: El Paso, Texas*, MIXER & SERVER, July 15, 1915, at 44, 44; see E.D. Skinner, *Correspondence: El Paso, Texas*, MIXER & SERVER, July 15, 1914, at 71, 71–72; see E.D. Skinner, *What Our Organizers Are Doing: El Paso, Texas*, MIXER & SERVER, Sept. 15, 1915, at 28, 28; R.A. The AFL’s journal explained the “clear reason why” in El Paso in 1915 “six Chinese restaurants [were] replaced by Americans,” was that “[u]nion men [were] appointed at the head of five departments in the city.” Wm. Sachs & E.D. Skinner, *What Our Organizers Are Doing: El Paso*, 22 AM. FEDERATIONIST 617, 617 (1915).

241. *Licenses to Chinese*, BOS. DAILY GLOBE, Apr. 22, 1913, at 9.

242. Chinese Club, 1 Pa. D. 84, 85 (Ct. Com. Pl. 1891). See, e.g., *Legal News*, BUTLER CITIZEN (Pa.), Apr. 17, 1902, at 3 (noting that saloon-owner “was refused [a license], and it is thought that

Jersey Supreme Court upheld the denial of a dance license to a Chinese restaurant, noting that some of the officers were “Chinamen” as were all of the employees and managers, and that one of the grounds for denial was “that it was detrimental to the young people of the neighborhood.”²⁴³

While the reported cases do not always reflect racial considerations, they suggest that authorities had ample power to regulate Chinese restaurants using facially neutral statutes.²⁴⁴ Regulatory boards and commissions denied licenses to Chinese restaurants, not on a case-by-case basis, but as a matter of what newspapers reported as blanket policy. Los Angeles authorities denied a liquor license to the Hong Kong Restaurant because “[s]erving drinks with meals there [did] not meet with the [police] chief’s approbation.”²⁴⁵ The chief’s sentiments were in keeping with general police opposition to “Chinese chop suey restaurants outside of Chinatown,” based on the judgment that such restaurants had a “tendency to disturb the peace.”²⁴⁶ Similarly, the *San Francisco Call* reported on the denial of a license to a Chinese restaurant in Palo Alto, observing that “[t]here has never been a Chinese business house in Palo Alto and it has been the policy of the citizens to keep such places out at all hazards.”²⁴⁷ There were similar reports in Minneapolis,

the refusal is occasioned by the fact that [he] rents a portion of the building he occupies for a Chinese restaurant”).

243. *Hudson Royal Rest. v. Mayor & Aldermen of Jersey City*, 160 A. 218, 219 (N.J. 1932) (per curiam).

244. *See Commonwealth v. Hong*, 158 N.E. 759, 759 (Mass. 1927) (upholding conviction for allowing underage actress to perform in Chinese restaurant); *State ex rel. Lamey v. Young*, 234 P. 248, 251 (Mont. 1925) (upholding closure of Chinese restaurant and related premises as a nuisance); *Chung Mee Rest. Co. v. Healy*, 171 A. 263, 264 (N.H. 1934) (upholding denial of dance license).

245. *Police Oppose Liquor in Chop Suey Places*, L.A. HERALD, Mar. 6, 1907, at 4.

246. *Id.*

247. *Do Not Relish “Chop Suey”: Citizens of Palo Alto Oppose Opening of a Chinese Restaurant in College Town*, S.F. CALL, July 29, 1905, at 6; *see also Palo Alto Is Aroused*, S.F. CALL, July 6, 1905, at 6 (“The citizens have never permitted a Chinese business place of any sort to become established in Palo Alto. This was ordinarily prevented by peaceful means, but on one occasion both the Chinaman and the landlord were given twenty-four hours to leave town—and they went.”); *Ready To Appeal*, S.F. CALL, Oct. 7, 1905, at 6 (noting that “[t]he sentiment of the people is strongly against the Chinese”). The *International Chinese Business Directory of the World* (Wong Kin ed., 1913) lists no Chinese businesses of any kind in Palo Alto or Stanford.

Minnesota;²⁴⁸ Moline, Illinois;²⁴⁹ and Omaha, Missouri.²⁵⁰ These examples indicate that operating a business was understood to be a matter of grace, not right, and that regulators felt free to conclude that the right number of Chinese restaurants was none.

License denials were sometimes successfully challenged. In March 1914, the Massachusetts Commission for the Investigation of White Slave Traffic issued a damning report after investigating many Chinese restaurants,²⁵¹ and a series of license denials followed, including one sought by Yee Toy of Lynn, Massachusetts.²⁵² The commissioners reasoned that “there should be no more Chinese restaurants in the city and that Chinese restaurants shouldn’t be allowed to compete with those of Americans as they have no interest here.”²⁵³ Toy successfully requested reconsideration after presenting a petition bearing two thousand names.²⁵⁴ Toy enjoyed temporary success and received his license,²⁵⁵ but the following month, the police charged him with “assuming to be a common victualer.”²⁵⁶ In another instance, the mayor of Malden, Massachusetts refused to sign a license because the restaurant employed no Americans.²⁵⁷ The Massachusetts Supreme Judicial Court issued a writ of mandamus requiring him to sign.²⁵⁸

Charles Shue, one of Boston’s “best-known Americanized

248. *Chinaman Loses License: Sam Jay Was Unable To Keep His International Cafe Orderly*, MINNEAPOLIS J., Feb. 13, 1905, at 6 (reporting that the liquor license of a Chinese restaurant had been revoked and that “[i]t is not likely that another license will be granted to a Chinese restaurant keeper as the mayor considers them incapable of handling boisterous, bibulous Americans”).

249. *Moline’s Mayor Taboos Chop Suey*, ROCK ISLAND ARGUS (Ill.), Jan. 22, 1912, at 10 (reporting that the Mayor “gave notice that no more chop suey houses would be allowed in Moline in connection with saloons and that the present one would have to close up”). The “chop suey joint” was closed as a public nuisance; the attached saloon remained open. *Grants Writ To Close Up Joint*, ROCK ISLAND ARGUS (Ill.), Feb. 27, 1912, at 5.

250. *Chinese Sues Pastor for Defamation*, ST. LOUIS POST-DISPATCH, Dec. 17, 1911, at 14 (reporting that the excise board “issued an order closing all the chop suey restaurants, and giving as the reason for its action that public sentiment appeared to be strongly opposed to such places”).

251. THE COMMONWEALTH OF MASS., *supra* note 121, at 16; *Politicians Blamed for White Slavery*, WASH. HERALD, Mar. 1, 1914, at 1.

252. *Deny Chinaman License*, BOS. DAILY GLOBE, June 3, 1915, at 9.

253. *Id.* Massachusetts law provided that issuance of a license was “not . . . required” but was left to “the sound judgment of the licensing board.” *Liggett Drug Co. v. Bd. of License Comm’rs of N. Adams*, 4 N.E.2d 628, 634 (Mass. 1936).

254. *Petition with 2000 Names*, BOS. DAILY GLOBE, June 16, 1915, at 2.

255. *See Old Blue Law Invoked*, BOS. DAILY GLOBE, July 27, 1915, at 3.

256. *Id.*

257. *Summon Mayor Blakely*, BOS. DAILY GLOBE, July 11, 1915, at 15.

258. *To Ask Mandamus Writ*, BOS. DAILY GLOBE, July 1, 1915, at 3.

Chinamen” unsuccessfully applied for a restaurant license in 1918,²⁵⁹ and he was left with the licensing board’s decision that “no more licenses for Chinese restaurants would be granted.”²⁶⁰ Based on the successful appeals in some cases, it appears that many of the license denials were legally improper, either because they were based on race and therefore in violation of *Yick Wo*, or for some other reason. But being in the right legally benefits only those with the financial means and tenacity to file a lawsuit.

3. *Discriminatory Law Enforcement.* To be sure, some of the misconduct reported in Chinese restaurants, and some of the criminal convictions for Chinese restaurateurs, represented actual wrongdoing. However, law enforcement’s special focus on Chinese restaurants may well have played a part. There is little reason to believe that Chinese people were disproportionately inclined to break the law; after all, “there is a connection between where police look for [crime] and where they find it.”²⁶¹ Thus, the many reports of apparent selective enforcement, or promises to place Chinese restaurants under particular scrutiny, suggest at least the possibility that Chinese entrepreneurs were arrested or deprived of licenses for conduct which would not have led to adverse action if committed by members of other, less closely supervised groups.

In 1899, the Boston police commissioners ordered all Chinese restaurants to close by midnight.²⁶² The *Boston Daily Globe* reported that the action was “part of the commissioners plan to drive the Chinese places from Boston.”²⁶³ A month later, the *Boston Daily Advertiser* debunked “a rumor, which somehow got about town yesterday, to the effect that the board of police commissioners is seriously considering the question of closing up those Chinese restaurants for good and for all. It is doubtful whether any power is vested in the board to issue an arbitrary order of that kind.”²⁶⁴ However, “[i]t goes without saying that public morals would be much promoted by shutting them up and keeping them shut.”²⁶⁵

259. *Oppose Licensing of a Chinese Restaurant*, BOS. DAILY GLOBE, Nov. 24, 1915, at 8.

260. *Id.*

261. David A. Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 MINN. L. REV. 265, 301 (1999).

262. *No Chop Suey After 12*, BOS. DAILY GLOBE, July 3, 1899, at 17.

263. *Id.*

264. *The Chinese Restaurants*, BOS. DAILY ADVERTISER, Aug. 12, 1899, at 4.

265. *Id.*

Chicago authorities also paid special attention to Chinese restaurants. In June 1905, the city council considered a resolution calling for investigation of Chinese restaurants,²⁶⁶ based on concerns about the presence of women in the restaurants at night,²⁶⁷ stemming from their belief that the restaurants had simply replaced the wine rooms banned by a previous mayor.²⁶⁸ By October 1, the restaurants were under investigation by the state attorney's office and the police.²⁶⁹ Reverend J. E. Copus reported in the *Rosary Magazine* that "[t]he police department . . . promised to 'get after' the 'chop suey dump.'"²⁷⁰ The Chicago police chief ordered "[r]igid inspections at frequent intervals" for Chinese restaurants and ice cream parlors,²⁷¹ and "the prohibition of young girls or youths after reasonable hours."²⁷² One lieutenant recommended revocation of the license of a Chinese restaurant for violating a midnight closing ordinance and further promised "a crusade on the many Chinese restaurants in his district."²⁷³ Five years later, the police still paid close attention to Chinese restaurants, as one police inspector warned that "[y]oung white girls are daily insulted and even attacked by Celestials."²⁷⁴ The following year, the Chicago police chief issued a "special order" against the sale of liquor in Chinese establishments; this announcement was followed by raids.²⁷⁵

In 1909, the Elsie Sigel murder continued to impact discretionary enforcement by police.²⁷⁶ The St. Louis police chief promised that

266. *Attack Segregation of Vice*, CHI. DAILY TRIB., June 10, 1905, at 7.

267. *See Ordered to Fight Vice*, CHI. DAILY TRIB., Oct. 1, 1905, at 2 (reporting that while the presence of women in saloons at night would be objectionable, women were frequently present in Chinese restaurants at night).

268. *Id.* The wine rooms and the restaurants could serve liquor at all hours, escaping restrictions on saloons, which had to close by 1:00 A.M. *Ordered to Fight Vice*, *supra* note 267. Similarly, in New York in 1900, when larger resorts were closed; there was "a flocking of women to cheap Chinese restaurants." *Police Grant New License to Gamblers*, N.Y. TIMES, Mar. 19, 1900, at 2.

269. *Ordered to Fight Vice*, *supra* note 267.

270. J. E. Copus, *Chicago's Under-World: The Criminal Aspect*, 27 ROSARY MAG. 454, 457 (1905).

271. *Mayor Defended By Foe*, CHI. DAILY TRIB., Nov. 9, 1905, at 3.

272. *Id.*

273. *May Close Chop Suey Place*, CHI. DAILY TRIB., Dec. 8, 1905, at 2.

274. *Search for White Slaves*, MARION DAILY MIRROR (Ohio), Dec. 31, 1909, at 1.

275. *See Chinese Men Mix Sin with Chop Suey*, CHI. DAILY TRIB., Mar. 27, 1910, at 3.

276. *See Ling*, *supra* note 123, at 209 (stating that more than a year after the murder in New York, St. Louis Police raided a Chinese restaurant in hopes of finding the accused killer Leon Ling).

“[t]he Chinese chop suey restaurants and Hop Alley will be closely watched by the police of St. Louis, who have had their attention [sic] called to the Chinese problem in American cities by the murder of Elsie Sigel”²⁷⁷ The chief further explained that although he could not “understand a white woman’s desire to go into a Chinese restaurant and eat,” it was “a problem for the woman herself,” for which the police could not “molest her,” or invade the restaurant’s “right to stay open”²⁷⁸ Despite this challenge, the chief assured that “we can and will watch these places strictly,” before offering that “[i]n [his] opinion, the immigration laws are too lax.”²⁷⁹ There are too many Chinese of bad character permitted to enter the United States as things are now.”²⁸⁰

Throughout 1909, the police also watched the Chinese restaurants in Detroit closely, and “maintain[ed] a sharp lookout” on Sam Lee’s restaurant because there were “reports that white men and women have languished in the dark, smutty rooms under the restaurant and lived in the fumes of the opium rather than face the world as it is.”²⁸¹ Around the same time, headlines in many cities continued to report raids on Chinese restaurants, including one story that the district attorney in Washington, D.C. in 1914 advised officers to pay special attention to “restaurants where liquor is served to women, motion picture theaters, and Chinese restaurants.”²⁸² The special attention was truly coast to coast: in Portland, Oregon the police raided over sixty-five mostly Chinese establishments pursuant to an ordinance prohibiting “barred-door[s],”²⁸³ and in Portland, Maine, a Chinese restaurant was closed based on misbehavior by soldiers, sailors and

277. *St. Louis Police Will Regulate Chinese Resorts*, *supra* note 124.

278. *Id.*

279. *Id.*

280. *Id.*

281. *See Chinese Fear That Sing Pui, Denied Dream Drug, Will Die*, DETROIT FREE PRESS, Aug. 1, 1909, at 9 (explaining that police were monitoring Sam Lee’s Chinese restaurant); *Chink Arrested for Opium Sale*, DETROIT FREE PRESS, May 23, 1909, at 1 (stating that police officers arrested the proprietor of a Chinese restaurant after patrolling the area and observing a known drug addict enter the restaurant).

282. Local police departments, in years following the murder, ramped up enforcement efforts. *Drastic Orders To Make Washington Morally Clean City*, WASH. TIMES, Feb. 9, 1914, at 1. Shortly before, in 1911 the *Tulsa Daily World* reported, “[t]wo new enforcement officers . . . selected the much raided Chop Suey restaurant . . . for the scene of their first operations,” *New Enforcers Raid Chop Suey*, TULSA DAILY WORLD, Aug. 8, 1911, at 5, and the *Pittsburg Press* headline noted “Big Raid at Greensburg: Crusade Against Chop Suey Dens and Foreign Restaurants,” *Big Raid at Greensburg: Crusade Against Chop Suey Dens and Foreign Restaurants*, PITTSBURG PRESS, Jan. 20, 1911, at 15.

283. *100 Doors Smashed by Axes of Police*, MORNING OREGONIAN, May 9, 1919, at 21.

“lewd” women who patronized it,²⁸⁴ after which the restaurant’s lawyer claimed that closing this restaurant while ignoring similar misconduct in others amounted to racial discrimination.²⁸⁵

Remarkably, the possibility for the discriminatory enforcement of a facially neutral Minneapolis ordinance against Chinese restaurants was explicitly built in during the drafting of that ordinance. Minneapolis mayor J.C. Haynes wrote to the city council, then considering an ordinance regulating restaurants and hotels, requesting that the law include authority to revoke licenses because of “certain abuses in some of these places, notably certain cafes and so-called chop suey houses.”²⁸⁶ The ordinance as enacted provided that licenses “shall be subject to revocation at any time by the City Council, in its discretion, or by the Mayor.”²⁸⁷

Given these perspectives, it would hardly be surprising if police found violations in Chinese restaurants based on facts which would not have led to charges in other venues.²⁸⁸ As observed by Justice Jackson, who was at one time the U.S. Attorney General, “[a] prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone.”²⁸⁹ This is particularly so in a highly regulated public place such as a restaurant, providing many opportunities to find infractions.

4. *Prohibition of Private Booths.* Chinese restaurants in the early decades of the twentieth century typically had private booths consisting of small rooms with doors or curtains.²⁹⁰ A national movement to

284. See Gary W. Libby, *Historical Notes on Chinese Restaurants in Portland, Maine*, CHINESE AM. HIST. & PERSPECTIVES 47, 48 (2006).

285. *Id.*

286. 36 PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS, MINN. FROM JANUARY 1, 1910 TO JANUARY 1, 1911, at 810 (1911).

287. *Id.* at 1063.

288. Anne Bowen Poulin, *Prosecutorial Discretion and Selective Prosecution: Enforcing Protecting After United States v. Armstrong*, 34 AM. CRIM. L. REV. 1071, 1100 (1997) (“Either discriminatory investigation or discriminatory selection among identified offenders may mask the rate and distribution of criminal activity.”).

289. Alexa Lawson-Remer, *Rightful Prosecution or Wrongful Persecution? Abuse of Honest Services Fraud for Political Purpose*, 82 S. CAL. L. REV. 1289, 1316 (2009) (quoting Robert H. Jackson, Remarks at the Second Annual Conference of United States Attorneys Held in the Department of Justice Building, Washington, DC (Apr. 1, 1940)).

290. See Jan Whitaker, *Restaurant Booth Controversies*, RESTAURANT-ING THROUGH HISTORY (Aug. 27, 2012, 7:13 PM), <http://restaurant-ingthroughhistory.com/2012/08/27/restaurant-booth-controversies/> [https://perma.cc/WAR3-P7LW]; see also *State v. Ito*, 131 N.W. 469, 469 (Minn. 1911) (“This is a Chinese restaurant and chop suey house. We went into a private

prohibit booths and private rooms was probably aimed at least in part at Chinese restaurants. The U.S. Public Health Service published a model ordinance prohibiting booths in restaurants, citing “recurring complaint[s] . . . that in “chop suey” places . . . the boxes, partitions, and booths made favorable places of solicitation and operation for pimps and prostitutes,” and explaining that its requirement for “the partitions to be removed” would mean “the entire establishment was thrown open to public gaze and opportunity of unlawful acts destroyed.”²⁹¹

As the Supreme Court has noted, land use and zoning requirements can impose a “substantial obstacle”²⁹² on disfavored targets. But as late as 1971, the Supreme Court was reluctant to invalidate facially neutral laws because of discriminatory motivation. In *Palmer v. Thomson*,²⁹³ the majority wrote that “no case in this Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it.”²⁹⁴ Accordingly, laws prohibiting booths could be enacted with the frank purpose of disadvantaging Chinese restaurants. While *Yick Wo*

booth and ordered a meal, which was served to us by the defendant.”); *After Chinese Restaurants*, SALT LAKE TRIB., Apr. 28, 1903, at 3 (referring to the “winerom” system in Chinese restaurants); *Chinese Obey Law*, MORNING OREGONIAN, Aug. 25, 1908, at 14 (quoting the Chief of the Portland city bureau for the protection of girls and women stating in regards to booths that “I will never vote again to grant a liquor license to any restaurant that puts up screens . . . whether it is a Chinese noodle ‘joint,’ or the finest white restaurant in town”); *Girls Drink Beer at All Hours in Chop Suey Houses*, *supra* note 106, at 1 (stating that “[n]early the entire floor space” of a Chinese restaurant in Chicago had a “series of private booths”); *License Denied Six*, MORNING OREGONIAN, Dec. 21, 1909, at 15 (stating that the liquor licenses of two Chinese restaurants may be granted “provided the horrid boxes [are] removed”); G.F. Rinehart, *Regulation a Failure*, ARIZ. REPUBLICAN, July 8, 1914, at 12 (discussing the failure of liquor regulation due to, *inter alia*, closed booths in Chinese restaurants).

291. U.S. PUB. HEALTH SERV., VENEREAL DISEASE ORDINANCES 29 (1919). According to their critics, closed booths allowed Chinese restaurants to “def[y] regulation” with nothing more “than a flimsy curtain between the hilarious and a possible policeman.” Rinehart, *supra* note 290, at 12; see also *Police Commissioners Make Good Their Threats To Punish Saloon Men by Suspension of Many Licenses*, DAILY L.A. HERALD, Sept. 2, 1900, at 5 (The Woman’s Christian Temperance Union stated: “We, representing the motherhood of our beloved state, do beseech you to listen to our appeals and that of all good citizens to abolish the stronghold of Satan called the booth”); *To Make War on Restaurant Drinks*, *supra* note 107.

292. See *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2316 (2016) (“[T]he surgical center requirement places a substantial obstacle in the path of women seeking an abortion.”).

293. *Palmer v. Thompson*, 403 U.S. 217 (1971).

294. *Id.* at 224; see also, e.g., *Yee Gee v. City & Cty. of San Francisco*, 235 F. 757, 760 (N.D. Cal. 1916) (upholding San Francisco ordinance limiting hours of laundries, noting “[s]o long as the act is fair upon its face, and capable of even-handed and impartial application to all who come within its terms, the mere motive actuating its enactment cannot be inquired into as a ground for avoiding it” (citations omitted)).

prohibited discriminatory enforcement, those targeted would have to prove governmental misconduct.²⁹⁵

Ogden, Utah saw a prolonged battle against Chinese restaurants and repeated tests of prohibitions on booths, and a version of the prohibition ultimately sustained remains in force.²⁹⁶ An April 4, 1902 article in the *Ogden Standard* reported that “[f]or some years past it has been difficult for the restaurants, owned by white men and in which none but white employes [sic] is hired to make enough profit.”²⁹⁷ There were four Chinese restaurants in the city, but the article warned that more were coming.²⁹⁸ The hotel and restaurant employees organized, hoping “that more of the laborers patronage will be turned to the restaurants owned by white men and employing white help.”²⁹⁹ The Central Trades and Labor Council declared a boycott,³⁰⁰ and “ask[ed] the [City] Council to prohibit girls under 18 years of age from going to these places and asks the Council to abolish the winerom system in vogue in such places,” which the newspaper predicted would require remodeling of a “dozen . . . Chinese restaurants on Twenty-fifth street alone.”³⁰¹

The booth ordinance became law.³⁰² The *Salt Lake Tribune* reported that the ordinance was “aimed at Chinese restaurants, as it appears, they were the only ones called upon to comply with the law.”³⁰³ On June 1, 1903, the *Salt Lake Herald* reported that Ogden’s Chinese restaurants were “hard to kill off” and “thriving in spite of opposition.”³⁰⁴ In March 1904, Judge Rolapp declared the booth ordinance invalid.³⁰⁵ But the controversy did not end there. The *Ogden Standard* continued to warn that “[d]anger to the morals of young men and young women lies in the ‘chop suey’ houses,”³⁰⁶ and in that spirit,

295. See, e.g., *Ex parte Quong Wo*, 118 P. 714, 716 (Cal. 1911) (upholding laundry zoning ordinance).

296. OGDEN, UTAH, MUNICIPAL CODE § 5-3D-4(H) (2017).

297. *Chinese Restaurants*, OGDEN STANDARD (Utah), Apr. 4, 1902, at 5.

298. *Id.*

299. *Id.*

300. *Boycott Inaugurated*, SALT LAKE TRIB., Apr. 10, 1903, at 3; *Boycott on Chinese Restaurants*, DESERET NEWS, Apr. 10, 1903, at 8; OGDEN STANDARD (Utah), Mar. 22, 1904, at 8.

301. *After Chinese Restaurants*, *supra* note 290, at 3.

302. *Screened Booths Unlawful*, DESERET EVENING NEWS, Oct. 13, 1903, at 1.

303. *Ogden Restaurant Keepers Win Case*, SALT LAKE TRIB., Mar. 5, 1904, at 3.

304. *Hard To Kill Off*, SALT LAKE HERALD, June 1, 1903, at 7.

305. *Ogden Restaurant Keepers Win Case*, *supra* note 303.

306. *Reform in Ogden*, OGDEN STANDARD (Utah), Feb. 10, 1906 at 4.

Ogden considered a new booth ordinance in January 1918.³⁰⁷ Chinese restaurant proprietors insisted that the ordinance “represented racial prejudice, agitated by the restaurant trust and directed against all [O]riental in that business here.”³⁰⁸ Nevertheless, the ordinance was enacted and enforced.³⁰⁹ It is not clear whether the 1918 version of the law impacted white restaurateurs any differently than the 1903 version, but it is clear that Chinese restaurants received disproportionate enforcement attention. One Ogden citizen who rented space to a Chinese restaurant complained that this “appeared to him like persecution against the Chinese,” asking “[w]hy don’t you go after the white men who are violating the city laws as well as the Chinamen?”³¹⁰ In a test case, the proprietor of the Alhambra Café, a Chinese restaurant,³¹¹ was convicted of violating a city ordinance.³¹² The Utah Supreme Court affirmed.³¹³ The Court further endorsed the anti-booth policy by noting “[w]e know, as all men know, that the best and largest dining rooms everywhere are open, and that the respectable and law-abiding men and women do not seek closed booths or dark rooms when they go to a public eating place to eat their meals.”³¹⁴

Other booth regulations appeared across the country. In some cases, the regulations targeted Chinese restaurants. For example, the mayor of Minneapolis ordered the closure of a Chinese restaurant for selling liquor without a license and concurrently ordered that “all booths be torn out of Chinese restaurants.”³¹⁵ Given the major union

307. *See Private Booths in Restaurants*, OGDEN STANDARD (Utah), Jan. 23, 1918, at 7.

308. *Chinese Protest Ban on Booths*, SALT LAKE HERALD, Jan. 29, 1918, at 2.

309. *See Crusade Starts on Chinese Restaurant Booths*, OGDEN STANDARD (Utah), Apr. 3, 1918, at 6; *May Issue Warrant To Test Booth Ordinance*, OGDEN STANDARD (Utah), Apr. 6, 1918, at 32.

310. *Beginning of the Legal Fight Against the Booths in the Local Restaurants*, OGDEN STANDARD (Utah), July 18, 1918, at 6.

311. The Alhambra Café was a Chinese restaurant in the sense that owner John Doe Leo was Chinese. *Stamping out the Liquor Offenses*, OGDEN STANDARD (Utah), Feb. 22, 1916, at 3. In addition, Chinese people were among its patrons and employees. *See Chinese Cook, Hit by Auto, Dies on Way to Hospital*, OGDEN STANDARD (Utah), Oct. 25, 1918, at 10 (reporting death of Lee Hun Poye, Alhambra Café cook); *Chinese Woman Allowed To Go*, *supra* note 209. However, the restaurant advertised “regular dinner served every day. Short orders served any time.” *Alhambra Cafe*, OGDEN STANDARD (Utah), Jan. 16, 1915, at 2. Therefore it is not known if it served Chinese food along with its American cuisine.

312. *City Wins Fight on Private Booths*, SALT LAKE TELEGRAM, Feb. 27, 1919, at 5.

313. *Booths Must Go Now That Supreme Court Has Decided in Favor of City of Ogden*, OGDEN STANDARD (Utah), June 27, 1919, at 14.

314. *Ogden City v. Leo*, 182 P. 530, 533 (Utah 1919).

315. *Humor Is Not Beyond the Stoic Chinaman*, LOGANSPORT REPORTER (Ind.), Aug. 14, 1911, at 8.

boycott in Minneapolis,³¹⁶ and the mayor's reported policy of denying liquor licenses to Chinese restaurants,³¹⁷ this is hardly surprising. Similarly, following the "chop suey raids" of 1918, the New York district attorney announced "the abolishment of private rooms in chop suey restaurants."³¹⁸ In other instances, news accounts do not make an explicit connection between the Chinese nature of the restaurant and the regulation. However, many jurisdictions that banned booths also implemented or seriously considered other anti-Chinese restaurant measures, or had strong union activity against the restaurants.³¹⁹

III. VICTORY AND NATIONAL IMMIGRATION POLICY

A. *The End of the War*

Something changed the war as it moved into a new decade. A 1919 union report indicated that in Boston there was "progress in the fight on the Chinese restaurants."³²⁰ A 1921 report in *The Mixer and Server* suggests that by then union goals had been achieved; as one columnist boasted, "I take pleasure in saying that the worst enemy that we have had to contend with here is beginning to wane and vanish, and we all

316. See *supra* note 69 and accompanying text.

317. See *supra* note 248 and accompanying text.

318. *Police Capture 178 in Chop Suey Raids*, *supra* note 112, at 8.

319. One such jurisdiction was Chicago. PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF CHICAGO 2219–20, 2652 (1904); *Bishop Sumner Urges Action: Advises Enforcement of Laws*, S.F. CHRON., Jan. 27, 1917, at 4; *Chicago Council Knocks out Another Saloon Adjunct*, BEMIDJI DAILY PIONEER (Minn.), July 1, 1904, at 4. Another was Los Angeles. *Police Commissioners Make Good Their Threats To Punish Saloon Men by Suspension of Many Licenses*, L.A. HERALD, Sept. 2, 1900, at 1; see also *Police Chief Will Now Act*, L.A. HERALD, Sept. 8, 1900, at 5. Other California cities banned booths. *Mayor Approves Box Ordinance*, S.F. CALL, Nov. 22, 1910, at 8; *San Rafael May Bar Restaurant Booths*, S.F. CALL, May 15, 1911, at 3. San Francisco considered but apparently never adopted a ban. *No Dark Places*, S.F. CALL, July 7, 1893, at 3; *Protection of Young Women Urged by Research Workers*, S.F. CHRON., Oct. 23, 1916, at 3; *Scandal Draws Toward Close*, S.F. CALL, Dec. 9, 1904, at 16. Other jurisdictions included Phoenix, *No More Sequestered Drinks*, ARIZ. REPUBLICAN, Jan. 21, 1909, at 6, Tucson, *Curtained Booths Must Go*, ARIZ. REPUBLICAN, Mar. 21, 1921, at 2, and other cities in Massachusetts, *Review of Liquor Laws Passed by States This Year*, ST. LOUIS POST, June 21, 1915, at 14; see also EL PASO HERALD, June 21, 1915, at 6; *Great Progress Is Made in Prohibition Legislation*, BISMARCK DAILY TRIB., June 23, 1915, at 6, and Oregon, *License Denied Six*, *supra* note 290, at 15; *Licenses to be Given*, MORNING OREGONIAN, Jan. 11, 1910, at 16; see also *Boxes Ordered Removed from Dallas Restaurants*, EAST OREGONIAN, Apr. 29, 1911, at 7; *Licenses Opposed First, Then Given*, MORNING OREGONIAN, Dec. 30, 1909, at 11; *Ordinance No 110*, OREGON MIST, June 2, 1911, at 1; *Private Boxes Doomed*, MORNING OREGONIAN, Apr. 28, 1911, at 3.

320. A. Martel, *What Our Organizers Are Doing: Philadelphia*, MIXER & SERVER, Feb. 15, 1919, at 37, 38.

wish him a speedy exit.”³²¹

If union members and competing restaurateurs sensed that the Chinese had been vanquished, they were correct. The U.S. census reported 107,488 Chinese residents in the continental United States in 1890; 89,863 in 1900; 71,531 in 1910;³²² and 61,639 in 1920.³²³ Anti-Chinese policies had reduced the population by almost half. The Naturalization Act of 1790 limited eligibility to “free white persons,” but people of African nativity and descent became eligible after the Civil War.³²⁴ While Japanese immigration was restricted by the Gentlemen’s Agreement of 1907–08,³²⁵ in 1924 it was explicitly barred by statute.³²⁶ Members of races native to continental Asia were barred by the Immigration Act of 1917.³²⁷ Congress provided that those racially ineligible for naturalization were also ineligible to immigrate in the Immigration Act of 1924,³²⁸ which became law “[w]ith the AFL’s strong support.”³²⁹ For all of these reasons, native white workers had reason to be confident that the problem of Asian immigration and competition was permanently resolved.

Unions had argued that Chinese workers should not be allowed to compete with whites because they were not allowed to become citizens—Chinese workers’ precarious immigration and citizenship status meant whites did not anticipate much pushback. Indeed, keeping Chinese restaurants around facilitated discrimination against Chinese workers. Those suspected of being undocumented could be targeted by law enforcement. The police raided New York’s Chinatown in 1925,³³⁰ resulting in the “largest seizure of Chinese under the Exclusion act ever made” in the city.³³¹ In addition, employers could threaten recalcitrant

321. Thos. Burke, *Correspondence: Detroit, Mich.*, MIXER & SERVER, Sept. 15, 1921, at 62, 62.

322. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, BULLETIN 127, CHINESE AND JAPANESE IN THE UNITED STATES 7 (1910).

323. 3 BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, FOURTEENTH CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1920: POPULATION 11 (1922).

324. Chin, *supra* note 17, at 281.

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.* In addition the Immigration Act of 1921 put temporary limits on European immigration, which in similar form would be made permanent in the national origins quota system included in the 1924 immigration law. *Id.*

329. See Burgoon et al., *supra* note 14, at 942.

330. *New Tong Murders; 500 Chinese Seized*, *supra* note 229.

331. *Id.* The same source reports that “[m]ore than 500 [Chinese] were gathered in by 100

workers with deportation.³³² To this day, Chinese restaurants continue to be immigration enforcement targets.³³³ Chinese immigration, and therefore Chinese restaurants, seemed to have been tamed.

Perhaps because the perception of the Asian threat was changing—tough immigration laws meant there was no more “yellow peril”—the perception of Chinese restaurants themselves also changed. In New York, the health commissioner said “that a report had been made to him that the Chinese restaurants were the cleanest in New York.”³³⁴ Connecticut authorities similarly reported that “[t]he Chinese restaurant is a feature in all towns and it is clean in its kitchen, cleaner than many other sorts in its linen and gives a more varied menu at a lower price, invariably.”³³⁵

detectives and half as many Federal agents, in Chinatown and environs.” *Id.*; see also *Smugglers Caught: Entry of Chinamen from Canada Checked*, REPUBLICAN NEWS ITEM (Pa.), Nov. 29, 1900, at 1 (describing arrests in Chinese laundry and restaurant by “Chinese Inspector” and local police). Similarly, *The New York Times* reported that “[t]he expulsion of so many Chinese badly crippled the Chinese chain restaurant and laundry business throughout the metropolitan district.” *72 More Chinese Ordered Deported*, N.Y. TIMES, Sept. 20, 1925, at 1.

332. *Chinese May Organize*, WASH. EVENING STAR, May 24, 1919, at 2 (noting “underlying motive for these arrests [of restaurant workers] was membership in the union”).

333. Note, *Temporary Detentions of Aliens for the Purpose of Interrogation are subject to the Terry Doctrine*, 72 COLUM. L. REV. 593, 593–95, 596–98 (1972) (discussing immigration raids on Chinese restaurants); David Hutter, *Two Days After Raids, Chinese Restaurants Open for Business*, PINE BLUFF COMMERCIAL (Nov. 4, 2016), <http://www.pbcommercial.com/news/20161104/two-days-after-raids-chinese-restaurants-open-for-business> [<https://perma.cc/E4LW-M5GE>]; Jenny Jarvie, *More than 50 Detained in Immigration Raids at Asian Restaurants in Mississippi*, L.A. TIMES (Feb. 23, 2017), <http://www.latimes.com/nation/la-na-mississippi-immigration-raids-20170223-story.html> [<https://perma.cc/M6FA-B5TR>]. Being Asian near a Chinese restaurant can be a component of probable cause as the D. C. Circuit explained:

[The officer’s] attention was initially drawn to petitioner and his companion by their distinctively oriental appearance and their clothing. We do not in any way intend to suggest that the appearance of being oriental is in any respect “suspicious”, and we wish to state in unequivocal terms that we could never condone stopping or questioning an individual simply because he looked to be of oriental descent. Nonetheless, we need not be so naive as to blink at the reality of the fact that many of the aliens who illegally enter the United States each year are oriental seamen who desert their ships at such major seaports as New York, Philadelphia, and Baltimore in our geographical area. Nor do we need to ignore the fact that many such illegal entrants find employment in and around food service establishments, particularly those specializing in oriental cuisines where other employees are likely to be conversant in their native languages.

Cheung Tin Wong v. INS, 468 F.2d 1123, 1127 (D.C. Cir. 1972).

334. *3,000 N.Y. Chinese in Protest Parade*, N.Y. HERALD, Sept. 17, 1921, at 6.

335. THE STATE OF CONN., REPORT OF THE DEPARTMENT OF LABOR AND FACTORY INSPECTION FOR THE YEAR 1921–22, at 132 (1922); see also, CHARLES C. DOMINGE & WALTER O. LINCOLN, FIRE INSURANCE INSPECTION AND UNDERWRITING 176 (6th ed. rev. enl. 1948) (reporting that “CHINESE RESTAURANTS, generally speaking, are cleaner than the usual run of restaurants”); Emanuel B. Halper, *Food Service Lease Use and Exclusive Clauses*, 32 REAL PROP. PROB. & TR. J. 455, 509 (1997) (“Chinese restaurants maintain a more attractive

On both coasts, the “Chop Suey craze” continued, but often, slumming had been replaced with glamour:

Broadway between Time Square and Columbus Circle was home to fourteen big ‘chop suey jazz places.’ One Chinese night club owner, a former Essex Street laundryman, supposedly wore a huge diamond ring, rode in an imported car, and squired around a bottle-blond burlesque dancer. In San Francisco, most of these new nightspots were in Chinatown Featuring all-Chinese singers, musicians, chorus lines, and even strippers, clubs like the Forbidden City attracted a clientele of politicians, movie stars, and businessmen out for an exotic good time.³³⁶

Bing Crosby, Bob Hope, Ronald Reagan, and other celebrities patronized the Forbidden City, a glamorous nightclub in San Francisco’s Chinatown.³³⁷ The first major Chinese cookbook was published in English in 1945, signaling that Chinese food had been tamed enough to have around the house.³³⁸

And yet, unions were right to worry that Chinese restaurants could be a Trojan Horse, in that they served as an economic toehold that gave the Chinese community a chance to grow. As Senator Daniel Patrick Moynihan and Professor Nathan Glazer noted in *Beyond the Melting Pot*, restaurants could be centers of economic activity for the larger community, because “[t]he Chinese restaurant uses Chinese laundries, gets its provisions from Chinese food suppliers, [and] provides orders for Chinese noodle makers.”³³⁹ In addition, a scholar explaining in 1943 the reasons for the partial repeal of Chinese exclusion statutes noted that “[a]n important factor . . . was their entrance into characteristic occupations held as a natural monopoly, notably, the hand laundry and

environment than most.”).

336. COE, *supra* note 2, at 189.

337. Harley Spiller, *Late Night in the Lion’s Den: Chinese Restaurant-Nightclubs in 1940s San Francisco*, 4 *GASTRONOMICA* 94, 94 (2004).

338. Charles W. Hayford, *Open Recipes, Openly Arrived at: How To Cook And Eat In Chinese* (1945) and *the Translation of Chinese Food*, 45 *J. ORIENTAL STUDS.* 67, 73 (2012). Yet, Chinese restaurants are still exotic enough that some believe “Chinese Restaurant Syndrome” is a racial-psychological rather than physical phenomenon. See Jennifer L. LeMesurier, *Uptaking Race: Genre, MSG, and Chinese Dinner*, 12 *POROI* 1, 2 (2017) (arguing that, even though “[c]urrent nutritional research is focused on the potential *positives* of consuming MSG” and MSG is not “a primarily Chinese ingredient,” the beliefs that “MSG [i]s an inherently dangerous substance” and Chinese food is “an edible health hazard” persist because rhetoric has subconsciously “reproduce[d] prejudicial attitudes and solidif[ied] them into seemingly commonsense beliefs”).

339. NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, *BEYOND THE MELTING POT: THE NEGROES, PUERTO RICANS, JEWS, ITALIANS, AND IRISH OF NEW YORK CITY* 31 (2d ed. 1970).

Chinese restaurant,” and asserts that “[t]his occupational specialization destroyed ‘white’ labor’s fear of competition, while enjoyment of the Chinese cuisine and other services won for the ‘Celestial’ the patronizing good-will, if not the friendship, of a substantial section of the American public.”³⁴⁰ So, Chinese restaurants not only provided Chinese people an opportunity to earn a living, they offered the possibility of somewhat more personal encounters with non-Chinese people than was routine in a laundry.³⁴¹

The war on Chinese restaurants is also an example of what Professor Douglas NeJaime has called winning through losing.³⁴² Unions and law enforcement declared war on Chinese restaurants, and the Chinese restaurants won, in the sense that Chinese restaurants not only survived but thrived. The innovative tool invented for the fight, banning white women from eating in Chinese restaurants, became law almost nowhere and was, in the end, legally untenable. Yet, unquestionably the unions won a more important victory by eliminating the possibility of substantial competition with Asian workers. Indeed, the unions has their cake and ate it too, as they restricted competition with Asian workers through federal immigration laws, without having to forego the opportunity to eat in Chinese restaurants.

B. *Drawing Modern Parallels*

Because the proponents of innovative, invalid legislation lost the battles but won the war, the episode is reminiscent of the saga of Arizona’s Senate Bill titled Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070).³⁴³ SB 1070, enacted in 2010 and copied

340. FRED W. RIGGS, PRESSURES ON CONGRESS: A STUDY OF THE REPEAL OF CHINESE EXCLUSION 29–30 (1950); see also Ivan Light & Charles Choy Wong, *Protest or Work: Dilemmas of the Tourist Industry in American Chinatowns*, 80 AM. J. SOC. 1342, 1342 (1975) (describing a 1960s view of American poverty that “emphasized the institutional segregation of the poor, chiefly nonwhite [workers], in a secondary labor market offering low wage, insecure dead-end employment, and no routes of escape into the more advantageous primary market”).

341. PFAELZER, *supra* note 53, at 99 (“Despite segregated housing and jobs, white and Chinese men and women interacted closely in rural towns in the West—at popular Chinese restaurants” and in other areas).

342. See Douglas NeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941, 1011 (2011) (concluding that social movements, “counterintuitively, produce positive indirect effects” in the wake of a failed litigation by using the defeat to mobilize constituencies, increase favorable cause lawyering scholarship, and influence legislators, among other strategies).

343. See Gabriel J. Chin & Marc L. Miller, *Broken Mirror: The Unconstitutional Foundations of New State Immigration Enforcement*, in STRANGE NEIGHBORS: THE ROLE OF STATES IN IMMIGRATION POLICY 167, 167–71 (Carissa Byrne Hessick & Gabriel J. Chin eds., 2014)

by many states, sought to impose state systems of regulation on undocumented immigrants.³⁴⁴ Unlike their predecessors in state legislatures in the first decades of the twentieth century, modern legislators insisted on enacting the laws and subjecting them to judicial tests even though the statutes were palpably unconstitutional.³⁴⁵

Though a legal failure, SB 1070 was a smashing political success. It contributed to making immigration an important issue in the 2016 presidential campaign. SB 1070 attempted to allow state and local police to enforce federal immigration law, and much of what it proposed to do is on the Trump administration's agenda. The failure and unconstitutionality of local measures did not make political impulses disappear; rather, it channeled them to the branch and level of government with the power to act, just as the drumbeat of the economic and moral danger posed by Chinese restaurants and other Asian activities—and the inability to regulate them at the state level—contributed to a climate in which Asian exclusion dramatically expanded in 1917 and 1924.

The war on Chinese restaurants also explains the idea of Asian-Pacific Americans as a cognizable group. As many observers,³⁴⁶ including particularly critics of affirmative action sometimes point out, Chinese, Japanese, Koreans, Indians, Cambodians, Vietnamese,

(exploring the role of the states in immigration policy and enforcement, including SB 1070).

344. Gabriel J. Chin, Carissa Byrne Hessick, Toni Massaro & Marc L. Miller, *A Legal Labyrinth: Issues Raised by Arizona Senate Bill 1070*, 25 GEO. IMMIGR. L.J. 47, 49 (2010); Gregory S. Schneider & Gabriel J. Chin, *Double Trouble: Double Jeopardy's Dual Sovereignty Exception and State Immigration Statutes*, 28 ARIZ. J. INT'L & COMP. L. 363, 363 (2011).

345. See generally Gabriel J. Chin & Marc L. Miller, *The Unconstitutionality of State Regulation of Immigration Through Criminal Law*, 61 DUKE L.J. 251, 252 (2011) (arguing that “state enforcement [of federal immigration law] would be unconstitutional even if it were explicitly authorized by Congress”). The Supreme Court struck down many parts of SB 1070 in 2012. *Arizona v. United States*, 567 U.S. 387, 416 (2012) (“[Sections] 3, 5(C), and 6 of S.B. 1070 are preempted.”).

346. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1300 (1993) (noting “the difficulty of combining Asian Pacific American subgroups into a cohesive ‘minority’ group because of their diverse nationalities and generations”); Sharon S. Lee, *The De-Minoritization of Asian Americans: A Historical Examination of the Representations of Asian Americans in Affirmative Action Admissions Policies at the University of California*, 15 ASIAN AM. L.J. 129, 149 (2008) (“Asian Americans are a diverse group, and disaggregated data shows wide disparities in academic performance and socioeconomic status among different Asian American communities.”); see also Kevin R. Johnson, *The Struggle for Civil Rights: The Need for, and Impediments to, Political Coalitions Among and Within Minority Groups*, 63 LA. L. REV. 759, 777 (2003) (“Latina/os, African Americans, and Asian Americans are in actuality a diverse community of communities.”).

Filipinos, and members of all other Asian national groups have different cultures and histories, often different languages, and sometimes distinct appearances.³⁴⁷ Yet, for legal purposes, they were often amalgamated as a single race, because the public perception of them was that they were all part of the same “yellow peril.”³⁴⁸ Concerned about Chinese immigrants, restaurant-related and federal immigration legislation targeted Asians as an undifferentiated racial group.

The story reveals that Asian Pacific American legal history has been underinvestigated. It is not particularly surprising that Arizona, California, Montana, Oregon, and Utah targeted Chinese restaurants, as those states had pervasive anti-Asian policies reflected by a range of anti-Asian statutes that prohibited Asians from intermarrying with whites³⁴⁹ and owning land.³⁵⁰ But eastern and midwestern states like Illinois, Massachusetts, Minnesota, New York, Ohio, and Pennsylvania had no antimiscegenation or property laws targeting Asians or any other races, and those states or cities within them carried on heretofore

347. Calli Fletcher, Note, *Using Racism To Combat Racism: Fisher v. University of Texas at Austin*, 18 FLA. COASTAL L. REV. 413, 421–22 (2017) (“Further, the minority pointed out that students who are labeled or are forced to label themselves as ‘Asian-American’ harken from an incredibly diverse geographic locale, one that includes ‘roughly 60% of the world’s population.’”) (citing *Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198, 2228 (2016) (Alito, J., dissenting)).

348. Chris K. Iijima, *The Era of We-Construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections on the Critique of the Black/White Paradigm*, 29 COLUM. HUM. RTS. L. REV. 47, 63 (1997) (“‘Asian American identity’ also has been conceptualized as a political unity that enables diverse Asian groups to understand similar unequal circumstances and historical treatment and that empowers the heterogeneous community to confront institutions that marginalize us.”). As Professor Yamamoto notes:

[I]n the late 1960s and 1970s diverse Asian groups in the United States articulated a new encompassing racial identity, ‘Asian American,’ to raise political consciousness about common problems and to assert collective demands on government. By minimizing group differences among distinct Asian cultures and political outlooks, the racialization of Asian Americans aggregated political power among formerly disparate, relatively powerless groups.

Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 ASIAN PAC. AM. L.J. 33, 60 (1995).

349. Hrishikesh Karthikeyan & Gabriel J. Chin, *Preserving Racial Identity: Population Patterns and the Application of Anti-Miscegenation Statutes to Asian Americans, 1910-1950*, 9 ASIAN L.J. 1, 15 (2002).

350. Dudley O. McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CALIF. L. REV. 7, 7–8 (1947); see also Keith Aoki, *No Right To Own?: The Early Twentieth-Century “Alien Land Laws” As a Prelude to Internment*, 40 B.C. L. REV. 37, 37–38 (1998) (briefly discussing the evolution of such laws in California and Washington); Gabriel J. Chin, *Unexplainable on Grounds of Race: Doubts About Yick Wo*, 2008 U. ILL. L. REV. 1359, 1383–84 (2008) (briefly discussing the Supreme Court decisions that upheld California and Washington’s laws restricting land ownership on the basis of race).

unexplored legal attacks on Chinese economic activity. Racial discrimination imposed by law was not restricted to the South, and racial discrimination with respect to Asians was not limited to the Pacific Coast or western states.

One advantage revealed by campaigns against Chinese restaurants is that the Chinese enjoyed some diplomatic protection of their interests. In 1901, the Chinese legation filed a claim for damages with the U.S. State Department for mistreatment by Americans.³⁵¹ When the Pittsburgh city council threatened discriminatory legislation, Chinese restaurant keepers sought help from their ambassador to invoke treaty rights,³⁵² and a letter from the secretary of state shut down an anti-Chinese restaurant bill in Montana.³⁵³ When Chinese men around the country were harassed by the police after the murder of Elsie Sigel, members of the community would “call[] on the Chinese Legation and afterward [go] to the State Department . . . to protest against the manner in which . . . the Chinamen of New York, Philadelphia, and other of the large cities of the country are being persecuted by the police.”³⁵⁴ Of course, invoking diplomatic assistance hardly assured victory or even safety. But it was almost certainly better than nothing. By contrast, African Americans and Native Americans in the United States could rarely turn to an outside power for aid or protection.

Adding this chapter to U.S. history underscores the pervasiveness of racism in the United States. The Framers and the political leaders who followed them conceived of the United States as a white nation.³⁵⁵

351. *Claims of Chinese Subjects Residing at Butte, Mont., on Account of Boycott of their Business*, in PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES WITH THE ANNUAL MESSAGE OF THE PRESIDENT TRANSMITTED TO CONGRESS, DECEMBER 3, 1901, H.R. DOC. NO. 57-1, at 100 (1902).

352. *Chop Suey Ordinance Passed*, *supra* note 153, at 1 (“Chinese restaurant keepers . . . talked of appealing to their ambassador . . . if any effort is made to enforce the measure, which compels them to close at midnight, forbids women and girls to patronize them and inflicts a fine of \$50 upon the proprietors for any violation.”).

353. McGinley, *What Our Organizers Are Doing: Great Falls, Montana*, *supra* note 112, at 30.

354. *Chinese Accuse Police*, N.Y. TIMES, July 6, 1909, at 14.

355. “According to its English conquerors, America was always meant to belong to white Englishmen.” Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965, 972 (1995). In 1890s, American leaders believed “America was by rights a white nation, a Protestant nation, a nation in which true Americans were native-born men with Anglo-Saxon ancestors.” Sanford Levinson, *Why the Canon Should Be Expanded To Include the Insular Cases and the Saga of American Expansionism*, 17 CONST. COMMENT. 241, 257 n.52 (2000) (quoting ROGERS SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* 3 (1997)); *see also* Ruth Gordon, *Racing U.S. Foreign Policy*, 17 NAT’L BLACK L.J. 1, 11 (2003)

Nonwhites were restricted in their ability to immigrate and become citizens; accordingly, it is hard to deny the white nationalist argument that the Naturalization Act of 1790 reflects the idea of a white America.³⁵⁶ On the other hand, few people are willing to embrace the idea that they also discriminate simply to advantage themselves.³⁵⁷ Intelligent, decent people required legitimate reasons that whites were preferred and others not. Those opposed to Chinese immigration did not oppose it arbitrarily; they did so because of a belief, reached after study, of “the inborn inferiority of the Yellow Man.”³⁵⁸ That does not preclude the possibility that their conclusions were subconsciously influenced by a belief that eliminating Asian competitors would improve their personal financial situation.

A broader point is that modern racial discrimination and segregation in employment,³⁵⁹ criminal justice,³⁶⁰ education,³⁶¹ and

(“America was proclaimed a white country and the nation was equated with its white population.”).

356. See Greg Johnson, *Is White Nationalism Unamerican?*, COUNTER-CURRENTS PUB. (July 17, 2017, 10:54 AM), <https://www.counter-currents.com/2017/04/is-white-nationalism-un-american/> [https://perma.cc/EPH7-MSAM] (“[T]he Naturalization Act of 1790 . . . defined who could become a citizen of the United States. Naturalization was limited to free white persons of good character. This excluded American Indians, indentured servants, free and enslaved blacks, Muslims, and later, Orientals.”).

357. For example, many people believe in the just world theory, that the world is basically fair, and therefore that people who are discriminated against or are unsuccessful are that way because of their own characteristics, rather than the structure of society. See Lauren D. Appelbaum, Mary Clare Lennon & J. Lawrence Aber, *When Effort Is Threatening: The Influence of the Belief in a Just World on Americans’ Attitudes Toward Antipoverty Policy*, 27 POL. PSYCHOL. 387, 390–91 (2006) (showing that the stronger a person’s adherence to the just world theory, the more likely that person is to ascribe to individualistic explanations for poverty, victim blame, and feel that asylum seekers are undeserving of receiving social benefits).

358. Mann, *supra* note 14, at 208.

359. *Griggs v. Duke Power Co.*, 401 U.S. 424, 427 (1971) (noting that at Duke Power Company, before the Civil Rights Act of 1964, “[n]egroes were employed only in the Labor Department where the highest paying jobs paid less than the lowest paying jobs in the other four ‘operating’ departments in which only whites were employed.”); see also Roy L. Brooks, *American Democracy and Higher Education for Black Americans: The Lingering-Effects Theory*, 7 J.L. & SOC. CHALLENGES 1, 17 (2005) (“[w]hole industries and categories of the best-paying jobs were reserved for whites [in the Jim Crow era].”).

360. DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2007) (discussing use of the criminal justice system to compel labor from African Americans).

361. Norman C. Amaker, *The Haunting Presence of the Opinion in Brown v. Board of Education*, 20 S. ILL. U. L.J. 3, 11 (1995) (explaining that the decision in *Brown* turned to some extent on the Court’s recognition “that the equal part of the ‘separate-but-equal’ canard, as was predictable given the nation’s racial history, had been blatantly ignored so that generations of black children had been locked into a process that amounted to little or no education in any meaningful sense”); see also Alan E. Brownstein, *Harmonizing the Heavenly and Earthly Spheres:*

housing³⁶² parallel historical discrimination regarding immigration and naturalization, because such discrimination was intended to increase economic opportunities for whites. Segregation was not simply a matter of social separation. Schools, jobs, and housing available to African Americans in the Jim Crow South, and to Indians, Hispanics, and Asians, were not better or equal, they were worse; the opportunities for whites were superior.

CONCLUSION

Chinese restaurants played a complex role in the development of the Asian American community. They made it possible for Chinese people to earn a living. But, even now, Chinese restaurants open to people of all races, often run by American-born U.S. citizens, seem to contribute to the conceptualization of Asians as perpetual foreigners.³⁶³ During a moment of geopolitical tension with China just fifteen years ago, “[a] radio station disc jockey in Springfield, Illinois suggested boycotting Chinese restaurants.”³⁶⁴ U.S. citizen Wen Ho Lee, a nuclear scientist of Chinese racial ancestry wrongly accused of spying for China, may have been charged in part because of Chinese restaurants. A witness inferred “something nefarious about the number of Chinese restaurants in Los Alamos,” and an investigator reportedly agreed, commenting that “just the fact that there are five Chinese restaurants here meant that the Chinese government had an interest.”³⁶⁵ Just as they did a century ago, Chinese restaurants contribute to a stereotype of Asians as exotic, and not quite American.

Recognizing that there was a war against Chinese restaurants offers several insights into American law. It is an example of how legal ideas can propagate. In this case, innovation occurred not through

The Fragmentation and Synthesis of Religion, Equality, and Speech in the Constitution, 51 OHIO ST. L.J. 89, 150 (1990) (noting that under separate-but-equal regime, “black facilities would generally not be true physical equivalents to those of whites”).

362. RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017) (discussing programs designed to benefit white home buyers and renters).

363. Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, “Foreignness,” and Racial Hierarchy in American Law*, 76 OR. L. REV. 261, 268 (1997) (“To be identified as foreign, as Asian Americans have been, is to be considered not American and, often, un-American.”).

364. Bill Ong Hing, *Vigilante Racism: The De-Americanization of Immigrant America*, 7 MICH. J. RACE & L. 441, 447 (2002).

365. Miriam Kim, Note, *Discrimination in the Wen Ho Lee Case: Reinterpreting the Intent Requirement in Constitutional and Statutory Race Discrimination Cases*, 9 ASIAN L.J. 117, 131–32 (2002).

judges,³⁶⁶ international organizations,³⁶⁷ or colonial bureaucrats,³⁶⁸ or organizations of lawyers. Instead, labor organizations and the motivated private citizens who were their members directly pursued a legislative audience for their ideas.

There are reasons to think that similar movements today can reach powerful policymakers directly, bypassing the legal establishment. Few judges, international organizations, or bar associations would express the view that Asians are not fully American, but the actions and ideology of President Donald Trump's administration seem to reflect just that. Steve Bannon, a former senior White House official in the Trump administration, hosted a radio show in 2015. During an interview, he discussed immigration with then-candidate Trump, who supported keeping skilled immigrants in the country, explaining "[w]hen someone is going to Harvard, Yale, Princeton, Penn, Stanford, all the greats" after they graduate, "we throw them out of the country, and they can't get back in. . . ."³⁶⁹ He went on to say, "I think that's terrible," and to comment that "[w]e have to be careful of that, Steve. You know, we have to keep our talented people in this country."³⁷⁰ However, Bannon disagreed, saying "[w]hen two-thirds or three-quarters of the CEOs in Silicon Valley are from South Asia or from Asia, I think . . . A country is more than an economy. We're a civic society."³⁷¹ Bannon wildly overestimated the number of Asian CEOs, as a 2015 study showed "that 27 percent of professionals working in Silicon Valley companies were Asian or Asian-American," and that "[t]hey represented less than 19 percent of managers and under 14 percent of executives."³⁷² Of course, many American citizens are of Asian racial ancestry. It is unfortunate but—as this article shows—

366. Anne-Marie Slaughter, *A Typology of Transjudicial Communication*, 29 U. RICH. L. REV. 99, 99 (1994) ("Courts are talking to one another all over the world.").

367. David M. Trubek, Yves Dezalay, Ruth Buchanan & John R. Davis, *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407, 478 (1994) (international organizations and agencies "spread Western legal ideas throughout the periphery").

368. Anthony Lester QC, *The Overseas Trade in the American Bill of Rights*, 88 COLUM. L. REV. 537, 537 (1988) (noting that western "legal ideas and systems were . . . spread, through imperial rule, to other continents").

369. Willa Frej, *Steve Bannon Suggests There Are Too Many Asian CEOs in Silicon Valley*, HUFFINGTON POST (Nov. 16, 2016 10:34 AM), http://www.huffingtonpost.com/entry/steve-bannon-disgusted-asian-ceos-silicon-valley_us_582c5d19e4b0e39c1fa71e48 [https://perma.cc/HF5M-2U2K].

370. *Id.*

371. *Id.*

372. *Id.*

nothing new, that some believe that only white citizens can be a part of this nation's "civic society," and that something is wrong if the best economic opportunities are not reserved for whites.³⁷³

373. Cf. Brian F. Schaffner, Matthew MacWilliams & Tatishe Nteta, *Explaining White Polarization in the 2016 Vote for President: The Sobering Role of Racism and Sexism* (Jan. 2017) (unpublished manuscript), http://people.umass.edu/schaffne/schaffner_et_al_IDC_conference.pdf [<https://perma.cc/QC6V-AEL5>] (proposing that Trump's populist economic message and protectionism resonated with white working class Americans).