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## From Exclusion to Exclusivity: Chinese American Property Ownership and Discrimination in Historical Perspective

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## From Exclusion to Exclusivity: Chinese American Property Ownership and Discrimination in Historical Perspective

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## ERRATA SHEET

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**FROM EXCLUSION TO EXCLUSIVITY:  
CHINESE AMERICAN PROPERTY OWNERSHIP AND  
DISCRIMINATION IN HISTORICAL PERSPECTIVE**

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## I. INTRODUCTION

In a prior article on representing Chinese real estate investors in the US, I examined Chinese property law, and why Chinese invest in the US.<sup>1</sup> This article explores today's vast investment in historical perspective, in particular the little known history of property discrimination against the Chinese in the US.

Today, buyers from the People's Republic of China, Hong Kong, and Taiwan, are the largest number of foreign residential real estate investors in the US, investing approximately \$28.6 billion for the twelve-month period ending March 2015.<sup>2</sup> Moreover, their average purchase price, \$831,800, far exceeds the next set of foreign investors, Indians, at \$460,200,<sup>3</sup> and the average price of US buyers, \$255,600.<sup>4</sup> Chinese also buy high profile commercial properties such as the Waldorf Astoria in New York.<sup>5</sup> Chinese are the third largest group of foreign commercial investors, trailing only Canada and Norway.<sup>6</sup>

Also, today the rate of homeownership for Chinese-Americans is 66%,<sup>7</sup> compared with 72% for whites, 47% for Latinos, and 42% for

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1. Mary Szto, *Representing Chinese Real Estate Investors in the United States*, 23 MINN. J. INT'L L. 173 (2014).

2. NAT'L ASS'N OF REALTORS® RESEARCH DIV., 2015 PROFILE OF HOME BUYING ACTIVITY OF INTERNATIONAL CLIENTS FOR THE TWELVE MONTH PERIOD ENDING MARCH 2015, 23 (2015).

3. *Id.* at 19.

4. *Id.* at 5.

5. Lin Yang, *Waldorf Astoria Hotel in New York Welcomes Heads of State*, FORBES, (Sept. 27, 2015), <http://www.forbes.com/sites/linyang/2015/09/27/chinese-president-xi-jinping-stays-at-waldorf-astoria-hotel-in-new-york/>.

6. In 2014 Canadian investors led in commercial real estate investment with 26% of all investment. They are followed by Norwegians (11%) and then Chinese (9%) and Japanese (9%) investors. Michael Gerrity, *Canada Top Global Investor in U.S. Commercial Properties in 2014*, WORLD PROP. J. (Feb. 5, 2015), <http://www.worldpropertyjournal.com/real-estate-news/united-states/top-foreign-property-investor-in-us-real-estate-top-global-real-estate-investors-cbre-foreign-investment-capital-in-real-estate-canadian-real-estate-investors-chris-ludeman-ross-moore-8842.php>.

7. ASIAN AM. REAL ESTATE ASS'N OF AM., THE STATE OF ASIA AMERICA 2015 14 (2015), <http://www.areaa.org/wp-content/uploads/2013/10/SAA15.pdf?131a70>.

Blacks.<sup>8</sup> Home equity is the chief means of wealth accumulation for most Americans and these rates fuel the US' racial wealth gap.<sup>9</sup> Unfortunately, Asians, Blacks and Hispanics all face housing discrimination today in the US.<sup>10</sup>

How did we arrive here? This article fills a gap in the property literature by examining the intersection of imperial Chinese history, contemporary Chinese property investment, and historic discrimination against US Chinese. I trace today's vast Chinese real estate investment and migration to the maritime silk road that started in the Guangdong and Fujian provinces in the Qin (221-206 BC) and Han dynasties (206 BC-220 AD). I also place today's investment in a third era of property rights and access for Chinese and Chinese-Americans, and chronicle the first two eras of violence and overt property discrimination. While property discrimination against Native Americans, Blacks, and Hispanics may be well known, property discrimination against Chinese and Chinese-Americans is not. My thesis is that unless we excavate this history, we will continue discrimination from the past; we must especially use this current Chinese investment in high-end homes and robust rate of Chinese-American homeownership to increase property access for all, including other minority groups. We must foster healing communities.

First, I will chronicle today's Chinese homebuyers. Their massive investment is tied to the surge in Chinese students in US universities, who provide a much-needed boost to declining revenue from other sources.

Then I introduce the maritime silk road and examine the three eras of US property access for Chinese. The first was before and during the Exclusion era when Chinese were the only persons from 1882-1943 to be denied the right to immigrate, naturalize, and own or lease property in the US because they were deemed unassimilable. The second era was the Cold War era, from the late 1940s to the early 1990s. In an effort to combat Soviet criticism of US racism, Chinese-Americans were then deemed a model assimilable minority worthy of entry into white suburbs. Unfortunately, Blacks and

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8. ROBERT R. CALLIS & MELISSA KRESIN, U.S. CENSUS BUREAU, CB 16-08, RESIDENTIAL VACANCIES AND HOMEOWNERSHIP IN THE FOURTH QUARTER 2015, at 9 (2016), <http://www.census.gov/housing/hvs/files/currenthvspress.pdf>.

9. LAURA SULLIVAN ET AL., THE RACIAL WEALTH GAP: WHY PUBLIC POLICY MATTERS, 9 (Inst. for Assets and Soc. Policy & Demos eds., 2015), [http://www.demos.org/sites/default/files/publications/RacialWealthGap\\_1.pdf](http://www.demos.org/sites/default/files/publications/RacialWealthGap_1.pdf). "[I]n 2011 the median white household had \$111,146 in wealth holdings," compared with \$7,113 for black and \$8,348 for Latino households. *Id.* at 1.

10. U.S. DEPT OF HOUS. AND URBAN DEV. OFFICE OF POLICY DEV. AND RESEARCH, HOUSING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES 2012, at 3 (2013), [https://www.huduser.gov/portal/Publications/pdf/HUD-514\\_HDS2012\\_execsumm.pdf](https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012_execsumm.pdf).

Hispanics were not. In other words, the assimilable model minority myth arose in the context of property access for Chinese and other Asian-Americans. It is a myth because Asian-Americans did not change between the Exclusion and Cold War eras; only geopolitics did. The third era is from the 1990s to the present; investors from Taiwan and Hong Kong, and now mainland China, have created burgeoning Chinese ethnoburbs, or to coin a new term, sinoburbs, in California, New York, and Texas. Some urban Chinatowns thrive as well, but some are being gentrified.

During the first era, Guangdong Chinese who came for the 1849 California Gold Rush were recruited to build the transcontinental railroad; this resulted in huge landholdings for the railroads. However, the Chinese workers faced constant violence and property deprivation. The Chinese were the first group that racial restrictive covenants in deeds were used against in the US, and Chinatowns were the US' first segregated neighborhoods.<sup>11</sup> Chinatowns were not merely quaint tourist spots; they were the only places Chinese were allowed to live. One bright spot during this dark era was the short-lived 1868 Burlingame Treaty which guaranteed free migration and equal property rights for US Chinese. Anson Burlingame, the treaty's architect, used anti-black slavery arguments to justify equal treatment for US Chinese. Chinese-American associations filed thousands of lawsuits to assert their rights under the Constitution, Burlingame Treaty and 1870 Civil Rights Act. Starting in 1913, state alien land laws aimed at Japanese also prohibited Chinese from owning property. Beginning in the 1930s Chinatowns were redlined along with Black and Hispanic neighborhoods. The Chinese Exclusion Acts were not repealed until after China became a US ally in World War II.

I also discuss three now obscure cases and a 1952 incident that caught national attention. *In Re Lee Sing* involved an 1890 San Francisco ordinance that ordered Chinese to leave Chinatown within sixty days; the 1892 *Gandolfo v. Hartman* case refused to enforce a racial restrictive covenant against Chinese lessees fifty-six years before the 1948 US Supreme Court landmark case *Shelley v. Kraemer*; and the 1948 *Tom D. Amer* case involved a Chinese-American family that fought racial restrictive covenants in southern California and was also granted certiorari by the US Supreme Court. The 1952 Sing Sheng episode concerned a neighborhood near San Francisco that voted not to allow a Chinese-American family to live

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11. CHARLOTTE BROOKS, ALIEN NEIGHBORS, FOREIGN FRIENDS: ASIAN AMERICANS, HOUSING AND THE TRANSFORMATION OF URBAN CALIFORNIA 11 (2009).



there; this received harsh criticism from national media, public officials, and the general public as a blow to the fight against communism overseas.

Throughout the article, I will provide some historical detail to provide context for property discrimination in each era.

I conclude with observations about why the history of property discrimination against Chinese-Americans has been almost forgotten. Amnesia perpetuates an assimilated model minority myth which pits US minority groups against each other, and masks continuing discrimination. Therefore, we must excavate the past. We must be vigilant to not repeat past US property discrimination against the Chinese, and instead use today's high rates of Chinese real estate investment and Chinese-American homeownership to achieve property access for all, including other minorities. This includes attention to China's revived maritime silk road, announced by President Xi Jinping in 2013, and how ethnoburbs and sinoburbs can be healing communities.

## II. TODAY'S CHINESE REAL ESTATE INVESTORS

Chinese real estate investors today dominate the US residential real estate market. According to the 2015 Profile of Home Buying Activity of International Clients compiled by the National Association of Realtors, for the first time, Chinese surpassed all other foreign buyers. They spent \$28.6 billion on US homes, up from \$22 billion the previous year.<sup>12</sup> As recently as 2011, Chinese buyers spent only \$7 billion.<sup>13</sup> The 2015 figure was 28% of all international sales.<sup>14</sup> Half of these sales were for non-resident Chinese buyers, and the other half for resident foreigners, defined as either immigrants in the US for less than two years or temporary visa holders here for professional, educational or other reasons.<sup>15</sup>

As noted above, the average purchase price of a home for domestic US purchases is \$255,600. In contrast, the average residential real estate purchase price for Chinese is \$831,800, compared with \$460,200 for Indians, the next group of foreign investors, who spent \$7.9 billion in 2015. Chinese made all-cash purchases 69% of the time.<sup>16</sup> Only 25% of domestic buyers make all cash purchases.<sup>17</sup>

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12. NAT'L ASS'N OF REALTORS® RESEARCH DIV., *supra* note 2, at 23.

13. *Id.*

14. *Id.*

15. *Id.* at 2, 23.

16. *Id.* at 23.

17. *Id.* at 19.

Where do Chinese like to purchase residential real estate? Thirty-five percent of purchases were in California.<sup>18</sup> Other popular places were Illinois (4%), Massachusetts (6%), New York (7%), Texas (4%), and Washington (8%).<sup>19</sup> Of all purchases, 46% were made in suburban areas, and 39% in central city/urban areas.<sup>20</sup>

According to the 2015 NAR survey, 39% of Chinese purchases were for use as a primary residence; 23% for residential rental property; and 7% for student residences.<sup>21</sup> In a particular locale, Chinese buyers pay special attention to *fengshui*, the Chinese art of placement of homes according to lines of energy and fortune in the universe.<sup>22</sup> Auspicious numbers are important as well; e.g., New York real estate agents list homes for \$3.68 million because 3, 6, and 8 are considered harbingers of fortune.<sup>23</sup>

Chinese investors' choice of location also mirrors Asian and Chinese population trends in the US. In 2010, California was home to 32% of all US Asians<sup>24</sup> and 36% of all US Chinese.<sup>25</sup> New York was home to 15% of all US Chinese.<sup>26</sup> Texas was home to 4.5% of all US Chinese.<sup>27</sup>

In comparison, Canadians, the second largest group of foreign purchasers, buy in other states: Florida (41%) and Arizona (16%).<sup>28</sup> Canadian sales only equaled \$11.2 billion.<sup>29</sup> Their average purchase price was only \$380,000; 47% of purchases were for vacation purposes; and 80% of buyers were non-residents.<sup>30</sup>

Indians were the third largest group of foreign investors, but 79% of these purchases were for primary residences and only 16% were all-cash sales.<sup>31</sup> Top states for Indian purchasers were California

18. *Id.* at 23.

19. *Id.* at 24.

20. *Id.* at 25.

21. *Id.*

22. Homes are even being built or altered on fengshui principles to attract Chinese buyers. Linda Deng, *Seattle Sees a Surge in Chinese Real Estate Buyers*, CHINA DAILY (Jan. 5, 2015, 6:55 AM), [http://usa.chinadaily.com.cn/world/2015-01/05/content\\_19235705.htm](http://usa.chinadaily.com.cn/world/2015-01/05/content_19235705.htm).

23. Julie Satow, *The Lure of the Gold Coast: Wealthy Chinese Buyers Head to New York's Suburbs*, N.Y. TIMES (Feb. 6, 2015), [http://www.nytimes.com/2015/02/08/realestate/wealthy-chinese-buyers-head-to-new-yorks-suburbs.html?\\_r=0](http://www.nytimes.com/2015/02/08/realestate/wealthy-chinese-buyers-head-to-new-yorks-suburbs.html?_r=0).

24. JOHN R. LOGAN & WEIWEI ZHANG, SEPARATE BUT EQUAL: ASIAN NATIONALITIES IN THE U.S. 5 (US2010 Project, ed., 2013), <http://www.s4.brown.edu/us2010/Data/Report/report06112013.pdf>.

25. *Id.* at 4, 6.

26. *Id.*

27. *Id.*

28. NAT'L ASS'N OF REALTORS® RESEARCH DIV., *supra* note 2, at 26.

29. *Id.* at 10.

30. *Id.* at 26.

31. *Id.* at 30.

(12%), New Jersey (13%), and Texas (13%).<sup>32</sup> The Indian population is the fastest growing Asian-American group in the US; it increased fourfold from 1990 to 2010.<sup>33</sup>

What is driving the large numbers of Chinese investment? Chinese buy for at least three reasons: (a) a stable investment and lower prices than in their homelands; (b) a place for their children who are studying in the US; and (c) an opportunity to immigrate to avoid political uncertainty and environmental degradation.

Although the Chinese economy has grown remarkably for several decades, its growth is slowing, and Chinese capital is fleeing abroad.<sup>34</sup> In the year preceding February 2016, individuals and companies moved \$1 trillion out of China.<sup>35</sup>

Regarding lower real estate prices, a 120 square foot condominium in Hong Kong might cost \$776,280, but in San Diego \$343,800 and in New York \$270,100.<sup>36</sup> In 2015, US home prices were also undervalued relative to income, and rents provided better value.<sup>37</sup>

Housing prices are also high in mainland China. This is due to government favoring of high-end real estate development.<sup>38</sup> In 2014 in Beijing, a square meter cost an average of \$2,339 while an average university graduate's monthly salary was only \$523 per month.<sup>39</sup> This means a 538 square foot apartment would cost \$111,000.<sup>40</sup> The high expense of homeownership in China is especially challenging because nine-tenths of Chinese in China own homes.<sup>41</sup> Chinese have few alternatives for investment because of a nascent and volatile stock market.<sup>42</sup>

32. *Id.* at 32.

33. LOGAN & ZHANG, *supra* note 24, at 2.

34. Keith Bradsher, *Chinese Start to Lose Confidence in Their Currency*, N.Y. TIMES (Feb. 13, 2016), <http://www.nytimes.com/2016/02/14/business/dealbook/chinese-start-to-lose-confidence-in-their-currency.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news>.

35. *Id.*

36. NAT'L ASS'N OF REALTORS® RESEARCH DIV., *supra* note 2, at 17.

37. *Id.*

38. Szto, *supra* note 1, at 199.

39. Xinyuan Zhang, *Youth Make Buying Homes a Low Priority*, GLOB. TIMES (Jan. 4, 2015), <http://www.globaltimes.cn/content/899830.shtml>.

40. Michelle Florcruz, *China's Housing Market Bubble: Home Ownership Elusive For Young Buyers and Renters*, INT'L BUS. TIMES (Feb. 2, 2015), <http://www.ibtimes.com/chinas-housing-market-bubble-home-ownership-elusive-young-buyers-renters-1808472>; *see also* *China Home Ownership Rate*, TRADING ECON., <http://www.tradingeconomics.com/china/home-ownership-rate>.

41. *Id.* *See also* *China Home Ownership Rate*, *supra* note 40.

42. *China's Stock Market Crashes-Again*, THE ECONOMIST (Jan. 4, 2016), <http://www.economist.com/news/business-and-finance/21685146-chinas-stocks-and-currency-start-2016-big-tumbles-chinas-stockmarket>.

The cost of rapid industrialization and urbanization in China has been environmental degradation: severe water contamination and depletion, hazardous air pollution due to coal use and auto emissions, and shortened life spans.<sup>43</sup>

The surge in real estate investment in the US also parallels the surge in Chinese students in the US. Places of high foreign student populations match places of Chinese home purchases. For example, many Chinese buy homes in Massachusetts which does not have a large Chinese population, but does have many prestigious schools.

This proximity to excellent schools is consonant with the popular story among Chinese of the Confucian thinker, Mencius (372-289 BC). Mencius' mother moved three times until her son could receive a proper education.<sup>44</sup>

Since 2005, the US foreign student population has increased by 85%; and from 2010, 50%.<sup>45</sup> Chinese students have created this surge.<sup>46</sup> Fifteen years ago, one of ten foreign students were from China; today that is one of three.<sup>47</sup>

In the November 2015 quarterly report of US Immigration and Customs Enforcement, there were 1.2 million international students in the US, an increase of 13.3% from July 2015.<sup>48</sup> Of these 1.2 million international students, 919,484, or 77% came from Asia<sup>49</sup> and 360,091 were from China.<sup>50</sup> The number of foreign K-12 international students increased 35% from July 2015; 52% of these younger students are from China.<sup>51</sup> The three states with the most international students were California (210,289 students), New York (134,068), and Texas (84,717).<sup>52</sup> Foreign students earn more

43. For a description of China's environmental crisis, see Eleanor Albert & Beina Xu, *China's Environmental Crisis*, COUNCIL ON FOREIGN REL. BACKGROUNDER, (Jan. 18, 2016), <http://www.cfr.org/china/chinas-environmental-crisis/p12608>.

44. *Mencius' Mother*, READINGS IN CLASSICAL CHINESE, <https://classicalchinese.wordpress.com/2008/03/16/mencius-mother%E9%84%92%E5%AD%9F%E8%BB%BB%E6%AF%8D/>.

45. Neil Shah, *Who is Coming to America? Increasingly, Chinese Students and Indian 20-Somethings*, WALL ST. J. (May 11, 2015, 10:59 AM), <http://blogs.wsj.com/economics/2015/05/11/who-is-coming-to-america-increasingly-chinese-students-and-indian-20-some-things/>.

46. Karin Fischer, *Chinese Students Lead Foreign Surge at U.S. Colleges*, N. Y. TIMES (Nov. 30, 2014), [http://www.nytimes.com/2014/12/01/education/chinese-students-lead-foreign-surge-at-us-colleges.html?\\_r=0](http://www.nytimes.com/2014/12/01/education/chinese-students-lead-foreign-surge-at-us-colleges.html?_r=0).

47. Drew DeSilver, *Growth From Asia Drives Surge in U.S. Foreign Students*, PEW RES. CTR., (June 18, 2015), <http://www.pewresearch.org/fact-tank/2015/06/18/growth-from-asia-drives-surge-in-u-s-foreign-students/>.

48. STUDENT AND EXCH. VISITOR PROGRAM: STUDENT AND EXCH. INFO. SYS., SEVIS BY THE NUMBERS GENERAL SUMMARY QUARTERLY REVIEW: NOVEMBER 2015 2 (US Immigration and Customs Enft, ed.) <https://www.ice.gov/sites/default/files/documents/Report/2015/sevis-bythenumbers-dec15.pdf>.

49. *Id.* at 11.

50. *Id.* at 12.

51. *Id.* at 2.

52. *Id.* at 15. The institutions with the highest number of foreign students in 2015 were:

than half of STEM (science, technology, engineering, and math) advanced degrees in the US.<sup>53</sup> The most popular majors for Chinese students are business (28%), engineering (20%), and math/computer science (12%).<sup>54</sup>

Foreign students are attractive to US schools because they usually pay full tuition. For Chinese students, this may be done with their own parents' resources or the collective resources of the extended family.<sup>55</sup> Chinese student tuition therefore subsidizes the cost of education for US students.<sup>56</sup> In 2014, it is estimated that Chinese students contributed \$22 billion to the US economy.<sup>57</sup> By coming to the US, Chinese students avoid the intense competition of the Chinese national college entrance exam, and gain an education that is less based on rote memory.<sup>58</sup>

Most Chinese students remain in the US after graduation.<sup>59</sup> China and India now send more immigrants to the US than Mexico.<sup>60</sup> Many Chinese immigrants are college-aged.<sup>61</sup>

Another avenue for Chinese immigration is the EB-5 visa. In 2014, Chinese investors were granted 9,128 out of the 10,000 EB-5 investment visas available;<sup>62</sup> EB-5 visas allow foreign entrepreneurs who create American jobs to immigrate.

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New York University (13,788), University of Southern California (13,062), Columbia University (11,139), Northeastern University (11,135), and University of Illinois (10,953). *Id.* at 17.

53. DeSilver, *supra* note 47.

54. *Id.*

55. The number of self-funded students is increasing. *Chinese Demand for Overseas Education Remains Strong Despite Worries About Jobs*, ICEF MONITOR (June 26, 2013), <http://monitor.icef.com/2013/06/chinese-demand-for-overseas-education-remains-strong-despite-worries-about-jobs/>.

56. Matt Schiavenza, *The Tenuous Relationship Between American Universities and Chinese Students*, THE ATLANTIC (May 30, 2015), <http://www.theatlantic.com/education/archive/2015/05/american-universities-are-addicted-to-chinese-students/394517/>. For a discussion of tuition and Chinese students at Purdue University, see Paul Stevens, *International Students: Separate but Profitable*, WASH. MONTHLY (Sept./Oct. 2013), [http://www.washingtonmonthly.com/magazine/september\\_october\\_2013/features/international\\_students\\_separat046454.php?page=all](http://www.washingtonmonthly.com/magazine/september_october_2013/features/international_students_separat046454.php?page=all).

57. Schiavenza, *supra* note 56.

58. *90% of China's Super-Rich Want to Send Children Abroad*, INT'L BUS. TIMES (Apr. 7, 2012, 11:07 AM), <http://www.ibtimes.com/90-china%E2%80%99s-super-rich-want-send-children-abroad-434838>.

59. Qihui Gao, *Only 30% of Chinese Back After Study Abroad*, CHINA DAILY (Aug. 17, 2011), [http://usa.chinadaily.com.cn/china/2011-08/17/content\\_13136773.htm](http://usa.chinadaily.com.cn/china/2011-08/17/content_13136773.htm).

60. Shah, *supra* note 45.

61. *Id.*

62. Alana Semuels, *Should Congress Let Wealthy Foreigners Buy Green Cards?*, THE ATLANTIC (Sept. 21, 2015), <http://www.theatlantic.com/business/archive/2015/09/should-congress-let-wealthy-foreigners-buy-citizenship/406432/>. The next highest number, 225, were granted to Korean investors. *Id.*

In 2014, Chinese-Americans spent \$105.1 billion on US real estate.<sup>63</sup> This is in addition to the \$28.6 billion spent by offshore Chinese. The average price home that Chinese-Americans look for is \$1.5 million.<sup>64</sup>

We turn now to an overview of the history of Chinese-Americans and property ownership, starting with the ancient maritime silk trade that facilitated migration and investment. This overview will help place today's investment surge and high rates of Chinese-American home ownership into context. We will see that today's migration is a continuation of the maritime silk road. We will also see that today's investment surge is the result of both the history of early extreme property discrimination against the Chinese in the Exclusion era, and the later model assimilated minority myth of the Cold War era. By examining this history, we can fight continuing discrimination. Both contemporary Chinese real estate investment and educational enrollment fueling the US economy are reminiscent of the economic boost that early Chinese laborers provided in building the transcontinental railroad and in reclaiming land in California.

### III. THE MARITIME SILK ROAD AND EARLY CHINESE ARRIVALS IN THE US

Contemporary Chinese migration and investment in the US is a continuation of the ancient southeast China maritime silk road which was centered in the Fujian and Guangdong provinces. To this day, migrants from Guangdong and Fujian and their descendants are the largest number of US Chinese and overseas Chinese elsewhere. Unfortunately, when large numbers of Guangdong Chinese came to the US during the Qing dynasty in the 1850s, they were met with violence and legal exclusion, including property discrimination, almost as soon as they arrived.

Chinese immigration to the US can be divided into four periods: free immigration before 1882 (however, the 1875 Page Act prohibited migration of forced Asian laborers and prostitutes);<sup>65</sup> the exclusion era from 1882 to 1943; limited immigration from 1943 to 1965; and exponential immigration from 1965 to the present.<sup>66</sup> In

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63. Michael Gerrity, *Chinese-Americans Spent \$105.1 Billion on U.S. Real Estate in 2014*, WORLD PROP. J. (Aug. 24, 2015, 9:00 AM), <http://www.worldpropertyjournal.com/real-estate-news/united-states/los-angeles-real-estate-news/chinese-property-investor-data-chinese-americans-real-estate-investors-juwaicom-foreign-real-estate-investor-report-mainland-chinese-property-investors-andrew-taylor-9314.php>.

64. *Id.*

65. An Act Supplementary to the Acts in Relation to Immigration (The Page Act), Sect. 141, 18 Stat. 477, 1873-March 1875.

66. ENTRY DENIED viii (Sucheng Chan ed., 1991).

the first three eras, migration from Guangdong, one of the centers of the maritime silk road, fueled Chinese migration to the US. In the present era, migration from Fujian, another center of the maritime silk road, has driven Chinese migration.

### A. *The Maritime Silk Road*

The maritime silk road can be traced to the Qin (221-206 BC) and Han (206 BC-220 AD) dynasties. During the late Tang (618-907) and Northern Song (960-1127) dynasties, and after 1760, Guangzhou, the capital of Guangdong, was the center of foreign maritime trade.<sup>67</sup> From the Southern Song dynasty (1127-1279) until the 1700s, Quanzhou in Fujian Province was the center of foreign trade.<sup>68</sup> The maritime silk road paralleled the overland silk road<sup>69</sup> which connected Asia, Europe, the Middle East, and Africa. The maritime silk road extended as far as India and the Middle East.<sup>70</sup> Chinese gold and silk traveled to south and southeast Asia; during the Han dynasty, these were traded for items such as “glass, garnet, amber, rock crystal, beryl, agate, etched carnelian beads, gold polyhedral beads, [and] pearls.”<sup>71</sup>

In 1790, however, only the city of Canton (now Guangzhou) in Guangdong was then open for limited foreign trade; Qing dynasty Emperor Qian Long informed England’s King George III that China had no need of Western imports.<sup>72</sup>

In order to prevent loyalists from the previous Ming dynasty (1368-1644) from fleeing overseas and plotting rebellion, the Qing government also forbid outward migration, which was punishable by death.<sup>73</sup> However, many Chinese, mainly from Guangdong and Fujian provinces, left anyway.<sup>74</sup>

The 1800s were tumultuous times for China, which spurred this migration. In the waning years of the Qing Dynasty (1644-1911), corruption was rampant. China was also forced to open more ports for foreign trade after the first Opium War (1839-1842). Because British imports of tea far exceeded Chinese imports of British products, Britain distributed opium within China, sickening its population. When the Chinese resisted these illegal acts and

67. SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 7 (1991).

68. *Id.*

69. Xiong Zhaoming, *The Hepu Han Tombs and the Maritime Silk Road of the Han Dynasty*, 88 *ANTIQUITY* 1229, 1231 (2014).

70. Li Jiao, *Unprecedented Excavation Brings Maritime Silk Road to Life*, 328 *SCIENCE* 424, 424 (2010) <http://science.sciencemag.org/content/328/5977/424.short>.

71. Zhaoming, *supra* note 69, at 1233.

72. JACK CHEN, *THE CHINESE OF AMERICA* 7 (1980).

73. CHAN, *supra* note 67, at 5.

74. *Id.* at 5.

dumped opium in Canton harbor, Britain retaliated with its gunboats. After China was defeated, China signed the Treaty of Nanking, which opened five ports to foreigners, introduced extraterritoriality for foreigners in China, and obligated China to pay huge indemnities.<sup>75</sup> Under extraterritoriality rights, the US and other foreign powers formed courts in their rented zones to adjudge infractions among foreigners and between Chinese and foreigners.

The Taiping Rebellion (1850-1864) and other uprisings also led to much bloodshed and unrest. Most Chinese migrants went to Southeast Asia and were involved in lucrative trade in the equivalent of today's Philippines, Indonesia, Burma and even Mexico.<sup>76</sup> Between 1820 and 1850, only 46 China-born Chinese came to the US.<sup>77</sup> Of around 1,000,000 Chinese overseas in 1894, only 90,000 were in the US.<sup>78</sup>

Some who went to the US before 1850 were sponsored by missionaries in China. These included Yung Wing, the first Chinese graduate of Yale and any US university, who arrived in 1847.<sup>79</sup> Yung Wing was from a village near Macao and was sponsored by Rev. S.R. Brown.<sup>80</sup> After attending the Monson Academy in Massachusetts, Yung Wing became a citizen in 1852 and graduated from Yale in 1854.<sup>81</sup> He later headed the Chinese Educational Mission which brought more students to the US. In 1902, his US citizenship was revoked. His story tells of both initial hope for fruitful Chinese-American exchange in the 1800s and tragedy from the Exclusion Acts.

The 1849 California Gold Rush prompted significant numbers of Guangdong Chinese to go to California. This led to Guangdong Chinese dominating Chinese migration in the first three eras of Chinese migration to the US. While the skills of Guangdong Chinese matched the needs of a growing US economy, however, they were met with extreme discrimination, including property discrimination. Mutual aid associations were key in providing resistance to this discrimination. They did not hesitate to enlist the help of churches, local attorneys, and other sympathizers. We turn now to the 1849 Gold Rush.

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75. CHEN, *supra* note 72, at 8.

76. *Id.* at 10.

77. WEI LI, *ETHNOBURBS* 53 (2009).

78. CHEN, *supra* note 72, at 11.

79. *Id.* at 13.

80. LOREN W. FESSLER, *CHINESE IN AMERICA: STEREOTYPED PAST, CHANGING PRESENT* 8 (1983).

81. CHEN, *supra* note 72, at 13.



### B. The 1849 Gold Rush

Nine days before Mexico ceded California to the US in 1848, gold was discovered near today's Sacramento.<sup>82</sup> The Chinese found out because they were already involved with shipbuilding in California and trade in Mexico.<sup>83</sup> In 1852, 20,000 Chinese passed through the San Francisco Customs House; until the mid-1860s between 2,000 and 9,000 arrived every year.<sup>84</sup>

The Guangdong Chinese came from three areas: Sanyi, Szeyi and Xiangshan.<sup>85</sup> These areas were particularly ravaged by poverty and instability. Until World War I, 60% of all US Chinese came from one county in the Szeyi area, Taishan, which means Mountain Plateau.<sup>86</sup> This county's terrain could only feed its population four months of the year; the rest of the time Taishanese were peddlers, shopkeepers, merchants, carpenters, fish farmers, or basket weavers.<sup>87</sup> The Taishanese also found ways to irrigate fields, build stone levees and landfill dams.<sup>88</sup> These were all skills they later used in the US.

In 1860, it was faster and cheaper to reach California from Canton, China than from the East Coast!<sup>89</sup> It took two months by ship from China; it took six months by wagon from just the Missouri River.<sup>90</sup>

What both facilitated Guangdong migration and survival in the US despite severe opposition? The Chinese formed community ritual organizations which provided mutual aid.<sup>91</sup> These organizations included *huiguan*, associations which were based on the districts that the Chinese came from, and clan associations.<sup>92</sup> These associations provided welcome for arrivals, temporary lodging, credit and other banking services, ritual observances such as funerals, places to worship, dispute resolution, and care for the sick and poor.<sup>93</sup> These associations also ensured a proper burial in China; this was necessary so that descendants could fulfil their ritual obligations to their ancestors.<sup>94</sup> The earliest *huiguan* were

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82. *Id.* at 37.

83. *Id.* at 10.

84. CHAN, *supra* note 67, at 28.

85. *Id.* at 5.

86. CHEN, *supra* note 72, at 18.

87. *Id.*

88. *Id.*

89. *Id.* at 65.

90. *Id.* at 65-66.

91. CHAN, *supra* note 67, at 63.

92. *Id.* at 63-64.

93. *Id.* at 64.

94. CHEN, *supra* note 72, at 28.

formed in San Francisco in 1851.<sup>95</sup> In 1862, a *gongsuo* was formed to resolve disputes among the different associations; this became known as the “Six Companies.”<sup>96</sup> Many Christian churches also provided aid to the Chinese.<sup>97</sup>

Unfortunately, some Chinese formed tongs, which were secret societies that profited from prostitution as early as 1852, opium consumption, and gambling.<sup>98</sup> Sadly, Chinese prostitutes were usually kidnapped and enslaved.<sup>99</sup>

During the second half of the 1800s, the majority of Chinese lived in California.<sup>100</sup> From 1843-1883, two thirds of US gold production came from California, or “\$1,200 million worth.”<sup>101</sup> It is estimated that at their peak, Chinese were 25% of miners.<sup>102</sup> In 1860, 24,000 out of 83,000 miners were Chinese; in 1870, 17,000 out of 30,000 miners were Chinese.<sup>103</sup> Merchants supplied the needs of the miners, and became the wealthiest members of Chinese-American communities.<sup>104</sup> In the Confucian system, scholars-gentry were the elite in China and merchants ranked below peasants; in the US, merchants were able to achieve social status, power and wealth.<sup>105</sup> From 1850-1882, around 47% of Chinese returned to China; this was similar to the return rate for European immigrants.<sup>106</sup>

Thus, the current concentration of Chinese in California today parallels the large number of Chinese in California during the first migration era. Today’s California Chinese, along with all Californians, benefit greatly from the early labors of the Guangdong Chinese. However, these Chinese laborers faced much extreme violence and property discrimination which we will discuss next.

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95. CHAN, *supra* note 67, at 64.

96. *Id.* at 65.

97. For example, Rev. William Speer, a Presbyterian missionary, spoke out against anti-Chinese legislation in his bilingual newspaper. Charles J. McClain, Jr., *The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850-1870*, 72 CAL. L. REV. 529, 546-47 (1984).

98. JUDY YUNG, UNBOUND FEET: A SOCIAL HISTORY OF CHINESE WOMEN IN SAN FRANCISCO 30 (1995).

99. *Id.* at 27.

100. CHAN, *supra* note 67, at 28.

101. CHEN, *supra* note 72, at 52.

102. *Id.* at 51.

103. *Id.*

104. CHAN, *supra* note 67, at 30.

105. *Id.* at 66-67.

106. MARISA MOSHIER ET. AL., SURVEYLA: CHINESE AMERICAN HISTORIC CONTEXT STATEMENT CITY OF LOS ANGELES DEPARTMENT OF CITY PLANNING OFFICE OF HISTORIC RESOURCES 2 (Sept. 2013), [http://ohp.parks.ca.gov/pages/1054/files/Chinese%20American%20Context%209\\_25\\_2013.pdf](http://ohp.parks.ca.gov/pages/1054/files/Chinese%20American%20Context%209_25_2013.pdf).

IV. VIOLENCE, ANTI-CHINESE LEGISLATION,  
AND RESISTANCE

In general, violence against Chinese in the US, and extreme property discrimination, paralleled economic downturns where Chinese were scapegoated by Euro-Americans.<sup>107</sup> It was also fueled by political movements to rid the US of the Chinese.<sup>108</sup> The Chinese were often without police protection.<sup>109</sup> The *huiguan* resisted by hiring attorneys to make their case in US courts. Unfortunately, Chinese miners in Australia also faced violence and anti-Chinese legislation.<sup>110</sup>

California imposed the Foreign Miners' Tax in 1850 and 1852.<sup>111</sup> Chinese miners were preyed upon; they were overcharged, and routinely robbed and beaten.<sup>112</sup> The foreign miners' tax became California's largest source of revenue (25-50 percent).<sup>113</sup> In 1853, representatives of the Chinese district associations, along with an attorney, appeared before the California legislature to voice their grievances about violence against the Chinese and court hesitation to receive Chinese testimony.<sup>114</sup> Unfortunately, in 1854 the law was amended to make the tax applicable only to Chinese.<sup>115</sup> The US Supreme Court declared the tax unconstitutional in 1870, but by then the Chinese had paid \$5 million, which was 85% of the tax collected; the Chinese never received a refund.<sup>116</sup> Because of anti-Chinese violence, Chinese also retreated to abandoned mines that other miners no longer wanted to mine.<sup>117</sup>

In the 1854 case of *People v. Hall*, three Chinese testified against Hall for murdering a Chinese miner, Ling Sing; the California Supreme Court ruled that Chinese could not testify against whites and Hall was freed.<sup>118</sup> This left Chinese defenseless against aggressors.

107. CHAN, *supra* note 67, at 53.

108. *Id.*

109. MOSHIER, ET. AL., *supra* note 106, at 54.

110. See Mae M. Ngai, *Chinese Gold Miners and the 'Chinese Question' in Nineteenth-Century California and Victoria*, 101 J. AM. HIST. 1082 (2015), <http://jah.oxfordjournals.org/content/101/4/1082.full?keytype=ref&ijkey=DyFf6sVoTJgA1U2>.

111. CHAN, *supra* note 67, at 46; McClain, *supra* note 97, at 539; Act of May 4, 1852, ch. 37, 1852 Cal. Stat. 84, *repealed and superseded by* Act of Mar. 30, 1853, ch. 44, 1853 Cal. Stat. 62 (officially repealed, Act of Apr. 26, 1939, ch. 93, 1939 Cal. Stat. 1067, 1215).

112. CHAN, *supra* note 67, at 46.

113. CHEN, *supra* note 72, at 48.

114. Charles J. McClain & Laurene Wu McClain, *The Chinese Contribution to American Law*, in ENTRY DENIED 4 (Sucheng Chan ed., 1991).

115. *Id.*

116. CHEN, *supra* note 72, at 48.

117. *Id.* at 48-49.

118. *People v. Hall*, 4 Cal. 399, 399 (Cal. 1854).

In 1860, the Chinese district associations requested assistance from the San Francisco Chinese Presbyterian mission, and Rev. A.W. Loomis helped them hire a lobbyist to appear regularly for them before the Sacramento legislature.<sup>119</sup>

In 1862, it was noted that at least 88 Chinese miners were murdered, eleven by collectors of the Foreign Miners' Tax.<sup>120</sup>

In 1862, the California legislature passed the Capitation Tax, or Chinese Police Tax to tax other Chinese laborers.<sup>121</sup> One plaintiff, Lin Sing, sued to recover the tax he had paid; overturning the lower courts, the California Supreme Court held that the tax was a "measure of special and extreme hostility to the Chinese" and impeded on the federal government's exclusive right to regulate foreign commerce.<sup>122</sup>

Few Chinese women made the voyage to the US; many women had bound feet during the Qing dynasty.<sup>123</sup> Among the women who did travel to the US, many were presumed prostitutes. In 1866, the California legislature passed "An Act for the Suppression of Chinese Houses of Ill Fame," i.e., brothels.<sup>124</sup> This Act stated that because Chinese prostitution was a nuisance, landlords who leased to brothels were guilty of a misdemeanor and such leases were invalid.<sup>125</sup> Thereafter, a compromise was made and Chinese prostitutes were allowed to remain in certain localities.<sup>126</sup>

Thus the Gold Rush brought many Chinese miners to the US, where they were met with violence and harsh taxes. The Chinese resisted through their ritual associations and the help of churches and local attorneys. After the Gold Rush, many Chinese from Guangdong were recruited to build the transcontinental railroads. Although their labor would make the railroads and others vast landowners, the Chinese faced extreme property discrimination. Many Chinese also died while building the railroads. Unfortunately, this pattern of benefiting others' landholdings, while suffering extreme property deprivation themselves, would repeat itself throughout Chinese-American history. We turn now to the building of the transcontinental railroad.

119. McClain, *supra* note 97, at 552.

120. CHAN, *supra* note 67, at 48.

121. McClain, *supra* note 97, at 555. Act of Apr. 26, 1862, ch. 339, 1862 Cal. Stat. 462 (officially repealed, Act of May 16, 1939, ch. 154, 1939 Cal. Stat. 1274, 1376).

122. McClain & McClain, *supra* note 114, at 6-7. Lin Sing v. Washburn, 20 Cal. 534 (Cal. 1862).

123. YUNG, *supra* note 98, at 18.

124. Sucheng Chan, *Exclusion of Chinese Women*, in ENTRY DENIED 97 (Sucheng Chan ed., 1991).

125. *Id.*

126. *Id.* at 98.

### V. BUILDING OF THE TRANSCONTINENTAL RAILROAD (1863-1869)

While there was a shortage of European-American workers in the 1850s and 1860s, Chinese were somewhat welcome laborers; they performed treacherous and sometimes fatal work that other laborers often shunned, in particular on the first transcontinental railroad. However, after European-Americans thus gained easy access to California, they arrived in large numbers and promptly relegated Chinese to menial work.<sup>127</sup> They accomplished this through legislation, taxes, boycotts, and violence.<sup>128</sup> Unfortunately, this pattern of oppression set the stage also for extreme property discrimination. For example, while the owners of the railroad companies amassed millions of acres of land, Chinese laborers were run out of towns. Even so, Chinese were instrumental in reclaiming millions of acres of California land that were swamps or desert; this was necessary because of the concentration of land in the hands of the railroad owners. The Chinese survived because of their ritual associations and diets.

As mentioned above, in 1860 it was faster and cheaper to reach California from Guangzhou, China than from the East Coast!<sup>129</sup> It took two months by ship from China; it took six months by wagon from just the Missouri River.<sup>130</sup> If California could be linked to the East by rail, the journey would be only one week.<sup>131</sup> In the 1860s, Congress authorized the Central Pacific Railroad Company to build part of the transcontinental railroad.<sup>132</sup> The railroad companies were not only paid money, but ten square miles of land for each mile of track laid.<sup>133</sup>

In response to the Central Pacific Railroad Company's recruitment, around 40,000 Chinese arrived in the late 1860s.<sup>134</sup>

Few white workers wanted to work on the western portion of the railroad. Three out of five laborers recruited by the Central Pacific Railroad quit immediately.<sup>135</sup> At hearings for the 1876 Joint Congressional Committee on Chinese Immigration, it was reported that these white laborers ". . . would stay until pay day, get a little money, get drunk and clear out."<sup>136</sup>

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127. CHAN, *supra* note 67, at 25.

128. *Id.*

129. CHEN, *supra* note 72, at 65.

130. *Id.* at 65-66.

131. *Id.* at 66.

132. FESSLER, *supra* note 80, at 97.

133. CHEN, *supra* note 72, at 82.

134. CHAN, *supra* note 67, at 28.

135. CHEN, *supra* note 72, at 66.

136. *Id.* at 67.

Finally, Charles Crocker, who was in charge of construction for the Central Pacific Railroad, convinced his business partners, Leland Stanford, C.P. Huntington, and Mark Hopkins, to hire Chinese to build the railroad.<sup>137</sup> In 1861 Stanford was also the first Republican Governor of California, and later in 1885, he and his wife founded Stanford University. Although he had previously supported Chinese exclusion from California, Stanford later reported in 1865 about the Chinese, "As a class, they are quiet, peaceable, patient, industrious, and economical . . . . We find them organized for mutual aid and assistance. Without them, it would be impossible to complete the western portion of this great national enterprise within the time required by the Act of Congress."<sup>138</sup>

It is estimated the largest number of Chinese laborers employed by the transcontinental railroad was 10,000 to 15,000.<sup>139</sup> In 1868, at least 80% Central Pacific Railroad workers were Chinese.<sup>140</sup> Most were former miners.<sup>141</sup> For the Central Pacific Railroad, they were ideal workers because building the western half of the railroad involved blasting through high mountain ranges<sup>142</sup> and Chinese laborers received much lower wages than European laborers.<sup>143</sup>

While the eastern part of the railroad was built by the Union Pacific Company with mainly Irish immigrants and Civil War veterans over Nebraska plains, the western portion had to traverse "the granite mountains and gorges of the Sierra Nevada and Rockies ... [and] had to be literally carved out of the Sierra granite, through tunnels and on rock ledges cut on the sides of the precipices."<sup>144</sup> In terms of wages, in 1867 Chinese workers were paid \$30 a month and no board even if they performed skilled work; unskilled Euro-American workers received \$30 a month and board, which was around \$1 a day.<sup>145</sup> Chinese also were whipped by overseers.<sup>146</sup> It is estimated that because of their lower wages, the Chinese saved the railroad company around \$5 million.<sup>147</sup> The Chinese had their own cooks and this proved to sustain them; in

137. *Id.*

138. *Id.* at 68.

139. CHAN, *supra* note 67, at 30. Chinese R.R. Workers in N. Am. Project, *FAQ's*, STAN. U., <http://web.stanford.edu/group/chineserailroad/cgi-bin/wordpress/faqs/> (last visited Apr. 3, 2016).

140. *Workers of the Central Pacific Railroad*, PBS.ORG, <http://www.pbs.org/wgbh/americanexperience/features/general-article/tcrr-cprrr/> (last visited Apr. 3, 2016).

141. CHAN, *supra* note 67, at 30.

142. *Id.* at 30-31.

143. *Id.* at 30.

144. *Id.* at 69.

145. *Id.* at 81.

146. *Id.*

147. CHEN, *supra* note 72, at 74.

contrast to a diet of beef and potatoes for the Caucasian workers, the Chinese ate rice, noodles, fish, oysters, vegetables, and dried fruit, and drank lukewarm tea.<sup>148</sup>

It is likely that over a thousand Chinese laborers died doing the treacherous work of blasting through mountain ranges.<sup>149</sup> Despite their death defying work, when the transcontinental railroad was completed in 1869, the Chinese were not invited to the ceremonies.<sup>150</sup> Also, after the railroad was completed, the Chinese were not allowed free passage on the trains.<sup>151</sup> As a result, thousands of them traveled westward on foot, and found work as migrant workers and farmers.<sup>152</sup> Some were also instrumental in building other railroads throughout the US.<sup>153</sup>

After the transcontinental railroads were built, it cost only \$40 to cross the continent; many immigrants went west to California.<sup>154</sup> When California's economy went into depression in 1873, the Chinese were scapegoated.<sup>155</sup>

In contrast to the plight of the Chinese rail workers, those who owned the railroad companies profited handsomely and became vast landowners. Because the railway companies were compensated with land for building railroad tracks, "[f]rom 1850 to 1880 [they] acquired as land grants 180 million acres of land alongside their tracks, or almost one-tenth the area of the United States. In California alone they held 20,000,000 acres."<sup>156</sup> The Homestead Act of 1862 set aside other limited land for settlers who would farm and develop the land; after these were settled, speculators, brokers and the railroad companies profited even more.<sup>157</sup> In 1871, only 516 men owned 8,685,439 acres in California.<sup>158</sup>

Why did the Chinese then become agricultural workers? By the mid-1870s, wheat had become California's largest employer and income producer.<sup>159</sup> By 1886, around 30,000 Chinese made up 87.5% of California's agricultural laborers.<sup>160</sup> Chinese farmers were employed by large growers.<sup>161</sup> Charles Nordhoff, journalist and author of "California (For Health, Pleasure, and Residence)" (1873)

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148. *Id.* at 68.

149. Chinese R.R. Workers in N. Am. Project, *supra* note 139.

150. CHAN, *supra* note 67, at 31.

151. *Id.* at 32.

152. *Id.*

153. CHEN, *supra* note 72, at 76-77.

154. *Id.* at 75-76.

155. *Id.* at 76.

156. *Id.* at 82.

157. *Id.*

158. *Id.*

159. *Id.* at 83.

160. *Id.*

161. *Id.* at 91.

wrote about Chinese farmers, "They learn quickly, are accurate, painstaking, and trustworthy, and especially as gardeners and for all hand-labor, they are excellent. White laborers are—as in every thinly settled country—unsteady and hard to keep."<sup>162</sup>

Because of the ownership of California land in a few hands, many Chinese also were hired to reclaim California's "swamps and fertile, although arid, deserts, and especially the tule reed lands in the Sacramento and San Joaquin river deltas and bordering floodlands."<sup>163</sup> They reclaimed five million acres of tule land, which then sold for \$100 an acre instead of \$1.<sup>164</sup> The Chinese came from the Pearl River Delta in Guangdong and knew how to drain, reclaim, and prevent flooding.<sup>165</sup>

In hearings in San Francisco for the Chinese Exclusion Act, California's surveyor general stated that Chinese labor on the railways and tule land reclamation was worth over \$289 million to the California economy.<sup>166</sup> As anti-Chinese sentiment increased, however, Chinese were relegated to work in "laundries, restaurants, and small-scale merchandising."<sup>167</sup> Eventually, these businesses allowed Chinese to move eastward.<sup>168</sup> However, in 1886 Euro-Americans boycotted Chinese manufactured goods.<sup>169</sup> Interestingly, by the 1940s there were almost no Chinese farm workers.<sup>170</sup>

Compared to migrants from other countries, the Chinese were few in number. Thus their accomplishments were even more striking. During the 1850s while 2.5 million immigrants arrived from Europe, there were only 35,000 Chinese in the US.<sup>171</sup> The overall US population was around 31.5 million people.<sup>172</sup> Around the time of the 1860s half of the Chinese who came returned to China, and half remained.<sup>173</sup> Before the 1880s there were around 300,000 Chinese who had traveled to the US; two thirds returned to China.<sup>174</sup> In the 1880 census, there were 105,465 Chinese in the US; this was .21 percent of the total population.<sup>175</sup>

Thus, the building of the first transcontinental railroad, and the reclamation of land by the Chinese were both major feats and

162. *Id.* at 84 (quoting CHARLES NORDHOFF, CALIFORNIA (Reprint of 1873 ed., 1974)).

163. *Id.* at 86.

164. *Id.* at 87.

165. *Id.* at 86.

166. *Id.* at 87.

167. *Id.* at 115.

168. CHAN, *supra* note 67, at 33.

169. *Id.* at 40.

170. CHEN, *supra* note 72, at 91.

171. *Id.* at 15.

172. *Id.* at 16.

173. *Id.* at 15.

174. *Id.* at 133.

175. *Id.*



contributions to the California and US economy by the Guangdong Chinese. In particular, the railroad companies and other elites benefited by becoming vast landowners. Unfortunately, these Chinese feats were followed by scapegoating of the Chinese when the economy turned.

We will now discuss two points of legal refuge in the extreme discrimination that Chinese faced in the US before the Exclusion Era, the 1868 Burlingame Treaty and the 1870 Civil Rights Act. These would be used in the legal battles the Chinese waged against discrimination, including extreme property discrimination. Unfortunately, these high points were followed by the Chinese Exclusion Acts, the nadir of discrimination, including extreme property discrimination, against the Chinese.

## VI. THE 1868 BURLINGAME TREATY

Shortly after the US Civil War and during the construction of the first transcontinental railroad, the 1868 Burlingame Treaty between the US and China was signed. Its architect, US statesman Anson Burlingame, used abolitionist arguments to advocate for equal treatment for Chinese in the US. In the same way, equal property access for Chinese today should be used to increase property access for all minorities today.

The 1868 Burlingame Treaty, though short-lived, was one of few favorable legal developments for the US Chinese in the 1800s. The Burlingame Treaty was the first equal treaty that China signed with a Western power. This Treaty promised equal treatment of Chinese migrants with those of the most favored nation.<sup>176</sup>

The previous treaties between China and the US were the Treaty of Wangxia in 1844 and the Treaty of Tianjin in 1858.<sup>177</sup> The Treaty of Wangxia gave the US most favored nation status, and extraterritorial rights.<sup>178</sup> This meant that Americans in China would not be tried by Chinese courts, but by US courts in China.<sup>179</sup> The Treaty of Tianjin, also signed by England, France, and Russia, opened up more Chinese ports for trade and areas of missionary work, required China to pay more indemnities after the Second Opium War, and legalized importation of opium.<sup>180</sup>

176. The Burlingame Treaty, U. S.-China, 16 Stat. 739, July 28, 1868.

177. CHEN, *supra* note 72, at 128.

178. DONG WANG, CHINA'S UNEQUAL TREATIES: NARRATING NATIONAL HISTORY 15-16 (2005), <https://books.google.com/books?id=mTVZjRfek2lC&printsec=frontcover#v=onepage&q&f=false>. Wangxia was then known as Wanghia. *Id.*

179. *See id.*, at 10 (describing rights granted to foreign powers under the unequal treaties).

180. *See id.* at 16 (discussing the Treaty of Tianjin). Tianjin was then spelled Tientsin. For a detailed discussion of the Treaty of Tianjin, *see id.*

Anson Burlingame, the Burlingame Treaty's architect, was the son of a Methodist preacher and a graduate of Harvard Law School.<sup>181</sup> He was an ardent abolitionist and famous orator who served three terms in Congress.<sup>182</sup> In the 1856 incident in which South Carolina Congressman Preston Brooks viciously beat Massachusetts Senator Charles Sumner with a cane after Sumner's anti-slavery diatribe, Burlingame came to Sumner's defense.<sup>183</sup> Burlingame not only gave a passionate speech in Congress against Brooks, but accepted Brooks' challenge to a duel.<sup>184</sup> Burlingame set the duel in Canada, and Brooks failed to show.<sup>185</sup>

In 1861, President Lincoln appointed Burlingame the US ambassador to Peking (now Beijing) for six years.<sup>186</sup> Burlingame spearheaded the Cooperative Policy to treat China in a "peaceful manner and [uphold China's] sovereignty and territorial integrity."<sup>187</sup> This policy would structure China-West relations on diplomatic terms, and not violence.<sup>188</sup>

In 1867, the Chinese were so impressed by Burlingame that Prince Gong, head of the Zongli Yamen which supervised foreign affairs, asked Burlingame to represent China in negotiations with the US and other Western treaty powers.<sup>189</sup> In Mrs. Burlingame's correspondence with her son, she quoted one Chinese official's request to her husband, "You must be our friend in foreign lands where we are so misunderstood."<sup>190</sup>

From 1868 to 1870, Burlingame and two Chinese officials, Zhi Gang and Sun Jiagu, toured first the US and then Europe.<sup>191</sup> In the US, Burlingame delivered speeches in San Francisco, New York, and Washington.<sup>192</sup> Burlingame was a staunch Republican and deft politician; he had to avoid Reconstruction partisanship and the Andrew Jackson impeachment hearings, and also use his Republican friends to win favor for the Chinese.<sup>193</sup>

181. Tim Brady, *Anson Burlingame: Diplomat, Orator*, 7 J. AVIATION/AEROSPACE EDUC. & RES., 15, 17 (1997), [commons.erau.edu/cgi/viewcontent.cgi?article=1192&context=jaaer](https://commons.erau.edu/cgi/viewcontent.cgi?article=1192&context=jaaer).

182. John Schrecker, *For the Equality of Men- For the Equality of Nations': Anson Burlingame and China's First Embassy to the United States, 1868*, 17 J. AM.-EAST ASIAN REL. 9, 10, 18 (2010).

183. *Id.* at 10.

184. *Id.*

185. Brady, *supra* note 181, at 17.

186. CHEN, *supra* note 72, at 128.

187. Schrecker, *supra* note 182, at 10.

188. *Id.* at 10-11.

189. Warren B. Walsh, *The Beginnings of the Burlingame Mission*, 4 FAR EASTERN Q. 274, 274 (1945).

190. *Id.* at 276.

191. Schrecker, *supra* note 182, at 9.

192. *Id.* at 15-16.

193. *Id.*

Burlingame “aimed to influence diplomatic, commercial, and religious interests, the three major groups that determined America’s Chinese policy.”<sup>194</sup> In speeches he equated justice for China with justice for Blacks<sup>195</sup> by using such language as “. . . for the equality of men—for the equality of nations.”<sup>196</sup> This echoed earlier abolitionist arguments that tied the anti-slavery movement to “an international drive toward freedom and progress.”<sup>197</sup> Two Chinese members of the Mission, Zhi Gang and Zhang Deyi, were impressed by American government and politics, but dismayed by the poor treatment of Blacks and Chinese.<sup>198</sup> San Francisco Chinese community leaders implored Zhi Gang to correct these injustices and for the first time, the plea of US Chinese was heard in Washington.<sup>199</sup>

The Burlingame Treaty granted the Qing government the right to appoint consuls in the US to “look after the interests of Chinese trade and immigrants.”<sup>200</sup> Article IV allowed for mutual freedom of worship for citizens in the other’s country. Article VI allowed for most-favored-nation treatment for such immigrants or travelers.<sup>201</sup> The Treaty did not prohibit naturalization,<sup>202</sup> which would have allowed it. However, upon motion from California Senator John Conness, the last sentence of Article VI stated that the Treaty did not confer naturalization upon Chinese in the US.<sup>203</sup> Article VII allowed Chinese “all the privileges of the public educational institutions under the control of the government of the United States.”<sup>204</sup>

Coincidentally, the same day that the Treaty was signed, July 28, 1868, the secretary of state proclaimed that the 14<sup>th</sup> Amendment was part of the Constitution.<sup>205</sup>

Thus, the Burlingame Treaty was a bright spot in Chinese-American legal history, and resistance to extreme property discrimination. The Treaty highlighted the equality of all people and nations. Unfortunately, it was later renegotiated to allow for the Chinese Exclusion Acts. The 1870 Chinese-American Civil Rights Act was also favorable to Chinese; however, it too was

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194. *Id.* at 19.

195. *Id.* at 20.

196. *Id.* at 21.

197. *Id.* at 21-22.

198. *Id.* at 22.

199. *Id.* at 27.

200. CHEN, *supra* note 72, at 128; The Burlingame Treaty, *supra* note 176, Article III.

201. *Id.* at art. VI.

202. CHEN, *supra* note 72, at 129.

203. Schrecker, *supra* note 182, at 30.

204. The Burlingame Treaty, *supra* note 176, at Article VII.

205. Schrecker, *supra* note 182, at 27.

ignored and followed by anti-Chinese legislation and extreme violence. We turn now to the 1870 Chinese-American Civil Rights Act.

#### VII. THE 1870 CHINESE AMERICAN CIVIL RIGHTS ACT AND ANTI-CHINESE LEGISLATION

In 1869, a Congressional delegation visited San Francisco on a fact-finding mission and met with Chinese community leaders and Caucasian businessmen.<sup>206</sup> Fung Tang, a Chinese merchant, spoke on behalf of the Chinese leaders and raised concerns about the foreign miners' tax, commutation tax, and the inability to give testimony in court; these were impediments to increased commerce with China.<sup>207</sup>

The following year, the 1870 Naturalization Act extended citizenship eligibility to "aliens of African nativity and to persons of African descent," but not to any other non-whites.<sup>208</sup>

However, in 1870 Congress' civil rights acts protected both emancipated slaves and Chinese.<sup>209</sup> In fact, the 1870 Civil Rights Act, Section 16 has been called the Chinese-American Civil Rights Act.<sup>210</sup> And it appears to be a response to the plea of the San Francisco Chinese merchants the previous year.<sup>211</sup> Specifically, it protected Chinese from "penalties, taxes, licenses and exactions of every kind."<sup>212</sup> It states,

Sec. 16. And be it further enacted, That all persons within the jurisdiction of the United States shall have the same right in every State and Territory in the United States to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding. No tax or charge shall be imposed or enforced by any State upon any person immigrating thereto from a foreign country which is not

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206. McClain, *supra* note 97, at 564-65.

207. *Id.* at 565.

208. Naturalization Act of 1870, 16 Stat. 254, July 14, 1870.

209. McClain & McClain, *supra* note 114, at 8.

210. RICHARD M. VALELLY, *THE TWO RECONSTRUCTIONS: THE STRUGGLE FOR BLACK ENFRANCHISEMENT* 106 (2004).

211. McClain, *supra* note 97, at 566-67.

212. McClain & McClain, *supra* note 114, at 8 (citing Section 16, Civil Rights Act of 1870, 16 Stat. 144 (1870)).

equally imposed and enforced upon every person immigrating to such State from any other foreign country; and any law of any State in conflict with this provision is hereby declared null and void.

Despite the Burlingame Treaty and 1870 Civil Rights Act protecting the Chinese, including their property rights, various governmental bodies continued to pass anti-Chinese legislation. California's 1879 Constitution was especially egregious. Extreme violence was also used against the Chinese.

In 1870, San Francisco passed an ordinance requiring every lodging house to have at least five hundred cubic feet of air for each occupant; this was only enforced against the Chinese.<sup>213</sup> In 1876, the state passed a similar law.<sup>214</sup> In the case of *Ah Wing*, the federal court decided that this was an appropriate exercise of the state's police power of public health and safety.<sup>215</sup>

In 1871, the largest mass lynching in the US occurred in Los Angeles' Chinatown. An internal Chinese feud led to wounding of a police officer. Then a mob of "Anglo, European and Mexican residents" descended.<sup>216</sup> They lynched 15 Chinese, shot four and wounded two others. They also destroyed and looted homes.<sup>217</sup> The sentences of the eight convicted rioters were overturned on "legal technicalities."<sup>218</sup>

In 1875, Congress passed the Page Act, which prohibited the entry of "Chinese, Japanese, and Mongolian contract laborers, women for the purpose of prostitution, and felons."<sup>219</sup> In 1870, there were over 2,000 prostitutes out of a total Chinese women population of almost 4,000.<sup>220</sup>

By the early 1880s, Chinese prostitutes were around 800 out of almost 4,000 Chinese women in California.<sup>221</sup>

In 1878, the US Supreme Court ruled that Chinese could not become citizens in *In re Ah Yup*.<sup>222</sup>

In 1879, California's new state constitution contained Article XIX, entitled "Chinese." It declared the presence of Chinese to be "dangerous or detrimental to the well-being or peace of the State" and authorized the legislature to ban employment of Chinese and to

213. *Id.* at 9.

214. *Id.* at 9-10.

215. *Id.* at 10.

216. MOSHIER, ET. AL., *supra* note 106, at 6.

217. CHAN, *supra* note 67, at 48-49.

218. MOSHIER, ET. AL., *supra* note 106, at 6.

219. CHAN, *supra* note 67, at 54.

220. Chan, *supra* note 124, at 107.

221. *Id.*

222. 1 Fed. Cas. 223 (D. Cal. Cir. Ct. 1878).

remove them from the state, or to limit their places of residence.<sup>223</sup> Article I, section 17, prohibited property rights to Chinese. It stated, "Foreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this state, shall have the same rights with respect to the acquisition, possession, enjoyment, transmission, and inheritance of property as native-born Citizens."

In 1879, California passed a law that required towns and cities to remove Chinese; this was declared unconstitutional by the US Circuit Court in California because it violated the Fourteenth Amendment and the Burlingame Treaty.<sup>224</sup>

Extreme property discrimination was often wed to employment discrimination. As noted earlier, the Chinese had few options but to work in laundries. In the 1870s and 1880s, around 240 out of 320 laundries were owned by the Chinese.<sup>225</sup> Between 1873 and 1884, the San Francisco Board of Supervisors passed fourteen laws to stop their spread.<sup>226</sup> In July 1877, white Californian mobs attacked Chinese laundries.<sup>227</sup> San Francisco's Board of Supervisors enacted ordinances in 1880 that were neutral on their face, but designed to

223. CAL. CONST. art. XIX (1879). The complete text is here:

ARTICLE XIX. CHINESE. SECTION 1. The Legislature shall prescribe all necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which persons may reside in the State, and to provide the means and mode of their removal from the State, upon failure or refusal to comply with such conditions; provided, that nothing contained in this section shall be construed to impair or limit the power of the Legislature to pass such police laws or other regulations as it may deem necessary.

SEC. 2. No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision.

SEC. 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crime.

SEC. 4. The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism is a form of human slavery, and is forever prohibited in this State, and all contracts for coolie labor shall be void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution. This section shall be enforced by appropriate legislation.

224. CHAN, *supra* note 67, at 56.

225. McClain & McClain, *supra* note 114, at 12 (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 358-59 (1886)).

226. CHAN, *supra* note 67, at 46.

227. McClain & McClain, *supra* note 114, at 12.

curb Chinese laundries.<sup>228</sup> They required persons operating a laundry in a wooden building to obtain a license; however, Chinese applications were not approved while white applications were.<sup>229</sup> In the 1870s, the Chinese had formed a laundry guild which had a legal fund.<sup>230</sup> The guild retained Hall McAllister, one of the century's great trial lawyers, to represent Yick Wo, who had been arrested for operating his laundry after his license was denied.<sup>231</sup> Yick Wo had operated his laundry for twenty-two years prior to the ordinance and had always complied with public safety measures.<sup>232</sup> In the landmark *Yick Wo* case, the US Supreme Court held that even though the laundry ordinances were neutral on their face, as applied they denied equal protection to Yick Wo, that protected noncitizens as well as citizens.<sup>233</sup>

Thus, in spite of the Burlingame Treaty and the Chinese Civil Rights Act, the 1870s marked violence and extreme discrimination, including property discrimination against the Chinese. California's anti-Chinese legislation was particularly egregious. The California Constitution denied property rights to the Chinese. We now turn to the Exclusion Acts and their aftermath. Sadly, these set the stage for even further violence and discrimination, including property discrimination. We will also discuss how the Chinese resisted the Exclusion Acts. The Exclusion era lasted from 1882 through 1943, and was followed by the Cold War era which allowed Chinese-Americans entry into white suburbs. This Cold War development was based on the model assimilated minority myth.

#### VIII. THE EXCLUSION ACTS AND FURTHER VIOLENCE

The Exclusion Era, from 1882-1943, marked the nadir of discrimination, including extreme property discrimination, against the Chinese in the US. This section will discuss major events during this era, and the next section will discuss several types of extreme property discrimination that Chinese faced during this era: segregation, restrictive covenants, and alien land laws. Despite severe legal and physical opposition, the Chinese also resisted the Exclusion Acts, which finally ended in 1943 during World War II when China was the US' ally.

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228. *Id.*

229. *Id.* at 13.

230. *Id.*

231. *Id.* at 14.

232. *Id.* at 13.

233. *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886).

In 1880, there were around 105,000 Chinese in the US.<sup>234</sup> In California, around 10% of the population was Chinese, and one quarter of the labor force was Chinese.<sup>235</sup>

Succumbing to political pressure from California, and using the rhetoric of supporting the working class, politicians across the country began to support Chinese exclusion.<sup>236</sup>

In 1880, the US negotiated a new treaty with China that allowed the US to unilaterally limit immigration of Chinese laborers.<sup>237</sup> In 1882, Congress passed the Chinese Exclusion Act, which prohibited the entry of Chinese laborers for ten years, but allowed “merchants, students and teachers, diplomats and travelers . . . .”<sup>238</sup> It is estimated that from 1850-1940, 18,600 Chinese students studied in the US.<sup>239</sup>

“The Chinese Exclusion Act was the foremost racist law passed after the Civil War” and legitimated discrimination and segregation across the country.<sup>240</sup> It was also the first immigration act that limited immigration. It was a prelude to the 1896 *Plessy v. Ferguson* case that upheld “separate but equal” public facilities for Blacks and Whites.<sup>241</sup>

Unfortunately, after the 1882 Exclusion Act, violence against Chinese escalated further. In 1884, in Rock Springs, Wyoming, 28 Chinese miners were massacred by a mob by burning and shooting; 79 huts were destroyed also by arson.<sup>242</sup> In 1885, the Chinese were run out of Tacoma, Washington and their Chinatown burned down.<sup>243</sup> In 1885, they “were forced to leave downtown Pasadena within twenty-four hours.”<sup>244</sup> In 1885 and 1886, federal troops were called into Seattle to quell anti-Chinese mobs.<sup>245</sup> During the 1880s, all around the American West, Chinese were run out of town, murdered, and their Chinatowns torched.<sup>246</sup>

In 1888, Congress decided that Chinese laborers who left the US could only return if they owned “at least \$1,000 in property or had

234. LI, *supra* note 77, at 54.

235. *Id.*

236. ANDREW GYORY, CLOSING THE GATE: RACE, POLITICS, AND THE CHINESE EXCLUSION ACT 256 (1998).

237. CHAN, *supra* note 67, at 54.

238. *Id.*

239. Zhang Yufa, *Returned Chinese Students From America and the Chinese Leadership (1846—1949)*, 35 CHINESE STUDIES IN HIST. 52, 53 (2002).

240. GYORY, *supra* note 236, at 257.

241. *Id.* at 258.

242. CHAN, *supra* note 67, at 49.

243. *Id.* at 50.

244. LI, *supra* note 77, at 65.

245. Mark L. Lazarus III, *An Historical Analysis of Alien Land Law: Washington Territory & State 1853-1889*, 12 U. PUGET SOUND L. REV. 197, 221-22 (1989).

246. CHAN, *supra* note 67, at 51.



a wife in the United States.”<sup>247</sup> Then the same year Congress enacted the Scott Act that provided that Chinese laborers who had left could not return at all.<sup>248</sup> Those Chinese who were allowed to enter were required to present a “Section 6” or “Canton” certificate from the Chinese government.<sup>249</sup>

In 1889, the US Supreme Court upheld the Exclusion Act’s constitutionality.<sup>250</sup> The Chinese Exclusion Act was extended in 1892 and 1902 and then made permanent in 1904.<sup>251</sup> In 1890, San Francisco tried to remove Chinatown from its borders; this also failed Constitutional muster.<sup>252</sup> I will discuss this case further below.

How did the Chinese resist the Exclusion Acts? In 1882, in the face of the Chinese Exclusion Act and at the urging of the Chinese consul in San Francisco, the Chinese Consolidated Benevolent Association (*Zhonghua Huiguan*) was formed; this became known as the “Chinese Six Companies.”<sup>253</sup> The Chinese Six Companies had a “legal war chest of some five thousand dollars”<sup>254</sup> and battled anti-Chinese legislation.<sup>255</sup> The Six Companies and the Chinese consul in San Francisco had attorneys on retainer to aid them.<sup>256</sup> Chinese Consolidated Benevolent Associations were set up in other cities, too.<sup>257</sup>

During the Exclusion Era, 1,100 cases involving Chinese plaintiffs or defendants were reported in the Federal Reporter, and 170 in U.S. Reports.<sup>258</sup> Ninety percent of these cases involved entry into the US.<sup>259</sup> By 1891, Chinese had filed 7,080 federal court petitions in San Francisco to challenge denial of entry; they won in 85 to 90 percent of cases.<sup>260</sup> Between 1891 and 1905, the federal courts “in San Francisco heard 2,657 Chinese *habeas corpus* cases.”<sup>261</sup> Around six to eight attorneys handled these cases and were paid seventy-five to one-hundred dollars per case.<sup>262</sup>

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247. *Id.* at 54.

248. *Id.* at 55.

249. Lucy E. Salyer, “Laws Harsh as Tigers”: Enforcement of the Chinese Exclusion Laws, 1891-1924, in ENTRY DENIED 60-61 (Sucheng Chan ed., 1991).

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

251. CHAN, *supra* note 67, at 55.

252. *Id.* at 56.

253. CHAN, *supra* note 67, at 65.

254. McClain & McClain, *supra* note 114, at 10.

255. CHAN, *supra* note 67, at 65.

256. Salyer, *supra* note 249, at 62.

257. CHAN, *supra* note 67, at 66.

258. *Id.* at 90.

259. *Id.*

260. Salyer, *supra* note 249, at 58.

261. *Id.* at 59.

262. *Id.* at 62.

After 1905, these cases declined as the Bureau of Immigration was put in charge of enforcement.<sup>263</sup>

There were other forms of Chinese resistance as well. In 1892, Wong Chin Foo formed the Chinese Equal Rights League to fight the Geary Act, which required Chinese to carry a resident permit.<sup>264</sup> He testified before Congress against the Act.<sup>265</sup> Earlier in 1883 he had founded the newspaper the Chinese-American, the first recorded use of the term.<sup>266</sup>

American born Chinese also organized. In 1895, rejected by the white Native Sons of the Golden West, Chinese-Americans founded the Native Sons of the Golden State in California.<sup>267</sup> In 1915, this became the Chinese-American Citizens Alliance, founded to “quicken the spirit of American patriotism, to insure the legal rights of its members and to secure equal economical and political opportunities for its members.”<sup>268</sup>

A huge victory for the Chinese and others was citizenship for those born in the US. In 1898, the US Supreme Court held in *United States v. Wong Kim Ark* that Wong Kim Ark, born in the US to Chinese parents, was a US citizen under the Fourteenth Amendment of the Constitution.<sup>269</sup>

The 1906 San Francisco earthquake also contributed to more Chinese becoming citizens, despite the Exclusion Acts. The earthquake destroyed public birth documents; many Chinese thus became “paper sons” who alleged they were sons of US citizens.

On the education front, strides were also made. Chinese children were not allowed in public schools; their only options were private tutors, or English and Bible classes taught by Protestant missionaries in Chinatowns.<sup>270</sup> After its establishment, however, the Chinese Six Companies also set up Chinese schools for children of immigrants.<sup>271</sup> And after litigation by the Tape family in 1885, California allowed “Oriental Schools” which lasted into the 1930s.<sup>272</sup> Unfortunately, in 1924, the US Supreme Court ruled that Martha Lum could not attend a white school in Mississippi;

263. *Id.* at 77.

264. Scott D. Seligman, *The Forgotten Story of the First ‘Chinese American’*, BUCKNELL U. MAG., Spring 2013, at 20, 22, <http://www.bucknell.edu/x81224.xml>.

265. *Id.* at 22.

266. *Id.* at 20.

267. MAE NGAI, *THE LUCKY ONES: ONE FAMILY AND THE EXTRAORDINARY INVENTION OF CHINESE AMERICA* 90-91 (2010).

268. John G. Tomlinson, *Four Lives*, USC TROJAN FAM. MAG., Summer 1998, [http://www.usc.edu/dept/pubrel/trojan\\_family/summer98/FourLives/lives1.html](http://www.usc.edu/dept/pubrel/trojan_family/summer98/FourLives/lives1.html).

269. *United States v. Wong Kim Ark*, 169 U.S. 649, 652, 704 (1898).

270. CHAN, *supra* note 67, at 57.

271. *Id.* at 65.

272. *Id.* at 57-58.

Chinese were not allowed into white schools until 1950.<sup>273</sup> Education discrimination, unfortunately, continues into the present as described further below.

In terms of business, in 1915, major investors of high-grade restaurants were considered merchants, thereby allowing entry in the US; this led to an explosion in Chinese restaurants.<sup>274</sup> This phenomenon continues to this day.

Politically, from 1894 to 1911, reformers from China, including Sun Yat-sen, later known as the father of the Republic of China, also visited US Chinatowns to raise money and support for a republican form of government in China.<sup>275</sup> Despite their lowly status in the US, Sun Yat-sen called overseas Chinese “the mother of the [Chinese] revolution.”<sup>276</sup> In 1911, the Qing dynasty was finally overthrown in China, ending millennia of imperial rule.

Despite resistance, the Exclusion Acts were successful in severely reducing the US Chinese population. They also led to the legal exclusion of other Asians and immigrants.

As a result of the Exclusion Acts, by 1920 there were only 61,639 Chinese in the US.<sup>277</sup> Before the Exclusion Acts, around 9,000 Chinese women had come to the US.<sup>278</sup> After their passage, only a few hundred women arrived each year.<sup>279</sup> To make matters worse, in 1922 the Cable Act stated that women who were US citizens who married aliens ineligible for citizenship would lose their citizenship!<sup>280</sup> This discouraged American-born Chinese women from marrying non-citizen Chinese men. Fortunately, the Cable Act was repealed in 1936.<sup>281</sup>

Because many Chinese men could not bring their wives to the US, nor marry US citizens, the only way the population grew besides fathering children in the US, was to father children in China; the law allowed for children of US citizens to be a citizen, if the child resided in the US for five continuous years before the age of 18.<sup>282</sup> Therefore, many men returned to China to have children; many

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273. *Id.* at 58.

274. Heather R. Lee, *The Untold Story of Chinese Restaurants in America*, SCHOLARS STRATEGY NETWORK (May 2015), <http://www.scholarsstrategynetwork.org/brief/untold-story-chinese-restaurants-america>; see also *Weedin v. Wong Jun*, 7 F.2d 311 (1925) (referring to the 1915 rule).

275. L. EVE ARMENTROUT MA, *REVOLUTIONARIES, MONARCHISTS, AND CHINATOWNS: CHINESE POLITICS IN THE AMERICAS AND THE 1911 REVOLUTION 1* (1990).

276. *Id.* at 5.

277. LI, *supra* note 77, at 55.

278. CHAN, *supra* note 67, at 104.

279. *Id.* at 106.

280. Married Women's Independent Nationality Act, Ch. 411, 42 Stat. 1021.

281. *Id.*

282. LI, *supra* note 77, at 58.

Chinese boys came to the US by the age of 13.<sup>283</sup> American-born Chinese did not outnumber foreign-born until 1940,<sup>284</sup> when they were 51.9% of the total number of Chinese in the US.<sup>285</sup>

Miscegenation laws also created further social isolation for the Chinese community;<sup>286</sup> it was not until 1967 that all the states' miscegenation laws were removed.<sup>287</sup>

With regard to excluding other Asians and immigrants, in 1907, the Japanese government agreed to limit migration to the US. In 1917, the US Immigration Act prohibited all Asian immigration except from the Philippines, then a US colony, and Japan.<sup>288</sup> Finally, the Immigration Act of 1924 prohibited the immigration of "aliens ineligible for citizenship."<sup>289</sup> This led to prohibition of Japanese immigration; immigration from Eastern and Southern Europe was also limited by quotas based on the origins of the US population in 1890.<sup>290</sup>

Why were the Chinese Exclusion Acts finally repealed? Geopolitics finally changed the situation for American Chinese. In 1941, China became the US' ally in World War II. However, it took two more years until in 1943, the Exclusion Act was "rescinded" and a quota of 105 Chinese was allowed to enter every year; Chinese were also allowed to become citizens through naturalization.<sup>291</sup>

Critical to winning US favor for China were the voices of students who had studied in the US and then returned to China.<sup>292</sup> One was Madame Chiang Kai-Shek. Madame Chiang, born Soong Mei-ling, had married Chiang Kai-Shek, the leader of the Chinese Nationalist government in 1927.<sup>293</sup> Her father, Charlie Soong, had graduated from Vanderbilt University in Tennessee in the 1880s<sup>294</sup> and later supported Sun Yat-sen, mentioned earlier, in the overthrow of the Qing dynasty.<sup>295</sup> Soong Mei-ling herself had graduated from Wellesley College in Massachusetts in 1917 with an English major.<sup>296</sup> On February 18, 1943, Madame Chiang was the

283. *Id.*

284. CHAN, *supra* note 67, at 107.

285. CHEN, *supra* note 72, at 220.

286. CHAN, *supra* note 67, at 60.

287. *Id.* at 61.

288. Immigration Act of 1917, Pub. L. No. 301, § 3, 39 Stat. 874, 875-76.

289. Immigration Act of 1924, Pub. L. 68-139, §13(c).

290. Immigration Act of 1924, Pub. L. 68-139, §11

291. CHAN, *supra* note 67, at 122.

292. FESSLER, *supra* note 80, at 269.

293. Seth Faison, *Madame Chiang Kai-shek, a Power in Husband's China and Abroad*, *Dies at 105*, N.Y. TIMES (Oct. 24, 2003), <http://www.nytimes.com/2003/10/24/international/asia/24CHIANG.html?pagewanted=all&pagewanted=print>.

294. FESSLER, *supra* note 80, at 269.

295. Faison, *supra* note 293.

296. *Id.*

first Chinese national and second woman to address both houses of Congress. She “electrified Washington, winning billions of dollars in aid” for China.<sup>297</sup> She did not mention the Exclusion Acts in her address, but later lobbied key Congressman on May 15-16 in a dinner she hosted; there she discussed repealing the Acts and what it would mean for the war effort.<sup>298</sup> The Exclusion Act was finally repealed on December 17, 1943.

The end of World War II also marked the beginning of large numbers of Chinese women migration to the US. In 1946, the Immigration Act of 1924 was amended to allow alien wives of American citizens to immigrate on a nonquota basis.<sup>299</sup> In 1947, the US also allowed the 1945 War Brides Act and 1946 Fiancees Act to apply to people of Asian descent.<sup>300</sup> After 1943, mainly brides of Chinese-American World War II veterans and political asylees came.<sup>301</sup> Between 1945 and 1953, 89% of the 12,151 Chinese who immigrated were women.<sup>302</sup> In 1950, less than one-third of Chinese men were married.<sup>303</sup> It was not until 1960 that Chinese in the US reached a near equal male-female ratio.<sup>304</sup> It was also not until 1965 that Chinese and other Asians could come in large numbers after the passage of the landmark Immigration and Nationality Act which eliminated race restrictions.

Thus, the Exclusion Era marked extreme violence and legal discrimination for the Chinese in the US. Chinese were considered unassimilable and their population reducible. However, the Chinese resisted the Exclusion Acts through litigation and forming new associations. Exclusion of the Chinese also led to exclusion for other Asians and immigrants. We will now discuss in further detail the extreme property discrimination Chinese faced during the Exclusion era. There were continual legal and extralegal campaigns to eliminate them and their property. Chinatowns were the only places Chinese could live and these were constantly threatened. As mentioned, racial restrictive covenants were first used against the Chinese. We will examine in particular San Francisco and Los Angeles. Chinese also faced alien land laws, and redlining.

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297. *Id.*

298. FESSLER, *supra* note 80, at 269.

299. Cindy I-Fen Cheng, *Out of Chinatown and into the Suburbs: Chinese Americans and the Politics of Cultural Citizenship in Early Cold War America*, 58 AM. Q. 1067, 1077 (Dec. 2006).

300. *Id.* at 1077-78.

301. CHAN, *supra* note 66, at ix.

302. Cheng, *supra* note 299, at 1078.

303. DAVIS MCENTIRE, RESIDENCE AND RACE: FINAL AND COMPREHENSIVE REPORT TO THE COMMISSION ON RACE AND HOUSING 114 (1960).

304. Cheng, *supra* note 299, at 1079.

We will also discuss how the surge in Chinese women migration after World War II facilitated Chinese entry into white suburbs in the Cold War era. Ironically, during the Cold War era, Chinese and other Asians were considered model assimilated minorities in order to combat Soviet criticism of US racism and to suppress other minorities. These were all a prelude to today's rise in Chinese real estate investment and unfortunately, continuing property, employment, and education discrimination.

### IX. CHINATOWNS & RESTRICTIVE COVENANTS

While the previous section discussed major events during the Exclusion Era, this section discusses extreme property discrimination during the Exclusion Era, specifically, Chinese segregation and restrictive covenants. Due to violence, legal exclusion, and racial restrictive covenants, Chinese lived in Chinatowns during the Exclusion Era. San Francisco Chinatown was the US' first segregated neighborhood because by the 1870s violence and discrimination were so thick the Chinese had no other residential option.<sup>305</sup> The average Chinese lived in an area which was 60% Chinese.<sup>306</sup> Although today they may seem like quaint tourist attractions, Chinatowns arose because of discrimination. As mentioned earlier, there were many attempts to destroy and remove Chinatowns. They were not provided public services, including police protection; and landlords were not required to provide habitable conditions.<sup>307</sup> Corrupt officials also allowed vice to spread. Nevertheless, some Chinatowns flourished even under these conditions. As mentioned earlier, from 1894-1911 US Chinatowns provided financial and other support for revolutionary reform in China.

We will discuss the San Francisco 1890 *In Re Sing* case, Los Angeles Chinatown, and the southern California *Gandolfo* case.

#### A. *In Re Lee Sing* (1890)

San Francisco Chinatown was in the central area of the city. It was excoriated for being a place of squalor, plague, and vice. On February 17, 1890, San Francisco enacted the Bingham Ordinance which ordered all Chinese to move within sixty days, and to live and conduct business only within a designated area within the city

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305. BROOKS, *supra* note 11, at 11.

306. *Id.* at 13.

307. The implied warranty of habitability did not become widespread until the 1970s. See *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970).

limits.<sup>308</sup> If anyone violated the ordinance they would be guilty of a misdemeanor, and imprisoned for a term not exceeding six months.<sup>309</sup>

Fortunately, on August 25, 1890, Judge Lorenzo Sawyer of the Circuit Court struck down the ordinance as violative of the Constitution, the Burlingame treaty, Section 1977 of the US Code, and as an arbitrary confiscation of property without due process of law.<sup>310</sup> Judge Sawyer had previously been Chief Justice of the California Supreme Court, and he subsequently became the first judge on the Ninth Circuit Court of Appeals in 1891. Judge Sawyer had presided over the Chinese laundry cases and seen thousands of habeas corpus cases after the 1882 Chinese Exclusion Act.<sup>311</sup>

Ironically, twelve years earlier in 1878, Judge Sawyer had decided in the landmark case *In re Ah Yup* that Chinese were not “white,” and therefore ineligible for citizenship.<sup>312</sup> However, even in that case, after citing the dictionary classification of the races, and the Senate debate on citizenship eligibility, which Senator Charles Sumner lost, he quoted Senator Sumner’s argument that:

If the Chinese come here they will come for citizenship, or merely for labor. If they come for citizenship then in this desire do they give a pledge of loyalty to our institutions, and where is the peril in such vows? They are peaceful and industrious; how can their citizenship be the occasion of solicitude?<sup>313</sup>

Judge Sawyer was appalled at the facial invalidity of the Bingham ordinance and stated it was not within the police power of the state,

The discrimination against the Chinese, and the gross inequality of the operation upon Chinese; as compared with others, in violation of the constitutional, treaty, and statutory provisions cited, are so manifest upon its face, that I am unable to comprehend how this discrimination and inequality of operation . . . can fail to be apparent to the mind of every intelligent person, be he lawyer or layman . . . . The obvious purpose of this order, is, to forcibly

308. *In re Lee Sing*, 43 F. 359, 360 (C.C.N.D. Cal. 1890).

309. *Id.* at 361.

310. *Id.*

311. D. MICHAEL BOTTOMS, *AN ARISTOCRACY OF COLOR: RACE AND RECONSTRUCTION IN CALIFORNIA AND THE WEST, 1850-1890* 174-75 (2013).

312. *In re Ah Yup*, 1 F. Cas. 223, 224 (C.C.N.D. Cal. 1878).

313. *Id.*

drive out a whole community of twenty-odd thousand people . . . from a whole section of the city which they have inhabited . . . for more than 40 years. Many of them were born there, in their own houses, and are citizens of the United States . . . . This, besides being discriminating, against the Chinese, and unequal in its operation . . . is simply an arbitrary confiscation of their homes and property, a depriving them of it, without due process or any process of law . . . . They would be compelled to take any lands, upon any terms, arbitrarily imposed, or get outside the city and county of San Francisco.<sup>314</sup>

Judge Sawyer, however, personally had stated elsewhere that he thought the Chinese were unassimilable and their diligence and perseverance made them machine-like.<sup>315</sup> He advocated limiting their presence by not allowing Chinese women to immigrate.<sup>316</sup>

Ironically, after the 1890 Bingham ordinance failed, San Francisco Chinatown became a popular tourist destination in the 1890s.<sup>317</sup> In the early 1900s, trade with China had increased, and calls were made to relocate Chinatown to make it an even more popular tourist spot.<sup>318</sup> Only the 1906 earthquake stopped these plans.<sup>319</sup> After the earthquake, both white and Chinese property owners in Chinatown rebuilt in the original Chinatown.<sup>320</sup> They adopted a “pseudo-Chinese façade.”<sup>321</sup> Presumably these Chinese property owners were citizens. We will now discuss conditions in Los Angeles Chinatown during the Exclusion Era.

### *B. Los Angeles Chinatown*

Up to and during the Exclusion era, Los Angeles Chinatown also faced neglect by public officials, and numerous demolitions. Nevertheless, alongside housing other facilities such as shops and opera houses, Los Angeles became a magnet for herbal medicine patients. Chinese-Americans also developed property with the help of Anglos, Japanese, and the first Chinese-American to practice law in California.

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314. *In re Lee Sing*, 43 F. at 360-61.

315. *BOTTOMS*, *supra* note 311, at 175.

316. *Id.*

317. Christopher Chou, *Land Use and the Chinatown Problem*, 19 *UCLA ASIAN PAC. AM. L.J.* 29, 58 (2014).

318. *Id.* at 66.

319. *Id.* at 69.

320. *Id.* at 71-72.

321. *Id.* at 73.



In the mid-1870s Chinese began to settle in large numbers in the Los Angeles area because of railroad construction there.<sup>322</sup> Although Chinese lived in the undesirable area east of the Los Angeles River, they paid high rents because they could not own property.<sup>323</sup> The Apablasa family were the main lessors for many decades.<sup>324</sup> In 1870, around 200 Chinese lived in Los Angeles Chinatown, along with French and Italian immigrants, and Mexican families.<sup>325</sup> American officials allowed “prostitution, gambling, drugs and other vice industries” in Chinatown so that they would not proliferate in other neighborhoods.<sup>326</sup> Ironically, the City Council’s “Subcommittee on Chinese” issued a report called “Chinatown: The Crying Evil of Our City.”<sup>327</sup>

Nevertheless, in 1880, there were around 500 Chinese in a prosperous Chinatown that included “an opera house, restaurants, shops, herbal stores, groceries, a bean cake factory, Chinese deli, and offices”<sup>328</sup> generally owned by Chinese-Americans.<sup>329</sup> Herbal medicine was critical to the Chinese community because Chinese were often denied access to public medical institutions.<sup>330</sup> By the 1890s, many European Americans and Hispanics, especially women, had become Chinese herbal medicine patients.<sup>331</sup>

In 1887, an arson-related fire consumed many buildings,<sup>332</sup> and in 1888 most buildings in Los Angeles’ original Chinatown were demolished; Chinese residents and businesses had to move to a “Second Chinatown.”<sup>333</sup> This new area was also undesirable because it was surrounded by railroad tracks and yards and a gas plant.<sup>334</sup>

By the late 1880s tourists began to frequent Los Angeles Chinatown and by the 1890s Chinese businesses began to cater to tourists, including offering Americanized versions of Chinese food such as chop suey.<sup>335</sup> By 1890, there were 4,424 Chinese in Los Angeles, which was 4.4% of the population and the largest minority; more than two-thirds lived in Chinatown.<sup>336</sup> Chinatown had its own newspaper.<sup>337</sup>

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322. Li, *supra* note 77, at 54.

323. *Id.* at 64.

324. MOSHIER, ET. AL., *supra* note 106, at 4.

325. *Id.* at 5.

326. *Id.*

327. Li, *supra* note 77, at 67.

328. MOSHIER, ET. AL., *supra* note 106, at 7.

329. *Id.* at 8.

330. *Id.* at 41.

331. *Id.* at 42.

332. *Id.* at 8.

333. Li, *supra* note 77, at 67.

334. *Id.*

335. MOSHIER, ET. AL., *supra* note 106, at 9.

336. Li, *supra* note 77, at 64.

337. MOSHIER, ET. AL., *supra* note 106, at 8.

In 1909, Louis Quon helped gather 373 Chinese investors to build City Market, which became known as Market Chinatown; they invested \$81,850, which was 41% of the capital needed.<sup>338</sup> The rest of the investors were Japanese and Anglos.<sup>339</sup> This area supported produce sales and distribution;<sup>340</sup> “Mexican, Japanese, and Jewish residents” also lived there.<sup>341</sup> The Chinese Congregational Church was located there, too.<sup>342</sup>

In 1916, Chinatown had the worse living conditions in the city because landlords (all non-Chinese) wanted to maximize their rental income: 878 out of 1,572 rooms surveyed were dark and windowless.<sup>343</sup> The city also refused to provide public services, including a sewer system.<sup>344</sup> By 1920, there were only 2,591 Chinese in Los Angeles.<sup>345</sup> In 1922, there were still only two paved streets in Chinatown.<sup>346</sup> In the 1920s, some Chinese began to move to the first Chinese “suburb,” West Adams.<sup>347</sup> Many Chinese lived in boarding houses, or in rooms adjacent to businesses.<sup>348</sup>

Starting in the 1900s, there were many cries to demolish Chinatown in favor of a new rail station.<sup>349</sup> From the mid-1910s to the early 1930s, Chinese community leaders and investors tried to acquire property to prevent this.<sup>350</sup> Mexican and Japanese homes stood next to Chinese homes in Chinatown.<sup>351</sup> In 1931, the California Supreme Court upheld the condemnation of Chinatown and much of Chinatown was demolished within two years before Union Station was built.<sup>352</sup> Finally, two developers facilitated the nation’s first planned Chinatown, called “New Chinatown”: Peter Soo Hoo, a Chinese electrical engineer, and Herbert Lapham, a Caucasian developer.<sup>353</sup> With the help of 25 Chinese-American investors, a corporation was formed to buy land.<sup>354</sup> Chinese-

338. *Id.* at 14.

339. *Id.* at 15.

340. *Id.* at 16.

341. *Id.* at 15.

342. *Id.*

343. LI, *supra* note 77, at 67.

344. MOSHIER, ET. AL., *supra* note 106, at 10-11.

345. LI, *supra* note 77, at 65.

346. JAN LIN, THE POWER OF URBAN ETHNIC PLACES: CULTURAL HERITAGE AND COMMUNITY LIFE 173 (2011).

347. LI, *supra* note 77, at 70.

348. Isabella Seong-Leong Quintana, *Shaken as by an Earthquake: Chinese Americans, Segregation and Displacement in Los Angeles, 1870-1938*, 32 GUM SAAN J. (2010), [http://www.chssc.org/History/ChinatownRemembered/Neighborhoods/Segregation\\_and\\_Displacement\\_in\\_Old\\_Chinatown.aspx](http://www.chssc.org/History/ChinatownRemembered/Neighborhoods/Segregation_and_Displacement_in_Old_Chinatown.aspx).

349. MOSHIER, ET. AL., *supra* note 106, at 11.

350. *Id.* note 106,

351. Quintana, *supra* note 348.

352. MOSHIER, ET. AL., *supra* note 106, at 11.

353. LI, *supra* note 77, at 68.

354. MOSHIER, ET. AL., *supra* note 106, at 19.

Americans owned the new area, which was designed to attract tourists<sup>355</sup> and dispel the notion that Chinatown was crime-ridden and unpaved.<sup>356</sup> The New Chinatown was designed in the “East Asian Eclectic Style.”<sup>357</sup> You Chung Hong, the first Chinese-American to practice law in California, was also instrumental in the development and design of New Chinatown.<sup>358</sup> You Chung Hong was a USC law graduate who had passed the bar in 1923.<sup>359</sup>

“China City” was also built by Caucasian preservationists and resembled a Hollywood film set; it literally had pieces from the 1937 movie “The Good Earth”<sup>360</sup> based on the Pulitzer Prize winning novel by Pearl Buck about Chinese peasant life. It attracted tourists and Hollywood celebrities such as Mae West.<sup>361</sup> China City burned down in 1948.<sup>362</sup>

Chinese did live and own properties elsewhere outside of Chinatown, but in a 1940 survey, only two residential districts in Los Angeles permitted “Orientals.”<sup>363</sup> The others had racial restrictive covenants against them. By 1940, the Chinese population in Los Angeles was 5,330.<sup>364</sup>

Thus, Los Angeles Chinatown during the Exclusion Era is the story of adverse conditions because of extreme property discrimination, but also resistance and resilience of ritual organizations and Chinese-American developers. It was even a focal point for healing through herbal medicine.

We will now discuss the little known fact that racial restrictive covenants were first used against the Chinese, not other minorities. This severely limited where Chinese could live until the Supreme Court ruled restrictive covenants unenforceable in 1948.

### C. Racial Restrictive Covenants

Racial restrictive covenants in deeds were first used against the Chinese.<sup>365</sup> These are promises among landowners that they will not sell to, or rent to persons other than Caucasians, unless the non-Caucasians are servants living with a Caucasian owner. Landlords refused to rent to Chinese, and realtors only showed

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355. LI, *supra* note 77, at 68.

356. MOSHIER, ET. AL., *supra* note 106, at 19.

357. *Id.* at 20.

358. Tomlinson, *supra* note 268.

359. *Id.*

360. LIN, *supra* note 345, at 180.

361. *Id.* at 185.

362. *Id.* at 181.

363. LI, *supra* note 77, at 68.

364. *Id.* at 65.

365. Michael Jones-Correa, *The Origins and Diffusion of Racial Restrictive Covenants*, 115 POL. SCI. Q. 541, 548 (Winter 2000/2001).

them property in the most “undesirable neighborhoods.”<sup>366</sup> Racial restrictive covenants were also later used against Blacks, Hispanics, and Jews. Starting in the 1930s, they were required by the Federal government for land purchased by federally subsidized mortgages; racial restrictive covenants were not overturned by the Supreme Court until 1948. In a little known 1892 case, however, the Chinese received a legal victory concerning them.

#### D. The 1892 *Gandolfo* Case

The 1892 *Gandolfo v. Hartman* case involved a prohibition on renting to “Chinamen” in a deed on property in Ventura County in southern California.<sup>367</sup> Fortunately, the Court declared the contract void as “contrary to the public policy of the government, in contravention of one of its treaties, and in violation of a principle embodied in its constitution.”<sup>368</sup> The *Gandolfo* case foreshadowed the landmark US Supreme court case *Shelley v. Kraemer* almost fifty years later, which held that racially discriminatory covenants were unenforceable.<sup>369</sup>

The defendants were landlord Hartman, and prospective lessees Fong Yet and Sam Choy. Landowner Steward had sold land to Gandolfo with the covenant, and then to Hartman.<sup>370</sup> District Judge Erskine Ross wrote the opinion. A former Confederate soldier, he eventually become a judge on the Ninth Circuit.<sup>371</sup> Although Gandolfo argued that the Fourteenth Amendment did not prohibit a private citizen from discriminating against others, Judge Ross wrote,

It would be a very narrow construction of the constitutional amendment . . . to hold that, while state and municipal legislatures are forbidden to discriminate against the Chinese in their legislation, a citizen . . . may lawfully do so by contract, which the courts may enforce. Such a view is, I think, entirely inadmissible. Any result inhibited by the constitution can no more be accomplished by contract of individual citizens than by legislation, and the courts should no more enforce the one than the other. This would seem to be very clear.<sup>372</sup>

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366. CHAN, *supra* note 67, at 57.

367. *Gandolfo v. Hartman*, 49 F. 181, 181 (S.D.C.A. 1892).

368. *Id.* at 183. *Gandolfo v. Hartman et. al.*, 49 F. 181 (1892).

369. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

370. BOTTOMS, *supra* note 311, at 202.

371. Gabriel J. Chin, *Panel Discussion on Saving the Neighborhood: Part IV*, 56 ARIZ. L. REV. SYL. 51, 51-52 (2014).

372. *Gandolfo*, 49 F. at 182.

Unfortunately, the *Gandolfo* victory was short-lived. Although the *Gandolfo* court held racial restrictive covenants unenforceable, the 1926 US Supreme court case *Corrigan v. Buckley* involving a black family established that they were.<sup>373</sup>

Racial restrictive covenants were one of the chief tools used to enforce racial segregation. From 1924 to 1950, it was also a violation of the Realtor Code of Ethics to place non-whites in a white neighborhood. Article 34 stated, "A realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood."

Thus, racial restrictive covenants were first used against the Chinese, and later against Blacks, Hispanics, Jews, and other minorities. We will now discuss redlining. While redlining is widely known to have prevented lending for homes in Black neighborhoods, it also contributed to severe poverty in Chinatowns during the Exclusion Era.

## X. REDLINING

During the 1930s, the Federal government decided to subsidize home mortgages for whites but not others. On secret maps of neighborhoods around the country, red lines were literally drawn around neighborhoods with non-white populations and declared not worthy of credit; Federal appraisal manuals stated that white neighborhoods were credit-worthy, and integration would lower property values.<sup>374</sup> This became a self-fulfilling prophecy. To this day, neighborhoods with lower property values are the redlined neighborhoods of the 1930s.

San Francisco's Chinatown was redlined.<sup>375</sup> It is no surprise, then, that in 1939, San Francisco's Chinese were even more segregated; 4,787 out of 4,858 Chinese lived in Chinatown.<sup>376</sup> Federal officials reported that 80% of housing units lacked heat, or private bathing or cooking facilities.<sup>377</sup> Unfortunately, even in 1960,

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373. *Corrigan v. Buckley*, 271 U.S. 323, 327 (1926).

374. BERYL SATTER, *FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA* 41-42 (2009).

375. Nuala Sawyer, *A History of Redlining in San Francisco Neighborhoods*, HOODLINE.COM (June 3, 2014, 10:00 AM), <http://hoodline.com/2014/06/a-history-of-redlining-in-san-francisco-neighborhoods>.

376. BROOKS, *supra* note 11, at 13.

377. *Id.* at 15.

San Francisco's Chinatown was described as a "slum."<sup>378</sup> In 1950, it contained the worst housing in the city: 66% of its housing was substandard and almost 30% was crowded.<sup>379</sup>

If deprivation of public services, demolition, and racial restrictive covenants were not enough to ensure that Chinese would not remain in the US, states also enacted provisions to specifically prevent Chinese and Japanese from owning land. We will now discuss the alien land laws. While the alien land laws are widely known to have discriminated against Japanese-Americans, they also further increased property discrimination against the Chinese during the Exclusion Era. The combination of the prohibition of immigration and naturalization, racial restrictive covenants, redlining, and the alien land laws, put Chinese on the bottom of the property hierarchy in the US during the Exclusion Era.

## XI. ALIEN LAND LAWS

The American colonies inherited a British common law that limited the rights of aliens to own land.<sup>380</sup> After the American Revolution, many states enacted laws that gave aliens the same rights to own land as citizens.<sup>381</sup> However, after the mid-1800s state constitutions and amended alien land laws excluded Chinese and Japanese owners.

### *A. Oregon and Washington*

The 1859 Oregon Constitution stated that "No Chinaman, not a resident of the state at the adoption of [this] constitution, shall ever hold any real estate or mining claim . . ."<sup>382</sup>

In 1886, Washington Territory passed a law that prevented aliens incapable of becoming citizens from enjoying the same property rights as citizens.<sup>383</sup>

In 1889, the Washington State Constitution disallowed property ownership by aliens "other than those who in good faith have declared their intention to become citizens of the United States . . . except where acquired by inheritance, under mortgage or in

378. MCENTIRE, *supra* note 303, at 46.

379. *Id.*

380. Lazarus, *supra* note 245, at 198.

381. *Id.* at 202-03.

382. ORE. CONST. art. XV, §8 (1859, repealed 1946).

383. Act of Jan. 29, 1886, 1885-86 Wash. Laws 102, *repealed* by Acquisition of Property by Aliens Act, ch. 56, § 1.1927 Wash. Laws 45.

good faith in the ordinary course of justice in the collection of debts . . . .”<sup>384</sup> Because of the Exclusion Act, Chinese could not declare their intention to become citizens.

Three Washington state cases, however, upheld some Chinese property ownership. In the 1897 *Goon Gan* case, the Supreme Court of Washington held that only the State could contest the ability of a Chinese administrator of an alien Chinese intestate’s estate to foreclose on a mortgage.<sup>385</sup>

In the 1915 case *Prentice v. How*, the Supreme Court of Washington held that while Wong How was a Chinese alien, only the State could bring a claim against How’s title to certain commercial real estate.<sup>386</sup> The State had brought no action before How conveyed title to his minor son, Franklin How, who was a native-born US citizen. Therefore, his son’s title was valid.

In 1933, the Washington Supreme Court also affirmed a Chinese alien’s right to assert a claim to inherited property in a Chinese family property dispute.<sup>387</sup> All restrictions on alien land ownership in Washington were not removed until the mid-1960s.<sup>388</sup>

Thus, early on the Northwest prohibited Chinese from owning land. We now turn to California’s prohibitions on Chinese property ownership. The California attorney general was explicit that limiting Asian land ownership would limit the Asian population and that white and “Oriental” farms could not co-exist.

### B. California

As mentioned above, the 1879 California Constitution prohibited Chinese from owning land. In 1913, California passed its Alien Land Law, which prohibited aliens ineligible for citizenship from buying agricultural land in fee simple absolute or leasing land for more than three years.<sup>389</sup> If the law was violated, the California State Attorney General could bring an escheat action for land obtained in violation of the statute.<sup>390</sup>

By 1913, the number of Chinese in the US had dropped significantly because of the Exclusion Acts and other US immigration laws. However, Japanese migrants arrived; alien land laws were used to prevent them from settling. While targeting

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384. WASH. CONST. art. II, §33 (1889, amended 1950 & 1954, repealed 1966).

385. *Goon Gan v. Richardson*, 47 P. 762, 763 (Wash. 1897).

386. *Prentice v. How*, 146 P. 388, 390-91 (Wash. 1915).

387. *Lew You Ying v. Kay*, 24 P.2d 596, 599 (Wash. 1933).

388. Lazarus, *supra* note 245, at 246.

389. CHAN, *supra* note 67, at 47.

390. Keith Aoki, *No Right to Own?: The Early Twentieth-Century ‘Alien Land Laws’ as a Prelude to Internment*, 19 B.C. THIRD WORLD L.J. 37, 55 (1998).

mainly Japanese, the alien land laws also placed Chinese-Americans at the bottom of persons who had been deprived of property rights.

While the Chinese brought many legal suits challenging the exclusion laws, the Japanese brought suits challenging the alien land laws.<sup>391</sup> Japanese immigrants formed the Japanese Association of America, which hired Euro-American attorneys.<sup>392</sup>

In a speech before the Commonwealth Club of San Francisco, the Attorney General stated the reason for the 1913 Alien Land Law,

The simple and single question is, is the race desirable . . . . [The Alien Land Law] seeks to limit their presence by curtailing their privileges which they may enjoy here; for they will not come in large numbers and long abide with us if they may not acquire land. And it seeks to limit the numbers who will come by limiting the opportunities for their activity here when they arrive.<sup>393</sup>

The Attorney General also stated in a brief,

The fundamental question is not one of race discrimination [but] . . . of recognizing the obvious fact that the American farm, with its historical associations of cultivation, environment and including the home life of its occupants, cannot exist in competition with a farm developed by Orientals with their totally different standards and ideas of cultivation of the soil, of living and social conditions. If the Oriental farmer is the more efficient, from the standpoint of soil production, there is just not much greater certainty of an economic conflict which it is the duty of statesmen to avoid.<sup>394</sup>

Because some Japanese tax and land reforms in the 1870s and 1880s deprived farmers of their land, many Japanese immigrated to Hawaii and the US West Coast.<sup>395</sup> In 1906 and 1907, President

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391. CHAN, *supra* note 67, at 69.

392. *Id.*

393. Aoki, *supra* note 390, at 55 n.53 (citing YAMATO ICHIHASHI, JAPANESE IN THE UNITED STATES 275 (1969)).

394. *Id.* (citing Brief by Ulysses S. Webb in *Porterfield v. Webb*, 263 U.S. 225 (1923), cited in *Oyama v. California*, 332 U.S. 633, 657 n.10(1948)).

395. *Id.* at 45.



Roosevelt negotiated a “Gentlemen’s Agreement” in which the Japanese government agreed to limit Japanese migration to the US.<sup>396</sup> In effect, Japan ceased giving passports to laborers to the US.<sup>397</sup> Why were Japanese-Americans perceived as a threat to white farmers? They were successful not only as agricultural laborers, but as farm owners.<sup>398</sup>

The Alien Land Law, however, was not heavily enforced during World War I because of the need for food crops.<sup>399</sup> In fact, Japanese landholdings had increased through the use of trusts and guardianships for American-born Japanese, shares in agricultural corporations which owned land, and land leases which were renewed beyond the three years.<sup>400</sup>

In 1920, California voters voted to amend the 1913 Alien Land Law to close these loopholes.<sup>401</sup> The amendment prohibited “guardianships and trusteeships in the name of ‘aliens ineligible [for] citizenship,’” and purchase of land through corporations that were held more than 50% by aliens or their minor citizen children.<sup>402</sup> The 1920 amendment also made sharecropping contracts “interests in land.”<sup>403</sup> In 1923, the California legislature made further changes: even agreements between landowners and hired alien farmers for planting and harvesting were made illegal.<sup>404</sup> Other changes in 1923 and 1927 to the Alien Land Law made escheat automatic without an action by the State Attorney General; prohibited ownership in corporations which owned agricultural land; and “created a rebuttable presumption that any real estate transaction [with] an ‘alien ineligible to citizenship’ was to be treated as a criminal conspiracy to evade the Alien Land Law.”<sup>405</sup>

The US Supreme Court upheld the constitutionality of alien land laws in 1923.<sup>406</sup> In *Terrace*, the Court held that the “quality and allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the state itself.”<sup>407</sup> This was in contrast to the Supreme Court overruling state intervention in bakery employee agreements in *Lochner*.<sup>408</sup>

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396. *Id.* at 49-50.

397. ENTRY DENIED, *supra* note 66, at vii-viii.

398. Aoki, *supra* note 390, at 53-55.

399. CHAN, *supra* note 67, at 47.

400. Aoki, *supra* note 390, at 56.

401. *Id.* at 57.

402. CHAN, *supra* note 67, at 47; Aoki, *supra* note 389, at 57.

403. Aoki, *supra* note 390, at 57.

404. CHAN, *supra* note 67, at 47.

405. Aoki, *supra* note 390, at 59.

406. *Terrace v. Thompson*, 263 U.S. 197, 220 (1923).

407. *Id.* at 221.

408. Aoki, *supra* note 390, at 65; *see Lochner v. New York*, 198 U.S. 45 (1905).

The following states also enacted alien land laws: Arizona (1917); Louisiana (1921); New Mexico (1922); Idaho, Montana (1923); and Kansas (1925).<sup>409</sup> Utah, Wyoming, and Arkansas enacted alien land laws during World War II.<sup>410</sup>

With the passage of alien land laws, the Chinese, Japanese, and others of Asian heritage were at the bottom of the racial hierarchy for housing opportunities.<sup>411</sup> While Blacks, Mexicans and Jews also were subjected to racial restrictive covenants, they were either citizens or at least eligible for citizenship.<sup>412</sup>

Before World War II, Chinese and other Asians thus lived in California's worst and most segregated neighborhoods.<sup>413</sup> Housing segregation was parallel to employment discrimination. The 1940 US census counted around 77,000 Chinese-Americans: around 63% were employed in manual labor (mainly in restaurants, laundries and garment factories); 21% were owners or managers in the Chinese ethnic economy; around 11% were semi-professionals and only 3% held professional positions.<sup>414</sup>

The alien land laws were unfortunately also a prelude to the mass incarceration of Japanese-Americans, including citizens during World War II.<sup>415</sup> One hundred twenty thousand Japanese-Americans were wrongly incarcerated.<sup>416</sup> Those Japanese-Americans who could not own land because of the alien land laws, but had labored tirelessly on farms, lost everything.<sup>417</sup>

In contrast to this travesty for Japanese-Americans during World War II, as mentioned earlier, Chinese-Americans finally saw the end of the Exclusion Acts during World War II. Chinese and Caucasians also purchased Japanese farms at very low prices when the Japanese were incarcerated.<sup>418</sup> The end of World War II also marked housing opportunities for veterans. Asian-American veterans, including Chinese-Americans, took advantage of the GI

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409. CHAN, *supra* note 67, at 47.

410. *Id.*

411. BROOKS, *supra* note 11, at 4. However, Filipinos were not considered aliens, but nationals of the US because the US exercised sovereignty over the Philippines. *Alfajara v. Fross*, 26 Cal. 2d 358, 364 (1945).

412. *Id.*

413. *Id.* at 7.

414. ELLEN D. WU, *THE COLOR OF SUCCESS: ASIAN AMERICANS AND THE ORIGIN OF THE MODEL MINORITY* 14 (2014).

415. See generally Aoki, *supra* note 390.

416. WENDY L. NG, *JAPANESE AMERICAN INTERNMENT DURING WORLD WAR II: A HISTORY AND REFERENCE GUIDE* 1 (2002).

417. Aoki, *supra* note 390, at 64.

418. Quintana, *supra* note 348.

Bill to further their education and buy homes.<sup>419</sup> World War II opened up many jobs for Chinese; by 1950, 7% had become professionals.<sup>420</sup>

Unfortunately, it was not until 1952 that California's alien land law was declared unconstitutional in *Sei Fujii v. California* as violative of the 14<sup>th</sup> Amendment.<sup>421</sup>

We now discuss the second major era of property access for Chinese in the US, the Cold War era and the model minority narrative. This second era was facilitated by a shift in geopolitics and concomitant surge in migration of Chinese women after World War II mentioned earlier. Ironically, while before and during the Exclusion era, Chinese were systematically deemed unassimilable and denied almost all property rights; during the Cold War era, Chinese and other Asians were touted as a model assimilated minority. Sadly, this new narrative simultaneously justified US military aggression in Asia, and continued residential discrimination against Blacks and Hispanics. These contradictory narratives lead to continuing discrimination today.

## XII. COLD WAR SUBURBANIZATION AND THE MODEL ASSIMILATED MINORITY

During the Cold War years (approximately 1947-1991) Chinese and Japanese families were gradually welcomed into suburban white neighborhoods while many Blacks, Hispanics, and other persons of color were not.<sup>422</sup> In 1950, well over 90% of Chinese lived in urban areas.<sup>423</sup> By 1990, this had dropped to 64% and in 2010 to 54.5%.<sup>424</sup>

Chinese suburbanization during the Cold War era was possible for at least two reasons. First, the 1948 US Supreme Court decision *Shelley v. Kraemer* held racial restrictive covenants in deeds were unenforceable and secondly, housing discrimination against Asians was deemed antithetical to fighting Communism in Asia. While Chinese and Japanese entered the suburbs, they were touted as model assimilated minorities to justify continued discrimination against other persons of color. This was in stark contrast to their status as unassimilable minorities just a few years earlier. Chinese and Japanese-Americans had not changed, but geopolitics had.

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419. CHAN, *supra* note 67, at 139.

420. WU, *supra* note 414, at 14.

421. 36 Cal. 2d 718 (1952).

422. BROOKS, *supra* note 11, at 7.

423. MCENTIRE, *supra* note 303, at 12.

424. LOGAN & ZHANG, *supra* note 24, at 13.

During World War II, the Soviet Union criticized US democracy for racism.<sup>425</sup> Among other recommendations, President Truman's Committee on Civil Rights responded by recommending the end of residential segregation.<sup>426</sup> The 1950s marked US military engagement in Asia to fight Communism; US soldiers fought in the Korean War and the US provided aid to anti-Communist regimes including Taiwan, the Philippines and Japan.<sup>427</sup>

In 1949, the Communist Party defeated the Nationalist government in China. After the Communist takeover, several thousand Chinese students were allowed to stay in the US.<sup>428</sup> They populated universities and bought homes in the suburbs.<sup>429</sup> From 1949 to 1952, the State Department gave grants to refugee Chinese students to complete their studies in the US.<sup>430</sup>

While some Chinese in America received refuge, their relatives in China did not fare well. Many American Chinese had sent money to their ancestral villages in China; relatives in China had invested in real property, which was confiscated by the Communists, and these landowners were publicly humiliated and executed.<sup>431</sup> After the Communist takeover Chinese-Americans thus lost contact with their relatives; US China trade was halted.<sup>432</sup>

In 1952, racial restrictions on US citizenship were finally lifted.<sup>433</sup> One no longer had to be "white" or "black" to be a citizen. Congress enacted programs so that Chinese scholars in the US and other refugees could become citizens; these included professionals and former diplomats.<sup>434</sup>

I will now discuss the little known 1948 *Tom Amer* case and the 1952 Sing Sheng incident. These incidents illustrate the shift from portraying Chinese as unassimilable, excludible, and segregated persons, to welcome residents of white suburbs. They also illustrate how the history of property discrimination against Chinese is little known. While *Shelley v. Kraemer* is oft-discussed as the case that eliminated racial restrictive covenants for Blacks, the *Tom Amer* case, which involved Chinese plaintiffs, is almost never mentioned.

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425. Cheng, *supra* note 299, at 1069.

426. *Id.*

427. BROOKS, *supra* note 11, at 196.

428. CHAN, *supra* note 67, at 141.

429. *Id.*

430. MOSHIER, ET. AL., *supra* note 106, at 26.

431. XIAOJIAN ZHAO, REMAKING CHINESE AMERICA: IMMIGRATION, FAMILY, AND COMMUNITY, 1940-1965 186 (2002).

432. *Id.*

433. *Id.*

434. LI, *supra* note 77, at 60.

Also, the 1952 Sing Sheng incident involving a Chinese family who desired to move into a white neighborhood in California, is almost entirely forgotten as well.

#### A. The 1948 Tom Amer Case

*Shelley v. Kraemer*<sup>435</sup> involved black homeowners and racial restrictive covenants. However, it is little known that Asian-Americans also fought such covenants in court, too. The *Tom D. Amer* and *Jin Kim* cases were brought to the US Supreme Court at the same time as the *Shelley* case by a coalition so that the Court would rule that racial covenants against Asians were also unenforceable.

Tom Amer was a Chinese-American combat photographer during World War II who had received the Purple Heart.<sup>436</sup> Amer was born in the United States<sup>437</sup> and therefore was a citizen. Amer had served in the special Chinese Infantry Unit of the US Army.<sup>438</sup> Jin Kim was a Korean-American dentist and veteran as well.<sup>439</sup> Both were part of the Los Angeles Committee against Restrictive Covenants, which also included black and Japanese families.<sup>440</sup> Amer, along with Robert and Emma Kong,<sup>441</sup> purchased a house at 127 West 56<sup>th</sup> Street in South Los Angeles but was met with an injunction from his white neighbors.<sup>442</sup> They alleged that their property values would be reduced and the character of the neighborhood destroyed.<sup>443</sup> Aided by “the All People’s Christian Church and Community Center in South Los Angeles, and the ACLU,” Amer fought the injunction.<sup>444</sup> Southern California ACLU counsel A.L. Wirin persuaded national ACLU leaders that racial covenants against Asian-Americans should also be challenged because a ruling in favor of Blacks was insufficient.<sup>445</sup> Wirin and Loren Miller represented Tom D. Amer. Wirin was also Japanese

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435. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

436. *Tom D. Amer*, L.A. TIMES OBITUARIES (July 11-12, 2008), <http://www.legacy.com/obituaries/latimes/obituary.aspx?n=tom-d-amer&pid=113129432>; CINDY I-FEN CHENG, CITIZENS OF ASIAN AMERICA: DEMOCRACY AND RACE DURING THE COLD WAR 49 (2014).

437. Petition for Writ of Prohibition in the Supreme Court of the State of California, *Amer v. Superior Court of the State of California*, 334 U.S. 813 (1948).

438. *Id.*

439. CHENG, *supra* note 436, at 49.

440. BROOKS, *supra* note 11, at 179.

441. Petition for Writ of Prohibition in the Supreme Court of the State of California, *supra* note 437.

442. MOSHIER, ET. AL., *supra* note 106, 25.

443. Petition for Writ of Prohibition in the Supreme Court of the State of California, *supra* note 437, at ¶ XVIII.

444. MOSHIER, ET. AL., *supra* note 106, at 25.

445. BROOKS, *supra* note 11, at 180.

American Citizens League Counsel; Miller and Thurgood Marshall argued the *Shelley* case. Wirin also fought the alien land laws.

After the *Shelley* case, the US Supreme Court remanded the *Amer* and *Kim* cases to the California Supreme Court to reconsider in light of *Shelley*.<sup>446</sup> After the *Shelley* case, Asian-Americans pioneered many white neighborhoods that eventually Blacks could then safely move into.<sup>447</sup>

### B. The 1952 Sing Sheng Neighborhood Vote

The 1952 Sing Sheng incident marked a turning point for widespread acceptance of Chinese-Americans into white suburbs. Although now almost all forgotten, at the time, national and local media publicized the fight of Sing Sheng to live in a white neighborhood.<sup>448</sup> In 1952, Sing Sheng and his family sought to live in the Southwood suburb of San Francisco.<sup>449</sup> Sheng was originally from China, his wife Grace was an American-born Chinese, and so was their two-and-a-half year old son, Richard.<sup>450</sup> Sheng had fought for the Chinese Nationalist army, finished college in the US, and worked as a mechanic for Pan-American Airlines.<sup>451</sup> When Southwood residents opposed Sheng's move because it would lower their property values, Sheng asked residents to take a vote and in a letter to them wrote, "The present world conflict is . . . between Communism and Democracy . . . . We have forsaken all our beloved China and have come to this country seeking the same basic rights. Do not make us the victims of false Democracy. Please vote in favor of us."<sup>452</sup>

Despite newspapers calling this vote a "test of democracy," residents voted against Sheng 174 to 28.<sup>453</sup> However, a public outcry ensued against the Southwood residents. The San Francisco Chronicle published an editorial that mourned this "desecration of democracy" and stated, "We cannot sell freedom to Asia unless we can deliver freedom at home."<sup>454</sup> Similar sympathetic coverage appeared in newspapers and media outlets across the country including the New York Times and Chicago Tribune.<sup>455</sup> Alas, even public officials spoke out in favor of the Shengs, including "the

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446. *Amer v. Superior Court of the State of California*, 334 U.S. 813 (1948).

447. BROOKS, *supra* note 11, at 193.

448. *Id.* at 203.

449. Cheng, *supra* note 299, at 1082.

450. *Id.* at 1085.

451. *Id.*

452. *Id.* at 1083.

453. *Id.* at 1083-84.

454. *Id.* at 1084.

455. *Id.* at 1087.

San Francisco City Council, the city attorney, the mayor, California governor Earl Warren, U.S. senators, the national Committee for Free Asia, and local church groups.”<sup>456</sup> One of the few public voices against the Shengs was the American Homes Development Company of Burlingame, which issued a statement in favor of racial covenants.<sup>457</sup> Ironically, the town of Burlingame had been named after Anson Burlingame, the author of the 1868 Burlingame Treaty.

The concerns of the Southwood residents about their property values were outweighed by the rhetoric about the sacrifices of the American military for Asian lives overseas.<sup>458</sup> The Sing Sheng incident did not end property discrimination against Chinese-Americans, however, but framed it in terms of US foreign policy.

In 1954, the first Chinese-American Stanford Law graduate and later judge<sup>459</sup>, Delbert Wong, was told by a real estate agent in 1954 that he could not buy a home in Silver Lake because he was Chinese.<sup>460</sup> Silver Lake is a community near Los Angeles. Fortunately, the owner agreed to sell to Wong anyway.<sup>461</sup> During those years, many Chinese used white friends to purchase property for them, who then transferred the deeds to the Chinese.<sup>462</sup>

Even when Chinese moved to previously all white affluent neighborhoods without opposition from neighbors, they were mistaken for housemaids.<sup>463</sup> In the 1950s and 1960s, while some Chinese entered the suburbs, Los Angeles Chinatown continued to prosper; benevolent associations and churches played active roles.<sup>464</sup>

Thus, the Tom Amer and Sing Sheng episodes illustrate how difficult it was for Chinese to be accepted into white suburbs, and how geopolitics opened the door for acceptance. They also illustrate how this history of property discrimination has been almost forgotten. We will now discuss further how the assimilated model minority narrative of Chinese and other Asian-Americans was born amidst explanations and justifications for continued racial

456. *Kitchen Debate Transcript*, (July 24, 1959), [http://www.foia.cia.gov/sites/default/files/document\\_conversions/16/1959-07-24.pdf](http://www.foia.cia.gov/sites/default/files/document_conversions/16/1959-07-24.pdf). See also Cheng, *supra* note 299, at 1087.

457. Cheng, *supra* note 299 at 1087.

458. BROOKS, *supra* note 11, at 202.

459. Jon Thurber, *Delbert E. Wong, 85; First Chinese American Judge in the Continental U.S.*, L.A. TIMES (Mar. 12, 2006), <http://articles.latimes.com/2006/mar/12/local/me-wong12>.

460. Cindy Chang, *Chinatown Landmark Named for Pioneering Jurist*, L.A. TIMES (Mar. 1, 2013), <http://articles.latimes.com/2013/mar/01/local/la-me-ff-0301-wong-square-20130302>. Wong graduated from Stanford in 1949. Thurber, *supra* note 459.

461. Arthur Dong, *Racial Covenants in Silver Lake*, L.A. TIMES (Sept. 24, 2000), <http://articles.latimes.com/2000/sep/24/realestate/re-25962>.

462. *Id.*

463. *Id.*, *supra* note 77, at 71.

464. MOSHIER, ET. AL., *supra* note 106, at 28.

residential segregation of Blacks and Hispanics. Unfortunately, this pitting of minorities against each other continues to this day.

*C. The 1960 Residence and Race Report and  
the Model Assimilated Minority*

Fueling support for Chinese and other Asian-Americans to be accepted in white suburbs, a commission issued a study in 1958 entitled "Where Shall We Live?" and then a 1960 report "Residence and Race."<sup>465</sup> The Commission was sponsored by the Fund for the Republic and was comprised of academics, media and business leaders.<sup>466</sup> The 1958 study's solution to racial segregation was advocating immigrants moving to "nonethnic neighborhoods" in the suburbs, assimilating and no longer identifying with ethnic groups, and thus becoming upwardly mobile and "emancipat[ed] from minority status."<sup>467</sup> The same study, however, reported a color barrier, which prevented Blacks from moving to the suburbs although immigrants (nonwhite and white) could.<sup>468</sup> With white middle-class standards as normative, the study noted that Blacks had deviant status: larger families, female-headed households, etc.<sup>469</sup> In contrast, the 1960 study noted that Chinese were "models of assimilation,"<sup>470</sup> and noted that the Chinese and Japanese were "exceptions" in exceeding whites in terms of levels of education.<sup>471</sup> According to the study, the presence of Chinese women as wives and mothers enabled an assimilated white suburban family structure, in contrast to a higher incidence of black single mother family households in urban black neighborhoods.<sup>472</sup> Of course, as mentioned earlier, Chinese women were not allowed to come in large numbers until after World War II.

Access to suburbs was so critical, that "[a]t the 1959 American National Exhibition in Moscow," an American suburban home was on display.<sup>473</sup> During the famous informal "Kitchen debate" with Soviet Premier Nikita Khrushchev that took place in the model kitchen, then Vice President Nixon praised the suburban home as the symbol of US superiority.<sup>474</sup>

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465. Cheng, *supra* note 299, at 1070.

466. *Id.*

467. *Id.* at 1070-71.

468. *Id.* at 1071.

469. *Id.* at 1072.

470. *Id.* at 1073.

471. *Id.* at 1074.

472. *Id.* at 1075.

473. *Id.* at 1071.

474. *Id.*



At the same time, during the 1950s and 1960s in the name of seeking Communist spies, the Immigration and Naturalization Service vigorously investigated “paper sons” and their families and used many informants in the Chinese community.<sup>475</sup> This left Chinese families in constant fear of being deported.<sup>476</sup> Thus the 1950s and 1960s also were a time of great trepidation for Chinese-Americans.

Nevertheless, by the mid-1960s the model minority rhetoric was firmly in place: Asian-Americans were “. . . a racial group distinct from the white majority, but lauded as well assimilated, upwardly mobile, politically nonthreatening, and *definitively not-black*.”<sup>477</sup> This recharacterization of Chinese as a model assimilated minority was critical to US exceptionalism on the world stage.<sup>478</sup>

During the Civil Rights movement in the 1950s and 1960s some Asian-Americans were active; but their voices were usually not publicized widely. The 1965 Immigration Act marked a turning point for the US population. It abolished quotas based on racial ancestry that had favored northern and western Europeans; family members could immigrate without quota limit.<sup>479</sup> This was due in part to lobbying by the Chinese-American community.<sup>480</sup> In 1965, a Chinese-American delegation composed of community leaders and lawyers from southern and northern California met with Senator Edward Kennedy, then chairman of the Immigration Subcommittee.<sup>481</sup> The delegation also testified before Congress to raise the immigration quotas.<sup>482</sup>

Since then immigration from China, Taiwan, Hong Kong, and Southeast Asia has increased exponentially. From 1960 through 1990, the Chinese population almost doubled in every decade.<sup>483</sup> Political instability has driven this migration. In 1971, China was admitted to the UN; Taiwan lost its seat. In the mid-1970s, after the Vietnam War, many ethnic Chinese from Vietnam, Laos, and Cambodia settled in the Los Angeles area.<sup>484</sup> In 1997, Hong Kong reverted to China after being a British colony. Many from Taiwan and Hong Kong chose to leave. In 1979, the US and mainland China resumed diplomatic relations as part of China’s open and reform era. This has led to exponential migration within and from China.

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475. Xiaojian Zhao, *supra* note 431, at 152.

476. *Id.*

477. WU, *supra* note 414, at 2.

478. *Id.* at 9.

479. Xiaojian Zhao, *supra* note 431, at 183.

480. Li, *supra* note 77, at 87.

481. *Id.*

482. *Id.*

483. *Id.* at 61.

484. *Id.* at 72.

In the 1970s and 1980s, community groups in Los Angeles Chinatown facilitated more affordable housing; Hong Kong investment also fostered large shopping centers.<sup>485</sup>

Thus commissioned studies justified Chinese and other Asians as model assimilated minorities worthy of entry into white suburbs, while denigrating other minority groups. The 1965 Immigration Act and political instability in Asia has led to exponential Chinese immigration to the US. We will now discuss the Los Angeles suburb Monterey Park and the beginning of Chinese ethnoburbs. Monterey Park demonstrates how Chinese and other Asians were gradually allowed to live in white suburbs. Monterey Park also demonstrates how Chinese and Chinese-American real estate agents and developers created ethnoburbs and sinoburbs. Unfortunately, Monterey Park also shows how discrimination must continually be fought. Monterey Park eventually paved the way for the surge in Chinese investment that we see today.

#### *D. California's Monterey Park*

In 1960, Los Angeles Chinatown was still the residential, business, and cultural center of the Los Angeles Chinese community.<sup>486</sup> By 1980, however, only 9.2 % of Los Angeles Chinese lived in Chinatown.<sup>487</sup> From 1960-1975, Chinese began to form ethnoburbs in the eastern suburbs of the Los Angeles area, starting with Monterey Park.<sup>488</sup> From 1975 through 1990, the ethnoburb surpassed urban Chinatowns as centers of Chinese residence and business.<sup>489</sup>

In Monterey Park, this was through the "deliberate efforts of individual Chinese people and key business leaders."<sup>490</sup> Why Monterey Park? Monterey Park was noted not only for its proximity to downtown Chinatown, but its affordable housing, already diverse population, and *fengshui*, especially its hilly areas.<sup>491</sup> In 1950, Monterey Park was 99.9% white.<sup>492</sup> In the late 1950s, developers and realtors welcomed Japanese-American households there.<sup>493</sup> Latinos and Jews were also present in Monterey Park.<sup>494</sup>

485. MOSHIER, ET. AL., *supra* note 106, at 30-31.

486. LI, *supra* note 77, at 71.

487. *Id.* at 73.

488. *Id.* at 80.

489. *Id.*

490. *Id.* at 79.

491. *Id.* at 85.

492. *Id.* at 80.

493. *Id.* at 85.

494. *Id.* at 84.

The first Chinese families to move to Monterey Park were not always welcome. Wilbert Woo moved there in the 1960s and received death threats.<sup>495</sup> The police guarded Woo's house, and eventually the Community Relations Commission was formed, which Woo served on, along with Betty Chu, a Chinese-American lawyer and banker.<sup>496</sup>

The 1965 Watts riots also prompted some Chinese to move out of Los Angeles.<sup>497</sup>

Frederick Fukang Hsieh, an engineer, bought his first house in Monterey Park in 1972 and saw its potential.<sup>498</sup> He became the first Chinese real estate agent there, and started to market Monterey Park as a "New Chinatown" and "Chinese Beverly Hills."<sup>499</sup> He addressed the fears of long-time white residents by meeting with local business leaders in 1977.<sup>500</sup> Chinese media in California and Asia also promoted Monterey Park.<sup>501</sup> Eventually several Chinese media outlets moved to Monterey Park, including the Chinese Daily News, the largest Chinese newspaper in North America.<sup>502</sup> The city also accommodated the new residents; e.g., senior centers featured ping pong, mahjong, and Peking opera.<sup>503</sup>

One resident stated in the 1980s,

My friends who live in other states, like the Midwest, have to go back to Taiwan to stay for several months every year because they feel so isolated, lonely, and uncomfortable . . . . But we who live here in Monterey Park feel no difference from living in Taiwan, especially us elderly people.<sup>504</sup>

The tragic 1982 murder of Vincent Chin in Detroit illustrates the dark side of life for Chinese in other parts of the US in the 1980s. Chin was mistaken for being Japanese and in a racist attack, brutally murdered by disgruntled Chrysler autoworkers.<sup>505</sup> The

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495. *Id.* at 86.

496. *Id.*

497. *Id.* at 83.

498. *Id.* at 89.

499. *Id.* at 89-90.

500. *Id.* at 90.

501. *Id.*

502. *Id.* at 91.

503. *Id.*

504. *Id.* at 92.

505. Frank H. Wu, Op-ed, *Why Vincent Chin Matters*, N.Y. TIMES A19 (June 22, 2012), [http://www.nytimes.com/2012/06/23/opinion/why-vincent-chin-matters.html?\\_r=0](http://www.nytimes.com/2012/06/23/opinion/why-vincent-chin-matters.html?_r=0).

murderers never served any time in prison.<sup>506</sup> This tragedy galvanized not only the Chinese-American community, but many Asian-American groups.<sup>507</sup>

In the late 1980s, there was also a backlash in Monterey Park. Reacting to the proliferation of Chinese signs in the city, Council members passed a resolution supporting English as the official language of the US.<sup>508</sup> Despite opposition, in 1988 the Hsi Lai Temple was completed in eastern San Gabriel Valley; it is the largest Buddhist monastery in the Western hemisphere.<sup>509</sup> By 1990, the San Gabriel Valley ethnoburb east of Los Angeles had become the main residential center for Chinese in the area.<sup>510</sup>

Thus, Monterey Park shows the rise of the Chinese ethnoburb, or suburb, through Chinese real estate agents and developers, and the continuing need to foster racial harmony. We will now discuss the third and current era of property access for Chinese in the US. This last era reflects the ancient maritime silk road because of the influx of the Fujianese; the model minority narrative because of the large numbers of Chinese in suburbs; and unfortunately, continuing housing, education and employment discrimination reminiscent of prior eras.

### XIII. THE MARITIME SILK ROAD CONTINUES: FLOURISHING CHINATOWNS AND SINOBURBS (THE 1990S TO THE PRESENT)

This section discusses the third and current era of property access for Chinese-Americans. Since the 1990s Chinese ethnoburbs and traditional Chinatowns have both flourished due to exponential Chinese immigration and investment. However, some Chinatowns are threatened by gentrification and commercial development, including investment from overseas Chinese. Following the maritime silk road, Fujianese in particular have arrived in the US in large numbers and are changing the face of New York Chinatown, and the US Chinese restaurant industry. Unfortunately, high home ownership rates and increased access to suburban and ethnoburban resources has not eliminated housing, employment, or education discrimination. In fact, while American universities welcome students from China, Chinese-American students in the ethnoburbs perceive themselves as disadvantaged in applying

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506. *Id.* at A19.

507. *Id.*

508. *Li, supra note 77*, at 93.

509. *Id.* at 95.

510. *Id.* at 75.

to elite colleges. In 2013, President Xi Jinping announced a new maritime silk road in an address to the Indonesian Parliament.<sup>511</sup>

### A. Exponential Migration

From 1990 to 2010, the US Chinese population grew from 1,645,472 to 4,025,055.<sup>512</sup> This is mainly due to immigration; this increase parallels surges in the US Filipino, Indian, Vietnamese, and Korean populations.<sup>513</sup> The US Chinese population has also become wealthier and more educated. However, in 2010 a higher percentage lived in poverty (13.7%) than the national average of 12.8%.<sup>514</sup> There is a large gap between affluent US Chinese and lower income Chinese.<sup>515</sup> This immigration surge also parallels the rate of economic growth in China since the 1990s.<sup>516</sup> From 1989 through 2015, China's average annual growth rate was 9.88%.<sup>517</sup>

Because of immigration, since the 1990s the US Chinese population has been around 70% foreign-born.<sup>518</sup> The mean years of education has risen from 13.6 to 13.9 from 1990 to 2010.<sup>519</sup> The median Chinese income has risen from \$59,113 in 1990 to \$65,000 in 2010.<sup>520</sup>

This dramatic increase in US Chinese has led to fewer Chinese living in urban Chinatowns and many more in suburbs. Elderly and the poor continue to live in poor housing in crowded urban Chinatowns.<sup>521</sup> Today's urban Chinatowns also still serve as tourist attractions, and are increasingly subject to gentrification for young urban professionals.<sup>522</sup> We will now discuss today's suburban and urban Chinese.

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511. Wu Jiao & Zhang Yunbi, *Xi in Call for Building of New 'Maritime Silk Road'*, CHINA DAILY (Oct. 4, 2013, 1:58 AM), [http://usa.chinadaily.com.cn/china/2013-10/04/content\\_17008940.htm](http://usa.chinadaily.com.cn/china/2013-10/04/content_17008940.htm).

512. LOGAN & ZHANG, *supra* note 24, at 4.

513. *Id.*

514. PEW RESEARCH CENTER, *THE RISE OF ASIAN AMERICANS* 37 (2013), <http://www.pewsocialtrends.org/files/2013/04/Asian-Americans-new-full-report-04-2013.pdf>.

515. ROBYN IREDALE & FEI GUO, *HANDBOOK OF CHINESE MIGRATION: IDENTITY AND WELLBEING* 15 (2015).

516. *Id.* at 297.

517. *China GDP Annual Growth Rate*, TRADING ECONOMICS (last visited Apr. 6, 2016), <http://www.tradingeconomics.com/china/gdp-growth-annual>.

518. LOGAN & ZHANG, *supra* note 24, at 5.

519. *Id.*

520. *Id.*

521. LI, *supra* note 77, at 61.

522. *Id.* at 62.

### B. Suburban Chinese

In 1990, 36% of US Chinese lived in suburbs, compared with 41.6% in 2000, and 44.5% in 2010.<sup>523</sup> This contrasts with 68.7% of whites and 56.5% of Indians in 2010.<sup>524</sup>

Chinese live in more affluent suburbs than others. In 2010, suburban Chinese had the highest average median income, \$85,561, compared to non-Hispanic suburban whites whose average median income was \$68,474.<sup>525</sup> Suburban Chinese, Indians, and Koreans also had the highest percentage of neighbors with college education at respectively 43.2%, 43.9%, and 43.6%, compared with non-Hispanic whites at 31.2%.<sup>526</sup> While Chinese who live in US suburbs tend to be affluent, suburban Blacks and Hispanics live in “mixed income, older, and inner ring suburbs.”<sup>527</sup> “Today, even middle-class minority neighborhoods have lower house price appreciation, fewer neighborhood amenities, lower-performing schools, and higher crime than white neighborhoods with comparable income levels.”<sup>528</sup>

Presumably, many of the suburban Chinese live in the ethnoburbs described earlier. In addition to being in southern and northern California, Chinese ethnoburbs are found in Houston and New York.<sup>529</sup> These have attracted both wealthy and poorer new immigrants. Today, they are the situs of Chinese hotels, restaurants, financial institutions, professional services, shopping malls, schools, businesses, and industry.<sup>530</sup> Since the 1990s, the ethnoburb has become a “global outpost” for international business, trade, and investment.<sup>531</sup> In 1999, Valley Boulevard in Alhambra near Los Angeles was referred to as the “Chinese Wall Street” because of the number of Chinese and Chinese-American banks there.<sup>532</sup> Real estate businesses and apparel manufacturing are also highly represented in the sinoburb.<sup>533</sup>

The ethnoburb has a lower density of ethnic population than an ethnic enclave.<sup>534</sup> It is a place to live and work.<sup>535</sup> “The combination of global ties and local ethnic service jobs gives the ethnoburb its

523. LOGAN & ZHANG, *supra* note 24, at 13.

524. *Id.*

525. *Id.* at 14.

526. *Id.*

527. *Id.*

528. U.S. DEPT OF HOUS. AND URBAN DEV. OFFICE OF POLICY DEV. AND RESEARCH, *supra* note 10, at 12.

529. LI, *supra* note 77, at 174.

530. *Id.* at 175-77.

531. *Id.* at 117.

532. *Id.* at 111.

533. *Id.* at 125.

534. *Id.* at 119.

535. *Id.* at 123.

unique characteristics: it is a fully functioning global economic outpost with a distinctive ethnic signature, formed in part as a result of recent international economic restructuring processes and changing geopolitical situations.”<sup>536</sup>

Sinoburb growth since the 1990s may also be bolstered by a common spoken language, Mandarin. Mandarin is the national language in mainland China and Taiwan. Since the 1997 handover, Mandarin is now commonly spoken in Hong Kong. Unlike in the 1800s where Chinese migrants tended to follow villagers who spoke the same dialects, this is less of an issue in today’s Chinese communities.

The sinoburbs have also introduced new architectural styles, and streetscapes.<sup>537</sup> The San Gabriel Valley is a “multiracial, multicultural, multilingual area with a strong ethnic Chinese signature. Many multifamily dwellings, including apartment buildings and condos, have replaced the formerly dominant single-family homes.”<sup>538</sup>

Racial harmony must constantly be cultivated, however.<sup>539</sup> In 1990, then Monterey Park councilwoman Judy Chu initiated Harmony Week to promote racial harmony and ethnic diversity.<sup>539</sup> In 1994, one Temple City city council candidate falsely accused Chinese bridal shops of being a front for money laundering and prostitution.<sup>540</sup> He later apologized.<sup>541</sup> Fortunately, sinoburb businesses employ and are patronized by people of many different backgrounds.<sup>542</sup>

Thus, more and more US Chinese live in affluent suburbs. This is possible because of the model assimilated minority narrative of the Cold War era.

### *C. Today’s Urban Chinese*

Among urban Chinese, in 2010 the average neighborhood median income was \$63,344 compared with \$58,825 for non-Hispanic whites.<sup>543</sup> In 2010, urban Chinese had 41.8% of neighbors with a college education, as compared with 36.7% of non-Hispanic whites.<sup>544</sup> However, non-Hispanic whites lived in urban neighborhoods with 57.2% homeowners, compared with 47.4%

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536. *Id.* at 127.

537. *Id.* at 75.

538. *Id.*

539. *Id.* at 97.

540. *Id.* at 96.

541. *Id.* at 97.

542. *Id.* at 76.

543. LOGAN & ZHANG, *supra* note 24, at 14.

544. *Id.*

of urban Chinese.<sup>545</sup> In 2010, in metropolitan areas, the average Chinese person's neighborhood was 14% Chinese, and 29% Asian.<sup>546</sup> New York's Asian population is 40% Chinese.<sup>547</sup>

We now discuss the surge in Chinese from Fujian province who have come to the US since the 1990s. This is a continuation of the ancient maritime silk road. Fujianese are not only changing the face of urban Chinese and Chinatowns, they are changing the face of commercial and residential real estate in surrounding areas. Also, they are changing the face of all American towns, with ubiquitous Chinese buffets, and budget buses linking restaurant workers, and the general American population around the country. Like the earlier Guangdong Chinese who were buoyed by mutual aid associations, the Fujianese rely heavily on clan and village associations.

#### *D. The Fujianese*

Following the ancient maritime silk road, since the 1990s, Fujianese have replaced Guangdong migrants as the major stream of Chinese migration to the US.<sup>548</sup> In 1994, it was estimated that 100,000 Fujianese lived in New York, and ten thousand arrive every year.<sup>549</sup> Today, Fujianese organizations estimate that 300,000 to 500,000 Fujianese have come through New York since the 1980s.<sup>550</sup> Eighty percent of US Fujianese come from once rural Changle near Fuzhou.<sup>551</sup> Changle's history of migration dates from the Song dynasty.<sup>552</sup> Many from Changle have risked death through illegal entry.<sup>553</sup> In 1994, ten smuggled Fujianese died when their ship the Golden Venture ran ashore in Queens, New York.<sup>554</sup> Around 80% of Changle migrants live in New York.<sup>555</sup> When they arrive they work in restaurants for three or four years to pay off their debts to

545. *Id.*

546. *Id.* at 10.

547. *Id.* at 6.

548. XIAOJIAN ZHAO, *THE NEW CHINESE AMERICA: CLASS, ECONOMY, AND SOCIAL HIERARCHY* 104 (2010).

549. Zai Liang & Wenzhen Ye, *From Fujian to New York: Understanding the New Chinese Immigration*, in *GLOBAL HUMAN SMUGGLING: COMPARATIVE PERSPECTIVES* (David Kyle and Rey Koslowski, ed., 2001), <http://www.freerepublic.com/focus/f-news/1112056/posts>.

550. Kenneth J. Guest, *From Mott Street to East Broadway: Fuzhouese Immigrants and the Revitalization of New York's Chinatown*, 7 *J. OF CHINESE OVERSEAS* 24, 29 (2011), <https://www.baruch.cuny.edu/wsas/academics/anthropology/documents/JCOGuestMotttoEBway.pdf>.

551. ZHAO, *supra* note 548, at 104.

552. *Id.*

553. *Id.* at 121.

554. *Id.* at 105.

555. *Id.* at 108.



smugglers or others; then they open their own restaurants and other businesses.<sup>556</sup> Like earlier immigrants, they rely extensively on clan and village associations.<sup>557</sup> By 2004, Changle immigrants dominated the Chinese take-out restaurant business in New York, and had opened some of the largest Chinese buffets around the country.<sup>558</sup> Fujianese have also developed an extensive inter-city bus system to transport restaurant workers, but now also other budget travelers.<sup>559</sup> These new immigrants have also caused housing prices to rise; landlords in Manhattan Chinatown and Flushing, Queens received twice as much income when the Fujianese arrived in large numbers.<sup>560</sup> Many Fujianese have done well; in the late 1990s and early 2000s, Fujianese purchased 80 percent of luxury condos in Queens, New York.<sup>561</sup> In 2004, Fujianese small vendors successfully protested rent increases from established Chinese commercial landlords in New York Chinatown.<sup>562</sup> They also invest heavily in Changle.<sup>563</sup> The Fujianese are buoyed by many temples, churches, and other ritual organizations.<sup>564</sup> However, Manhattan Chinatown and Brooklyn Chinatown in Brooklyn Sunset Park are being threatened by commercial developers and gentrification.<sup>565</sup> Ironically, some of these commercial developers are investors from China who seek to build luxury housing in New York.<sup>566</sup>

Thus, the Fujianese have become a major force in the Chinese-American landscape. Buoyed by their ritual associations and networks, they are also transforming real estate and transport across the country. Today's Fujianese are traveling the ancient maritime silk road.

We now discuss today's housing, employment and education discrimination. Ironically, although Chinese and Chinese-Americans are now huge investors in residential real estate, and are subsidizing higher education for other students; housing, employment and education discrimination remain persistent. Unfortunately, this is reminiscent of discrimination in prior eras.

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556. *Id.* at 109, 121.

557. *Id.* at 115, 117.

558. *Id.* at 109.

559. *Id.* at 113.

560. *Id.* at 114.

561. *Id.*

562. *Id.* at 124.

563. *Id.* at 129.

564. Guest, *supra* note 550, at 39.

565. *Id.* at 41, 43.

566. *Id.* at 42.

#### XIV. TODAY'S HOUSING, EMPLOYMENT, AND EDUCATION DISCRIMINATION

In general, Chinese-American homeownership is considered robust. In 2011, 73% of whites owned their own homes; compared with 47% of Latinos and 45% of Blacks.<sup>567</sup> It was estimated that 59.8% of Asians own homes.<sup>568</sup> In 2010, 61.9% of Chinese owned their own homes.<sup>569</sup>

Why is Chinese homeownership high in the US? In traditional Chinese culture, the home is not only physical shelter, but a sacred place to honor ancestors. Not coincidentally, today homes are one of the few investments available on the China mainland. In the US, one 2004 study has found that English proficiency is not a major factor in Chinese homeownership, but multilingualism and the "presence of ethnic Chinese communities" may be.<sup>570</sup> Also, families from Taiwan and mainland China had significantly higher homeownership rates than whites or other Asians.<sup>571</sup>

Despite rosy numbers about homeownership, median income and educational levels, however, Chinese-Americans, and Asian-Americans in general, face continued discrimination in housing, employment, and educational access. Closer study shows that higher income is due to more spouses working and higher education levels; Asian-Americans receive less income even though they have more years of education; and a higher concentration of Asian-Americans work in menial jobs.<sup>572</sup> Also, Asian-Americans live in areas with higher costs of living.<sup>573</sup>

In terms of housing discrimination, a 2012 report from the US Department of Housing and Urban Development (HUD) reveals that Asian renters learn about 9.8% fewer available units than whites when contacting real estate agents.<sup>574</sup> Asian renters are shown 6.6% fewer available units.<sup>575</sup> Black and Hispanic renters are also told about (11.4% and 12.5%, respectively) and shown (4.2% and 7.5%, respectively) fewer units than whites.<sup>576</sup> Asian homebuyers are told about 15.5% and shown 18.8% fewer homes than whites in

567. SULLIVAN ET AL., *supra* note 9, at 1.

568. LOGAN & ZHANG, *supra* note 24, at 11.

569. PEW RESEARCH CENTER, *supra* note 514, at 37.

570. Gary Painter, Lihong Yang & Zhou Yu, *Homeownership Determinants for Chinese Americans: Assimilation, Ethnic Concentration and Nativity*, 32 REAL EST. ECON. 509, 530 (2004).

571. *Id.* at 531.

572. CHAN, *supra* note 67, at 168-69.

573. *Id.* at 168.

574. U.S. DEPT OF HOUS. AND URBAN DEV. OFFICE OF POLICY DEV. AND RESEARCH, *supra* note 10, at 1.

575. *Id.*

576. *Id.*

majority white neighborhoods.<sup>577</sup> Black homebuyers are told about 17% and shown 17.7% fewer homes than whites.<sup>578</sup> Interestingly, Hispanic homebuyers are told about and shown the same number of homes as whites. “Minorities whose ethnicity is more readily identifiable experience more discrimination than those who may be mistaken for whites.”<sup>579</sup> The study stated,

Specifically, black and Asian renters whose race is readily identifiable based on name and speech are significantly more likely to be denied an appointment than minorities perceived to be white. During an in-person visit, renters who are identifiably black, Hispanic, or Asian are shown fewer units than minorities who are perceived to be white. Similarly, homebuyers who are identifiably black or Asian face higher discrimination during the in-person visit than those who are perceived to be white.<sup>580</sup>

The practice of real estate agents telling about and showing fewer units and homes raises the costs of housing for minorities.<sup>581</sup> While the average search for a home is twelve weeks, minorities will have to search longer if they are shown fewer units.<sup>582</sup> Because the HUD testers posed as unambiguously qualified applicants, actual discrimination is probably understated.<sup>583</sup> Unfortunately, today Asian renters are more likely to be discriminated against than ten years ago!<sup>584</sup> Fortunately, black renters are facing less overt discrimination than ten years ago.<sup>585</sup>

Non-Chinese landlords may dislike Chinese renters because of certain food preparation methods, e.g., stir-frying causes oil accumulation in apartments. Chinese renters may prefer stir-frying because this preserves vegetable nutrients. With regard to homebuyers, even though Chinese who buy high-end homes presumably can afford them, they may be paying a surcharge for housing. A 2013 study found that from 1990 to 2008 Blacks and

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<sup>577</sup> *Id.* at 1, 7.

<sup>578</sup> *Id.* at 1.

<sup>579</sup> *Id.* at 8.

<sup>580</sup> *Id.*

<sup>581</sup> *Id.* at 1.

<sup>582</sup> *Id.* at 8.

<sup>583</sup> *Id.* at 3.

<sup>584</sup> *Id.* at 10.

<sup>585</sup> *Id.*

Hispanics paid on average 3% more for comparable homes than whites.<sup>586</sup> This may be due to the higher search costs<sup>587</sup> just described in the 2012 HUD study.

In terms of employment discrimination, Chinese and other Asian-Americans hit a “bamboo ceiling” in the workplace. Although only 4% of whites believe Asian-Americans face employment discrimination, 30% of Asian-Americans say they have.<sup>588</sup> Of the next highest group, African Americans, 26% reported incidents of employment discrimination.<sup>589</sup>

Asian-Americans are perceived as “technically competent and good workers, but not as leaders.”<sup>590</sup> They are “too quiet,” “blending in.”<sup>591</sup> Therefore, they receive fewer promotions and less pay.

In a study of unemployment during and after the Great Recession (2007-2010), Asian-Americans had the highest rate of long-term unemployment (six months or longer).<sup>592</sup> Highly educated Asian-Americans also had higher unemployment rates than similarly situated educated whites.<sup>593</sup> This may be due to the fact that 75% of Asian-Americans are foreign born, while 95% of white employees are not.<sup>594</sup>

Education access is also a concern. While access to well-resourced suburban and urban schools help Asian-Americans to achieve, this access is limited on the university level. In a 2009 study by Princeton sociologists Thomas Espenshade and Alexandria Radford, it was found that Asian-Americans needed to score 140 points more on the Scholastic Aptitude Test (SAT) than similarly situated white college applicants to enter elite colleges.<sup>595</sup> Also, although the Asian-American applicant pool has grown over the past twenty years, the number of Asian-American students in the Ivy Leagues has remained between 15% and 18%.<sup>596</sup> In 2015, groups of Asian-Americans filed complaints to the Department of Education and lawsuits about discriminatory practices in college

586. Patrick Bayer, et al., Estimating Racial Price Differentials in the Housing Market 3, 19 (2013), [http://real.wharton.upenn.edu/~fferreir/documents/bcfm\\_March\\_2013.pdf](http://real.wharton.upenn.edu/~fferreir/documents/bcfm_March_2013.pdf).

587. *Id.* at 19.

588. ASIAN AM. REAL ESTATE ASS'N OF AM., *supra* note 7, at 13.

589. *Id.*

590. MARLENE KIM, UNFAIRLY DISADVANTAGED? ASIAN AMERICANS AND UNEMPLOYMENT DURING AND AFTER THE GREAT RECESSION (2007-10), at 10, (Econ. Pol. Inst., 2012) <http://www.epi.org/publication/ib323-asian-american-unemployment/>.

591. ASIAN AM. REAL ESTATE ASS'N OF AM., *supra* note 7, at 13.

592. KIM, *supra* note 590, at 6.

593. *Id.* at 1.

594. *Id.*

595. *Asian-Americans, The Model Minority is Losing Patience*, THE ECONOMIST (Oct. 3, 2015), <http://www.economist.com/news/briefing/21669595-asian-americans-are-united-states-most-successful-minority-they-are-complaining-ever>. See generally, THOMAS J. ESPENSHADE & ALEXANDRIA WALTON RADFORD, NO LONGER SEPARATE, NOT YET EQUAL (2009).

596. See *Asian-Americans, The Model Minority is Losing Patience*, *supra* note 595.

admissions.<sup>597</sup> Ironically, Chinese-Americans consider coming from the ultra-competitive ethnoburb San Gabriel Valley to be detrimental when applying to colleges.<sup>598</sup> They are afraid to indicate “Asian American” on their college applications. Ultimately, limited access to elite colleges means limited access to elite employment. Unfortunately, rates of depression and suicide among Asian-American college students are also higher than other groups.<sup>599</sup> The “model minority” narrative creates simultaneously higher expectations for Asian-Americans, and fewer opportunities for advancement because a minority, especially a model minority, needs to remain a minority. The model minority narrative also pits minority groups against each other, instead of uniting them.<sup>600</sup>

While Asian-American applicants are facing higher admission bars, the foreign Chinese population continues to grow at places such as the University of Illinois, whose freshman class was 10% from China.<sup>601</sup> In 2000, the University had 37 Chinese undergraduates; it now has almost 3,000.<sup>602</sup> It may be that this influx of students from China could be limiting admissions of Chinese-Americans and other Asian-Americans.

Eliminating disparities in US homeownership would substantially reduce the racial wealth gap.<sup>603</sup> However, the experience of Chinese-Americans, and other Asian-Americans with high homeownership rates, demonstrates that homeownership in and of itself, does not eliminate employment, housing,

597. See Douglas Belkin, *Harvard Asian-American Bias Complaint Dismissed*, WALL ST. J. (July 7, 2015), <http://www.wsj.com/articles/complaint-alleging-discrimination-by-harvard-dismissed-1436305777>.

598. Frank Shyong, *For Asian Americans, a Changing Landscape on College Admissions*, L.A. TIMES (Feb. 21, 2015), <http://www.latimes.com/local/california/la-me-adv-asian-race-tutoring-20150222-story.html>.

599. See Jennifer Chen, *The Dangerous Weight of Expectations*, Pac. Standard Mag. Aug. 10, 2015, <https://psmag.com/the-dangerous-weight-of-expectations-34236d9872b7#.3qx xi5jop>; Anna Gorman, *For Many Asian Americans Depression is an Unfamiliar Word*, Wash. Post, May 22, 2015, [https://www.washingtonpost.com/national/health-science/for-many-asi-an-americans-depression-is-an-unfamiliar-word/2015/05/22/f186d140-e8f1-11e4-9767-6276fc9b0ada\\_story.html](https://www.washingtonpost.com/national/health-science/for-many-asi-an-americans-depression-is-an-unfamiliar-word/2015/05/22/f186d140-e8f1-11e4-9767-6276fc9b0ada_story.html).

600. For example, many Asians believe that New York Chinese-American police officer Peter Liang was scapegoated when he was convicted of manslaughter of a black man, Akai Gurley, when white officers have not been held accountable for other incidents. Sarah Maslin Nir & David W. Chen, *Many Asians Express Dismay and Frustration After Liang Verdict*, N.Y. TIMES, Feb. 12, 2016, <http://www.nytimes.com/2016/02/13/nyregion/many-asians-express-dismay-and-frustration-after-liang-verdict.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region&region=top-news&WT.nav=top-news>.

601. Elizabeth Redden, *At U. of Illinois, Growth in the Number of Chinese Students Has Been Dramatic*, INSIDE HIGHER ED., Jan. 7, 2015, <https://www.insidehighered.com/news/2015/01/07/u-illinois-growth-number-chinese-students-has-been-dramatic>.

602. *Id.*

603. LAURA SULLIVAN ET AL., *supra* note 9, at 1.

and education discrimination. These, unfortunately, are part of the legacy of the Exclusion and Cold War eras, and the nonassimilable/model assimilable trap.

We come now to final observations as to the little-known history of property discrimination against the Chinese, and how excavating this history can help us face the future, and help all achieve greater property access.

## XV. CONCLUSION

This article has examined the intersection of Chinese imperial history, contemporary Chinese property investment, and discrimination against Chinese-Americans. While each has been chronicled elsewhere, their confluence has not. In particular, the story of property discrimination against Chinese-Americans has largely been hidden. Why is this? And what lessons can we learn to ensure property justice for all?

Today, Chinese investors are the largest number of foreign investors in the US residential real estate market and their average purchase price, \$831,800, far exceeds the national average of \$255,600. Since 2009, Chinese are also the largest number of foreign students in the US. Chinese-American homeownership rates (66%) are also robust; the rates for whites are 72%, Blacks 42%, and Hispanics 47%. Unfortunately, this homeownership gap sustains an enormous racial wealth gap. Also, Blacks, Hispanics, and Asians all face housing discrimination today.

### *A. How Did We Arrive Here?*

Contemporary vast and high end Chinese real estate investment is an expansion of the ancient maritime silk road that originated in the Guangdong and Fujian provinces as early as the Han dynasty. Since Chinese first arrived in the US in large numbers in the 1850s, there have been three main eras of property access for Chinese-Americans: the era prior to and including the Exclusion era; the Cold War era; and the present urban Chinatown and ethnoburb or sinoburb era. Each reflects the endurance of the maritime silk road and the Chinese ritual community, and the geopolitics of the age.

Before and during the Exclusion era, while China was militarily weak and increasingly impoverished, Guangdong laborers came because of their ritual obligations to their ancestors and descendants. Their clan and district associations, *huiguan*, facilitated their passage, sustenance, and support while they

abored in the US. These Guangdong laborers were welcomed by some as they mined gold and built the transcontinental railroads. Their ritual diets nourished them as they did the treacherous work of blasting through mountains to build the railroads. However, after other American workers could easily travel to California over these railroads, US national and local post-Reconstruction politics converged to decry the Chinese as unassimilable coolies. Chinese were subject to extreme violence, legal exclusion and property discrimination. They were regularly attacked and their homes destroyed. Chinese women were presumed prostitutes and had the most difficult time migrating. Chinatowns were deprived of public services and demolished. Chinese were the first to be subject to racially restrictive covenants; they also suffered under alien land laws. Eventually, the Federal government required racial restrictive covenants for subsidized mortgage lending and high appraisal values. Chinatowns were redlined in the 1930s. Because they were ineligible for citizenship, Chinese were on the lowest rung of the US racial property hierarchy. Nevertheless, some Chinatowns not only survived but thrived and flourished. The Chinese consulate and *huiguan* hired lawyers to bring thousands of suits to fight discriminatory laws. Chinatowns were also sites for raising money for revolutionary activity in China.

In the second era, the Cold War era, Chinese came to the US to flee political uncertainty, either from the mainland, Hong Kong, Taiwan or Southeast Asia. Hong Kong, near Guangdong, and Taiwan, next to Fujian, are part of the maritime silk road. Aided by the US Supreme Court ruling in *Shelley v. Kraemer* which held racial restrictive covenants unenforceable, US media, government, and business forces now painted the Chinese as a model assimilable minority worthy of living in white suburbs. This was to counteract Soviet criticism of racial discrimination in the US, and to bolster support for US troops in Asia. While some Chinese families were still met with death threats or just bewilderment when they entered suburbs, they and other Asian-Americans were gradually welcomed into more affluent neighborhoods. Unfortunately, many Blacks and Hispanics were not and the racial wealth gap grew. The term “model minority” was used to firmly entrench Chinese and other Asian-Americans in a US racial hierarchy that placed whites at the top, Hispanics and Blacks at the bottom, and Asian-Americans in the middle. In the 1970s, Chinese entrepreneurs and investors from Taiwan and Hong Kong began to finance Chinese ethnoburbs, or sinoburbs, in California and elsewhere.

In the third era since the 1990s, Chinese immigration has increased exponentially, along with a surge of Chinese students

since the 2000s. This is due to economic reform in China which has created wealth for many. While all parts of China now send students and immigrants, in accordance with the maritime silk road, Fujianese migration in particular has skyrocketed. The Fujianese are also buoyed by their ritual organizations. Many Chinese seek homes near prestigious schools, in accordance with Confucian ritual tradition. They also seek a place for safe investment and an escape from environmental degradation in mainland China caused by rapid industrial development. Aided by Chinese real estate agents in both hemispheres, sinoburbs in the US continue to flourish. *Fengshui* is popular. The Chinese students provide much-needed funds for US universities. However, Chinese-Americans face a bamboo ceiling in the work place, and closed doors in elite schools. Ironically, some perceive coming from a highly competitive high school in a sinoburb to be a disadvantage. Along with Blacks and Hispanics, Asians face housing discrimination.

### *B. Where Do We Go From Here?*

Current Chinese investment in US real estate and education is fueling both the expanded Chinese maritime silkroad, and new transcontinental paths for the US. This is reminiscent of how early Chinese laborers in the mines, transcontinental railroads, and agricultural fields greatly contributed to the US economy and property ownership and development. If we can heal from our past, however, we can avoid repeating the American nightmare that the Chinese faced after they built the first transcontinental railway: exclusion, violence, demolition; and education, property, and job discrimination. We can all be part of a global route that provides property access and justice for all nations and peoples within nations.

In order to heal from past wounds we must excavate the history not only of discrimination against the Chinese, but that of property discrimination. It has been hidden because it conflicts with a model assimilated minority narrative. Hiding this history also promotes conflict among minority groups. Thankfully, this history is also the history of resilience and resistance through ritual communities that used appropriate legal action. It is the history of the *huiguan*, churches, Anson Burlingame who fought black slavery and unequal treatment for the Chinese, attorneys who represented the Chinese and judges who ruled in their favor, and of plaintiffs such as Fong Yet, Sam Choy, and Tom Amer who knew racial restrictive covenants were unjust. It is the history of savvy and visionary Chinese-American real estate agents, developers, attorneys, and



community leaders. The Chinese in America were and are not an unassimilable people, nor a “model assimilated minority” to be kept in place, but a sophisticated and adaptable migrant group as all are. Today’s urban Chinatowns and sinoburbs, along with other ethnoburbs, can promote multiethnic and multiracial property access. They can and should also be healing and healthful communities.

