Citizenship Colored

Asian American Immigration and the Legal Constructions of White National Identity
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CHAPTER 1

CHALLENGING THE MYTH:

The State of Asian America

The United States of America is often symbolized through the Statute of Liberty. Numerous immigrant narratives begin with the sight of the Statute of Liberty as their ship approached Ellis Island, the gate to the Promised Land. Its inscription read, “Give me your tired, your poor, your huddled masses yearning to breathe free; the wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed to me. I lift my lamp beside the golden door!” And so America was seen as the welcoming land for the immigrant, a nation comprised of newcomers, amalgamated as citizens in the giant melting pot. The traditional idea of the melting pot and the American Dream are now so ubiquitous in the American psyche that it is seldom even questioned. Children are educated early on with history books filled with black and white images of newly arrived immigrants, while popular culture is ever ready to recycle the familiar motif, reinforcing its authenticity. The immigration explosion of the nineteenth century is especially a fond topic, with numerous stories of the “Americanization” process of immigrants, especially the Irish, the Jews, and the Eastern Europeans. Horatio Alger may have died in the nineteenth century, yet his idea of the American Dream lives on.
However, at the other end of the nation, a seldom told, very different story unfolds. While history books are filled with tales of the passage through Ellis Island, they tend to ignore or misrepresent another nineteenth century immigration explosion, one that came through Angel Island on the West Coast. The melting pot and the American assimilationist approach that is often the central theme in immigration studies cannot be used to neatly describe the experiences of the other group that migrated through Angel Island. For these immigrants, they were never given a chance to assimilate, complicating the standardized American immigration myth (Chan 1991:xiv). Whatever similarities these two groups of immigrants may have had in their hopes of the elusive American Dream, their trials would prove to be quite divergent. Although both groups initially faced similar hardships involving nativist discrimination and poverty, one group would continue to struggle as the “perpetual internal foreigners” for generations to come (Chang 1997:1412). Whatever difficulties encountered by the new immigrants who passed through Ellis Island, today they have become part of the historical myth of the melting pot, an addition to American society so significant as to render the national slogan as “the land of the immigrant.” On the other hand, the immigrants who passed through Angel Island and various other ports of the West Coast are even today largely invisible. Their stories are untold, their histories denied. Whatever their contribution may have been to American society, their contribution to the American melting pot seems to have been their exclusion from it. America could and would be defined as a nation that did not include them.
The main difference between the two groups of immigrants was race; the Ellis Island arrivals were what one would today call “white,” while those who passed through Angel Island were Asian. This was an issue that became increasingly important as the number of arrivals multiplied. The large numbers had the potential to change the nature of the nation. They would define what would be “American.” The idea of the melting pot presents Americanization as though it were an organic process, an unrestrained, arbitrary pattern that depended only on who had chosen to arrive at the shores. The composition of the nation today is simply a reflection of such a natural process of immigration and naturalization, leading to the diverse population America has today. The proportions and the conditions of the different races in the US, then, are merely coincidences. However, to accept such a proposition would be a gross misrepresentation of history. It would discount the experiences of the immigrants who entered through Angel Island, who came from across the Pacific Ocean. Their history would show that the constitution of American society through immigration was far from being arbitrary, but rather a deliberate attempt to construct a specific American national identity. Their stories would tell that at the center of such a national identity was the racial requirement of being white.

Critical Race Theory deals with the “complex interplay among race, racism, and American law” (Delgado 1993:461). Critical Race Theorists examine American legal culture, and American society in general, by problematizing the assumptions of race and showing its deep effect on every aspect of American life. In so doing, they challenge the dominant discourse of white supremacy and presumed racial neutrality, and instead
provide “counter-accounts of social reality by subversive and subaltern elements of the reigning order” (Crenshaw et al 1995: Intro). Through methods such as “storytelling/counterstorytelling” (Delgado 1993:462), they provide a counter-narrative to the presumed “color-blind” hegemony of history and of law, recognizing the indisputable role race plays in American society.

This thesis, then, is a counter-narrative to the myth of American immigration and the melting pot. It presents the story of the Asian immigrants who came during the nineteenth and early twentieth century, and the reaction of American society to their arrival. The governmental efforts to restrict their migration were justified through a schematic racialization of Asians as the “other,” which reinforced the white homogeneity of American identity. The deliberate racialization of Asians situated them as permanently unassimilable to an American society premised upon whiteness as a prerequisite for membership. The formation and preservation of American national identity was not something conceived through the natural process of immigration, but rather a deliberate and specific process constructed through government policy. Essential to such a national identity was the racial requirement of whiteness.

Today, despite racial diversity in the United States, whites are still clearly the dominant race, whether in numbers or especially in political power. Discriminatory immigration and naturalization laws ensured the numerical supremacy of the white race, while segregation and legal persecution of persons of color would ensure the white race’s supremacy in the social and political arena. Most importantly, however, was the fact that the aggregation of all these measures constructed American national identity as being
exclusively white. Despite the American claims of equal opportunity and freedom, the words would ring hollow so long as the right to be American was premised upon an unattainable racial identity. And America, the mythic melting pot, the land of the free, would continue to employ these tactics to ensure exclusion of the racial others from the status of being American.

The stories of the early Asian immigrants have rarely been told, and are even more rarely discussed. In the Eurocentric historiography, Asian immigrants were forced into silence (Takaki 1998:7-8). But there certainly is no lack of material that needs to be told. Preeminent Asian American scholar Ronald Takaki subtitled a chapter in his book *Strangers from a Different Shore* (1998) as “Their History Bursts with Telling.” The history of pre-World War II Asian American immigration has been an eventful one – one that is often painful yet rarely spoken of. It is marked by exclusion, discrimination, violence, and at the same time, resistance.

On one level, then, this thesis is an attempt to give a voice to those stories that have yearned for so long to be told, to be recognized against the naïve myth of the American melting pot. At the same time, however, it is an attempt to take the stories one step further, in recognizing not just the experiences of the Asian immigrants themselves, but the impact it has had on the nation as a whole. Most importantly, the article seeks to situate their experiences within the larger movement of American society to legally define a white national identity. The motivation of race and racism behind the actions against the Asian immigrants was not only about the immigrants as being Asian, but also about maintaining the nation as being white. Asian exclusion and discrimination was
essential in sustaining a white national identity. By putting race at the center of the
discussion on American immigration and naturalization policy, the article attempts to
show the enormous effect race has, and continues to have, in defining who we are as a
nation.

Part I of this thesis is an overview of immigration and naturalization laws enacted
to target the migration of Asians to the United States. Up until World War II, the laws
generally became more and more restrictive, and by 1934 had effectively halted all Asian
immigration. The laws were enacted and enforced to racialize Asians as an unassimilable
“other,” in contrast to the white majority. Part II argues that legal restrictions were a
conscious national effort to legally create a national white identity. By defining who did
or did not belong to the United States, the federal and state governments effectively
constructed a national identity that included only those who were allowed to be white and
therefore eligible for membership in the national community. Who was to be included
was a matter of deliberate government policy that emphasized the purity of and the
protection for the white national identity. Part III turns to the impact of this national
vision on the lives of Asians and other racial minorities, once they had entered the United
States. Specifically, this thesis is interested in the enforcement of segregation and
discrimination laws that maintained the legal myth of a white national identity. Crucial
to this was making sure that those non-whites already in the country would never attain
the status of being fully “American.” The article concludes by emphasizing the
importance of allowing minority stories to be heard, and the centrality of race in the
formation of American identity. Only by allowing these stories to be told can the full impact of the role of race in this society be realized.
CHAPTER 2

RACING YELLOW:

THE POLITICS OF IMMIGRATION AND NATURALIZATION

Immigration

Early Asian immigration to the United States came in distinct waves, based on nationality. The first significant number of Asians to arrive in the United States were the Chinese in the mid-1800s. Recruited as labor for Hawaiian sugar plantations and the transcontinental railroad and lured by the California Gold Rush, the Chinese entered the United States often on labor contracts. When resentment against the Chinese grew, employers recruited Japanese labor. After the Japanese were the Filipinos, with Asian Indians filling the interim. Most of the immigrants worked as laborers, either in agriculture or industry, while a small number would become small businessmen, mostly serving their own ethnic communities (Chan 1991:25-42). The distinct waves of immigrants were usually delineated by outside pressures, through legislative restrictions that grew as a response to hostility towards the immigrants.

The Chinese, having been the first to arrive and being the largest and most visible group, were the first to be targeted. From the beginning, the majority of Chinese arrivals were men, often intending to only stay a few years and then return to China. However,
before long many of the Chinese began to be seen as not sojourners but immigrants (Barth 1964:212-3), seeking instead to settle in the United States. The first restriction specifically targeted the Chinese in their efforts to pursue permanent residency and a stable home in their new environment. Under the guise of denying entrance to “immoral women,” the 1875 Page Act effectively put an end to entry by all Chinese women. The restriction was extended to men as well by the 1882 Chinese Exclusion Act. Implicitly upheld in the Chinese Exclusion Case, or Chae Chan Ping v. United States, 130 U.S. 581 (1889), Chinese exclusion was extended indefinitely in 1904. Its enforcement was aided by the passage of the 1888 Scott Act, prohibiting re-entry of Chinese laborers, even with certificates proving they had entered the United States before the Chinese Exclusion Act went into effect. Efforts at exclusion were further aided by the 1892 Geary Act. Claiming that “Chinese names and faces were all alike,” the Act required registration of all Chinese residing in the United States, to distinguish between pre-Exclusion Act residents and post-Exclusion Act illegal immigrants (Hing 1993:25). The Supreme Court upheld its provisions in Fong Yue Ting v. United States, 149 U.S. 698 (1893).

Japanese immigration was for the most part put to an end in 1907. The Gentlemen’s Agreement between President Theodore Roosevelt and the Japanese government provided for the Japanese government’s voluntary restriction of emigration by Japanese laborers. The voluntary restriction became mandatory in 1924, through the Immigration Act of 1924 that prohibited immigration for all aliens ineligible for citizenship. Asian Indians were barred from entering in 1917, through a congressional Immigration Act that created the Asiatic Barred Zone, including most of South and
Southeast Asia. The Filipinos were the last to be denied. Since as a result of the 1898 Spanish American War the Philippines was a US protectorate, Filipinos had been allowed unrestricted entry into the United States. However, the 1934 Tydings-McDuffie Act granted the Philippines independence, and therefore placed Filipinos under the 1924 restriction against immigration by all aliens ineligible for citizenship. These immigration measures would remain in effect until World War II, when gradually, immigration and naturalization was allowed, nationality by nationality. However, it was not until 1965 and the repeal of race-based immigration quotas that Asian immigrants were finally allowed fully equal rights of immigration as their European counterparts.¹

The initial restrictive immigration measures were seen as economic actions, in response to demands to protect white labor interests. Indeed, the Chinese Exclusion Act of 1882 specifically barred entry of Chinese laborers only, and the pressures on Congress from labor interests to pass legislation to such an end is described in the Supreme Court’s opinion in the Chinese Exclusion Case (1889). Also, the completion of the transcontinental railroad in 1869 created a large surplus of Chinese labor that competed with white laborers, often at lower wages. Charles Johnson discusses what he calls the “race relations cycles,” wherein initially the Chinese sojourner is welcomed for providing much needed labor. Before long, however, white workers feel threatened by the cheap Chinese labor and push for exclusion. Then, Japanese immigration was encouraged to provide labor. Again, white workers begin to feel threatened by the Japanese agricultural

¹ The brief chronology in the above two paragraphs is mostly based on Bill Ong Hing, Making and Remaking Asian American Through Immigration Policy, 1850-1990 (1993), 23-41.
success, and again push for exclusion (Johnson 1939:293). The immigration waves were contingent upon white labor interests in the United States.

However, narrowly tailored economic interests seems to be an insufficient justification for the systematic exclusion and disenfranchisement of Asians perpetuated in the United States for such a long period of time. After all, Irish immigrants had initially encountered similar nativistic racism, in regards to their threat to entrenched labor interests. For the Irish, though, the period was brief, and before long, they were themselves asserting white privilege against Chinese and African American wage competition. Thoroughly incorporated into the American mainstream, they “did not express their demands and aims in terms of their Irishness, but in the name of ‘white workingmen’” (Allen 1994:196). The process of how the Irish became white, despite initial discrimination that likened them to blacks, also informs the Asian experience, namely in the question of how the Chinese could not become white. A conscious effort by Irish immigrants to distance themselves from blacks and “nigger work” and insist on their “whiteness and on white supremacy” eventually led to acceptance by the larger American population as whites (Roediger 1991:251). Although the Chinese were involved in similar work and similar initial treatment, however, they were racialized as Asians in a way that permanently cast them as outsiders.

Another justification for exclusion that was mentioned at the time was cultural. Gunther Barth (1964) examines the Chinese as sojourner theme at length, attributing the hostility the Chinese immigrants encountered to their unwillingness to adapt themselves to American life. Planning on returning to China after making money in the US, the
Chinese had different motives and experiences from other newcomers. Barth thus claimed that the hostility was mainly due to Chinese differences rather than race-based discrimination, and concludes that once the Chinese decided to become immigrants and not just sojourners, the hostilities ended. The fundamental flaw of this argument is too obvious to even reiterate. The succession of exclusionary measures throughout the 19th and 20th century show only too well that it was after the Chinese had arrived in significant numbers and decided to settle in the US that they encountered serious difficulties, especially legally.

However, it is true that Chinese unassimilability was a significant factor in the passage of such exclusionary measures. Again, in the *Chinese Exclusion Case*, the Supreme Court notes the way the Chinese “remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own county,” and “without any interest in our country or its institutions” (1889:595-6). The language of both Barth and the Supreme Court suggest an element of choice, as though the Chinese had chosen to remain separated, as first sojourners and later immigrants. For the Court, their exclusion was justified, on the grounds that their self-segregation posed a threat to the unity of the nation. The insulated Chinatown communities and their inability for normal family formation were seen as evidence of the exclusivity of the Chinese immigrants, with concerns raised regarding “the peace of the community on the Pacific Coast, and possibly to the preservation of our civilization there” (*Chinese Exclusion Case* 1889:594).
Similar to the economic argument, however, is the way Asians were racialized specifically as unassimilable. The creation of bachelor societies was inevitable due to early prohibition of women’s immigration through the Page Act, and later exacerbated by the Cable Act. Violence and the need for self-preservation created insulated ethnic communities, while racially restrictive covenants discouraged settlement outside. The emphasis on racial difference for Asians reinforced the myth of unassimilability, which in turn justified increasingly exclusionary immigration measures. Restrictive naturalization laws, as elaborated later in the chapter, further intensified the need for community self-preservation and also restricted the immigrants’ ability to fully participate in “our country or its institutions.”

Both the economic and the cultural justifications discount the fundamental issue of race that informs Asian exclusion. Although economic reasons were part of the initial movement to restrict Asian immigration, it is insufficient to explain the continued persistence of restriction and exclusion. After all, while Asian immigration was continuously restricted, nationality by nationality, “European immigration was encouraged,” despite economic depressions (Hing 1993:24). Also, cultural justifications imply choice, as though the Asian immigrants arrived in the United States and voluntarily chose self-segregation and cultural isolation. However, assimilation was never a choice for these immigrants. The entire concept of assimilation was premised upon a racial identity that Asians could never attain. The socioeconomic conditions and the hostilities of the time promoted the racialization of Asians as the permanent foreigner and the perpetual other, unable or unwilling to join the larger American society.

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2 The Cable Act is further discussed in the Naturalization section of this chapter.
Closely linked with the immigration policies were the naturalization laws. It was through naturalization laws that the racialization of Asians really took effect. While immigration only dealt with who would physically be allowed into the country, naturalization specifically dealt with the question of who was “worthy enough” of being American. The answer was quickly found in one of the earliest of American laws. The Naturalization Act of 1790 provided explicitly that naturalization would be limited to only “free white persons.” Although the Naturalization Act would be amended numerous times over the years – most notably in 1870 to include persons of African nativity and descent – the qualifier of “free white persons” would always be retained. While it could be – and often was – argued that the 1790 Act only considered Western Europeans, Negroes, and Native Indians as subjects for regulation, the 1875 amendment to the Naturalization Act was explicitly constructed to prevent Chinese immigrants from obtaining citizenship.

Initially, there was some confusion as to its applicability to the Chinese and to other Asian immigrants, resulting in numerous lower court cases with conflicting decisions as to whether or not the immigrants could be naturalized. Usually, the question of their eligibility hinged on the definition of “free white persons” (Haney 1996:49-77). The question was finally put to rest by the Supreme Court in *Takao Ozawa v. United States*, 260 U.S. 178 (1922) and *United States v. Bhagat Singh Thind*, 261 U.S. 204
(1923).³ The court firmly established that Japanese and Asian Indians were not allowed to naturalize due to the “free white persons” restriction, and further defined what it meant to be “white.” While in Ozawa the court stated that white meant Caucasian, in Thind, the court further narrowed the definition by declaring that based on common knowledge, Caucasian meant of European descent. Once again, Asians’ inability to assimilate was a main focus, reinforcing the preconceived notion of the nation as exclusionary of non-white persons.

The denial of naturalization for Asian immigrants had far-reaching consequences. While for most other immigrants the lack of citizenship meant only lack of political rights, for Asians, it would affect their very livelihood and the existence of their communities. The permanent denial of naturalization provided states with a means to discriminate against an entire race of people, while still passing Fourteenth Amendment Equal Protection scrutiny. Most prominent among such measures were the California and the Washington Alien Land Laws, which prohibited “aliens ineligible for citizenship” from owning property in their respective states. Both state laws were explicitly upheld as reasonable regulations in Porterfield v. Webb, 263 U.S. 225 (1923) and Terrace v. Thompson, 263 U.S. 197 (1923), respectively (C. Kim & B.L. Kim 1977:383-3).

The “aliens ineligible for citizenship” loophole also provided an efficient way for the government to target Asian family formation, by denying the rights other immigrants were granted through marriage. Congress in 1855 declared that foreign women automatically acquired citizenship upon marriage to a US citizen (Haney Lopez 1996:46).

³ The above two paragraphs are mostly based on Sucheng Chan, Asian Americans: An Interpretive History (1991), 92-94.
However, the Supreme Court in *Chang Chan v. Nagle*, 268 U.S. 346 (1925) declared that even wives of US citizens, if they were themselves “aliens ineligible for citizenship,” could not be naturalized, or in the specific case, even enter the country, under the Immigration Act of 1924. The measures were even more draconian for female US citizens who married these “aliens ineligible for citizenship,” for under the 1922 Cable Act, they automatically lost their own US citizenship (Chan 1991:106). These provisions clearly burdened Asian immigrants in ways that did not affect other immigrants, and were intended precisely to do so.

One small victory for the Asian immigrants, however, came in the decision of *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). This Supreme Court case affirmed that all children born in the United States, excepting children of diplomats, would be considered US citizens under the Fourteenth Amendment. The decision was especially significant for Asians, because unlike European immigrants, they did not have the option of children being automatically naturalized when their parents were, since Asians were barred from naturalization. Through this decision, numerous children of Asian descent were granted US citizenship, and it provided a source of refuge in the enforcement of restrictive immigration laws. It would open the doors for one way of illegal immigration as well, whereby the Chinese already in the US would create “paper sons” in order to bring over friends and family from China (Salyer 1995:44).

Overall, for Asian immigrants, the right to US citizenship was denied except by birth. It was only in 1943, after the US alliance with mainland China during World War II, that the US finally recognized the right of naturalization for Chinese immigrants. The
privilege was further extended in 1946 to Filipinos and Asian Indians, and the Immigration and Naturalization Act of 1952 finally removed all racial bars for naturalization (Haney Lopez 1996:45-6).

A brief overview of the immigration and naturalization laws affecting Asian immigrants is sufficient to show that clearly, Asian immigrants to this nation faced a very different situation than their European counterparts. Exclusionary measures specifically targeted Asian immigrants, denying entry to entire groups, one nationality at a time. Even those that did manage to come to the United States were permanently denied citizenship, based on their racial attributes alone. It is evident that the aggregation of such various legislation and judicial decisions severely restricted Asian mobility and activity. Most importantly, these measures constructed Asians as a racial “other,” justifying their exclusion through an emphasis on their unassimilability. Of course, many other immigrant groups no doubt faced antagonism and prejudice upon arriving to the United States, yet it was only Asians whose arrival created opposition sufficient to initiate a series of restrictive legislation, which were often upheld by the judiciary. Compared to the plight of their European counterparts, the restrictions that color the Asian immigration experience seem far too draconian to be discounted as mere accident. What were the motivations behind such racialization? What consequences were intended by preventing the entry of and the acquirement of citizenship by Asian immigrants?
STUDYING RACE:

ASIAN AMERICANS AND CRITICAL RACE THEORY

Critical race theory recognizes the central role race plays in American society. The idea of race itself, however, is premised upon the concept of race as a social, and often explicitly legal, construction. Instead of seeing race as a biological, predetermined category, critical race theorists understand that “race is defined not by its inherent content, but by the social relations that construct it” (J. Lee 1994:443). The idea that race is socially constructed, however, does not mean race is unimportant or in any way insignificant. The repudiation of ethnologic taxonomy is intended to show the non-biological origins of race, not to dispute the very existence of race as a crucial social phenomenon. Despite its social construction, race remains “nonetheless ‘real’ in the sense that there is a material dimension and weight to the experience of being ‘raced’ in American society, a materiality that in significant ways has been produced and sustained by law” (Crenshaw 1995:xiii).

Under the American tradition of rule of law, race⁴ has been created and sustained by a legal system that continuously reproduces the racial hierarchy. For people of color,

⁴ For the purposes of this article, the term “race” and “color” are used interchangeably. Although there is debate on the proper terminology in referring to whites and racial minorities, “common knowledge”
the “centrality of race” in society is “maintained and perpetuated in significant ways by
the rule of law” (Calmore 1992:320). The now-infamous opinion by Justice Brown in
Plessy v. Ferguson, 163 U.S. 537 (1896) claimed “if one race be inferior to the other
socially, the Constitution of the United States cannot put them upon the same plane.”
Under such thinking, “racism permeates U.S. society through individual antipathies and
psychoses, not because the institutions central to American life… systematically create
and perpetuate racist norms” (Haney Lopez 1994:24). However, it is the Constitution
itself and the legislation stemming from it that created the social inferiority in the first
place, and such inferiority is deliberately and continuously reinforced through the law.
The maintenance of such a racialized society required “a legislative body or court [to]
define what race is and who is a member of what race” (Finkelman 1993:2106). It is with
difficulty that the government has applied itself to this task, conveniently utilizing or
discarding “scientific” classifications in the process. Often their vision required the
subordination or exclusion of persons of color in order to create a “lovely White” society
(Takaki 2000:14). Legal classification then, was an instrument used to uphold the purity
of whiteness from “colored” contamination.

The racialization of Asians, undertaken through the succession of restrictive
legislation and the judicial decisions affirming them, was critical in situating Asians as
unassimilable to mainstream America. The process presupposed a conception of
America which Asians could never become a part. Assimilationist theories of
immigration suggest “ultimate acceptance by the dominant group of an ethnic minority

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definitions of race and color are used in this article to emphasize the color division between white and non-white.
Race, however, has complicated this model (Ancheta 1998:108). For European immigrants, assimilation meant the adoption of Anglo-American standards and acculturation of behavior to those standards. Once acculturation was achieved, the idea was that “structural assimilation” – integration into mainstream society – could occur, through the acceptance of the immigrant group by the dominant group (Hing 1993:182 n225). But the Anglo-American standards were constructed not only as a social and cultural conception, but also as a racial categorization. Asian unassimilability was thus achieved by a process of racialization, of setting them up as permanently “other.” No matter the degree of behavioral acculturation, race was constructed as an immutable characteristic that prohibited the assimilation of Asians into mainstream American society.

As mentioned in Chapter 2, genuine – albeit selfish – economic concerns and substantive cultural differences of the Chinese were invoked as reasons for their exclusion. However, material justifications such as these were simply part of the larger, intangible process of racialization that reified Asian unassimilability and reinforced the fiction of American homogeneity. The consequence – if not the explicit motivation – of this process of racialization was the reinforcement of America as a white nation. The racialization of the “other” strengthened the racial identity of the mainstream. Without the existence of the Asian other, “the ‘real’ Americans would not have known who they were” (Chang 1997: 1412). Luckily for them, the deliberate racialization of Asians has allowed for them to recognize their unifying national characteristic as white racial identity.
Asian exclusion was a self-fulfilling prophecy. The more restrictive the exclusionary measures, the more it reinforced the “naturalness” of white American identity. Their whiteness was premised upon the exclusion of the “other;” therefore, classification of whiteness was equally concerned with classification of the other in order to maintain the boundaries. Whiteness was integrally tied to privilege, since only those who were classified as white were allowed the privilege of belonging to and participating in the American national community. The racialization of Asians as other justified the withholding of these privileges from them, since the conferring of privileges was based upon membership in the national community. The racial disadvantage that excluded and discriminated against Asians further perpetuated the disadvantage, as it denied political citizenship and the attendant political autonomy to the Asian immigrants.

By constructing a national identity defined by the exclusion of others, white became classified through its exclusivity. The racialization of Asians as the other allows whiteness to be defined through the non-white status of Asians. Whatever the actual definition of white Americanism, the racialized bodies of Asians established whiteness as a basic element of the American national community and justified their exclusion from it. Most importantly, the boundaries of whiteness were essential in sustaining its purity and exclusivity. Maintaining boundaries was a crucial dimension in legitimizing the claims of white supremacy; whiteness as a fundamental element of American national identity required that race be accepted as an immutable classification. The privilege embedded in the idea of whiteness meant that the conferring of a white title was intimately tied with worthiness. Who was worthy of accepting those privileges, and conversely, who was
unworthy of such advantage? The reification of whiteness as racialized privilege was legitimized by science and embraced in legal doctrine as ‘objective fact’ (Harris 1993:283). The forced justification of racial categories in Asian naturalization court opinions sought authentication from the authorities of the so-called science of racial anthropology. Although the categories are created via legislative and judicial deliberation to serve a narrow goal of white supremacy, such legal conceptions are publicly sanctioned and become entrenched throughout the entire society.

For many critical race theorists, the main focus of much of the scholarly output has traditionally been African Americans, and especially the shortcomings of the Civil Rights Movement of the 1960s (Delgado 1993:461). It is important to note, however, that despite the focus on African Americans, constructions of blackness is seen in relation to the construction of whiteness. In the legal construction of race, black has become equated with “‘bad’ or unworthy of inclusion” (Williams 1989:2133). Hence, black was seen as bad and yet more specifically, it signified unworthiness of inclusion into white American society. The anxiety of defining whiteness is manifested through the efforts of the legislature and the judiciary to define white not by who was to be included, but rather by who was to be excluded. Lacking scientific legitimacy yet yearning for exclusionary

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5 Asian American critical race theorist Robert S. Chang is critical of the near exclusive focus on African Americans by fellow scholars. In “Toward an Asian American Legal Scholarship,” 81 Cal. L. R. 1241 (1993), Chang criticizes the racial bifurcation into black and white that many scholars seem to follow, claiming it excludes Asian Americans and Latino/as. On the other hand, Andrew Hacker, in his book Two Nations (1995), asserts that there exists only two races in the United States, black and white, and that Asians and Latinos cannot be considered “races.” This article is premised on the grounds that Asians are indeed a race, and that their experiences are worthy of inclusion in talking about race relations in America. And while admittedly critical race theory has been focused on issues facing African Americans, the discussion of white racial identity, or the racial identities of persons of color in relation to white identity, has been relevant in examining the experiences of Asian Americans as well.
justification, whiteness has been an “attempt to build an identity based on what one isn’t and on whom one can hold back” (Roediger 1994: 13).

Although not as much acknowledged as the experiences of African Americans, early Asian American immigrants were also racialized in order to justify their exclusion from the American community. The construction of a ‘pure’ white identity was achieved by attaching inherent meaning to the symbolic personality of skin color against African Americans. The method was similarly utilized against Asian Americans, often involving explicit comparisons between Asians and blacks in contrast to white (Takaki 2000:216). This is why critical race theory’s emphasis on racialization is informative for discussing the experiences of Asians as well, despite their explicit focus on African Americans. The subordination and ‘other’-ization of certain persons in order to create and maintain white nationality was often a shared common experience for all people of color. The concerns of whiteness did not lie in the individuality of those who were excluded; their concern lay in the reaffirming of their white identity through the exclusion of all who were from contaminated races and therefore deemed unworthy of inclusion.

The inherently political nature of defining whiteness through exclusion is evidenced in the 1911 Senate Documents, which attempted to categorize races by consulting various ethnological and anthropological authorities. While most of the races

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6 The selected bibliography cited in the Senate Document include anthropologists such as Daniel G. Brinton, A.H. Keane, P. Topinard, and Edward B. Tylor. Ethnological journals such as "Achiv für Anthropologie" and the American Anthropologist are also listed, along with many other citations. However, it is interesting to note the disclaimer in the Introduction, claiming the Senate Document “is not to be regarded as written for the ethnologist, but for the student of immigration” (3). It seems to be a clear example of separating the “scientific” classifications of race from the inherently political classifications that the Document provides.
and ethnicities listed are defined by specific geographical or cultural boundaries, the
definition of Caucasian is given as “the white race or grand division of mankind as
distinguished from the Ethiopian, Mongolian, American, and Malay races… to include all
races, which… are, when considered from all points of view, felt to be more like the
white race than like any of the four other races just mentioned” (1911:30). White
becomes almost the default category, since whomever does not belong to the other races
must therefore be white. White becomes a nearly tautological categorization, defined as
an amalgamation of persons who are not excluded from white.

The construction of whiteness through exclusion is examined more specifically in
the next chapter, through the examples in the history of early Asian American
immigrants. Their struggle to be included in American society is an exemplar of the
exclusionary nature of whiteness, and of being “American.” Whiteness in American
society was constructed to equate with what it meant to be American, and the
racialization and exclusion of immigrants of color was a crucial part of this process.
In a 1945 law review article, INS research analyst Charles Gordon discussed the recent “Chinese Repealer” legislation which granted naturalization rights to Chinese immigrants. In making the case for extending naturalization to all Asian immigrants, Gordon stated, “It is indisputable that we traditionally have sought to encourage the admission of aliens into the fellowship of American citizenship” (1945:253). As mentioned in Chapter 1, the myth of America as the land of the immigrant has a long-standing history that perform a role in constituting national identity. The encouragement of immigration was a part of the “American Creed,” a social ethos and political ideology based upon American traditions of democracy and republicanism. Immigration was a natural extension of the American Creed, because “America wanted generously to share its precious ideals and its happiness in enjoying a society ruled by its own people with all who would come here” (Myrdal 1962:5). American identity was linked with democracy, and democracy meant everyone should be welcome and equal.

The restrictive immigration and naturalization measures taken against early Asian immigrants, mentioned in Part I, explicitly say otherwise. Despite the welcoming mythology, in reality American history is full of examples where newcomers were at best
grudgingly tolerated and at worst, turned away. The American Creed and the ideals of
democracy notwithstanding, “if there was an ‘American orientation’ to newcomers it was
not toward giving equal opportunity to all but toward inviting entry by white Europeans
and excluding others” (Saxton 1997:10). Equality of opportunity was a myth sustained
by what Ian Haney Lopez terms “the immigrant analogy,” whereby the experiences of
racial minority groups and the experiences of European ethnic groups are equated,
expected to follow “the same trajectory of incorporation into American society”
(1994:21). Based upon the race of the newcomer, however, their reception was quite
varied. The lived experiences of Asians who came to the United States show the “poor
analogy between Ellis Island and Angel Island” (Chang 1993:1296). Only white
immigrants were welcomed, while the arrival of Asians and other racial minorities was
seen as a threat to America and American national identity.

The anxiety to create and enforce a white national identity is a recurring theme in
the history of Asian immigration. Nativistic racism – that “both nativism and racism are
mutually constitutive of each other and operate in tandem to preserve a specific
conception of the nation” (Chang 1997:1401) – was especially visible during the late 19th
and early 20th century, when pre-1965 Asian immigration was at its peak. Perhaps it
suggests that the increasing number of non-white immigrants compelled the need to
specify an American identity, to maintain the white status quo. Peter Schuck attributes
the increasing immigration restrictions after the 1880s to an American interest in defining
a “national community.” Although he does not specifically mention race, Schuck sees
the national identity so created as “a legal artifact self-consciously constricted by
Congress” (1984:86). Much like the legal constructions of race, American national identity is similarly created through legislative and judicial conspiracy. For Schuck, however, these measures were indicative of the post-1880 period only, with the 1882 Chinese Exclusion marking a pointed departure from the traditional US immigration policy of “individual freedom” and “open borders” (1984:86). While the influx of Asian immigrants in the second half of the 19th century may have created an urgent demand for defining an exclusionary model of national identity, one need only remember the forced “immigration” of blacks during slavery to realize that perhaps the idea of America as a land welcoming all immigrants has never been a reality.

From the earliest conception of the nation, the republican ideal of American democracy was explicitly tied to race. Maintaining a white America was an issue that concerned the Founding Fathers, and Benjamin Franklin expressed the expectation of a new nation “where we have so fair an opportunity, by excluding all Blacks and Tawneys, of increasing the lovely White.” In order to ensure that “only the ‘worthy part of mankind’ should be encouraged to settle in the new republic and be eligible for citizenship,” the 1790 Naturalization Law was enacted, limiting naturalization only to “free white persons” (Takaki 2000:14-5). Prevailing notions that only whites were capable and deserving of democratic membership provided for an explicit legislative bar on extending such privilege to members of the colored races. Thus, from the inception of the nation, America was founded upon principles that directly linked republican ideology with a white national identity. As the Supreme Court of Washington pointed out in 1902’s In re Takuji Yamashita, 30 Wash. 234, the fact that racially restrictive
naturalization laws had existed “co-extensively with the formation of the American republic, it must be taken to express a settled national will” (238-9). While the majority of newcomers were European, this principle was observed without disturbance. It was only as the number of Asian immigrants increased that America found occasion to reiterate the founding principles of the nation and dispel the illusion that America has always been a welcoming land.

In the early periods of Chinese immigration, for a brief period the Know-Nothing party gained some momentum by relying on nativistic and racist sentiments of the public. The party challenged both Irish and Chinese immigration, and although short-lived, the legacy of its mission to “keep America pure” remained a powerful element in later exclusionary movements (Hing 1993:21).

It is noteworthy that the party did not specifically refer to whiteness in its xenophobic mission; whiteness is assumed in the meaning of “America.” This sort of “racial nationalism” would continue to be an important factor in the construction of “Black and White as racial and national formations” (Chang 1997:1403). Once whiteness became defined not only as a racial classification but as a national identity, justifying the exclusion of persons of color becomes an easy task. Reification of a white national identity thinly veils the racism inherent in such exclusion, and instead forces the issue on eligibility of republican citizenship. Like the literacy and the knowledge requirements of naturalization, race came to be seen as just another eligibility requirement for citizenship. The situation was self-perpetuating. To be American was to be white and so persons of color could be excluded, yet because persons of color were
excluded, it reinforced the idea of a homogenous white America. The pattern was
continued and intensified throughout the history of pre-World War II Asian immigration,
for “the stronger the sense of the national community, the more natural the restrictions
were, and vice versa” (Chang 1997:1412).

As noted in the US Supreme Court opinion in United States v. Bhagat Singh Thind, 261 U.S. 204 (1923), it is not so much that the Hindu chooses exclusion, but rather “the great body of our people instinctively recognize it [racial difference] and reject the thought of assimilation.” The effort to define a white national identity through exclusion can be seen in the long succession of racial naturalization cases that culminated in 1923’s United States v. Thind. Until the Court reached the final decision, however, there was considerable divergence in the lower courts as to who could and who could not be included under the banner of white. Throughout the process, however, America was slowly constructing a firmer idea of national identity. By deciding who belonged in the “national community,” the restrictions “solidified or helped to construct the country’s sense of the national” (Chang 1997:1412).

One of the first Asian naturalization cases to be heard by a federal court was In re Ah Yup, 1 F. Cas. 223 (1878). The application for citizenship was quickly denied by the California Circuit Court. The opinion states precisely that while who “congress intended to include in the term ‘white person’” was debatable, it was universally understood that “it excluded Mongolians” (emphasis added). For the court, what mattered wasn’t the actual definition of white persons; it was sufficient to ascertain the definition in so far as it meant, “not Mongolian.” In general, In re Ah Yup became the guiding principle in
many jurisdictions thereafter, where Chinese immigrants petitioned for citizenship. Especially after the Chinese Exclusion Act (1882), most courts found little difficulty in deciding that Mongolians were certainly not included under the term “free white person.” However, the California case did not mandate uniformity. An interesting case arose in 1890, wherein a Chinese person petitioned for admission to the California Bar (In re Hong Yen Chang, 84 Cal 163 (1890)). Records showed that petitioner had been granted United States citizenship in a New York State court in 1887. The California Supreme Court declared petitioner’s US citizenship invalid, and denied request for Bar admission.

Although In re Ah Yup set the standard in 1878, up until 1860 the Chinese had been classified as whites for census purposes. Several prominent Chinese immigrants (usually scholars) did indeed obtain citizenship during that time, most notably the educator and activist Yung Wing, who was naturalized in Connecticut in 1852 (Wong 1998:22). As the number of Chinese immigrants – and especially Chinese laborers – exceeded the handful of sojourners of the previous decades, pressures for exclusion gave voice to the 1875 amended Naturalization Act. Congressional debate shows that the precise intent of specifying “free white persons” in the 1875 act was to exclude the Chinese from obtaining US citizenship. When naturalization was extended to include African Americans in 1870, an attempt to include the Chinese under its provisions was struck down because of their “undesirable qualities” (Hing 1993:23 n34).

7 Unfortunately, in 1898, Yung Wing’s citizenship was revoked when he attempted to re-enter the United States after a visit to China. The action was a direct consequence of 1878’s In re Ah Yup. However, Yung Wing did later manage to return to the United States, where he would spend the rest of his life writing and working within the Chinese immigrant community.
Despite the *In re Ah Yup* decision and the Chinese Exclusion Act, however, some judges continued to confer citizenship to Chinese applicants (Hull 1992:404). The fact that *In re Ah Yup* was decided in California and Hong Yen Chang was granted citizenship in New York does not seem a coincidence. Perceptions of the Chinese during the early years were significantly different between the regions, due to the almost exclusive concentration of the Chinese immigrants in the West Coast. Petition for the Chinese Exclusion Act had originated in California, where the Oriental menace of “vast hordes of its people crowding in upon us” was probably felt most keenly (*The Chinese Exclusion Case* 1889:606). It was only when their presence seemed to create a substantial threat to the homogeneity of the national character that legislators and judges felt the need to counteract the threat through restrictions.

From *In re Ah Yup*, the federal and state judiciary would continue on a path of piecemeal exclusion. Numerous cases in multiple jurisdictions arose inquiring the naturalization status of an Asian immigrant. Because *In re Ah Yup* had set the standard that to be naturalized, one must be white or black, petitioners claimed whiteness as the only justification for their application. The result of the numerous cases, taken as a whole, provides no singular definition of what it means to be “white,” other than reiterate what the 1911 *Senate Document* had claimed – that to be white was to be not non-white. Instead of defining whiteness in itself, courts concentrated on deciding who was conversely not white, and therefore must be excluded from full participation in American society. In the process, the courts oscillated between “scientific definitions” versus “common knowledge” understandings of racial classifications.
The Massachusetts Circuit Court opinion of *In re Halladjian*, 174 F. 834 (1909), best sums it up by claiming that “the word ‘white’ has been used in colonial practice, in the federal statutes, and in the publications of the government to designate persons not otherwise classified” (24). In declaring that Armenians, who had often been seen as geographically Asian, were white and therefore eligible for naturalization, the court concludes that “‘white’ is still the catch-all word which includes all persons not otherwise classified” (26). Admitting that once the Chinese and Japanese were considered white as well, the court however states that “only after the feeling concerning the Chinese had led to a discrimination between them and other aliens was their naturalization refused”(26-7).

No judicial statement better exemplifies the legal construction of whiteness; by judicial fiat the Chinese could one day be white and the next day Mongolian. Dislike and distrust of the Chinese was sufficient to deem them “unworthy” of democratic citizenship, and stripping them of their white status was necessary to justify their exclusion.

The tension between scientific evidence and common knowledge classifications is most prominent in the naturalization cases involving Asian Indians. Depending on which standard to which the given court adhered, conflicting opinions arose out of several jurisdictions. Adherents to scientific evidence would follow the theory that Indians, as Aryans, were Caucasian and therefore eligible, while common knowledge assumed that white meant European and therefore excluded those whose morphology did not follow the European form. Thus, New York, Washington, and California\(^8\) all granted citizenship

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\(^8\) *United States v. Balsara*, 180 F. 694 (1910); *In re Akhay Kumar Mozumdar*, 299 F. 240 (1913); *In re Mohan Singh*, 257 F. 209 (1919).
to high-caste Hindus and Parsees, while Pennsylvania\(^9\) denied the application. The California court justified its position by relying upon “respectable opinion” which placed Indians amongst the Aryans, and therefore as whites. Washington and New York both seemed uncertain in their position, yet they felt in the end, Indians probably could be considered white. Pennsylvania, on the other hand, quickly denounced “inquiries made of ethnologists” (8) in determining whiteness for naturalization purposes, and instead adhered to the meaning “which the common man extracted from it” (5).

The question was finally laid to rest by the Supreme Court in \textit{United States v. Bhagat Singh Thind}, where the Court declared that based on common understanding of the word “white,” Hindus were not white. After all, the framers who had written the 1790 Naturalization Act had intended only for the inclusion of white persons who could be considered “bone of their bone and flesh of their flesh” (213), whose children “quickly merge into the mass of our population” (215). Unfortunately, “the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white,” and their children would “retain indefinitely the clear evidence of their ancestry” (215). The Supreme Court decision retroactively revoked the citizenship of many Indians in the United States, who had been previously granted in friendlier lower courts. Even Thind himself had previously been granted citizenship, and the case only came to the Supreme Court by an action brought by the United States to cancel his certificate of naturalization. The judiciary constructed what whiteness meant, and by 1923, it decided that it certainly did not include the Indians. Again, like the Chinese in an earlier period, divesting the Indians

\(^9\) \textit{In re Sadar Bhagwab Singh}, 246 F. 496 (1917).
of their citizenship meant stripping them of their white status, for citizenship was intimately tied to the idea of whiteness.

Throughout these various “prerequisite cases” (Haney Lopez 1996), the courts struggled to reach a comprehensive definition of what “free white persons” meant. However, in the end, none of the decisions seems to have found a satisfactory answer; instead, they based their decisions more on whether each individual ethnicity that arose in each case belonged to the white race or not. White was continuously defined by “the gradual process of judicial inclusion and exclusion” (quoting Davidson v. New Orleans, 96 U.S. 97 (1877), in Ozawa v. United States), rather than by a definitive explanation on its own. Therefore, in Takao Ozawa v. United States, 260 U.S. 178 (1922), the court admitted to “a zone of more or less debatable ground outside of which, upon the one hand, are those clearly eligible, and outside of which, upon the other hand, are those clearly ineligible for citizenship.” The court sufficed to say that the Japanese clearly “belong[s] entirely outside the zone on the negative side” (198).

To become naturalized was to become American, and in order to become American one had to be white. The judicial classifications of whiteness were ultimately a decision to determine “American.” Whiteness and American identity became explicitly tied together through the racial prerequisite for citizenship, and the judiciary constructed the parameters by excluding Asians and maintaining the purity of white America. While encouraging European immigration, the legislature tried to restrict the Asian population by prohibiting entry and denying naturalization. The judiciary upheld such provisions with gusto, creating racial classifications that fell in line with the intent of Congress to
maintain a “lovely White” nation (Takaki 2000:14). Republican government, the foundation upon which America was built, was deserving only for the white race, and the judicial construction of Asians’ racial status made sure that they would be prevented from ever becoming “American.” Such judicial construction in turn reinforced the racial prerequisite, since the more the Asian population was restricted, the more it emphasized the overwhelmingly white majority in American society. The immigration and naturalization measures were self-perpetuating, reifying a social and legal construction of American national identity premised upon whiteness.
MAINTAINING BOUNDARIES:
ASIAN AMERICANS AND THE ‘PERPETUAL FOREIGNER’

As mentioned in Chapter 2, early Asian immigration to the United States came in distinct waves, based on nationality. Although complex factors were at play in defining the waves, Johnson’s “race relations cycle” (1939:293) does provide a crude and rather simplified explanation. One group of Asians would be welcomed to the United States to provide labor, then as their numbers increased hostility would grow, ultimately leading to exclusionary measures and invitation to a new group of Asians to replace the labor supply. However, because exclusion would be legislated after the wave had begun, the successive efforts at banning their immigration would come only after a significant number of each group had already settled in the United States. Thus, despite the immigration restrictions and their alien status, there existed a notable Asian population in the United States, especially concentrated in the West Coast region. Added to that was the long history of immigration. As restrictions prevented any additions to the community through immigration, reproduction aided to increase an otherwise stagnant population. By 1924, the Asiatic Barred Zone and the quota system had essentially put an end to all Asian immigration except for the Filipinos; yet in 1930, there were already over 500,000 Asians living in the United States (Hing 1993).
Nearly all of the first generation immigrants from Asia would remain aliens, due to the discriminatory naturalization laws that restricted citizenship to only “free white persons.” However, one small victory for the Asians during the time period came through the Supreme Court decision of *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). In a 6-2 decision, the court ruled that under the Fourteenth Amendment, all persons born in the United States were US citizens, including the original petitioner, who was of Chinese descent. The decision put to rest previously conflicting lower court decisions regarding the status of children born of Chinese nationals.

Even so, the strong dissents submitted by Chief Justice Fuller and Justice Harlan show that the majority’s opinion was not to be taken for granted. After all, questions regarding children’s citizenship status only arose because of the unique situation of Asian children whose parents were barred by law from becoming naturalized. Previous European immigrants were quickly naturalized, and therefore their children could be assumed to have the same nationality; however, Asian immigration presented the unique situation where children were declared a different nationality from their parents. The dissent argued that despite the Fourteenth Amendment’s provision that “all persons born in the United States” shall be citizens, “naturalization laws excepting persons of a certain race and their children” would not be invalid (729). Perhaps the entrenched image of the Chinese sojourner was what motivated the dissent, for it declares that the Chinese have never “desired” citizenship (726), and their children should not gain citizenship by mere “accident of birth” (731) – conveniently ignoring the legal barriers to the parents’ naturalization. Fortunately, despite the dissent, the majority ruled that even for ineligible
Asian immigrants, their children born in the United States were entitled to full US citizenship.

Altogether, the over half-million Asians residing in the United States by the 1930s constituted a significant number, especially since they were geographically concentrated in one region. Not only that but many of these persons were United States citizens, constitutionally guaranteed equal rights and protections as any other citizen, regardless of race. How did the United States maintain a white national identity in the face of growing numbers of non-white populations? Could whiteness and white privilege be upheld despite the “vast hordes” (Chinese Exclusion Case 1889:606) of yellow immigrants and their offspring that invaded American soil? How could this population be contained so it did not interfere with or contaminate the image of white American identity?

The newly freed slaves provided a good model to follow. Chinese immigration began shortly before the Civil War, and after the brief Reconstruction period, blacks in America were relegated to nearly the same status as they had been before emancipation. The subjugation of African Americans after the Civil War is a well-known history, and even the struggles of the Civil Rights Movement have not rectified the wrongs committed. Thus, the insufficiency of the Civil Rights rhetoric for the lives of African Americans today is a frequent theme in Critical Race Theory. Although the Civil War Amendments and the 1870 amendment to the Naturalization Act theoretically granted full citizenship rights to the emancipated slaves, African Americans have been treated as second class citizens for much of recent US history. To continue the identification of
America with white, it was “required that Blacks never become American” (Chang 1997:1402). It was essential that they be kept at a lower place in the racial hierarchy and prohibited from mixing into the white American mainstream.

An effective way of containing undesired populations has been forced segregation, whether in housing, accommodations, education, or especially within the family. The discriminatory measures were more than a product of individual racial prejudice; the geographic and physical containment of African Americans was instrumental in maintaining the purity of white America. Along with other colored peoples, “Negroes” in the US have been set apart. Despite the usual efforts towards “Americanizing” other immigrant newcomers, “in regard to the colored peoples, the American policy is the reverse. They are excluded from assimilation” (Myrdal 1962:54). They are kept as “aliens permanently” (620).

Despite the Equal Protection clause, the Civil Rights Cases, 109 U.S. 3 (1882), allowed private discrimination to continue, while Plessy v. Ferguson, 163 U.S. 537 (1896) sanctioned state-mandated segregation. Until the 1950s, state-mandated segregation in public schools and restrictive covenant agreements were sanctioned under the Constitution, while anti-miscegenation laws prohibiting marriage between blacks and whites were enforceable until the 1960s. Anti-miscegenation laws were especially severe in the efforts for separation, for its enforcement was used in “defining racial identity, establishing racial inequality, and preserving moral propriety” (Moran 2001:5).

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Anti-miscegenation laws went beyond simple spatial separation of the races, but mandated physical separation – a separation that sustained a justification for “biological race.”

Many of the discriminatory procedures that were used against blacks were soon applied towards the growing Asian community in the United States. Even the citizen status of the second generation provided no relief from race-based discrimination. Such measures “reached out from its original institutional base [of African Americans] to engulf those persons of non-white color and non-occidental culture” (Lyman 1991:233). In similar ways that blacks were segregated, Asians were forced into segregated spaces, although it was facilitated to a degree by their regional concentration on the West Coast and the formation of ethnic communities in metropolitan areas.

Racial qualities that had been assigned to blacks became Chinese characteristics,” achieving the “Negroization” of Chinese immigrants (Takaki 2000:216-7).

A striking example can be found in the California Supreme Court decision of People v. Hall, 4 Cal. 399 (1856). The court ruled that Chinese persons could not testify against a white man during trial, based upon the California statute providing that “No black or mulatto person, or Indian, shall be permitted to give evidence in favor of, or against, any white person” (McClain 1984:549). The Court’s reasoning, on grounds of public policy, was that “black person” was a term “contradistinguished from white, and

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12 Of course, these ethnic centers were often a result of legislative and social segregation, yet it is acknowledged that segregation “plays a paradoxical role in community construction” (Haney Lopez 1994:55). Despite the detrimental effects of segregation on people of color, it has sometimes contributed to the creation of community support through geographic concentration.
necessarily excludes all races other than the Caucasian” (404).\(^\text{13}\) The court notes that the Chinese are “the more degraded tribes of the same species,” noting their similarity to both Indians and Negroes (403). Although the statute was repealed in 1873 (H. Kim 1992:7), the court’s reasoning represented national sentiment towards the Chinese that would survive for decades to come.

Similar to the African American experience, school segregation also became an issue for Asian Americans as well. As the offspring of the first immigrant generation of Chinese reached school age, several California school districts allocated funds for a separate “Oriental school” to prevent Chinese children from attending the white schools. When the offspring of the Japanese immigrants were later ordered to attend the Oriental school for Chinese children, there was a general outcry from the Japanese community. Through the Gentlemen’s Agreement (1907) between President Theodore Roosevelt and the Japanese government, the children of Japanese descent in California were afforded the right to attend white schools, but only at the cost of future emigration restrictions (Chan 1991:57-9).

However, in the southern states, where there was not a large Asian population and therefore no Oriental school, there was some confusion as to whether children of Asian descent would attend the white or the “colored” schools. When second generation Chinese American Martha Lum was ordered to attend the colored school, she sued the school district. The Supreme Court of Mississippi ruled in favor of the district (\textit{Rice v. Gong Lum}, 139 Miss. 760 (1925)), and it was later upheld by the United States Supreme

\(^{13}\) The language of the court provides an interesting contrast to the Massachusetts Circuit Court opinion of \textit{In re Halladjian}, 174 F. 834 (1909), where white was seen as “the catch-all word which includes all
Court (*Gong Lum v. Rice*, 275 U.S. 78 (1927)). Despite the fact that the California ruling of *People v. Hall* had by then essentially been overturned by statutory repeal, the Mississippi high court cited its reasoning that black persons meant all persons not white. Again, like in *People v. Hall*, the Mississippi decision was decided based upon issues of public policy, declaring the purpose of segregation to be “preserving the purity and integrity of the white race and its social policy” (43). Although Lum’s counsel argued that “the Mongolian is on the hither side of the half-way line between the Caucasian and African” (22) – thus making them closer to whites than to “colored persons” – the Court adhered to the Standard Dictionary definition of “colored” to mean “of a dark skin or non-Caucasian race” (33). The Supreme Court upheld Mississippi’s decision, citing the separate but equal doctrine and state jurisdiction over education.

Segregation in education has its roots in the fear of miscegenation. Most states had anti-miscegenation laws prohibiting the union between blacks and whites; as the number of Asians increased, most of the Western and Southern states also adopted anti-miscegenation laws against Asian-white unions as well. The laws were more significant for “sending messages of racial inferiority than in thwarting interracial relationships” (Moran 2001:33). The only Asian group noticeably affected by these laws were the Filipinos; most Chinese men remained in bachelor societies, most of the Japanese came with their wives, while many Indians married Mexican women (Chan 1991:60). The Filipinos challenged anti-miscegenation statutes in California with mixed success. The obsessive interest of the Californians to regulate Filipino sexuality may have been related to the fact that they were the last Asian group to be excluded, and after Tydings-
McDuffie in 1934, the Filipino invasion may have seemed less of a threat (Volpp 2000:92).

Anti-miscegenation was the ultimate goal of racial segregation – the achievement of racial anti-amalgamation (Myrdal 1962:53). Of course, it was only for the purity of the white race that such measures were needed. The Mississippi court in *Rice v. Gong Lum* notes that despite Mississippi’s prohibition of white-black and white-Asian marriages, no law “prohibits any marriage or social relations between the negro and Mongolian races, and they are left free to maintain such social, including marriage, relations as they see proper to enter into” (33). In the appeal to the US Supreme Court, Lum’s counsel tried to argue equal protection violation because “The white race may not legally expose the yellow race to a danger that the dominant race recognizes and, by the same laws, guards itself against” (79). However, the court affirmed that it was only the whites that needed to be protected from racial contamination.

In many ways, the tools used against African Americans were recycled and reworded to be used against Asian Americans. However, “By labeling Asian immigrants unassimilable and unfit for citizenship, the federal government made them easy targets” (Moran 2001:30). Their alien status provided states with means to antagonize the Asian community while still withstanding Fourteenth Amendment scrutiny. The designation of Asian immigrants as “aliens ineligible for citizenship” in statutory law “permitted states to pass statutes that were race-neutral on their faces, and thus immune to Equal Protection challenges, which nevertheless discriminated on the basis of race” (Chang 1993:1293).
Although Myrdal had mentioned the status of Negroes in the United States as “aliens permanently,” for Asians there was even legal sanction for their perpetual sense of “foreignness” (Chang 1993:1241). The discriminatory laws that were passed accordingly affected the very livelihood and preservation of many Asian immigrants.

Before the clever invention of the “aliens ineligible for citizenship” loophole, many discriminatory actions taken against the early Chinese immigrants by state legislatures were struck down as violating the Fourteenth Amendment guarantee of equal protection. The most notable case is the Supreme Court decision of Yick Wo v. Hopkins, 118 U.S. 356 (1886), which struck down the San Francisco laundry licensing statute that, despite its facial race-neutrality, had the intent of shutting down the many Chinese-owned laundries. Citing that the Fourteenth Amendment protected all persons regardless of nationality, the court declared that the impartial appearance of the statute was insufficient to pass equal protection scrutiny when “administered by public authority with an evil eye and an unequal hand” (58). Similarly, the early California Circuit Courts struck down state statutes mandating employment discrimination and residential segregation against the Chinese.\(^\text{14}\) And fifty years before Shelley v. Kraemer, a California Circuit Court declared restrictive covenants banning the Chinese were clearly incompatible with the Constitution.\(^\text{15}\)

However, the statutes specifying “aliens ineligible for citizenship” passed all Fourteenth Amendment scrutiny, as seen through the Alien Land Laws in California and Washington. In upholding Washington’s law, Justice Butler reasoned that since it

\(^{14}\) In re Tiburcio Parrott, 1 F. 481 (1880); In re Lee Sing and In re Sing Too Quan, 43 F. 359 (1890).

\(^{15}\) Gandolfo v. Hartman, 49 F. 181 (1892).
applied to all aliens who did not intend to naturalize, it was not a race-based discrimination. Unlike in *Yick Wo*, the court did not find that the intent of the legislation in targeting Japanese landowners and its only application to Asian immigrants was sufficient to make it discriminatory.\(^\text{16}\)

Family formation was difficult especially for the Chinese immigrants, especially with Supreme Court decisions such as *Chang Chan v. Nagle*, 268 U.S. 346 (1925), which prohibited entry of petitioners’ Chinese wives. Because their wives were “aliens ineligible for citizenship,” marriage to an American citizen would not make them citizens, as it would for any other alien woman. Also, although anti-miscegenation statutes were in place, the federal government made sure it would hold special meaning for non-citizen Asians. The Cable Act was noted earlier as a provision that stripped American women of citizenship when they married an alien ineligible for citizenship, or essentially any non-citizen Asian. What is interesting about the Cable Act (1922) is that it was a reaction to an earlier Expatriation Act (1907), which stripped American women of citizenship when they married any alien. After protests from women’s groups, Congress passed the Cable Act, ending “the practice of treating a woman’s nationality as derivative of her husband’s” (Moran 2001:32). However, the provision remained in effect for women who married Asians. There may be two rationales for the legislature’s decision – one is obviously miscegenation, in punishing white American women who would dare to cross the color line and marry an Asian man, while another is directed towards the denial of marital autonomy for American-born Asian woman who married within her race. Either way, the Cable Act further hindered an already difficult Asian

\(^{16}\) *Terrace v. Thompson*, 263 U.S. 197 (1923).
family formation process, making it difficult to procreate and produce American-born offspring.

Differential treatment made international travel difficult, even for US-born Asians. The stamp of foreign-ness that marked anyone of the Asian race enforced an assumption of alien when being met at the entrance points to the nation. After Chinese Exclusion went into effect, many Chinese Americans who left the country for a short period and then returned often encountered difficulties in re-entering at ports in the West Coast. Despite claims of US citizenship, customs officials practiced a racial profiling that cast a presumption of alien and of guilt onto all Asians entering the country. For persons of Chinese descent, “the benefit of a doubt which attaches to all accused persons is taken away from one simply because he is a Chinaman” (United States v. Ju Toy, 198 U.S. 253 (1905) at 179). Insufficient documentation or unsatisfactory interviews with customs officials could lead to denial of entry, based solely on the decisions of immigration inspectors stationed at the ports. An 1894 Congressional rider mandated that for aliens seeking entry into the United States under the Chinese Exclusion Act, the decision on their admission would be finalized at the administrative level with the immigration or custom officers, with appeal available only to the Secretary of the Treasury. The measure was enacted to curtail the enormous number of habeas corpus cases filed by Chinese persons detained at immigration, thus removing Chinese immigration cases from court jurisdiction. There was an anti-Chinese bias to many of the immigration officers’ decisions, and before long, Chinese detainees found that claiming
US citizenship provided access to habeas corpus petitions, since the 1894 act only applied to aliens (Salyer 1995:97-107).

However, it was not long before the courts declared that the 1894 act applied to immigration decisions of citizenship as well. The two decisions of *United States v. Sing Tuck*, 194 U.S. 161 (1904) and *United States v. Ju Toy* (1905) – both opinions written by Justice Holmes – declared that there was no right to judicial review of an unfavorable decision by an immigration officer. Although the 1894 act specifically referred to aliens and not alleged citizens, the court disposed of the issue by simply stating “The meaning of the cases and the language which we have quoted is not satisfied by so narrow an interpretation, but we do not delay upon them. They can be read,” (262).

By these two decisions, the US citizens of Chinese descent were relegated to the same status and afforded the same rights as aliens of Chinese descent, showing that even citizenship was not sufficient to transcend the prejudices of race. After all, the grudgingly granted citizenship of American-born Chinese was not a guarantee of membership in the national community; their race would make sure they remained “perpetual foreigners”(Chang 1997:1416), regardless of their citizenship status. The court’s opinion “aimed to solve a particular enforcement problem” for the Chinese Exclusion Act, at the cost of “blur[ing] the distinction between aliens and citizens” of Chinese descent (Salyer 1995:114). In both *Sing Tuck* and *Ju Toy*, Justice Brewer, joined by Justice Peckham, wrote sharp dissents. They recognized the differential treatment between an “American citizen of Anglo-Saxon descent” and “American citizens of Chinese descent” (*Sing Tuck* 1904:178), and the blatant denial of due process for the

A combination of various measures was enforced to maintain the purity of white American identity. Physical exclusion from the nation was not sufficient to purge America of their presence; therefore the population needed to be contained in order to prevent the contamination of the white majority. Taking the example of segregation that was forced upon African Americans, segregation and discrimination against Asian Americans was quickly legislated and enforced, relegating US citizens of Asian descent into second class citizenship. State action discrimination against Asians was upheld even under the Fourteenth Amendment Equal Protection clause, using the loophole of “aliens ineligible for citizenship.” Prohibited from land ownership and hindered from family formation, their options for improving their subjugated lives were limited by the restrictions upon their race. Even US citizenship was no shield, as they were marked with the same stigma of “foreigner” and “alien” that was attached to all persons of Asian descent.

The legislative and judicial choices that were made in the process were decisions that reinforced and maintained white American identity. By making sure that like blacks, Asians would never fully “become American” (Chang 1997:1402), the law reinforced the idea that only whites could be American, and conversely, that to be American was to be white. Even as the number of Asians in the United States increased through reproduction, as long as the restrictions on their lives remained in place, they could not
pose a threat to the purity of American whiteness. As long as they remained separated from the white mainstream and relegated to a second-class citizenship, America could maintain its white identity despite the growing numerical heterogeneity.
CHAPTER 6

LOOKING TO THE FUTURE:

THE NEED FOR RECOVERING THE PAST

The experience of early Asian American immigrants to the United States has not been an easy one. While immigration is often marked by hardship and struggles for every race and every generation, the particular experiences of these immigrants were especially arduous. In addition to the economic and cultural barriers facing immigrants upon arrival to a foreign shore, Asian immigrants also faced a pervasive nativistic racism that attempted to construct and maintain an American national community that excluded them. Under the controlling American myth of assimilation, immigration, and the American Dream, the lives and the experiences of these immigrants have been hidden and silenced. A testimony to the falsity of the American myth, their place in the history of this nation has been withheld. For generations, these immigrants were denied membership in the national community; by denying them a voice in the nation’s history, their exclusion in the past continues to be perpetuated today.

Counter-narratives are necessary tools for providing a voice to those who have been forced into silence. The American myth of immigration and the melting pot has for too long been the dominant theme in the conceptualization of national identity. The impact, if not the deliberate motivation, of the treatment of early Asian immigrants on the formation of an American identity is something that needs to be publicized and
understood. The restrictions and the discrimination that many Asian immigrants faced was a part of a larger process which attempted to construct a white American identity, creating a community of which Asians could never become a part.

Race was a central theme in justifying the exclusion of Asians from American society. By racializing the newly arrived Asian immigrants as Mongolian, as Oriental, as yellow, America justified their unassimilability and the immutable differences from white mainstream America. Restrictive immigration and naturalization laws provided means of creating and enforcing the racialized identities of the Asians, and as a corollary, the identities of white Americans constructed in opposition to them. By situating Asians as the unassimilable “other,” the incontrovertible conception of America as a homogenous white community was reinforced. Exclusion defined inclusion. Asians became the “perpetual foreigners” in a deliberate attempt to recognize and uphold whom the “real Americans” were (Chang 1997:1412). Restrictive immigration laws prevented their arrival to American shores; naturalization laws created white racial prerequisites, ensuring permanent Asian exclusion. Once in the United States, Asian lives were constantly constrained by numerous discriminatory measures and segregation orders that disabled Asian participation in national society. All of these maneuvers, taken in the aggregate, not only defined Asians as the “other,” but also defined the presumed homogeneity of mainstream Americans as well. It became a self-perpetuating process, in which white racial identity became a prerequisite for attaining American identity. In time, American national identity itself became equated with the requirement of whiteness of race, further justifying Asian exclusion from the national polity.
White American identity was premised on the idea of who was worthy of democratic membership to the national society. The racialized identities of Asians situated them as permanently unassimilable and inherently excludable. As the number of Asians in the nation increased and more and more of them sought to settle down and form a visible community, antagonism towards their presence led to exclusionary immigration laws, restrictive naturalization measures, and a plethora of court cases endorsing the nativist racism that had motivated the legislation in the first place. Their increased presence threatened the hegemony of white nationality; therefore, they had to be contained. Even when they had lawfully entered the country, even when their children were declared US citizens, the purity of a white American identity could only be ensured through their racialization as “other.” To that end, the law played a vital role in maintaining the racial social structure and preventing contamination by undesirable others. For the Asians, family relations and the engagement of livelihood were seriously hindered, and they were forced into segregation and subordination.

In June 1999, President Bill Clinton issued Executive Order 13125, establishing the White House Initiative on Asian Americans and Pacific Islanders and the President’s Advisory Commission on Asians Americans and Pacific Islanders. The goal of the executive order was “to improve the quality of life of Asian Americans and Pacific Islanders by increasing their participation in federal government programs where they may be underserved.” The Interim Report was presented in January 2001, compiling the accomplishments and testimonies of numerous Asian American leaders and community activists. In their survey of the Asian Pacific American community in the United States
today, however, the Report noted the acute phenomenon of their status as MIH – “Missing In History” (5). The experiences of Asian Americans throughout a large period of American history has been lost in the History “as taught in classrooms, as reflected in the media and the arts, and as understood by government policymakers and program planners. In government, Asian Americans and Pacific Islanders are invisible, relegated to a residual category of ‘Other’” (5). The deliberate process of racialization that led to early exclusion and discrimination of Asians in the United States is still perpetuated today through the denial of their history. Their marginal status in society today is often seen without the knowledge of the context of such marginalization. The systematic exclusion perpetuated throughout the history of this nation constructed an arbitrary national identity that justified their continued marginalization. When such contextualization is disallowed, it continues to aid the view of Asians as “perpetual foreigners, forever ‘aliens’ whose loyalty and place in America is always questioned” (Interim Report 2001:6).

The stories of the early Asian immigrants are in as of themselves significant for challenging the pervasive American myth of the melting pot and the American Dream. To this end alone, their experiences need to be spoken out about, their voices need to be heard. However, the need is even more acute when looking towards the future. Since the immigration quotas against Asian Americans were removed in 1965, Asian American immigration to the country has increased exponentially. Today, Asians comprise 4.0% of the national population and are the fastest growing racial population in the United States. By 2050, Asians are expected to comprise 9% of the US population (Interim Report
2001:3). As their numbers increase and the generations mature, the view of Asians as ‘foreigner’ or ‘alien’ can no longer be sustained. Their long-standing legacy in this country needs to be recognized and their assertion as being a part of the American community must be acknowledged. Their experiences, their history, and their legacy are a part of the history and the identity of the nation as a whole. In the past, the status of Asian Americans in the United States have constructed and defined an exclusionary white national identity that continues to play a role in society to the present day. Today, however, their meaningful inclusion in the national community could redefine and re-signify who we are as a nation. White American identity has been a deliberate legal construction that was dependent on the silencing of the “Other” voices. In reclaiming and re-inserting the history that had been denied, we are reclaiming our own American identity.
APPENDIX A

Chronology of Selected Immigration/Naturalization Statutes and Policies Affecting Asian Americans

1790 Naturalization Act
    Restricted naturalization to only “free white persons.”

1875 Page Act
    Barred entry to the U.S. of all Chinese women.

1882 Chinese Exclusion Act
    Barred entry to the U.S. of all Chinese laborers.

1888 Scott Act
    Prohibited Chinese re-entry.

1892 Geary Act
    Required Special Registration for the Chinese residents in the United States.

1898 Spanish-American War
    Philippines becomes U.S. protectorate, allowing Filipinos unrestricted immigration to the U.S.

1907 Gentlemen’s Agreement
    Japanese government agrees to voluntary restrictions of Japanese laborer emigration.

1913 California Alien Land Law
    Prohibited land ownership for all “aliens ineligible for citizenship.” Similar laws were enacted subsequently in other Western states.

1917 Immigration and Naturalization Act
    Created the “Asiatic Barred Zone,” prohibiting immigration for all Asians.

1922 Cable Act
    U.S. women who married an “alien ineligible for citizenship” were stripped of their U.S. citizenship.
1924 Immigration Act: National Origins Quota Act
   Permanent exclusion of any “aliens ineligible for citizenship.”

1934 Tydings-McDuffie Act
   Granted Philippines independence. Filipinos are now categorized as “aliens ineligible for citizenship” and therefore denied immigration.

1943 Chinese Repealer
   Chinese Exclusion Act repealed.

1946 Filipino and Indian Naturalization Act
   Asian Indians and Filipinos granted citizenship rights.

1952 McCarran-Walter Act
   Abolishes Asiatic Barred Zone, but limits the number of immigrants from Asia through restrictive quotas.

1965 Amendment to 1952
   Abolished the national-origins quota system.
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