

Chew Heong v. United States: Chinese Exclusion and the Federal Courts

Edited by James H. Landman

This article is adapted from Chew Heong v. United States: Chinese Exclusion and the Federal Courts, written by Lucy Salyer, associate professor of history at the University of New Hampshire, for inclusion in the Federal Judicial Center's project, "Federal Trials and Great Debates in United States History." For additional information on the "Federal Trials and Great Debates" project, see the Resources listing for this article.

Waves big as mountains often
astonished this traveller.
With laws harsh as tigers,
I had a taste of all the barbarities.
Do not forget this day when you
land ashore.
Push yourself ahead and do not be
lazy or idle.¹

This excerpt is from a poem by “Xu,” a Chinese immigrant who early in the twentieth century carved his poem into wooden barrack walls on Angel Island—a small island in San Francisco Bay known as the “Ellis Island of the West.” The “laws harsh as tigers” described in the poem refer to the Chinese exclusion laws that, beginning in 1882, established the most restrictive immigration laws the United States had known to that point. The case of Chew Heong, a Chinese immigrant who was one of thousands of Chinese to challenge the laws in federal court, provides fascinating insight into our nation’s early efforts to control immigration and into the often difficult role of the federal courts in enforcing federal policies in times of political turmoil.

The Chinese Exclusion Act of 1882

In 1882, Congress adopted the first Chinese Exclusion Act and, in doing so, took a giant step away from its previous “open door” immigration policy. The act forbade the immigration of Chinese laborers for 10 years. It marked the beginning of the U.S. government’s embrace of restrictive immigration policies and highlighted the different treatment immigrants received depending on their race and nationality.

The act was not the first to target Chinese for discriminatory treatment. Congress had passed the Page Act in 1875, prohibiting the immigration of Asian contract laborers and Asian women suspected of prostitution—a clause that was interpreted broadly to prevent the immigration of Chinese women and the formation of Chinese American families. Even earlier, beginning with the Chinese immigration to California during the Gold Rush, towns and states on the West Coast had devised numerous laws to deprive Chinese of their livelihoods, to segregate them in

schools and neighborhoods, and generally to make their lives in the United States so miserable that they would leave. But the Chinese Exclusion Act of 1882 raised anti-Chinese fervor to the level of federal policy. Congress endorsed exclusionists’ arguments that American workers could not compete with Chinese and that Chinese were fundamentally different as a race, unable to assimilate and posing a danger to American institutions and culture.

In passing the Exclusion Act, Congress rejected the spirit behind the 1868 Burlingame Treaty with China that declared a person had an “inherent and unalienable right to change his home and allegiance.” Instead, the act reflected the terms of a new treaty—the Angell Treaty—that the U.S. obtained with China in 1880. In the Angell Treaty, China agreed that the United States could limit, though not absolutely prohibit, the immigration of Chinese laborers. The treaty specified that Chinese laborers already residing in the United States remained free to come and go as before. Furthermore, the treaty did not apply to nonlaborers, such as merchants, students, professionals, and diplomats. The 1882 act conformed to the treaty in restricting new immigration only of Chinese laborers for a period of 10 years.

Chinese Resistance to the Exclusion Act of 1882

When Congress passed the 1882 Exclusion Act, many anti-Chinese forces celebrated, believing their fight to force Chinese out of the United States had finally succeeded. Within a year, however, their hopes turned to frustration as they renamed the Chinese Exclusion Act, the “Chinese Evasion Act.” Chinese did not meekly accept their exclusion from the United States. The Chinese immigrant community had a strong internal organizational network that provided an institutional basis for their resistance to the policy. The Chinese Six Companies, known to Chinese as the *Zhonghua Huiguan*, was composed of leaders from different *huiguan* (district associations) to which all Chinese immigrants belonged depending upon their region of origin. The Chinese consulate in San Francisco was the official representative of the Chinese government. Both the Chinese Six Companies and the Chinese consulate provided crucial leadership and financial support for the fight against discriminatory treatment of Chinese immigrants.

When the Exclusion Act was passed, the Chinese organizations turned naturally to the federal courts in California to test the act’s reach. Litigation had been one of the few avenues open to Chinese immigrants to resist discriminatory actions in the nineteenth century. Few Chinese managed to become American citizens because of U.S. law reserving naturalization to those who were “white” or of African descent. Lacking political power, Chinese found that the Burlingame Treaty of 1868, which guaranteed Chinese residents “the same privileges, immunities, and exemptions” extended to natives of other countries, and the Fourteenth Amendment, which prohibited states from denying any person due process or equal protection of the laws, to be potent weapons in the federal courts. Federal judges struck down many of the discriminatory state laws on the grounds that they violated the treaty rights of the Chinese or their right to equal protection under the Fourteenth



This cartoon, first published in 1884, shows Judge Lorenzo Sawyer dumping Chinese out of a barrel while California protests in vain. The cartoon’s title, “There’s Millions In It,” also alludes to rumors that Judge Sawyer was profiting from bribes to allow Chinese to land.

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Amendment. Litigation proved so fruitful that the Chinese Six Companies and Chinese consulate kept American attorneys on retainers to represent them whenever the need should arise. When exclusion went into effect, attorneys for the Chinese were kept busy as Chinese arriving at ports sought to prove their right to enter the United States.

A crucial disagreement over the 1882 Exclusion Act arose on the question of what evidence Chinese needed to prove their right to enter the United States. The law provided a system to identify Chinese who remained exempt from exclusion. Resident Chinese laborers, for example, received a certificate of identity—known as a “return” certificate—before they left the United States and presented the certificate for readmission upon their return. Chinese merchants and other nonlaborers were to obtain certificates from the Chinese government verifying their occupations, physical descriptions, and exemption from exclusion. These so-called “section 6 certificates” were to constitute sufficient evidence that a

Chinese immigrant was exempt from exclusion, and these certificates provided the foundation for the Chinese right to enter, though the collector of the port could still deny entry based on contradictory evidence.

Problems soon arose when many Chinese entitled to enter the United States did not have the required certificates. Some resident Chinese laborers, for example, had left the United States before the certificates became available. Chinese merchants arrived in the United States from ports outside China and did not have the section 6 certificates required to establish their exemption. The collector of the port at San Francisco, a political appointee responsible for enforcing the exclusion laws, insisted upon strict compliance with the law and denied entry to Chinese without the required certificates. At a time when political parties vied for the anti-Chinese vote and local newspapers covered every aspect of the law’s enforcement, the collector of the port (also called the collector of customs)

U.S. Circuit Courts in the Nineteenth Century

The case of Chew Heong was first heard in the U.S. Circuit Court for the District of California. The U.S. circuit courts had served since 1789 as one of the two types of trial courts in the federal judiciary (the other type was the district court). Circuit courts had jurisdiction over all suits above a certain monetary value, most federal crimes, and suits between citizens of different states (so-called diversity jurisdiction). In 1875, Congress also gave the circuit courts authority to hear any case involving a “federal question,” that is, concerning a federal statute, the Constitution, or a treaty.

Before 1869, circuit courts had no judges of their own but were convened by the district judge and the Supreme Court justice assigned to the geographical circuit in which the districts were organized. Congress, in 1869, provided for the appointment of circuit judges to serve on the circuit courts within each of nine geographical circuits. Circuit courts could also be convened by the circuit’s Supreme Court justice or the district judge or by a panel of two of the authorized judges. As in the case of Chew Heong, a Supreme Court justice could hear a case both at the circuit court level and on appeal to the Supreme Court.

felt pressure to demonstrate his office’s dedication to exclusion. If denied entry, Chinese often filed writs of habeas corpus in federal court, arguing that they were being detained illegally on board ship and denied their right to land.

The habeas corpus cases pitted the collector of the port against the federal judges and put the federal courts in a bind. All of the federal judges involved in the cases professed support for the exclusion policy. But the judges also believed that the treaty, as the United States’ explicit promise to the Chinese government, must be upheld to preserve the nation’s honor. Further, the Constitution mandated that treaties and federal statutes were both the “supreme law of the land.” Whenever possible, the judges argued, legislation should be interpreted to conform to the nation’s treaties. The collector, in the opinion of the judges, had disregarded the treaty in his zealous requirement for certificates in all cases. In a succession of cases, federal judges ruled that the Exclusion Act had to be interpreted reasonably and in accordance with the Treaty of 1880. The collector could not require certificates as the only evidence of admission if they had been impossible or unreasonably difficult to obtain. The federal courts allowed “parol evidence,” that is oral testimony, or written records to establish Chinese petitioners’ right to land.

Local newspapers and the collector of the port denounced the federal courts for creating gaping loopholes in the exclusion law and accused Chinese of widespread perjury and fraud in concocting testimony before the courts. Of the 2,652 Chinese allowed to land in the first 14 months after the act’s passage, the collector claimed that one third were admitted under the court’s rulings and often without proper documentation. While attempting to deflect public criticism of their rulings, the federal judges also struggled to keep up with the demanding pace of the exclusion litigation. In his written opinion in *In re Chow Goo Pooi*, Judge Ogden Hoffman, of the U.S. District Court for the Northern District of California, complained that he had 190 Chinese habeas corpus cases on his docket and had been unable to make

a dent in them, despite weeks of hearings and night sessions. All other work in the court had come to a near halt.

The Chinese Exclusion Act of 1884 and the Case of Chew Heong

Frustrated by the failure of the 1882 act to meet their expectations, exclusionists in Congress amended the law in 1884 in an attempt to close the perceived loopholes. The 1884 law specified that the return certificates were to be “the only evidence permissible” of a Chinese laborer’s right to enter the United States. All eyes were on the federal courts in San Francisco to see how the judges would respond to this new provision. The potential consequences for Chinese were significant. Attorney Thomas Riordan estimated that approximately 12,000 Chinese resident laborers had left the United States before the certificates had become available and would lose their right to return if the act was strictly enforced.

The 1884 act soon came before a panel of four judges in the U.S. Circuit Court for the District of California for a hearing in the case of *Chew Heong*. The case had been selected by the Chinese consul’s attorney to test the 1884 act. Chew Heong had come to the United States sometime before November 1880, when the Angell Treaty went into effect, but had left San Francisco for Honolulu in June 1881, before the Exclusion Act was passed and before return certificates became available. He returned to San Francisco on September 22, 1884, and applied for admission as a prior resident. Within five days, Chew Heong appeared before U.S. Supreme Court Justice Stephen J. Field, sitting in the U.S. Circuit Court for the District of California.

Although Field had issued earlier decisions asserting the importance of upholding the laborers’ treaty rights of free migration, he now abruptly changed his mind, citing both the clear language of the law and the intent of Congress to forestall resort to the courts. Field declared that the 1884 statute clearly allowed entry only to laborers who had return certificates. If the law worked hardships for men like Chew

Heong, it was up to the legislature or the executive, not the courts, to remedy the situation.

Field had clearly run out of patience with the Chinese habeas corpus cases that had flooded the federal courts. During Chew Heong's hearing, Field rhetorically questioned attorney Riordan: "...what shall the Courts do with [the Chinese laborers]? Can it give each one of them a separate trial? Can it let each of them produce evidence of former residence? No; it was because the Courts were overcrowded that the second Act was passed.... Besides, Congress never supposed that Chinamen intended to go back to China and stay several years. If they do not come back at once they should not be allowed to come at all."

The three other judges on the panel, Lorenzo Sawyer, Ogden Hoffman, and George Sabin, disagreed with Justice Field. As federal judges resident in California, they heard the bulk of the Chinese cases and shared Field's concern about their crushing caseloads. But they continued to uphold the authority of the 1880 treaty and interpreted the 1884 act in light of their earlier precedents. The clause making return certificates the only acceptable evidence applied only to Chinese laborers who left after the certificates were available, they argued. The law could not require the impossible, and nor should it be allowed to defeat the treaty rights of laborers like Chew Heong. Resident Chinese laborers who left before the certificates were available should still be allowed to prove prior residence through other evidence.

Chew Heong Before the Supreme Court of the United States

Federal law provided that the opinion of the presiding Supreme Court justice prevailed in the circuit court, although a divided opinion could be appealed to the Supreme Court, and Chew Heong filed an appeal. Field's decision was approved in the court of popular opinion as one San Francisco newspaper declared that the decision showed "how unjustly the people of

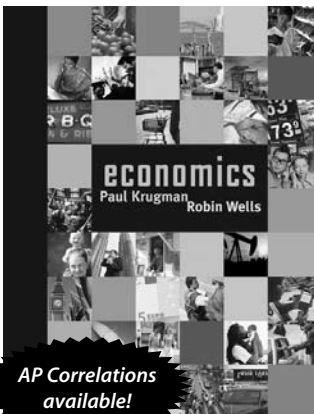
California have judged Mr. Justice Field with reference to the Chinese question." But when the Supreme Court heard the case, Field found himself reversed in a 7-2 decision.

Justice John Marshall Harlan, writing for the majority, began by stressing the importance of treaties in securing commerce and trust among nations. Harlan refused to believe that Congress intended to "disregard the plighted faith of the government" so recently pledged

in the 1880 treaty. Unless Congress clearly and unmistakably expressed its intent to violate the treaty, the Court was obliged under the Constitution and rules of construction to try to reconcile the statute with the treaty. This could easily be done, said Harlan. Echoing Judge Sawyer's dissenting opinion in the circuit court, Harlan thought it clear that Chew Heong did not have to present a certificate if it had been impossible for him to obtain one.

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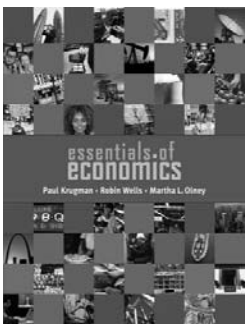
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Field rendered a bitter dissent, joined by Justice Joseph P. Bradley, accusing the majority of willfully misreading the clear language of the statute and ignoring the intent of Congress. He reminded the majority of the strong sentiment behind the exclusion policy among “all classes ... from the whole Pacific Coast” who “saw ... the certainty, at no distant day, that from the unnumbered millions on the opposite shores of the Pacific, vast hordes [of Chinese] would pour in upon us, overrunning our coast and controlling its institutions.” Field

acknowledged the authority of treaties but stressed they were no more binding than federal statutes. Congress clearly intended in the act of 1884 to close a door opened by the federal courts in their earlier decisions. It was the duty of the Supreme Court, he admonished, to be “the servant of the law, bound to obey, not to evade or make it.” Field ended with a dire prediction that “all the bitterness which has heretofore existed on the Pacific Coast on the subject of the immigration of Chinese laborers will be renewed and intensified,

and our courts there will be crowded with applicants to land.”

The Aftermath of Chew Heong

If Field failed to sway his Supreme Court brethren, he was right that the battle over Chinese exclusion would intensify after *Chew Heong*. On the day after the circuit court’s decision in *Chew Heong*, Field authored another opinion—this time unanimous—holding that children born in the United States of Chinese parents were American citizens and exempt from the exclusion law. This

TEACHING ACTIVITY

The American Bar Association Division for Public Education has prepared several lesson plans to accompany the Federal Judicial Center’s historical unit on *Chew Heong v. United States: Chinese Exclusion and the Federal Courts*. Brief descriptions of the lesson plans are provided below. To access free downloadable copies of the curriculum, as well as the historical unit, visit www.abanet.org/publiced/greatdebates. All the lessons prepared for the unit are intended for grades 9–12.

A. Simulation Activity. Through simulation of proceedings in the *Chew Heong* case, students understand the role of the federal courts in protecting the rights of Chinese immigrant laborers. Students also learn how the Chinese immigrant community used litigation in the federal courts to protect the interests of Chinese laborers. Presented in three scenes, the activity traces Chew Heong’s case from his detention aboard a steamship in

San Francisco’s harbor, to his hearing before the U.S. Circuit Court for the District of California, to arguments before the U.S. Supreme Court.

B. Primary Source Activity. Through analysis and discussion of the primary sources in this case, students understand the conflicts federal judges faced between public opinion, personal opinion, and the rule of law in the *Chew Heong* case. Sources include a political cartoon from the 1880s, the Angell Treaty between the U.S. and China, excerpts from judicial decisions, and a personal letter by Judge Lorenzo Sawyer.

C. Comparative Analysis Activity. By making connections among Chinese immigration and exclusion in 1880s America and related issues from contemporary and other historical periods, students gain comparative understanding of immigration, immigration policy, law, and the American experience.

RESOURCES

Books

Him Mark Lai, Genny Lim, and Judy Yung, *Island: Poetry and History of Chinese Immigrants on Angel Island 1910–1940*. HOC DOI, 1980; reprinted, Seattle: University of Washington Press, 1991.

Lucy Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law*. Chapel Hill: University of North Carolina Press, 1995.

Websites

“Federal Trials and Great Debates in U.S. History,” The Federal Judicial Center (FJC). The FJC is developing a series of historical units on landmark cases, including *Chew Heong v. United States*, that examine the role the federal courts have played in key public controversies that have defined our constitutional and other legal rights. Follow the “Teaching Judicial History: Notable Federal Trials” link on the FJC’s History of the Federal Judiciary site, www.fjc.gov/history/home.nsf.

“The Chinese in California, 1850–1925,” Library of Congress, American Memory. A wide-ranging collection of digitized

primary sources, including pamphlets, correspondence, photographs, and cartoons, about Chinese immigration, memory.loc.gov/ammem/award99/cubhtml/cichome.html.

Angel Island State Park, Immigration Station, San Francisco. Includes photographs and descriptions of the immigration station at Angel Island in San Francisco Bay. This was the major port of entry for Chinese immigrants, beginning in 1910, www.angelisland.org/immigr02.html.

Chinese Immigration Documents Online: Digitized Chinese Case files from the National Archives. Allows researchers online access to sample documents from investigations conducted by government officials of Chinese entering the United States during the exclusion period, www.archives.gov/research/arc/topics/chinese-immigration.html.

Chinese Immigration Records in the National Archives. Describes the types of records relating to Chinese immigration available at the central and regional offices of the National Archives and Records Administration. Some of these records have been digitized and are available online, www.archives.gov/genealogy/heritage/chinese-immigration.html.

decision, as well as the *Chew Heong* opinion, provided another opening for Chinese and expanded litigation in the federal courts as both Chinese claiming birthright citizenship and laborers asserting prior residency sought to establish their right to enter the United States. The federal courts' caseload continued to mushroom. The courts innovated by appointing examiners and referees to assist with the petitions in expedited hearings, but they still strained to keep up.


The federal courts' jurisdiction over the Chinese exclusion and general immigration cases would be gradually curtailed by statute and Supreme Court decisions. While Chinese continued to resort to the federal courts for protection, exclusionists turned again to Congress and to vigilante action in their determination to force Chinese out of the United States. Anti-Chinese violence crested throughout the West in 1885 and 1886, with the worst incident being the Rock Springs, Wyoming, massacre in which 28 Chinese were killed and hundreds more fled for their lives. In 1888, Congress passed the most stringent exclusion act thus far, the Scott Act, which explicitly rejected the 1880 treaty, cancelled all return certificates, and stipulated that once Chinese laborers left the United States, they could never return. While the 1882 act forbade Chinese immigration for 10 years, the 1888 act made the exclusion policy permanent.

When Chae Chan Ping, another Chinese immigrant armed with a return certificate, petitioned U.S. Circuit Court Judge Lorenzo Sawyer for entry after the 1888 act's passage, he found his way barred. Sawyer conceded that there was no doubt that Congress had reneged on the treaty and, given the evident conflict between the act of 1888 and the treaty, the federal statute must govern as the most recent expression of its will. Justice Field had the satisfaction of writing the opinion for the unanimous Supreme Court decision upholding the act of 1888. His dissent in *Chew Heong* now became the basis for a landmark decision in 1889, *Chae Chan Ping v. United States*, which

granted sweeping power to Congress to deny entry to any aliens it chose.

The Legacy of Exclusion

The battle over exclusion was not over. Buoyed by their successes in cases like *Chew Heong*, Chinese in the United States continued to see the federal courts as potential allies, however reluctant. They and their attorneys persistently and creatively employed litigation to keep the gates of the United States ajar. They forced federal judges to consider the extent of government power and the reach of due process for aliens and citizens alike at a time when public opinion cared little for immigrants' rights. The tenure of federal judges was constitutionally protected, but the judges were not insulated from the local communities in which they lived and worked. Distressed by vocal public criticism of the courts' decisions, Judge Sawyer expressed the hope that, in the long term, the judges' adherence to the law and treaties would be vindicated. Most immediately, the federal courts' decisions resulted in a

determined campaign in Congress to remove federal court jurisdiction over Chinese exclusion and general immigration cases, which, by 1905, had largely succeeded. 

Note

1. From *Island: Poetry and History of Chinese Immigrants on Angel Island, 1910-1940*, eds. Him Mark Lai, Genny Lim, and Judy Yung (HOC DOI, 1980; Reprinted, Seattle: University of Washington Press, 1991).

The views expressed in this article are those of the author and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.



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