

## THE WAR AGAINST CHINESE RESTAURANTS

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### INTRODUCTION

This article identifies and explores a forgotten chapter in the saga of racial regulation in the United States. For roughly thirty years, in the last decade of the nineteenth century and the first decades of the twentieth, a national movement, driven primarily by unions, sought to eliminate Chinese restaurants from the United States.<sup>1</sup> The main tool was innovative legislation. The effort failed; “there are more Chinese restaurants in the United States than McDonald’s, Burger King, and KFC restaurants combined.”<sup>2</sup> But the campaign, unsuccessful in its immediate goal, helped propagate the idea of Chinese as morally dangerous, and contributed to the passage of the Immigration Acts of 1917 and 1924, which almost completely eliminated Asian immigration to the United States.

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<sup>1</sup> See, e.g., *Labor Declares War on Chinese Restaurants*, WASH. TIMES, Feb. 16, 1913, at 7; *May Declare Boycott: Cooks and Waiters’ Unions Opposed to Chinese Restaurants*, ST. PAUL GLOBE, Mar. 22, 1902, at 7 (“The Cook and Waiters’ Union had decided to make war on the Chinese restaurants that are running in Minneapolis.”); *News of the Great West*, OMAHA DAILY BEE, June 6, 1891, at 11 (“A movement is on foot in Butte to carry on a war against Chinese restaurants.”)

<sup>2</sup> Bethany R. Berger, *Birthright Citizenship on Trial: Elk v. Wilkins and United States v. Wong Kim Ark*, 37 CARDOZO L. REV. 1185, 1254–55 (2016); see also *Let’s Eat Chinese Tonight*, 38 AM. HERITAGE no. 8, at 98 (1987).

That American legal institutions subordinated people of color for profit is well-known. For example, the Constitution protected slavery, designed to derive advantage from involuntary African American labor.<sup>3</sup> After the Civil War, Reconstruction, and Redemption, in many parts of the country African Americans were compelled to work by a compromised criminal justice system.<sup>4</sup> Similarly, Latinos in the United States have often labored without the opportunity for full membership.<sup>5</sup> The Indian tribes possessed priceless real estate, which was taken from them.<sup>6</sup> Later, the United States held a fortune in Indian property “in trust,” an obligation which, in the decades it has been in force, has been honored occasionally if at all.<sup>7</sup>

Chinese Americans and other Asian Americans were also targeted by law, but the method was different. Southern planters and other business owners desired African American labor at below-market prices, illegally importing enslaved persons before the Civil War,<sup>8</sup> and, even after the formal abolition of slavery, using law to prevent African American migration out of the South.<sup>9</sup> With Chinese and other Asians, the concern was economic competition with workers on the Pacific coast, and the legal solution was exclusion, both of future competitors and of those already lawfully present in the United States.

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<sup>3</sup> “[T]he original Constitution, candidly considered, not only did not outlaw slavery, but deliberately protected it.” John Hart Ely, *Foreword: On Discovering Fundamental Values*, 92 HARV. L. REV. 5, 25 (1978). See also, e.g., Jack M. Balkin, *Original Meaning and Constitutional Redemption*, 24 CONST. COMMENT. 427, 468 (2007) (“When William Lloyd Garrison famously argued that the United States Constitution was ‘a covenant with death, and an agreement with hell,’ he meant that the Framers in the North had been forced by those in the South to agree to provisions that recognized and protected slavery.”); Richard Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?*, 97 YALE L.J. 923, 947 n.42 (1988) (“Ten provisions of the Constitution protected the institution of slavery without overtly sully the document’s egalitarian appearance by mentioning the ugly word.”).

<sup>4</sup> DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2008).

<sup>5</sup> See, e.g., JOHN WEBER, *FROM SOUTH TEXAS TO THE NATION: THE EXPLOITATION OF MEXICAN LABOR IN THE TWENTIETH CENTURY* (2015); RONALD MIZE & ALICIA SWORDS, *CONSUMING MEXICAN LABOR: FROM THE BRACERO PROGRAM TO NAFTA* (2010).

<sup>6</sup> STUART BANNER *HOW THE INDIANS LOST THEIR LAND: LAW AND POWER ON THE FRONTIER* (2005).

<sup>7</sup> Joseph R. Membrino, *A Brief History of Indian Trust Administration Reform: Will The Past Be Prologue?*, 50 TULSA L. REV. 227 (2014).

<sup>8</sup> HUGH THOMAS, *THE SLAVE TRADE: THE STORY OF THE ATLANTIC SLAVE TRADE: 1440 - 1870* (1997).

<sup>9</sup> DAVID BERNSTEIN, *ONLY ONE PLACE OF REDRESS: AFRICAN-AMERICANS, LABOR REGULATIONS, AND THE COURTS FROM RECONSTRUCTION TO THE NEW DEAL* (2001).

Some exclusion was imposed directly by federal law, such as through the Chinese Exclusion Act of 1882. Other techniques operated indirectly. Thus, California's anti-Asian alien land law, which prohibited Asians from owning agricultural land, was intended "to discourage the coming of Japanese into this state."<sup>10</sup> Laws prohibiting land ownership by Asians were adopted throughout the West, and were upheld by the Supreme Court.<sup>11</sup> In addition, social conditions such as union boycotts of businesses with Chinese owners or employees,<sup>12</sup> or ordinary discrimination,<sup>13</sup> channeled Chinese disproportionately into laundry and restaurant employment.<sup>14</sup>

Targeting businesses owned by or employing Chinese would of course encourage their departure from the locality or from the nation itself.<sup>15</sup> Discrimination against Chinese laundries

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<sup>10</sup> Dudley O. McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CAL. L. REV. 7, 13 (1947) (quoting *In re Yano*, 206 P. 995, 1001 (Cal. 1922)).

<sup>11</sup> *Id.*; Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" As A Prelude to Internment*, 40 B.C. L. REV. 37 (1998); see also Gabriel J. Chin, *Unexplainable on Grounds of Race: Doubts About Yick Wo*, 2008 U. ILL. L. REV. 1359, 1383-84 (2008).

<sup>12</sup> See *infra* notes \*\*\*\_\*\*\*, and accompanying text.

<sup>13</sup> See, e.g., Priscilla Spires Wegars, *Chinese in Moscow, Idaho, 1883-1909*, 52 THE HISTORIAN No. 1 82, 96-97 (Nov. 1989) (describing hotels and restaurants advertising white-only employees).

<sup>14</sup> RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 240 (1989) ("By 1920, 58 percent of the Chinese were in services, most of them in restaurant and laundry work . . . ."); Samantha Barbas, *"I'll Take Chop Suey": Restaurants as Agents of Culinary and Cultural Change*, 36 J. POPULAR CULTURE 669, 673-74 (2003) ("Yet by the early twentieth century, [the Chinese] had been forced out of the general labor market by hostile labor unions, exclusionary legal policies, and racial discrimination, and segregated into an ethnic labor niche. The new work opportunities available to Chinese Americans centered primarily around service occupations, such as laundry and restaurant work, based in Chinatowns and catering to largely Chinese customers."); FOURTEENTH BIENNIAL REPORT OF THE BUREAU OF LABOR STATISTICS OF THE STATE OF COLORADO 22 (1914). [Commission on Immigration and Naturalization, Statement of officers of the Chinese Consolidated Benevolent Association 1815 (1952) In the New York area which is typical of the Chinese communities in the United States, most of the people of Chinese ancestry are engaged in the restaurant or laundry industry. \*\*\*;] Siegen K. Chou, *America Through Chinese Eyes*, 24 CHINESE STUDENTS MONTHLY 81, 83 (1928) ("Restaurant and laundry business is synonymous with the Chinese."); Huping Ling, *Family and Marriage of Late-Nineteenth and Early-Twentieth Century Chinese Immigrant Women*, 19 J. AM. ETHNIC HIST. 43, 47-48 (2000).

<sup>15</sup> SHELLEY SANG-HEE LEE A NEW HISTORY OF ASIAN AMERICA 131-33 (2014) (discussing methods of economic exclusion); *Against the Chinese*, ANACONDA STANDARD (MT), Jan. 12, 1893, at 2 ("Just as soon as the people of the city cease to patronize Chinese restaurants and laundries and cease to employ Chinese as servants and porters, life in Anaconda will cease to be lucrative to the Chinaman and the exodus will begin.")

is reflected in the celebrated case of *Yick Wo v. Hopkins*,<sup>16</sup> which exemplifies the decades-long West Coast effort to prevent Chinese laundries from gaining an economic foothold and becoming permanent competitors.<sup>17</sup> Given the deep tradition of race-based economic regulation, it is predictable that the law targeted Chinese restaurants as it did Chinese laundries. Chinese restaurants not only provided Chinese people an opportunity to earn a living, they offered the possibility of somewhat more personal encounters with non-Chinese than was routine with a laundry.<sup>18</sup> Under the circumstances, it would be surprising if there had been no significant efforts to suppress Chinese restaurants. Nevertheless, this is the first scholarship to identify and map out this phenomenon.

Part I discusses labor union opposition to Chinese restaurants, and an important technique, boycott.<sup>19</sup> Part I also describes the notorious murder of Elsie Sigel, granddaughter of a Union general, by a New York Chinese restaurant worker who had “seduced” her. While efforts to regulate Chinese restaurants long predated the Sigel killing, the case made the problem of moral contagion presented by Chinese restaurants a prominent national issue, and facilitated new efforts to regulate Chinese restaurants.

Part II catalogues methods regulation used to eliminate Chinese restaurants. Some cities considered outright bans or restrictive zoning. Many jurisdictions entertained prohibitions on white women or girls patronizing or working in Chinese restaurants, or used the police to keep whites out of Chinese establishments. Some jurisdictions had discriminatory licensing or enforcement practices. In addition, many Chinese restaurants served meals in private booths.

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<sup>16</sup> 118 U.S. 356 (1886).

<sup>17</sup> David E. Bernstein, *Lochner, Parity, and the Chinese Laundry Cases*, 41 WM. & MARY L. REV. 211 (1999) (“From the 1860s to the early twentieth century, Chinese laundrymen throughout the American West suffered from violence, boycotts, and hostile regulation of their occupation by local governments.”). *See generally* Joan S. Wang, *Race, Gender, and Laundry Work: The Roles of Chinese Laundrymen and American Women in the United States, 1850-1950*, 24 J. AM. ETHNIC HIST. No. 1 58 (2004); *cf. Oppose the Chinese: Asiatic Immigration League Members Give Views*, WASH. EVENING STAR, Aug. 21, 1908 at 4 (noting that league calling for a boycott of Chinese laundries, expansion of exclusion to other Asian races, and that “[i]n spite of the fact that chop suey costs 75 cents for one order John S. Brinkman last night stated that Chinese prices in America are too low for competition by Americans.”)

<sup>18</sup> JEAN PFAELZER, *DRIVEN OUT: THE FORGOTTEN WAR AGAINST CHINESE AMERICANS* 99 (2007) (“Despite segregated housing and jobs, white and Chinese men and women interacted closely in rural towns in the West—at popular Chinese restaurants” and in other areas).

<sup>19</sup> *See, e.g.*, 26 MIXER & SERVER No. 5, May 15, 1917, at 23.

Some jurisdictions passed ordinances banning booths, forcing Chinese restaurants to engage in costly renovations, or close.

Part III discusses the decline of hostility towards Chinese restaurants in the 1920's due to the passage of highly restrictive federal immigration laws, which made continued efforts at regulation and suppression of Chinese restaurants unnecessary. Part III also explores the implications of this episode for our understanding of race policy.

## I. LABOR UNIONS & THE CHINESE RESTAURANT THREAT

Until 1921, there were no numerical limitations on immigration to the United States. Although criminal conviction, disease and certain other characteristics disqualified a prospective immigrant, in other respects the borders were open. The open-border policy applied to all races except Asians. Particularly in the Western United States, political, moral and economic considerations led to the perception of a "Yellow Peril," the danger that untold numbers of racially dangerous Asians could come to the United States and undermine its basic character. Of course, in the late Nineteenth Century, United States law was dealing in various ways with the fate of other non-white racial groups, Indians and African Americans.<sup>20</sup> Thus, while immigration in general was not numerically limited, Asian immigration was tightly controlled.

Congress passed the Chinese Exclusion Act in 1882. But the Chinese Exclusion Act did not resolve the problem. For example, the Supreme Court found discrimination against Chinese laundries in San Francisco in *Yick Wo v. Hopkins* in 1886, four years after the major success of passage of Chinese Exclusion. A key reason that anti-Chinese forces did not declare victory was that Chinese Exclusion statutes were facially temporary. Because Congress revisited the question periodically, Chinese exclusion was a continuing political issue until it was made permanent in 1902. Even then, the issue was not closed. By 1902, Japanese and other Asian

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<sup>20</sup> Thus, U.S. Senator John Perceval Jones of Nevada argued in favor of the Chinese Exclusion Act:

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

13 CONG REC. 1744-45 (1882).

immigrants were migrating to the United States, and their racial assimilability and therefore their right to immigrate became prominent public policy questions.

Those Chinese in the United States had limited opportunities for employment. Some jobs required licenses which were limited to U.S. citizens, a status immigrant Chinese could never achieve because of racial restrictions on naturalization.<sup>21</sup> Even without law, social discrimination restricted employment opportunities. Accordingly, many Chinese were employed in services and small businesses, such as restaurants and laundries.

Americans seemed to like Chinese food. The popularity of “chop suey” and other Americanized or American Chinese dishes resulted in “the subsequent sprouting of Chinese restaurants.”<sup>22</sup> Their numbers grew rapidly in the late 19<sup>th</sup> and early 20<sup>th</sup> century.<sup>23</sup> In 1870, with 63,000 Chinese residents in the United States, Chinese restaurants employed only 164 Chinese persons.<sup>24</sup> By 1920, despite a decline in Chinese employment,<sup>25</sup> there were over 11,400 employed by Chinese restaurants in the United States.<sup>26</sup>

Unions opposed both Chinese restaurants and Asian immigration. The Cooks’ and Waiters’ Union is now part of the modern-day UNITE-HERE. Its members competed directly with Chinese restaurants, and the union was a powerful force at the turn of the twentieth century;

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<sup>21</sup> See, e.g., *In re Hong Yen Chang*, 24 P. 156 (Cal. 1890) (denying admission to the California bar based on Chinese race), *abrogated by In re Hong Yen Chang*, 344 P.3d 288 (Cal. 2015).

<sup>22</sup> B.L. SUNG, *THE STORY OF THE CHINESE IN AMERICA* 202-03 (1967); see also ANNUAL REPORT OF THE COMMISSIONER GENERAL OF IMMIGRATION TO THE SECRETARY OF LABOR 403 (1920) (“The bureau, of course, is well aware of the fact that throughout this district as well as the whole country Chinese restaurant and similar enterprises are growing in number, size, and evident prosperity.”) (available at <http://babel.hathitrust.org/cgi/pt?id=uc1.31158002260726;view=1up;seq=9>); 28 MIXER & SERVER No. 8, Aug. 15, 1919 at 63 (stating that Chinese restaurants were “springing up like mushrooms”); Andrew P. Haley, *The Nation before Taste: The Challenges of American Culinary History*, 34 PUB. HIST. No. 2, 74 (Spring 2012) (describing growth of Chinese restaurants in various U.S. cities).

<sup>23</sup> Haiming Loi, *Chop Suey as Imagined Authentic Chinese Food: The Culinary Identity of Chinese Restaurants in the United States*, 1 J. TRANSNATIONAL AM. STUDIES 12 (2009); see Barbas, *supra* note 14, at 674-76; JOHN JUNG, *SWEET AND SOUR: LIFE IN CHINESE FAMILY RESTAURANTS* 43 (2010).

<sup>24</sup> Barbas, *supra* note 14, at 674-76; Ivan Light, *From Vice District to Tourist Attraction: The Moral Career of American Chinatowns, 1880-1940*, 43 PAC. HIST. REV. 367, 385 (1974); RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 79 (1989).

<sup>25</sup> This of course was due to restrictive immigration laws.

<sup>26</sup> See Light, *supra* note 24, at 385.

by 1903, their membership exceeded 50,000.<sup>27</sup> They were affiliated with the American Federation of Labor, which by 1914 claimed nearly 2,000,000 members.<sup>28</sup> The unions strongly supported Chinese Exclusion<sup>29</sup> and expansion of the exclusion policy to all Asian races.<sup>30</sup> A report in the *Mixer and Server*, the union magazine, explained:

View this matter from every angle, without heat or racial prejudice, and the fact stares us in the face that there is a conflict between the American wage-earner and the workers or employers from the Orient. Our Government has been compelled to close its doors to Asiatics in recognition of this fact.<sup>31</sup>

Unions saw the lower wage scales in Chinese restaurants as a threat,<sup>32</sup> but rather than trying to unionize Chinese restaurants and their employees, unions sought to eliminate the “unfair”

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<sup>27</sup> 12 MIXER & SERVER No. 4, April 15, 1903, at 20.

<sup>28</sup> REPORT OF PROCEEDINGS OF THE THIRTY-FOURTH ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR, HELD AT PHILADELPHIA, PENNSYLVANIA NOVEMBER 9 TO 21, INCLUSIVE 1914, at 45.

<sup>29</sup> See 25 MIXER & SERVER No. 4, April 15, 1916, at 2 (“The American Federation of Labor was one of the first great organizations to appreciate and recognize the havoc which had been wrought by the competition of Asiatics, and it required . . . them to go unqualifiedly on record for Asiatic exclusion. They have allowed no opportunity to escape, they have been advocating and still continue to advocate, the exclusion from America of all Asiatic workers, for such workers are a menace to any peoples with ideals such as have become a part of the life of Americans.”); REPORT OF PROCEEDINGS OF THE THIRTY-EIGHTH ANNUAL CONVICTION OF THE AMERICAN FEDERATION OF LABOR HELD AT ST. PAUL, MINN. JUNE 10-20, INCLUSIVE 1918 at 110-13

<sup>30</sup> REPORT OF PROCEEDINGS OF THE THIRTY-THIRD ANNUAL CONVICTION OF THE AMERICAN FEDERATION OF LABOR HELD AT SEATTLE, WASHINGTON NOV. 10-22, INCLUSIVE 1913 at 304-05 (passing resolution “That the provisions of the present Chinese exclusion law be so extended as to apply to all Asiatics.”); REPORT OF PROCEEDINGS OF THE THIRTY-FIRST ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR, HELD AT ATLANTA, GEORGIA NOVEMBER 13 TO 25, INCLUSIVE 1911, at 306 (adopting resolution “[t]hat we reaffirm our previous declaration that the Chinese Exclusion Act should be made to apply to all races natives [sic] of Asia.”); PROCEEDINGS OF THE SIXTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES’ INTERNATIONAL ALLIANCE AND BARTENDERS’ INTERNATIONAL LEAGUE OF AMERICA. HELD AT BOSTON, MASS., U.S.A., May 8, 9, 10, 11, 12 and 13, 1911, at 39-40; 25 MIXER & SERVER No. 3, Mar. 15, 1916m at 29.

<sup>31</sup> 25 MIXER & SERVER No. 7, July 15, 1916, at 4.

<sup>32</sup> For example, in 1905, a Chinese cook working in San Francisco earned from \$25.00 to \$35.00 per month with no days off and labored from fourteen to sixteen hours daily. White cooks, had the “luxury” of working merely ten to thirteen hours per day, six days per week, and might earn in a week what a Chinese cook could earn in a month. A.E. Yoell, *Oriental v. American Labor*, 34 ANN. AM. ACAD. POL. & SOC. SCI. 250 (1909). See also *Salt*

competition by driving the restaurants out of business. In this, the interests of unions sometimes dovetailed with the business interests of restaurant owners who would profit from the closure of their competitors.<sup>33</sup>

#### A. Boycotts of Chinese Restaurants

Early methods of eliminating Chinese competition included physical threats and violence.<sup>34</sup> For example, in 1893, Chinese restaurant owners residing in Selma, California, were physically “driven out” by organized labor.<sup>35</sup> The *Salt Lake Tribune* reported, “laboring men” waited for the restaurant keepers, “sending them out of town,” and that “today, their businesses were closed.”<sup>36</sup> Similarly, in 1902, in Silverton, Colorado, the Cooks’ and Waiters’ Union and the Miners’ Union ordered seventy Chinese residents to leave town.<sup>37</sup> Two-thirds of the Chinese population departed within ten days.<sup>38</sup> Silverton had six to eight Chinese restaurants; two weeks later, only two remained.<sup>39</sup> The U.S. Secretary of State wrote to the Governor of Colorado calling for “protection of their rights of person, business and property.”<sup>40</sup> Nevertheless, the efforts in Colorado were apparently successful; in 1914 the Colorado Bureau of Labor Statistics reported that of the few Chinese remaining in the state most “follow mostly the laundry business in the smaller towns . . . There are one or two uptown Chinese restaurants in Denver that are

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*Lake City and Neighborhood*, INTERMOUNTAIN CATH., Mar. 26, 1904, at 8 (stating that it was hard for restaurants employing organized labor to compete with Chinese restaurants because they “are more cheaply conducted than others”).

<sup>33</sup> *One of the Tendencies*, DAILY HONOLULU PRESS, Sept. 12, 1885, at 2. (“Ask the restaurant keeper and he will tell you ‘We cannot compete with the Chinese restaurants.’ The white merchants will be forced to bear the losses of this competition, for the Chinaman in the end will patronize Chinese merchants.”).

<sup>34</sup> See generally PFAELZER, *supra* note 18.

<sup>35</sup> *Driving out Celestials*, SALT LAKE TRIB., Aug. 20, 1893, at 2.

<sup>36</sup> *Id.* See also *Anti-Chinese Agitation: Two Restaurant-Keepers Ordered to Leave Selma*, SACRAMENTO RECORD-UNION, Aug. 21, 1893, at 1.

<sup>37</sup> *Ban on Yellow Men*, SALT LAKE TRIB., Feb. 2, 1902, at 7.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Chinese Want Protection*, SPOKANE DAILY CHRON., Feb. 12, 1902, at 5.



patronized by people that fancy this sort of cooking for a change, but they can scarcely be called in competition with the American establishments.”<sup>41</sup>

Later, unions developed more sophisticated techniques. First, Asians were generally not permitted to join the unions, or to work in union shops.<sup>42</sup> The Cooks’ and Waiters’ Union barred even United States citizens of Asian racial backgrounds from membership, because they have “proven themselves unsuited to our ideas of civilization, and to attempt to open our doors to such, would force [the] loyal men and women [of the union to] surrender their affiliation, for [we] are true to one principle — nothing doing with either Chinks, Japs or other Asiatics.”<sup>43</sup> To fight the “iniquitous chop suey joints,” unions sometimes banned unionized restaurants from employing Asian labor and barred union members from working at establishments employing Asians.<sup>44</sup> Dealing with the Chinese inspired union creativity; reportedly, “[t]he first union label was used by San Francisco Cigarmakers in opposing the product of Chinese Cigarmakers.”<sup>45</sup>

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<sup>41</sup> FOURTEENTH BIENNIAL REPORT OF THE BUREAU OF LABOR STATISTICS OF THE STATE OF COLORADO 22 (1914).

<sup>42</sup> See, e.g., O.M. Boyle, *News of the Labor World*, S.F. CALL, Mar. 19, 1910, at 7 (“The cooks’ helpers union, local no. 110, is still quietly engaged in carrying out the war against Asiatic employes. It hopes in a short time that employers will supplant the Japanese and Chinese in kitchens of restaurants, cafes and hotels. The organization is carrying out the wish of the San Francisco labor council in this matter.”); O.M. Boyle, *News of the Labor World*, S.F. CALL, Feb. 28, 1907, at 9 (“All but one of the restaurants in Palo Alto employ Japanese or Chinese cooks and dishwashers. These eating houses have been notified by their union patrons that they will take no more meals at them unless white help is substituted for the Mongolians.”)

<sup>43</sup> See PROCEEDINGS OF THE SIXTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES’ INTERNATIONAL ALLIANCE AND BARTENDERS’ INTERNATIONAL LEAGUE OF AMERICA. HELD AT BOSTON, MASS., U. S. A., MAY 8, 9, 10, 11, 12 AND 13, 1911, at 94-95. See also Charlotte Garden & Nancy Leong, “*So Closely Intertwined*”: *Labor and Racial Solidarity*, 81 GEO. WASH. L. REV. 1135 (2013) (discussing racial exclusion policies in unions and their demise). There were labor unions made up of Chinese, such as the Mon Sang Association in Chicago. See Susan Lee Moy, *Chinese in Chicago: The First One Hundred Years*, 398 in ETHNIC CHICAGO: A MULTICULTURAL PORTRAIT (Melvin H. Holli & Peter d’A. Jones eds., 4<sup>th</sup> ed. 1995).

<sup>44</sup> *Minneapolis Labor After the Chinese*, THE LABOR WORLD, Nov. 19, 1904, at 1; accord 31 MIXER & SERVER No. 11, Nov. 15, 1922, at 9 (stating that in 1922, the president of Cooks’ and Waiters’ International Union declared that “no member of our International Union be permitted to work with Asiatics”); *Boycott Raised*, L.A. HERALD, Feb. 16, 1903 (reporting that Asian cooks in Sacramento, California were barred from working at union affiliated hotels and restaurants).

<sup>45</sup> *The Union Label: Why We Favor it and Why it is Opposed*, 16 THE TOBACCO WORKER No. 11, 12 (Nov. 1912). See *Justin Seubert, Inc., v. Reiff*, 164 N.Y.S. 522, 523 (Sup. Ct. 1917) (noting that “[i]f the manufacturer deals in ‘Chinese, tenement house, or scab cigars,’ or if his name appears upon a box containing such cigars, the label may be refused, at the option of the local union.”).

Boycott was another important tool.<sup>46</sup> In the course of debating a resolution to extend Chinese Exclusion to other Asian races, one delegate to the Socialist National Convention of 1910 captured the history when, speaking of the 1880s, he noted: “[O]ur fear was the Chinaman; and we sent train loads of men across this continent with the cry, ‘The Chinese must go.’ We instructed our men to boycott the Chinese laundries, Chinese restaurants, Chinese servants of all kinds. We fought the Chinamen and their exclusion took place.”<sup>47</sup>

At the 1914 AFL convention, Delegate William Kavanaugh of New Jersey introduced the following resolution:

WHEREAS, Chinese restaurants and Chinese laundries give no employment to American labor; [and]

WHEREAS, Chinese are not eligible to citizenship; and

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

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<sup>46</sup> See, e.g., *Waiters form Union*, BILLINGS GAZETTE (MT), Feb. 22, 1907, at 7 (“[I]t is understood that the main object of the association will be to do all in their power to discontinue the Chinese restaurants throughout the city”); *Special Message on Jap Question*, SANTA FE NEW MEXICAN, Dec. 18, 1906, at 1 (reporting that “The unions of San Francisco from October 3 to October 24, maintained a boycott against Chinese restaurants in San Francisco, showing the feeling of the working class”); *Card to the Public*, TONOPAH (NEV.) BONANZA, Jan. 17, 1903, at 6 (ad from union encouraging readers “to cease their patronage of Chinese restaurants, laundrys, and all places where Chinese labor is employed, thus giving our own race a chance to live.”); *Local Comment*, THE NEW NORTH-WEST (MT.), Apr. 30, 1892, at 5 (“The two remaining Chinese restaurants have at last been frozen out of Deer Lodge”); *Boycott Them*, DAILY TOMBSTONE, Mar. 15, 1886, at 3 (“There are today three Chinese restaurants in Willcox, all doing good business, while the two hotels in our town, conducted by ladies of our own race and color, are driven to the wall. Close the Chinese restaurants and our hotels would at once do a better business and could afford a better service.”).

<sup>47</sup> PROCEEDINGS OF THE NATIONAL CONGRESS OF THE SOCIALIST PARTY HELD AT CHICAGO, ILLINOIS MAY 15-21, 1910, at 96. Another example of the connection between restaurant competition and immigration policy occurred at the 1909 convention of the California Federation of Labor. At the same meeting where they resolved “that the terms of the Chinese Exclusion Act should be enlarged and extended so as to permanently exclude from the United States and its insular territory all races native of Asia other than those exempted by the present terms of that Act,” PROCEEDINGS, TENTH ANNUAL CONVENTION, CALIFORNIA STATE FEDERATION OF LABOR 8 (1909), they cataloged the forms of competition by Asian workers, noting, among other occupations, that “Cooks have a problem to look after in these dear Jap boys and sly Chinese,” and that “[t]here are about twenty Chinese restaurants in San Francisco, employing about 180 Chinese, and seventy Jap restaurants with about 300 employes.” *Id.* at 14.

RESOLVED, That this, the Thirty Fourth Convention of the American Federation of Labor, requests its affiliated membership to give their patronage to American laundries and restaurants.<sup>48</sup>

The convention modified the resolution, approving an exhortation to “patronize union restaurants and laundries” and reminding the members of existing support for systematic Asian exclusion.<sup>49</sup> Because Chinese were generally excluded from union membership, the resolution as passed was tantamount to supporting a national boycott.

Other unions also endorsed boycotts. In 1915, the Hotel and Restaurant Employees International Alliance and the Bartenders International League voted for a boycott of “Japanese and Chinese Restaurants and Chinese Laundries,” urged locals to “place a fine of not less than five dollars against any member found guilty of patronizing a concern that is owned or operated in part by Asiatics,” and that “that no members of our International Union be permitted to work with Asiatics, and that no House Card or Bar Label or Union Button be displayed in such places.”<sup>50</sup> Notably, some members argued unsuccessfully that the wiser course would be to bring Chinese into the union.<sup>51</sup> But the prevailing sentiment was that the union should “chase the slant-eyed celestials and the little brown skinned fellows back to the place where they belong.”<sup>52</sup>

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<sup>48</sup> REPORT OF PROCEEDINGS OF THE THIRTY-FOURTH ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR, HELD AT PHILADELPHIA, PENNSYLVANIA, NOVEMBER 9 TO 21, INCLUSIVE 1914, at 294.

<sup>49</sup> *Id.* at 469.

<sup>50</sup> PROCEEDINGS OF THE EIGHTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES’ INTERNATIONAL ALLIANCE AND BARTENDERS’ INTERNATIONAL LEAGUE OF AMERICA. HELD AT SAN FRANCISCO, CAL, U. S. A., JUNE 14, 15, 16, 17, 18 AND 19, 1915 at 155-56.

<sup>51</sup> One delegate argued: “There is but one method to overcome the obstacle and that is to organize the Asiatics, put them into unions and you will have a chance to determine the question of wages, hours and conditions, otherwise the problem will be with you indefinitely and as difficult to solve as it seems to be now.” PROCEEDINGS OF THE EIGHTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES’ INTERNATIONAL ALLIANCE AND BARTENDERS’ INTERNATIONAL LEAGUE OF AMERICA. HELD AT SAN FRANCISCO, CAL, U. S. A., JUNE 14, 15, 16, 17, 18 AND 19, 1915 at 155-56. *See also id.* (“We must either devise ways and means to conduct such a terrific campaign against them that will drive them out of business or we must accept them as members. The Chinese waiters and cooks of New York City, I understand, a short time ago were on strike for the 12-hour work day for six days a week, and the Chinese Restaurant Keepers’ Association did everything possible to break the strike so it seems, no matter what creed or color the working men or women are, they are up against the same problems.”).

<sup>52</sup> PROCEEDINGS OF THE EIGHTEENTH GENERAL CONVENTION HOTEL AND RESTAURANT EMPLOYEES’ INTERNATIONAL ALLIANCE AND BARTENDERS’ INTERNATIONAL LEAGUE OF AMERICA. HELD AT SAN FRANCISCO, CAL, U. S. A., JUNE 14, 15, 16, 17, 18 AND 19, 1915 at 155-56. *See also, e.g.*, EILEEN V. WALLIS, EARNING POWER:

The *Mixer and Server* and other media reported boycotts in cities across the country.<sup>53</sup> In 1916, the culinary workers of Casper, Wyoming waged a “hard fight against Chinese and Japanese restaurants,” which “settled in a victory” for the union.<sup>54</sup> In 1916, the “Cooks and Waiters’ Local 413” of Tucson, Arizona were engaged in a “desperate struggle with the proprietors of six Chinese and Japanese restaurants.”<sup>55</sup> Similarly, in Phoenix, the community recognized “the blighting effect of low wages and the rapid decaying process which sets in on the vitals of a community wherever the Oriental hand of avariciousness and cheap living gets its grip.”<sup>56</sup> An Ogden, Utah unionist promised “a hot chase after the scalp of Chinks and Japs,” and proposed a novel use of technology: “How would a union man or a lady — call her one of the female sex — like to have his or her photograph taken when going in or coming out of a Chinese house?”<sup>57</sup> In 1902, the U.S. District Court in Minneapolis reportedly enjoined a union boycott interfering with the business of the Chinese restaurants in the city.<sup>58</sup>

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WOMEN AND WORK IN LOS ANGELES 1880-1930 75 (2010) (noting that Waitresses Union Local No. 98 “made discrimination against Asians a key part of its activities” and endorsed a boycott of Japanese restaurants); *Thoroughly Rout Typo Insurgents*, L.A. HERALD, Aug. 17, 1911 (reporting that at the International Typographical Union convention “[a] resolution was adopted expressing as the sense of the convention that all members of the union should refuse to patronize Chinese laundries, restaurants and other establishments. Local unions were authorized to assess fines for violations.”); 25 MIXER & SERVER, No. 3, Mar. 15, 1916, at 28, 29 (reprinting resolution that “the California Federation of Labor again records itself as opposed to the patronizing or employing of Asiatics in any manner; and in favor of an extension of the Chinese Exclusion law so as to bar all Asiatics.”)

<sup>53</sup> There was also at least one major boycott specifically targeting Japanese restaurants. See *Japanese in the City of San Francisco, Cal.: Message from the President of the United States Transmitting the Final Report of Secretary Metcalf on the Situation Affecting the Japanese in the City of San Francisco Cal.*, S. Doc. 59-147, at 7 (Dec. 16, 1906) (noting that “[a] boycott was maintained in San Francisco from October 3 to October 24 by members of the Cooks and Waiters’ Union against Japanese restaurants.”) However, it was part of a larger policy effort; according to the report, the Japanese and Korean Exclusion League had requested “all affiliated unions to enforce the penalties imposed by their laws for patronizing Japanese or Chinese.” *Id.* at 8.

<sup>54</sup> 25 MIXER & SERVER No. 5, May 15, 1916, at 23.

<sup>55</sup> 25 MIXER & SERVER No. 6, June 15, 1916, at 56.

<sup>56</sup> 25 MIXER & SERVER No. 6, June 15, 1916, at 56.

<sup>57</sup> 12 MIXER & SERVER No. 4, April 15, 1903, at 20.

<sup>58</sup> *Boycott Against Chinese Stopped*, INDIANAPOLIS J., Apr. 22, 1902, at 4. See also *Organized Labor is Enjoined by Court*, Lab. W., Dec. 26, 1903, at 1; *More Pickets Enjoined: Wong Chong Gets an Order*, MINNEAPOLIS J., Apr. 19, 1902, at 6; *Threatens to Sue: Ye Sing may Fight Boycott in the Courts*, MINNEAPOLIS J., Mar. 24, 1902, at 7.

Chinese restaurants were inexpensive,<sup>59</sup> and thus union members were tempted to patronize them boycotts notwithstanding. Leaders argued that the union member is not “benefiting himself financially” by saving a “few cents” in patronizing a Chinese place of business because “not one cent of the money paid to these slant-eyed Orientals comes back to them in any way”; further, “thousands of these Asiatics find encouragement in this country” and eating Chinese food means “the continuation indefinitely of a terrible struggle against these barbarians.”<sup>60</sup> This reasoning was evidently insufficient.

To prevent cheating motivated by financial or culinary considerations, unions often fined on members caught eating at a Chinese restaurant, or in some instances, patronizing any Asian owned establishment. As part of an important systematic boycott,<sup>61</sup> unions in Butte, Montana imposed fines on those visiting Chinese restaurants as early as 1892.<sup>62</sup> In 1901, the Chinese legation filed a claim with the State Department in the amount of \$500,000 “for damages of

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<sup>59</sup> See HAIMING LIU, *FROM CANTON RESTAURANT TO PANDA EXPRESS: A HISTORY OF CHINESE FOOD IN THE UNITED STATES* 53 (2015) (“Chop suey’s marketability was due to its modest price”); *Chinese Restaurant Now Night Club ‘Yellow Peril,’* BROOK. DAILY EAGLE, Oct. 31, 1928, at 1, 3 (stating that Chinese restaurants have “ridiculously” low prices); 25 MIXER & SERVER No. 5, May 15, 1916, at 23.

<sup>60</sup> 25 MIXER & SERVER No. 7, July 15, 1916, at 4. *But see* Park v. Hotel & Rest. Emp. Int’l All., Locals Nos. 106 etc., 30 Ohio Dec. 64, 71–72 (Com. Pl. 1919) (“Under modern social conditions, the law of competition in business controls business relations as immutably as the law of gravitation controls matter. If a Chinaman can furnish better food at less cost than a white man, he will be patronized, and I know of no law that will compel or force any patron to pay a higher price for inferior food merely because it is prepared and served by a white man.”).

<sup>61</sup> Stacy A. Flaherty, *Boycott in Butte: Organized Labor and the Chinese Community, 1896-1897*, 37 MONTANA: THE MAGAZINE OF W. HIST. No. 1 34 (Winter 1987); *After the Chinese: An Effort to Expel them from the Principal Cities of Montana*, DAKOTA FARMERS’ LEADER, Feb. 3, 1893, at 3 (“About a year ago, labor organizations of Butte, Anaconda and Missoula waged war against the employment of Chinese, and threats of a boycott were made against citizens employing them in any capacity or patronizing Chinese laundries or restaurants. . . . Already all but one Chinese restaurant have been closed, and half the laundrymen have gone out of the business and are leaving town.”).

<sup>62</sup> *No Love for the Heathen*, SACRAMENTO DAILY UNION, Jan. 29, 1892, at 1 (noting that the labor organizations of Butte, Montana imposed a fine on any member “who patronizes Chinese restaurants, laundries, stores, or any establishment where Chinese help is employed.”). Perhaps this was partly due to the particularly strong anti-Asian sentiment in Montana at the turn of the century. See Larry D. Quinn, “*Chink Chink Chinaman*”: *The Beginning of Nativism in Montana*, 58 PAC. NW. Q. No. 2, 82-87 (Apr. 1967). See also, e.g., 26 MIXER & SERVER No. 5, May 15, 1917 at 23 (stating that there was a \$15 fine for union members who visited Chinese restaurants); 23 MIXER & SERVER No. 7, July 15, 1914, at 38 (recording imposition of \$5 dollar fine); 21 MIXER & SERVER No. 1, Jan. 15, 1912, at 17 (\$2-10 fine). 23 MIXER & SERVER No. 7, July 15, 1914 at 38 (recording imposition of \$5 dollar fine).

several hundred Chinese subjects resident in the city of Butte . . . between the year 1886 and the present day.”<sup>63</sup>

Litigation in Cleveland, Ohio made clear that the boycotts of Chinese restaurants were of a different character than other sorts of labor action—they were not designed to recruit new union members or persuade businesses to sign a contract, but to render Asian workers unemployed, or shut Asian businesses down.<sup>64</sup> In 1919, Cleveland unions recognized seriousness of “the Chinese situation” — “one small [Chinese restaurant] twenty years ago to all of 25 at the present time.”<sup>65</sup>

Union members picketed two new Cleveland Chinese restaurants, the Golden Pheasant and the Peacock Inn.<sup>66</sup> The Peacock Inn responded with a lawsuit,<sup>67</sup> “claim[ing] that the defendant trades unions are labor organizations . . . engaged as conspirators in a common unlawful conspiracy and boycott against the plaintiffs.”<sup>68</sup> Judge Martin A. Foran was uniquely suited to rule on the case; he had been a member of Congress when the Chinese Exclusion Act was amended and revised, and previously served as president of the Coopers International Union. He agreed with the allegation that the union had “continuously, especially during the times that meals are being served, walk up and down in front of said door leading to said restaurant, unlawfully blocking the entrance thereto” and encouraged patrons to eat elsewhere “on the ground that they are Chinamen and members of the yellow race, and that Americans should not patronize a Chinese restaurant, but should confine their patronage and support to restaurants operated by Americans or by white persons.”<sup>69</sup>

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<sup>63</sup> *Claims of Chinese Subjects Residing at Butte, Mont., on Account of Boycott of their Business*, PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES WITH THE ANNUAL MESSAGE OF THE PRESIDENT TRANSMITTED TO CONGRESS DECEMBER 3, 1901 100 (1902).

<sup>64</sup> See generally J.W.O., *The Boycott as a Weapon in Industrial Disputes*, 116 A.L.R. 484 (originally published in 1938) (discussing early 20<sup>th</sup> century cases on permissible and impermissible types and methods of boycotts).

<sup>65</sup> 28 MIXER & SERVER No. 8, Aug. 15, 1919 at 63.

<sup>66</sup> 28 MIXER & SERVER No. 8, Aug. 15, 1919 at 63.

<sup>67</sup> *Park v. Hotel & Rest. Emp. Int’l Alliance*, (Locals Nos. 106, 107, 108, 167), 30 Ohio Dec. 64, 66 (Ct. Com. Pleas 1919).

<sup>68</sup> *Id.* at 67.

<sup>69</sup> *Id.* at 67-68.

Judge Foran scolded the unions, noting “that all men, even including Chinamen residents of the United States, stand equally before the law, that all men have certain inalienable rights, among which are life, liberty and the pursuit of happiness.”<sup>70</sup> He noted that the picketing was not an attempt to unionize the workers: “no persons can become members who are not citizens by birth or naturalization . . . It is admitted that Chinamen cannot belong to any local of defendants’ international union.”<sup>71</sup> Accordingly, the real aim was to “compel[] the management to discharge Chinese waiters and employ white waiters, and in default of so doing, compel the restaurant to cease doing business.”<sup>72</sup> Similarly, during the Minneapolis boycott of 1902-03, “[t]he Chinese proprietors say they were directed to employ union men only but that this is impossible as Mongolians are barred from labor organizations.”<sup>73</sup>

The picketers’ message was distinctly moralistic; they questioned the virtue of women who patronized the Peacock Inn:

A favorite cry of the pickets to respectable and decent women was, “Hello, sweetheart”; and one gentleman who took his wife to the restaurant said that a picket said to him, “I see you have your soubrette with you.” In order to enter the restaurant, patrons have to pass around, jostle and collide with these pickets. Some of the affidavits say that the remarks addressed to them and their ladies were unprintable. Many women in their affidavits swore that the picket said to them, “This is no place for a woman to go,” and that the language of the pickets was loud and boisterous and that the pickets menacingly brushed against them.<sup>74</sup>

Judge Foran enjoined the picketing at the Peacock Inn, the Golden Pheasant, and another Chinese restaurant.<sup>75</sup> The next month, the author of a follow-up reported in the *Mixer and*

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<sup>70</sup> *Id.* at 97.

<sup>71</sup> *Id.* at 70-71. While Chinese could not join the union at all, the court noted that African Americans were welcome to belong to segregated locals: “it is provided in the constitution that colored men may form local unions, but may not belong to the unions consisting of white men. In other words, while the colored brother may belong to the same church, he is not permitted to worship in the same pew.” *Id.*

<sup>72</sup> *Id.* at 70-71. *See also id.* at 86 (“In the instant case, or the case now at bar, it is admitted freely and candidly that the purpose is to drive the Peacock Inn restaurant out of business”).

<sup>73</sup> *Court Order is Sweeping*, LAB. W., Dec. 26, 1903, at 1. *See also* SHERRI GEBERT FULLER, CHINESE IN MINNESOTA 19 (2004) (noting that Chinese restaurants in Duluth were also boycotted).

<sup>74</sup> 30 Oh. Dec. at 97-98.

<sup>75</sup> 28 MIXER & SERVER No. 8, Aug. 15, 1919, at 63.

*Server* that the “Chinks won the last encounter,” but vowed to fight on: “Local 106, with a membership of 800, of which 60 per cent of its manhood went into the trenches [of] war [are] not going to lay down to a lot of Chinese, whom our own great and glorious Government says, cannot be citizens. Right is might, and as our cause is a just one, we will fight it to a victorious finish.”<sup>76</sup>

A more successful boycott began in June, 1914, when the Cooks’ and Waiters’ Union Local 848 of El Paso, Texas “started a fight on the Chinese.”<sup>77</sup> They “picketed their places and distributed a few thousand dodgers [and] carried an advertisement in both of [the] daily papers [and] had a series of articles published in . . . the *Texas Union*.”<sup>78</sup> The local union secretary reported to the *Mixer and Server* that “we are going to replace the Chinese dumps with the best American restaurants in the South, and El Paso is going to be three times as big and three times as rich in another five years as she is now.”<sup>79</sup> In El Paso, labor worked with management; the owners of the American restaurants in El Paso organized into the “American Restaurant Proprietors’ Alliance” in order to help with “fighting the Chinese.”<sup>80</sup> A July, 1915 update in the *Mixer and Server* explained:

We have witnessed the closing of another Chinese restaurant. While there were nothing much but Chinese restaurants a few years ago, the people have seen the handwriting on the wall, and now only about five such places remain that cater to the American trade. If any one doubts the fact that Local 848 has not been the cause of the demise of these Chinese places, all they need to do is to ask any well informed citizen of El Paso, and the members are reinvigorating the movement to do away with them entirely, which we hope will not be many months off.<sup>81</sup>

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<sup>76</sup> 28 MIXER & SERVER No. 9, Sept. 15, 1919, at 51. The restaurant evidently survived; famed clarinetist Artie Shaw played there early in his career, but after the boycott. JOHN WHITE, ARTIE SHAW: HIS LIFE AND MUSIC 48 (2006).

<sup>77</sup> 23 MIXER & SERVER No. 7, July 15, 1914, at 71-72.

<sup>78</sup> 23 MIXER & SERVER No. 7, July 15, 1914, at 71-72.

<sup>79</sup> 23 MIXER & SERVER No. 7, July 15, 1914, at 71-72.

<sup>80</sup> 23 MIXER & SERVER No. 7, July 15, 1914, at 71-72. In January, the Wisteria Café advertised: “We don’t have closed booths like all Chinese restaurants. Who benefits by this? Will El Paso people soon wake up? Who is ashamed to eat without those closed booths?” EL PASO HERALD, Jan. 22, 1914, at 11.

<sup>81</sup> 24 MIXER & SERVER No. 7, July 15, 1915, at 44.



A few months later, the local witnessed “the closing of six Chinese restaurants. [W]e have got them ‘on the run’ now. Several good American restaurants have been opened during the past spring and summer and another will be ready for business in about a month.”<sup>82</sup>

There is a clear reason why in El Paso in 1915 “six Chinese restaurants [were] replaced by Americans”; according to the American Federation of Labor’s journal: “Union men [were] appointed at the head of five departments in the city.”<sup>83</sup>

The story was similar in Brockton, Massachusetts. In 1911, an organizer for the Local 161 wrote to the *Mixer and Server* about a boycott in that city.<sup>84</sup> But the restaurants survived. The following year, the union tried new tactic — they were “vigorously opposed” to the renewal of the Chinese restaurants’ licenses.<sup>85</sup> Six years later, the battle continued.<sup>86</sup> The unions again turned to the licensing commission in 1917, explaining that “members of [the] local were being dispensed . . . through the inability of [white] proprietors . . . to compete with [the] chinks.”<sup>87</sup>

### *B. Protection of White Women and the Sigel Murder*

Although boycotts after the turn of the century were rarely entirely successful, Chinese restaurants were certainly Orientalized. One idea was that Chinese food was tainted. In 1887, a fan of Chinese food nevertheless predicted that “visions of kittens and rats would keep the Chinese restaurant from being largely patronized.”<sup>88</sup> In 1905, the *Denver Post* reported that local

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<sup>82</sup> 24 MIXER & SERVER No. 9, Sept. 15, 1915, at 28.

<sup>83</sup> 23 AM. FEDERATIONIST 617 (1915).

<sup>84</sup> 20 MIXER & SERVER No. 11, Nov. 15, 1911 at 22. *See also Refuse to Make Arrests*, BOSTON DAILY GLOBE, Nov. 22, 1911, at 10. Circulars were also sent out to “each and every member or organized labor” asking them to avoid patronizing the restaurants. 20 MIXER & SERVER No. 12, Dec. 15, 1911 at 16-17. 21 MIXER & SERVER No. 1, Jan. 15, 1912, at 17. *See also Labor Declares War on Chinese Restaurants*, WASHINGTON TIMES, Feb, 17, 1913, at 7.

<sup>85</sup> *Licenses to Chinese*, BOSTON DAILY GLOBE, Apr. 22, 1913, at 9.

<sup>86</sup> 26 MIXER & SERVER No. 5, May 15, 1917 at 23; 20 MIXER & SERVER No. 11, Nov. 15, 1911 at 22; 30 MIXER & SERVER No. 2, Jan. 15, 1921, at 18 (stating that in 1921 the labor unions continued to picket Brockton’s Chinese restaurants).

<sup>87</sup> 26 MIXER & SERVER No. 5, May 15, 1917, at 23.

<sup>88</sup> Allen Forman, *The Chinese in New York*, SALT LAKE EVENING DEMOCRAT, Apr. 9, 1887, at 3.

Chinese restaurant served dog meat “in a Chinese dish called chop suey.”<sup>89</sup> In 1906, a Missouri article reported: “In Minneapolis they are investigating the chop suey restaurants. There is a suspicion that they do not use fresh rats.”<sup>90</sup> Certainly, competing restaurants had reason to denigrate Chinese victualers. In 1913, a Bisbee, Arizona newspaper reported a Clifton Chinese restaurant had human children on the menu;<sup>91</sup> the story turned out to be a prank.<sup>92</sup> Nevertheless, an advertisement from the *El Paso Herald* for an American restaurant quoted the Bisbee article in its entirety, and added the following statement: “You good Americans who feel that way about it can patronize the CHINK. But if you want a firstclass, wholesome meal, cooked and served by your own kind of people. EAT at The American Restaurant . . . Kitchen and Ice Boxes open for inspection.”<sup>93</sup> In Jerome, Arizona in 1909, there were whispered insinuations that the Chinese restaurants served “refuse and tainted meats” procured from trash barrels of the butcher shops.<sup>94</sup> Constable Charles King and former Arizona legislator W.S. Adams suggested that the city should “punish the Chinks for serving unpalatable food,”<sup>95</sup> and that the Chinese “should be driven from the camp and that furthermore no more should be permitted to enter.”<sup>96</sup>

Nevertheless, while there were many suggestions that Chinese restaurants were “not so good either in a moral or a culinary way,”<sup>97</sup> few claimed that the food was unpalatable in

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<sup>89</sup> *Society Eats Dog Hash*, BOURBON NEWS, Oct. 13, 1905, at 3; *see also Cat Chop Suey*, THE CAUCASIAN, Sept. 19, 1907, at 1 (reporting from Baton Rouge on Chicago’s Chinese restaurants).

<sup>90</sup> MONROE CITY DEMOCRAT, Oct. 18, 1906, at 3.

<sup>91</sup> *A Sensation at Clifton: Former Bisbee Man Brings Story of Finding Child’s Arm in Chinese Restaurant—Officers Raided Place*, BISBEE DAILY REV., Sept. 12, 1913, at 1.

<sup>92</sup> *Sensation was a Poor Canard: Clifton Story of Finding Arm Child in a Restaurant is denied by City Clerk—Says it was a Joke*, BISBEE DAILY REV., Sept. 20, 1913, at 2.

<sup>93</sup> *Id. Help The Poor Heathen Chinese*, EL PASO HERALD, Sept. 13, 1913, at 2.

<sup>94</sup> *Libel Charge Preferred Against Woman*, WEEKLY JOURNAL-MINER, Oct. 27, 1909, at 5, *available at* <http://chroniclingamerica.loc.gov/lccn/sn85032923/1909-10-27/ed-1/seq-5/>.

<sup>95</sup> *Faction War Over Chink Trouble*, BISBEE DAILY REV., Oct. 8, 1909, at 8.

<sup>96</sup> *Id.*

<sup>97</sup> *See Chopstick Dinners, A Fad With Would Be Bohemians*, DAILY BOOMERANG, Mar. 3, 1901, at 4; *A Chinese Restaurant*, ROCHESTER DEM. & CHRON., July 23, 1904, at 6; *Intoxicants in Chinatown*, SUNDAY STAR, Aug. 6, 1905, at 6 (“The local Chinatown is not a motley, ill-assorted colony of celestials like that in Mott street, New York, but an orderly and well-regulated community. Lawlessness and disorder by Chinamen are unknown

principle, that is, if not prepared with rats or dogs. By negative inference, under the right conditions, it seemed accepted that the food served in Chinese restaurants could be good. The real objection to Chinese restaurants was not the food, it was the people who owned and worked in them, and the alleged moral and economic consequences of their enterprises.

Another idea was that Chinese restaurants were locations for vice. Chinese restaurants and Chinatowns were sometimes popular tourist attractions.<sup>98</sup> At the turn of the twentieth century, middle and upper class whites often visited Chinatowns and their restaurants out of “morbid curiosity” to go for an evening of “slumming.”<sup>99</sup> Thus, the *Chicago Tribune* reported on an 1891 trip to New York’s Chinatown, where the English visitors admired the “cleanliness of the kitchen and cookery” of the restaurant; but they, according to the article, had only “seen the curious and clean side of Chinatown.”<sup>100</sup> The visitors were then taken to the “dives of Chinese immorality” where “sternness and pity mingled in their faces” at the sight of young white girls smoking opium “face-to-face” with Chinese men.<sup>101</sup> Others might see these scenes on film.<sup>102</sup> Thus, many Americans believed that early Chinese restaurants were the successors to other

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quantities there, and the police therefore rarely, indeed, have occasion to invade its quaint precincts for the purpose of arresting some offender.”)

<sup>98</sup> See generally Barbra Berglund, *Chinatown’s Tourist Terrain: Representation and Racialization in Nineteenth-Century San Francisco*, 46 AM. STUDS. No. 2 5 (Summer 2005) (discussing tourism in San Francisco’s Chinatown).

<sup>99</sup> See WILLIAM MCADOO, *GUARDING THE GREAT CITY* 171 (1906); Barbas, *supra* note 14, at 671-73 (stating that there were “slummers” in both San Francisco’s and New York’s Chinatowns as early as the 1870’s); Andrew P. Haley, *The Nation before Taste: The Challenges of American Culinary History*, 34 PUB. HIST. No. 2, 73-74 (Spring 2012); Light, *supra* note 24, at 383; Jung, *The Sour Side of Chinese Restaurants*, *supra* note \_\_, at 18 n. 5; JUNG, *supra* note 23, at 39; *Barred from Chinatown*, N.Y. TRIBUNE, Oct. 25, 1910, at 7 (stating that the “rubber neck” men who come to visit Chinatown are now barred by a police order); *Elsie Sigel’s Death Warning Against Fatal Lure of Chinese*, SPOKANE PRESS, June 26, 1909, at 6; *Opposes “Slumming”*, WASH. POST, Nov. 1, 1910, at 16. See generally *Claws of the Dragon Losing Grip on New York’s Famous Chinatown*, THE SUN (N.Y.), June 15, 1913, at 3 (discussing the change in New York’s Chinatown, and how it no longer presented the spectacles for visitors it once did).

<sup>100</sup> *Through the Slums: Lady Henry Somerset Visits The Dens Of New York*, CHICAGO DAILY TRIBUNE, Nov. 29, 1891, at 2.

<sup>101</sup> *Id.*

<sup>102</sup> Daniel Czitrom, *The Politics of Performance: From Theater Licensing to Movie Censorship in Turn-of-the-Century New York*, 44 AM. Q. 525, 541 (1992) (describing films depicting Chinatown slumming, such as *Lifting the Lid* (Biograph 1905), and *The Deceived Slumming Party* (Biograph 1908)).

purveyors of vice in American Chinatowns, such as brothels, gambling joints, and opium dens,<sup>103</sup> and at times served as late-night substitutes for closed saloons.<sup>104</sup> So-called “lobbygows” escorted and promised protection to Chinatown tourists, even hiring local residents to act out stereotypical vices.<sup>105</sup> However, this kind of business was a double-edged sword. To be sure, flaunting exoticism generated patronage. But the implication that something naughty or worse might be going on foreseeably caused morally conservative Americans to further fear for the restaurants’ young white visitors.<sup>106</sup>

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<sup>103</sup> See Light, *supra* note 24, at 368; see also *Sunday Vice in Chinatown*, N.Y. HERALD, Jan. 14, 1895, at 3 (discussing the atmosphere of New York’s Chinatown, including its restaurants, in 1895); *Assails Board*, BOSTON DAILY GLOBE, Feb. 1, 1901, at 6 (“The have suffered to exist for a long time Chinese resorts [sic], frequented by both sexes, where the scenes of the most revolting character are nightly enacted under the eye of the police, with no effort on the part of the board to stop this evil.”) (quoting statements before the Massachusetts Legislature); *Girl Exposes Opium Den*, INDIANA STAR, Feb. 22, 1910, at 5; *Barred from Chinatown*, N.Y. TRIBUNE, Oct. 25, 1910, at 7; *Girls Drink Beer At All Hours in Chop Suey Houses*, CHICAGO DAILY TRIBUNE, May 16, 1914, at 1 (discussing a 1914 investigation of 26 Chinese restaurants in Chicago); *Reform Chinatown Here; No Fights, No Opium Now; All Games Are Innocent*, WASH. POST, Mar. 25, 1917, at 2 (describing the Chinatown of the past while commenting on its recent reform); *The Chinese Restaurants*, BOSTON DAILY ADVERTISER, Aug. 12, 1899, at 4.

<sup>104</sup> See *To Make War on Restaurants Drinks*, EL PASO HERALD, Oct. 5, 1913, at B4; *Intoxicants in Chinatown*, SUNDAY STAR, Aug. 6, 1905, at 6 (“Another of the original chop suey and yet quo mein restaurants in Chinatown is familiarly known as Moy’s. . . . These resorts a do rushing business after the bells have tolled the midnight hour, and often a motley array of customers are to be found in them while the city sleeps — men, women and boys, black, white and yellow and all shades of morality, some drunk, some sober and others who eat great quantities of yet quo mein in their efforts to get sober, as the dish is said to have quite a sobering effect on the whiskey-soaked rounder of the night.”); see, e.g., *Chop Suey Dealer Is Fined*, OMAHA SUNDAY BEE, Oct. 16, 1910, at F8 (reporting that a chop suey restaurant owner was fined \$100 for selling liquor after 8 o’clock); *Three Killed and Nine Wounded in Political Riots at Rock Island*, EL PASO HERALD, Mar. 27, 1912, at 5 (“The whole trouble from its inception may be traced to the fact that I favored the law against disorderly saloons and chop suey joints.”).

<sup>105</sup> See I.L. NASCHER, *THE WRETCHES OF POVERTYVILLE* 134 (1909); Light, *supra* note 24, at 390; see also *The social, moral, and political effect of Chinese Immigration: Testimony taken before a committee of the Senate of the State of California* 151 (April 3, 1876) (statement of James R. Rogers, San Francisco Chief of Police).

<sup>106</sup> See Berglund, *supra* note 98 at 17 (“In the tourist literature, Chinese restaurants, for example, were portrayed as violating norms of public health as well as various food taboos.”); Light, *supra* note 24, at 383; *Police Capture 178 In Chop Suey Raids*, N.Y. TIMES, Apr. 15, 1918, at 8 (quoting an assistant district attorney as stating “there are many persons left in this city who believe that the Sabbath should be observed. Chop suey restaurants at 2 o’clock or later in the morning are not fit places for young girls 16 or 17 and there were several of this age detained”); *300 Arrested as N.Y. Police Raid 30 Joints*, WASH. HERALD, Apr. 15, 1918, at 8 (“Many young girls evidently not out of their teens were found in the raid. In most of these cases as soon as the police entered the man escorts of the girls deserted them.”). On the other hand, some stories seem quite positive, at least to the modern eye:

Labor unions exploited the idea that Chinese restaurants were sources of moral contagion.<sup>107</sup> For example, a 1904 *Labor World* front page article featured the “iniquitous Chinese Chop Suey joints” of Minneapolis, calling “the attention of the people to the necessity for stamping out” such establishments.<sup>108</sup> The restaurants were immoral in and of themselves, and also caused vice through economic demoralization:

The moral sense of our city has been terribly shocked recently by the disclosures of the crimes in connection with certain Chinese restaurants. The papers have been discussing the matter; the Humane society, members of women’s clubs and prominent officials of the city have been offering remedies, but so far no suggestion has been made that goes to the root of the matter. . . .

[The labor unions argued:] “These institutions will bring cheap labor into the city. That will compel other restaurants to hire cheap labor. This will demoralize the restaurant workers, compel them to work for low wages and put hundreds of young women into positions of distressing temptation.”

So the labor Unions of Minneapolis withstood the Chinese restaurants. But the so-called business interests of our city insisted that the right of the employer to whom he would, at whatever wages he would, must be maintained. The courts rendered an injunction that defeated the labor unions and sustained the Chinese restaurants, and they are here today by consent of the courts. And the results which the working class foresaw, and sought to prevent, are among us.<sup>109</sup>

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“Whites, blacks, and Mongolians mingled without sign of prejudice.” *Two Mott Street Restaurants: Open All Night—Free Tea and Mixed Company*, N.Y. SUN, Feb. 28, 1892, at 21.

<sup>107</sup> Chinese restaurants, for example, sometimes employed children. See MINUTES OF THE NEWARK CONFERENCE OF THE METHODIST EPISCOPAL CHURCH 65 (1911); PROCEEDINGS OF THE ANNUAL MEETING OF THE NATIONAL CHILD LABOR COMMITTEE, *Report from the Child Labor Committee*, 169 (1911) (stating that Chinese restaurants sometimes used children as “night messengers” for immoral purposes); *Redskins Hot After Scalp*, L.A. TIMES, July 9, 1903, at 13 (stating that “in many instances [Chinese restaurants] employed as waiters on table, Indian boys”).

<sup>108</sup> *Minneapolis Labor After the Chinese*, THE LABOR WORLD, Nov. 19, 1904, at 1.

<sup>109</sup> *Minneapolis Labor After the Chinese*, THE LABOR WORLD, Nov. 19, 1904, at 1.

Unions invoked fears of harm to white women.<sup>110</sup> As early as 1899, the question was asked: “Can any means be devised to prevent the employment of white girls in Chinese restaurants?”<sup>111</sup> While one observer wrote that “[b]eer and noodles in Chinese joints have caused the downfall of countless American girls,”<sup>112</sup> seduction through the use of opium was a greater concern.<sup>113</sup> There were lurid reports that Chinese restaurants were fronts for opium dens,<sup>114</sup> and that Chinese men used opium “as a trap for young girls.”<sup>115</sup> National headlines

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<sup>110</sup> See, e.g., 26 MIXER & SERVER No. 5, May 15, 1917, at 23 (“It is admitted even by some of the aldermen the demoralizing effect the behavior permitted in those places is liable to have on the community, and as a consequence, we feel assured our fight on this occasion cannot help meeting with success.”); 24 MIXER & SERVER No. 4, April 15, 1915 at 29-30 (Lobbying for a Montana law which was devised at union convention that the unions hoped would harm Chinese restaurants, the bill’s sponsor, Senator McKenzie, said, ‘I have been called upon to attend many young girls who have become addicted to the use of drugs. Questioning disclosed the fact that the ‘habit’ had been contracted in so-called Chinese restaurants, operating in this state.’ He also stated that he believed ‘The moral features of the bill should receive the support of each and every person interested in safeguarding young womanhood’); see also 24 MIXER & SERVER No. 3, March 15, 1915 at 32 (stating “this bill, if enacted into law, will go a long way towards decreasing the popularity of the Chinese restaurants in the State”).

<sup>111</sup> *Children’s Society*, SACRAMENTO DAILY UNION, May 9, 1899, at 4.

<sup>112</sup> *Chinese Restaurants in Madera*, MADERA MERCURY (CA), Jan. 20, 1912, at 2.

<sup>113</sup> “Chinese men were thought to lust after White women, ‘seeking to assuage their perilous hunger by luring these women behind the partitions of their laundries or restaurants into their private lairs, then seducing them with wine and opium so that they could have sexual relations with them.’” Sandra Ka Hon Chu, *Reparation as Narrative Resistance: Displacing Orientalism and Recoding Harm for Chinese Women of the Exclusion Era*, 18 CAN. J. WOMEN & L. 387, 394 (2006) (quoting Tania Das Gupta, *Families of Native People, Immigrants, and People of Colour* 146 at 153, in CANADIAN FAMILIES: DIVERSITY, CONFLICT AND CHANGE (N. Mandell & A. Duffy, eds., 2000)).

<sup>114</sup> See *Citizens May Take the Law Into Their Own Hands*, S.F. CALL, Dec. 27, 1899, at 1; *Conceal Opium in Chop Suey Bowls*, WEEKLY JOURNAL-MINER, Mar. 4, 1914, at 4; *Girls Frequent Opium Den*, L.A. TIMES, Nov. 23, 1908, at 14. Rev. *Pittman’s Lecture on Social Problems Last Night*, ELMIRA GAZETTE & FREE PRESS, Apr. 1, 1905, [no page available]; *Mrs. Gooley Says White Girls Frequent Local Opium Dens*, E. OREGONIAN, Nov. 8, 1909, at 1.

For examples of the drug busts see, e.g., *Chink Arrested for Opium Sale*, DETROIT FREE PRESS, May 23, 1909, at 1; *Chop Suey Plant a Blind For Opium*, N.Y. TIMES, Feb. 9, 1914, at 5; *Mrs. Masters Is Fighting the Chinese Restaurants*, PITTSBURGH PRESS, Sept. 12, 1910, at 1; *Opium Raiders Believe Den to Be Headquarters*, ST. LOUIS POST, July 23, 1910, at 1; *Opium Smoking in Virginia City*, N.Y. TIMES, Mar. 29, 1881, at 2 (“For the accommodation of the smokers, and as a blind, a Chinese restaurant has been opened, in which a good meal can be obtained for the small sum of two bits.”); *Raid Secret Opium Store*, KENNEWICK COURIER, Oct. 9, 1908, at 6 (“Bellingham [, Washington]—As the result of the raid made Friday night by local police on a Chinese chop suey

described the “opium sandwich,” the “latest wrinkle in restaurant novelties,” and reported that Chinese restaurants concealed opium in Chinese nuts.<sup>116</sup> And there were regular reports of young girls being “rescued from an opium den,” often such reports suggested that they “were compelled to use the drugs.”<sup>117</sup> The following is a statement from a Congressional hearing on regulation of opium:

In the Chinatown of the city of Philadelphia there are enormous quantities of opium consumed, and it is quite common, gentlemen, for these Chinese or “Chinks,” as they

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house, which revealed the existence of a secret store for the retailing of contraband opium, the officers here believe they have unearthed the Celestials who have been guilty of retailing smuggled opium in this city for the past year.”).

<sup>115</sup> See *Rescued from Opium Den*, DAILY ARDMOREITE, Nov. 26, 1908, at 2; *accord Backroom of Saloon Takes Toll of Girls*, THE STAR, April 3, 1914, at 2 (“She found that ‘more than a majority of the women drinking in these places were working girls or girls of leisure, and young girls at that.’ None of the chop suey places or other resorts in the loop district of Chicago, which the committee asserts are the most dangerous, were included in that report.”); *Even Doctors Are Victims*, BOSTON DAILY GLOBE, Mar. 6, 1911, at 8 (stating that “numbers of Boston young women who patronize Chinese restaurants because of a taste for chop suey . . . [became] confirmed opium smokers” in the “Chinese dives” on Harrison Avenue.)

In 1908, during a widely publicized raid on a Pittsburg Chinese restaurant, “[o]ne of the ‘hanging’ opium dens was disclosed” and in it police found Mrs. Meade Long, age 43, and her daughter, Bessie, age 18, in company with the restaurant’s proprietor, Ho Tim. *Girls Frequent Opium Den*, L.A. TIMES, Nov. 23, 1908, at 14. By translating Chinese records found at the raid, policed “learned the names and addresses of many of the girl opium smokers and are considering sending out detectives to lay the whole scandal before the parents rather than cause the immediate arrest of the girl smokers.” *Id.* One detective stated, “We have indisputable evidence that at least a score of East End girls have been frequenters of this resort, being both a prey to opium and Chinamen.” *Id.*

In 1909, the *Boston Globe* reported that a 15-year-old white girl was rescued after being abducted by a Chinese man. *White Girl Is Held Captive*, BOSTON DAILY GLOBE, Sep. 7, 1909, at 14. The police found her in a Chinese hotel and arrested her captor. *Id.* According to the *Globe*, the girl “begged the white men to take her away, and wept when she realized they had come to rescue her.” *Id.* She claimed that the last thing she remembered was looking for her friends in a Chinese restaurant. *Id.* Wong, the alleged captor, claimed she came with him willingly. *Id.*

<sup>116</sup> See *Opium Raiders Believe Den to be Headquarters*, ST. LOUIS POST, Jul 23, 1910, at 1; ROME DAILY SENTINEL, July 25, 1910, at 6; MOORCROFT TIMES, July 28, 1910, at 6; *Opium Sandwich the Latest*, BEMIDJI DAILY PIONEER, Oct. 24, 1910, at 1; *Chinese Sells Opium Hidden in Sandwich*, L.A. HERALD, Oct. 23, 1910, at 2; *Dope in Sandwiches*, EL PASO HERALD, Oct. 26, 1910, at 11; *Dope Sandwich the Latest*, L.A. TIMES, Oct. 22, 1910, at 11. “‘Fiends’ Get Opium Inside of Chinese Nuts, WASH. HERALD, Mar. 2, 1914, at 12.

<sup>117</sup> See, e.g., *Rescued from Opium Den*, DAILY ARDMOREITE, Nov. 26, 1908, at 2.

are called, to have a concubine as a white women. There is one particular house where I would say there are 20 white women living with Chinamen as their common-law wives. The Chinamen require these women to do no work, and they do nothing but smoke opium all day and night. A great many of the girls are girls of family, and the history of them is very pathetic. You will find those girls in their younger days out with sporty boys, and they got to drinking. The next step was cigarettes. Then they go to Chinese restaurants, and after they go there a couple of times and get a drink in them they want to 'hit the pipe.' They do it out of curiosity or pure devilishness.<sup>118</sup>

The *Chicago Tribune* reported that “[m]any a young girl received her first lesson in sin in Chinese restaurants,”<sup>119</sup> and that

More than 300 Chicago white girls have sacrificed themselves to the influence of the chop suey ‘joints’ during the last year, according to police statistics . . . . Vanity and the desire for showy clothes led to their downfall, it is declared. It was accomplished only after they smoked and drank in the chop suey restaurants and permitted themselves to be hypnotized by the dreamy, seductive music that is always on tap.<sup>120</sup>

The idea of white female victimization became a media trope. In 1899, Charles E. Blaney and Charles A. Taylor’s play *King of the Opium Ring*, played at the Columbus Theater and the Academy of Music in New York.<sup>121</sup> Later produced around the country, it featured a clown who rescued a young white girl from the balcony of a Chinese restaurant.<sup>122</sup> Similarly, in one of his works popular novelist Frank Norris exploited the “reputed Chinese fondness for slave

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<sup>118</sup> *Importation and Use of Opium: Hearing on H.R. 25240, H.R. 25241, H.R. 25242, and H.R. 28971 Before the H. Comm. on Ways and Means*, 61st Cong. 3d Sess. 71 (1911).

<sup>119</sup> *Chinese Dens of Iniquity That Are Well Protected by the Authorities*, BRIDGEPORT HERALD, Aug. 28, 1904, at 11 (“[Chinese restaurants do] not harm the women who live in the half world and eke out a miserable existence, depending upon the small sums of money the so called sports throw into their laps as presents. But the young girls of the town who are not steeped in crime and are just starting down the road that sooner or later leads to the gutter are brought into close contact with vice in its very worst forms.”).

<sup>120</sup> *Suey ‘Joints’ Dens of Vice*, CHICAGO TRIB., Mar. 28, 1910, at 2.

<sup>121</sup> MARVIN LACHMAN, *THE VILLAINOUS STAGE: CRIME PLAYS ON BROADWAY AND IN THE WEST END* 155 (2014).

<sup>122</sup> DALLES DAILY CHRON., Oct. 6, 1900, at 4.



girls . . . One of his white women characters, accompanied by her fiance, is kidnapped in broad daylight in a Chinese restaurant.”<sup>123</sup> Similarly, renowned realistic painters depicted scenes from Chinatown.<sup>124</sup>

Officials regularly prosecuted Chinese men for luring in and assaulting or enslaving white girls.<sup>125</sup> According to a 1914 Massachusetts legislative report, Chinese restaurants were the “favorite resorts of professional pimps and prostitutes,” and “Immoral young girls . . . who have not yet become commercial prostitutes . . . get intoxicated” in these places.<sup>126</sup> In 1909, the Chicago police conducted a “systematic search of Chinatown . . . in an effort to find many white girls said to be held in *virtual* slavery.”<sup>127</sup>

Just as legal policy toward African Americans was driven by a concern about interracial sex, some feared early Chinese restaurants because of the intense sexuality of Chinese men. Because of Chinese Exclusion, there were many more Chinese men than women in the United

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<sup>123</sup> Judy M. Tachibana, *Outwitting the Whites: One Image of the Chinese in California Fiction and Poetry, 1849-1924*, 61 S. CAL. Q. No. 4, 379, 385 (Winter 1979).

<sup>124</sup> John X. Christ, *A Short Guide to the Art of Dining, Slumming, Touring, Wildlife, and Women for Hire in New York's Chinatown and Chinese Restaurants*, 26 OXFORD ART J. 73 (2003).

<sup>125</sup> See Jung, *The Sour Side of Chinese Restaurants*, *supra* note \_\_\_, at 18 n. 12-13. [note 13 is missing in the endnotes to the original article, email the author in order to get the source of the 1915 event]; *Girl Assaulted in Chinese Den*, CHEYENNE DAILY LEADER, Jan. 6, 1891, at 1; *Another White Slave Case*, MORNING OREGONIAN, Apr. 11, 1906, at 18; see, e.g., *White Girl is Outraged*, THE COOS BAY TIMES, June 27, 1907, at 1 (telling the story of a girl who was kept a prisoner behind bars for more than three years after being trapped in a Chinese restaurant); *Another 'Friend' of Hing To Be Deported*, ARIZ. REPUBLICAN, Oct. 2, 1909, at 3 (“The girl, who is rather pretty, like all those whom Hing has selected as his inmates...”); *White Slaves in Michigan*, TURTLE MOUNTAIN STAR, Jan. 27, 1910, at 5.

<sup>126</sup> THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS, REPORT FOR THE INVESTIGATION OF THE WHITE SLAVE TRAFFIC 16 (1914); see also *Swann to Proceed Against Owners of Chop Suey Places*, N.Y. TRIBUNE, Apr. 17, 1918, at 9 (stating that the 1918 New York Chop Suey raid was justified, according to the District Attorney, because of the “presence of the young girls found in [the restaurants] after 2 o’clock”).

<sup>127</sup> *Search for White Slaves*, MARION DAILY MIRROR, Dec. 31, 1909, at 1 (emphasis added); see also *Korean Waiter Held for Violations of White Slave Law at Chicago*, INTER MOUNTAIN GLOBE, Mar. 30, 1911 (Wyoming) (reporting that Chinese restaurateurs were plotting to “secure white American girls and ship them to Japan to become the playthings of wealthy Japanese.”).

In 1919, there was even a short story called *Chop Suey & Company* featuring a naïve police officer who believed that the Chinese are plotting to abduct a young woman from a chop suey joint. See ANDREW COE, *CHOP SUEY: A CULTURAL HISTORY OF CHINESE FOOD IN THE UNITED STATES* 195 (2009).

States.<sup>128</sup> By some accounts, in 1890, there were more than 25 males for every one female.<sup>129</sup> Hence, it is not surprising that there was a demand for commercial sex in America's Chinatowns,<sup>130</sup> and that Chinese men sometimes married white women<sup>131</sup> — a practice frowned upon by most white Americans even in places that recognized interracial marriage.<sup>132</sup> The *St. Louis Post* reported that Chinese Restaurants “are visited . . . often by respectable girls and women on sight-seeing expeditions, or [those] who have ‘the chop suey habit.’ The Chinese of these places soon find a way to form an acquaintance with young women customers who go to

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<sup>128</sup> See SUCHENG CHAN, ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA 95-146 1882-1943 95 (1991) available at <http://www.lcsc.org/cms/lib6/MN01001004/Centricity/Domain/81/TAH%202.pdf>; MCADOO, *supra* note 99, at 171.

<sup>129</sup> See Light, *supra* note 24, at 375; see also RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 239 (1989).

<sup>130</sup> THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS, REPORT FOR THE INVESTIGATION OF THE WHITE SLAVE TRAFFIC 16 (1914) (“Certain White Prostitutes solicit exclusively in Chinese Restaurants, and cater only to Chinese patrons.”); Light, *supra* note 24, at 370.

<sup>131</sup> “Chinese-Irish marriages were sufficiently noticeable in new York City to merit regular comment in the city’s newspapers.” John Kuo Wei Tchen, *Quimbo Appo’s Fear of Fenians: Chinese-Irish-Anglo Relations in New York City* 129 in THE NEW YORK IRISH (Ronald H. Bayor & Timothy J. Meagher eds. 1996).

<sup>132</sup> See Jung, *The Sour Side of Chinese Restaurants*, *supra* note \_\_, at 18 n. 12; Huping Ling, “Hop Alley”: Myth and Reality in the St. Louis Chinatown, 28 J. URBAN HIST. 184, 209 (2002) (referring to the “nationwide antagonism against the interracial sexual relationships between European Americans and Chinese”); *Calls Police an Abomination . . . White Wife Excites Policeman’s Suspicions*, OR. DAILY JOURNAL, Apr. 18, 1906, at 10; THE BROAD AX, Mar. 22, 1913, at 2 (Salt Lake City, Utah) (stating “determination to press the inter-racial marriage prohibition . . . received a local impetus when a Chinese restaurant keeper married a white girl”); see also *Another ‘Friend’ of Hing To Be Deported*, ARIZONA REPUBLICAN, Oct. 2, 1909, at 3; *Believe Admirer of White Wife May Have Slain Chinamen*, PITTSBURG PRESS, Aug. 4, 1913, at 1 (“[W]ealthy Chinese restaurant man found hacked to death in his bed yesterday, was the victim of a disappointed sweetheart of his young white wife . . . [They met when she] was working [as a mission worker] in the Chinese section when Elsie Sigel was murdered in New York.”); *Detroit Chinaman and White Girl to Marry*, DETROIT FREE PRESS, Mar. 27, 1907, at 8 (“Charlie Jinwing, First Celestial to Sell Chop Suey Here, Inaugurates Another Innovation by Securing License to Wed Miss Evelyn G, Clark.”); *Finds Wife a Chinaman’s Bride; Charges Bigamy*, ST. LOUIS POST, Jun 7, 1907, at 4 (“Husband Says Mamie Lange Deserted Children for Hop Alley and Fears She Has Fled City With Charlie Toy. . . . When told that . . . her daughter married a Chinaman, Mrs. McGraw fell back in her chair with a Groan.”); *Intoxicants in Chinatown*, SUNDAY STAR, Aug. 6, 1905, at 6 (“This celestial is not the only citizen of Chinatown who married a white wife. Several others have taken unto themselves Caucasian brides, and have half-breed children. . . . Most of these white wives are said to follow their husband’s example and become hitters of the opium pipe.”)

the place often . . . . In Hop Alley several Chinese have white wives.”<sup>133</sup> A certificate of marriage with a Chinese man was considered “a frequent excuse” for the presence of a white woman in a Chinese restaurant,<sup>134</sup> and a required one if she was to stay the night in New York’s Chinatown in 1909.<sup>135</sup> Former New York Police Commissioner William McAdoo once claimed, “[T]he so-called Chinese wives are probably, taken together, the most wretched, degraded, and utterly vile lot of white women and girls that could be found anywhere.”<sup>136</sup> It “gave a girl a bad name” just to work in a Chinese restaurant.<sup>137</sup>

Not all those visiting Chinatowns went for amusement or vice.<sup>138</sup> Christian missionaries entered in hopes of converting the Chinese, but sensational newspaper reports claimed that female missionaries too often succumbed to opium addiction and “the fatal lure of Chinese.”<sup>139</sup> One clergyman explained: “I know the possible dangers of social intercourse between the races . . . so our Chinese school is watched very strictly.”<sup>140</sup> A Kansas City detective thought that society should “prevent young girls from wrecking their lives by attempting to Christianize

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<sup>133</sup> *St. Louis Police Will Regulate Chinese Resorts*, ST. LOUIS POST, June 21, 1909, at 3.

<sup>134</sup> THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS, REPORT FOR THE INVESTIGATION OF THE WHITE SLAVE TRAFFIC 16 (1914).

<sup>135</sup> *Elsie Sigel’s Death Warning Against Fatal Lure of Chinese*, SPOKANE PRESS, June 26, 1909, at 6.

<sup>136</sup> MCADOO, *supra* note 99, at 171.

<sup>137</sup> *Free Labor Bureau Helps Young Girls*, THE LABOR WORLD, Mar. 9, 1912, at 1, 3. But sexual immorality was not limited to Chinese men. The 1914 Wisconsin Vice Committee reported that “couples who are desirous of indulging in immoral practices [enter Chinese restaurants because] they serve as convenient meeting places for who are yet ashamed to enter wine rooms and saloons. . . . The appearance of innocence . . . lead[s] inexperienced young people to enter . . . meeting [them] with the strongest sexual temptations.” STATE OF WISCONSIN, REPORT AND RECOMMENDATION OF THE WISCONSIN LEGISLATIVE COMMITTEE TO INVESTIGATE THE WHITE SLAVE TRAFFIC AND KINDRED SUBJECTS 57 (1914).

<sup>138</sup> See MARY TING YI LUI, THE CHINATOWN TRUNK MYSTERY, MURDER, MISCEGENATION, AND OTHER DANGEROUS ENCOUNTERS IN TURN-OF-THE-CENTURY NEW YORK CITY 111-43 (2005).

<sup>139</sup> TING YI LUI, *supra* note 138, at 42-44; I.L. NASCHER, THE WRETCHES OF POVERTYVILLE 134 (1909); *Elsie Sigel’s Death Warning Against Fatal Lure of Chinese*, SPOKANE PRESS, June 26, 1909, at 1, 6 (“The police say the Chinamen go to Sunday school only to learn English and to associate with well bred white girls. . . The high caste Chinamen flock to the Sunday school that has the prettiest teacher. If a low cast Chinamen begins to gain the sympathy of the teacher one of the high cast men . . . will tell him to stay away from the Sunday school.”).

<sup>140</sup> *St. Louis Police Will Regulate Chinese Resorts*, ST. LOUIS POST, June 21, 1909, at 3.

Oriental.”<sup>141</sup> In 1909, the oldest Chinese mission worker in New York stated that she did not “believe in young girls teaching Chinamen” because the Chinese continue to “hold a fascination for young American girls . . . after they once come in contact.”<sup>142</sup> In September, 1909, *Munsey’s Magazine* published “Woman’s Love of the Exotic” which suggests the public perception of the issue:

#### A DANGEROUS ASSOCIATION

[I]n the beginning, [they] were probably religious in their cast of thought; and they went down to Chinatown, at first, with the sincerest and most innocent motives. . . .

In time, familiarity brought about a new feeling, and made the interest a personal interest, quite as much as a religious one. The very fact that white men despise Chinese, and often ill-treat them, stirred what may be called a maternal instinct in the women who made themselves responsible for the welfare of their charges. Just as a mother loves most tenderly her most misshapen and ill-favored child, so these girls felt their hearts moved by the thought that their ‘converts’ had all the world against them. Then, again, the personality of the Orientals, with their insidious ways and fawning manners, made the appeal still stronger. Add to this the fact that religious emotion is very closely related to one that is physical, and we find a combination which explains why so many of these young women went astray, and why in their converts they ultimately found lovers.<sup>143</sup>

Some worried young missionary girls would end up like other white women who “consort with the Mongolians for a thimble of the drug.”<sup>144</sup>

1909 was a critical year for regulation of Chinese. In an era when many Americans used over-the-counter patent medicines containing opiates or cocaine,<sup>145</sup> Congress passed the

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<sup>141</sup> *Follow Trail Set By The Black Book*, WASH. TIMES, Sept. 8, 1913, at 2.

<sup>142</sup> *Elsie Sigel’s Death Warning Against Fatal Lure of Chinese*, SPOKANE PRESS, June 26, 1909, at 6.

<sup>143</sup> Lawrence Burt, *Woman’s Love of the Exotic*, MUNSEY’S MAG., Sept. 1909 at 831-32, available at <http://www.unz.org/Pub/Munseys-1909sep-00831>.

<sup>144</sup> See NASCHER, *supra* note \_\_\_, at 134.

<sup>145</sup> DAVID F. MUSTO, *THE AMERICAN DISEASE: ORIGINS OF NARCOTIC CONTROL* 3 (3d ed. 1999) (“Opiates and cocaine became popular—if unrecognized—items in the everyday life of Americans”)

Smoking Opium Exclusion Act of 1909.<sup>146</sup> And then, in June, 1909, came tragedy and disaster. As is described in Professor Ting Yi Lui's award-winning book *The Chinese Trunk Murder*, Leon Ling, a worker in a New York Chinese restaurant, murdered Elsie Sigel, a young, white missionary from a prominent family.<sup>147</sup> In part because Ling was the subject of an unsuccessful manhunt, the crime became a prolonged national sensation.<sup>148</sup>

Ms. Sigel was described as a Christian missionary seduced by her Chinese pupil.<sup>149</sup> Lurid headlines such as *Was Strangled By Her Chinese Lover: Granddaughter of General Sigel Slain in the Slums of New York* captured the public's attention.<sup>150</sup> Unfortunately for Chinese restaurants, not only was Ling a restaurant worker, but Ms. Sigel's body was found in a trunk in Ling's room, which also happened to be above a Chinese restaurant, although one in Midtown Manhattan, not Chinatown.<sup>151</sup> The subsequent "wave of suspicion" put Chinese restaurants across the country under the spotlight.<sup>152</sup> An Oregon newspaper stated "that the Sigel

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<sup>146</sup> See CHERYL L. CHAMBERS, *DRUG LAWS AND INSTITUTIONAL RACISM; THE STORY TOLD BY THE CONGRESSIONAL RECORD* (2011); *See, e.g., Dreamers Who Hit the Pipe*, WASH. POST, Mar. 7, 1909, at M1; *Fight on Opium Led by America*, CHICAGO DAILY TRIB., Apr. 19, 1909, at 1; *Opium Barred After April 1*, N.Y. TIMES, Mar. 28, 1909, at 3; *Opium Barred by New Statute*, S.F. CHRONICLE, Mar. 28, 1909, at 39; *Opium Barred Except for Medical Use*, LOS ANGELES TIMES, Mar. 28, 1909, at I2; *Opium Riots Spread*, L.A. TIMES, Dec. 29, 1908, at I1; *Sent Trouble Over Opium Law*, S.F. CHRON., Mar. 21, 1909, at 21; *State Officers are After Opium*, S.F. CHRON., Apr. 24, 1909, at 7; *Riot Against Opium Edict*, WASH. POST, Dec. 28, 1908, at 4.

<sup>147</sup> *See generally* TING YI LUI, *supra* note 138 (Telling the story of the Sigel murder and the country's pursuit of her murderer); *see, e.g., St. Louis Police Will Regulate Chinese Resorts*, ST. LOUIS POST, June 21, 1909, at 3 (asking the chief of police what he would do in light of their "attention [being] called to the Chinese problem in American cities by the murder of Elsie Sigel.").

<sup>148</sup> *See generally* TING YI LUI, *supra* note 138 (Telling the story of the Sigel murder and the country's pursuit of her murderer).

<sup>149</sup> *See e.g., Elsie Sigel's Death Warning Against Fatal Lure of Chinese*, SPOKANE PRESS, June 26, 1909, at 1, 6 (quoting Florence Todd, the oldest missionary worker in New York) ("I didn't think she was in love him. She was such a devout mission worker, and she declared so many times that God had called her to help save the souls of the Chinamen . . ."); *Girl Found Murdered in Chinatown's Room a Sigel*, WY. SEMI-WEEKLY TRIBUNE, June 6, 1909, at 1.

<sup>150</sup> *Was Strangled By Her Chinese Lover*, S.F. CHRON., June 19, 1909, at 1.

<sup>151</sup> *See Girl Found Murdered in Chinatown's Room a Sigel*, WYO. SEMI-WEEKLY TRIBUNE, June 6, 1909, at 1; *Elsie Sigel's Death Warning Against Fatal Lure of Chinese*, SPOKANE PRESS, June 26, 1909, at 1, 6.

<sup>152</sup> GUERNSEY GAZETTE, Oct. 22, 1909, [no reported page]; *see also Chop Suey Profits Lessen*, LOGANSPOUT PHAROS TRIB., Aug. 23, 1909.

revelations have disgusted the Americans, and at present it is considered bad form to eat in a Chinese restaurant.”<sup>153</sup> Also, police and an alert citizenry often identified Asian men, more or less at random, as Leon Ling, and officers in all parts of the United States raided Chinese businesses in hopes of finding Ling or preventing white female missionaries, and white women in general, from visiting such establishments.<sup>154</sup> Describing a case of mistaken identity, a Connecticut newspaper reported that “[t]o be a Chinaman these days is to be at least a suspect in the murder of Elsie Sigel, the New York girl.”<sup>155</sup>

The treatment of Chinese following the murder was so severe that in Washington three Chinese delegates “called on the Chinese Legation and afterward went to the State Department [to protest] the manner in which . . . the Chinamen of New York, Philadelphia, and other large cities of the country are being persecuted by police.”<sup>156</sup> They declared, “[T]he residents of the various Chinese quarters in the big cities have been subjected to constant surveillance [and] their homes and places of business have been searched by the authorities who are on the trail of Leon Ling.”<sup>157</sup> A report in *The New York Times* stated, “Tom Lee, known as the Mayor of [New York’s] Chinatown, said yesterday that what the merchants object to is the violent attacks of men wearing badges, who represent themselves as police officers and go into the Chinamen’s stores and living apartments, holding them up and robbing them.”<sup>158</sup> In a raid following the Sigel murder “there was so much excitement” that the Police “reserves has to be called out to keep the

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<sup>153</sup> SUNDAY OREGONIAN, July 18, 1909, at 2.

<sup>154</sup> See TING YI LUI, *supra* note 138, at 12-16; see also *Thinks Elsie Sigel To Blame*, WYO. STOCKGROWER & FARMER, July 7, 1909, at 4 (“It is a mistake to send attractive young women down to the slums to teach these classes in mission schools.”).

<sup>155</sup> *These are Hard Days for Chinese*, BRIDGEPORT EVENING FARMER (CT), June 22, 1909, at 1.

<sup>156</sup> *Chinese Accuse Police*, N.Y. TIMES, July 6, 1909, at 14; see, e.g., *Police Raid Two Chop Suey Joints*, ROCK IS. ARGUS, Dec. 20, 1910, at 2 (“Two of the several chop suey joints that are being operated over saloons in the downtown district were visited last night by police officers incident to a raid upon street walkers.”).

A little over a year later, the *Rock Island Argus* reported that the Mayor of Moline “gave notice that no more chop suey houses would be allowed in Moline in connection with saloons and that the present one would have to close up.” *Moline’s Mayor Taboos Chop Suey*, ROCK ISLAND ARGUS, Jan. 22, 1912, at 10. A judgment was later rendered holding that the “chop suey joint” had to close because it qualified as a public nuisance. The saloon which was attached also failed to operate under a license, but it was allowed to remain open. *Grants Writ to Close Up Joint*, ROCK IS. ARGUS, Feb. 27, 1912, at 3.

<sup>157</sup> *Chinese Accuse Police*, N.Y. TIMES, July 6, 1909, at 14.

<sup>158</sup> *Chinese Merchant’s Complain*, N.Y. TIMES, July 4, 1909, at 3.

crowds back.”<sup>159</sup> The Mayor of Bayonne, New Jersey found it necessary to ban films depicting the murder of Elsie Sigel.<sup>160</sup>

The press followed the case for years after the murder. In 1911, two years after the murder, the *Washington Post* and *The New York Times* made an obligatory reference to the Sigel murder in articles reporting on the capture of the then-notorious opium smuggler “Boston Charlie,”<sup>161</sup> a case related to the Sigel murder only in the sense that both cases involved Asians. The *Washington Post* stated that a “batch of letters” seized along with Charlie did not have “any bearing on the murder of Elsie Sigel by Leon Ling.”<sup>162</sup> *The New York Times* quoted the District Attorney as stating: “For the last five days the New York press has been constantly publishing lurid articles in regards to the alleged discovery of evidence pointing to the murder of Elsie Sigel . . . . From these articles it would appear that, or at least it may be inferred, that this office was responsible [for the statements] . . . so far as I know, no such discoveries have been made.”<sup>163</sup> The Sigel murder stimulated race-based regulation under the guise of “protect[ing] young women.”<sup>164</sup> Four years after the murder, the *Washington Times* commented: “The Elsie Sigel case wasn’t enough . . . Every state in the union should pass laws that would prohibit a white girl from ever crossing a Chinaman’s threshold.”<sup>165</sup>

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<sup>159</sup> *White Woman in Opium Den*, N.Y. TIMES, June 22, 1909, at 2.

<sup>160</sup> *Bayonne Ban on Sigel Pictures*, N.Y. TIMES, July 7, 1909, at 5.

<sup>161</sup> *Alleged Opium Chief Held*, WASH. POST, Jan. 31, 1911, at 3; *Hold Chinaman as Head of Opium Ring*, N.Y. TIMES, Jan. 31, 1911 at 1.

<sup>162</sup> *Alleged Opium Chief Held*, WASH. POST, Jan. 31, 1911, at 3

<sup>163</sup> *Hold Chinaman as Head of Opium Ring*, N.Y. TIMES, Jan. 31, 1911 at 1. *See also, e.g., Elsie Siegel Case is Recalled: Murder of girl by Chinaman brought to Mind by Chink’s Arrest*, DAILY MISSOULIAN, Sept. 3, 1911, at 7 (“The unsolved mystery of the murder of Elsie Siegel, which occurred more than two years ago, once more claimed attention to day, following the arrest of a Chinese by immigration inspectors who last night raided a restaurant in Hoboken. Although the authorities declined to explain what connection, it any, the arrest had with the Siegel case, it was reported today that the police had found an important clue.”).

<sup>164</sup> *Protection of Young Women Urged by Research Workers*, S.F. CHRON., Oct. 23, 1916, at 3.

<sup>165</sup> *Follow Trail Set By The Black Book*, WASH. TIMES, Sept. 8, 1913, at 2.

## II. LEGAL METHODS OF SUPPRESSION OF CHINESE RESTAURANTS

The earliest methods of suppression of Chinese restaurants were extra-legal, or private. This section examines some of the methods employed using state power.

### A. *Restrictions on White Women as Patrons or Employees*

Lawmakers in Minneapolis considered endorsing a ban on Chinese restaurants. On April 11, 1902, Alderman McCoy of the Minneapolis City Council moved, “That the City Council of the City of Minneapolis does hereby fully endorse the course pursued by the Minneapolis Cooks’ Protective Benevolent Association in stamping out the so-called Chinese restaurants.”<sup>166</sup> But on May 9<sup>th</sup> the committee replied: “relative to the Chinese question, . . . the subject matter involved has been taken into the courts, and there passed upon, and, believing that there should be no possible conflict between the judicial and legislative branches of the government, we respectfully ask to be discharged from the further consideration of the subject.”<sup>167</sup> The council granted this request, so the proposal went to further.<sup>168</sup>

Chicago imposed restrictive zoning. In 1911, Alderman Wilson Shufelt of the City Council asked the Corporation Counsel for an opinion on whether Chinese restaurants could be excluded from Wabash Avenue. Assistant Corporation Counsel Nicholas Michaels opined that “[t]he presumption that opium smoking and gambling will be indulged cannot be raised.” So long as the proprietors were law-abiding, “there is no warrant in the law of the land which would justify discrimination against the Chinese. Such is the opinion of the Supreme Court in the celebrated California laundry cases.”<sup>169</sup> Nevertheless, two weeks later, the City Council voted to order the Commissioner of Public Works and the Commissioner of Buildings “to refuse the issuance of permits for contraction or remodeling of any building or buildings by any Chinaman” in the district near Wabash Avenue and 23d St.; the resolution noted that “the Chinese in the city of Chicago are invading said neighborhood,” and their presence “will materially affect and deprecate the value of property in said vicinity.”<sup>170</sup> Like the power to tax, the power to zone

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<sup>166</sup> PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS, MINNESOTA 132 (1902).

<sup>167</sup> PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS, MINNESOTA 176 (1902).

<sup>168</sup> PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS, MINNESOTA 176 (1902).

<sup>169</sup> Opinion of Dec. 6, 1911, in 4 OPINIONS OF THE [CHICAGO] CORPORATION COUNSEL AND ASSISTANTS, FROM APRIL 1, 1911-DECEMBER 31, 1912 486 (1914).



could well be the power to destroy. While Illinois courts in this era were by no means defenders of Chinese,<sup>171</sup> if asked they would almost certainly invalidate this ordinance.<sup>172</sup>

Another method to eliminate Chinese restaurants would have been to prohibit Chinese from working. In 1914, Arizona enacted the Anti-Alien Employment Act prohibiting businesses from employing more than 20% noncitizens in their workforces.<sup>173</sup> Because Chinese restaurants typically employed Asians,<sup>174</sup> and Asians were racially ineligible to naturalization,<sup>175</sup> the law would likely have compelled the closure of many or most of Arizona's Chinese restaurants. It is likely that the unions supported the law in part to get rid of Chinese restaurants; the February, 1914 *Mixer and Server* reported that the Cooks' and Waiters' Local 631 of Phoenix, Arizona "has done wonders since they organized" and have "bettered their conditions two hundred percent."<sup>176</sup> They have "been able, through their systematic work, to close a few Chinese restaurants, and now have American ones instead."<sup>177</sup> The report predicted that "before long every restaurant in Phoenix will be conducted by white people instead of the Chinks, as has been the custom for many years in Arizona."<sup>178</sup>

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<sup>170</sup> J. Procs. of the City Council of the City of Chicago for the Council Year 1911-1912, 2035-36 (Dec. 18, 1911).

<sup>171</sup> *Barnett v. Chicago City Ry. Co.*, 167 Ill. App. 87, 90 (App. Ct. 1912) (upholding tort judgment where child ran after someone shouted "the Chinaman is coming", referring to a neighboring laundryman; "any ordinary boy of his age, intelligence and experience would, under the same circumstances, naturally have been acting under fear of pursuit by the Chinaman.")

<sup>172</sup> *City of Chicago v. Gunning Sys.*, 114 Ill. App. 377, 385 (App. Ct. 1904) (invalidating restrictive Chicago land use ordinance, citing, inter alia, *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)), *aff'd*, 73 N.E. 1035 (Ill. 1905).

<sup>173</sup> *Raich v. Truax*, 219 F. 273, 275 (D. Ariz.), *aff'd*, 239 U.S. 33 (1915); *Arizona's New Alien Law Void*, EL PASO HERALD, Jan. 7, 1915, at 7, available at <http://chroniclingamerica.loc.gov/lccn/sn88084272/1915-01-07/ed-1/seq-7/>.

<sup>174</sup> See *New Tong Murders; 500 Chinese Seized*, N.Y. TIMES, Sep. 19, 1925, at 1 (stating that deportations "would cripple their businesses, as a shortage of Chinese cheap labor could not be filled with white help.")

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<sup>176</sup> 23 MIXER & SERVER No. 3, Mar. 15, 1914 at 35.

<sup>177</sup> 23 MIXER & SERVER No. 3, Mar. 15, 1914 at 35.

<sup>178</sup> 23 MIXER & SERVER No. 3, Mar. 15, 1914 at 35.

A group of Chinese restaurant employees filed suit,<sup>179</sup> but before their case could be heard, a federal court invalidated the law based on a suit by an Austrian restaurant worker.<sup>180</sup> In a decision upheld by the U.S. Supreme Court, the district judge found that the right to labor was property and that the law amounted to an unconstitutional deprivation of property under the 14<sup>th</sup> Amendment and also a violation of equal protection.<sup>181</sup> The November, 1915 Supreme Court action decision presumably invalidated a similar Los Angeles ordinance passed in August, 1915 “designed to do away with the employment of Orientals in saloons and restaurants and give their places to citizens.”<sup>182</sup>

In Canada, however, there was a promising development. The unions succeeded in the passing the “white women’s labor bill” in Saskatchewan, prohibiting employment of white women by Asians.<sup>183</sup> In 1914 the Supreme Court of Canada affirmed a Chinese restaurant owner’s conviction for employing white women.<sup>184</sup> The United States participated in this international movement, which leveraged anxiety about changing roles of women.<sup>185</sup> The states of Arizona, Iowa, Massachusetts, Montana, Oregon, and Washington, and the cities of Los Angeles, Pittsburgh and San Francisco, considered legislation or decrees banning white women from patronizing Chinese restaurants or being employed there.

A high point for the movement occurred in 1913 when the American Federation of Labor adopted the following resolution:

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<sup>179</sup> *Phoenix Aliens Bring Test Fight Against “80” Law: Chinese Restaurant Proprietors Apply for Temporary Injunction Claiming that New Statute violates Treaties*, BISBEE DAILY REV., Jan. 3, 1915, at 3.

<sup>180</sup> 23 MIXER & SERVER No. 3, Mar. 15, 1914 at 35.

<sup>181</sup> *Raich v. Truax*, 219 F. 273, 275 (D. Ariz.), *aff’d*, 239 U.S. 33 (1915).

<sup>182</sup> *Citizens’ Hands Across the Bar: Only American Employees in Saloons, Says Police Commission*, L.A. TIMES, Aug. 5, 1915, at II-1.

<sup>183</sup> Constance Backhouse, *The White Women’s Labor Laws: Anti-Chinese Racism in Early Twentieth-Century Canada*, 14 L. & HIST. REV. 315, 326-30 (1996).

<sup>184</sup> *Quong Wing v. The King*, 49 S.C.R. 440 (1914). See also PAUL YEE, *SALTWATER CITY: AN ILLUSTRATED HISTORY OF STORY OF THE CHINESE IN VANCOUVER* 102 (Rev ed. 2006) (“The Women and Girls Protection Act of 1924 allowed the police chief to force employers to discharge white females from work that damaged their moral fibre, and in the fall of 1935, three Chinatown café owners were ordered to fire their white waitresses.”)

<sup>185</sup> As Professor Mae Quinn showed, Anxiety about the changing role of women led to new forms of regulation of their conduct. Mae C. Quinn, *From Turkey Trot to Twitter: Policing Puberty, Purity, and Sex-Positivity*, 38 N.Y.U. REV. L. & SOC. CHANGE 51 (2014).

WHEREAS the evils arising from the employment of white women and girls in establishments owned or controlled by Chinese and Japanese constitute, both morally and economically, a serious menace to society; therefore be it

RESOLVED, That the American Federation of Labor be requested to pledge its best endeavors to secure the passage of a law prohibiting the employment of white women or girls in all such establishments.<sup>186</sup>

Notably, the text itself reflected the dual economic and moral motivation of the measure. In addition, it made clear that the menace was not presented by Chinese alone; other Asians were equally worthy of regulation.

It is by no means clear that these proposals, advanced as they were in the days before the Nineteenth Amendment, were congenial to women themselves. An article in the *Arizona Republican* in 1916 reported that a wealthy woman “advertised for a cook and in thirty days one replied. In the same column of the paper was an ad for a girl cashier in a Chinese restaurant and forty answered in one day.”<sup>187</sup> Nevertheless, the idea turned into legislation or other action in a number of jurisdictions.

In September, 1912, the *Los Angeles Times* reported that police chief and future Mayor Charles E. Sebastian “says he will recommend to the Police Commission that an order be issued barring all white female help from oriental eating places, with the penalty that if the order is not instantly complied with that their license be revoked.”<sup>188</sup> Two years later, the *Los Angeles Herald* reported that “[t]he police commission gave its unanimous approval today to the plan of

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<sup>186</sup> REPORT OF PROCEEDINGS OF THE THIRTY-THIRD ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR HELD AT SEATTLE, WASHINGTON NOV. 10-22, INCLUSIVE 1913, 370; *see also* REPORT OF PROCEEDINGS OF THE THIRTY-FOURTH ANNUAL CONVENTION OF THE AMERICAN FEDERATION OF LABOR, HELD AT PHILADELPHIA, PENNSYLVANIA NOVEMBER 9 TO 21, INCLUSIVE 1914, at 90 (noting that “[t]his question is one that should be considered by state legislatures and city councils, where organizations in the pacific and intermountain states are doing their utmost to carry out the purposes contained in this resolution.”); *Resolutions Acted On By Convention at Fairbault*, LAB. W., July 28, 1917, at 2 (noting recent AFL resolution “that the executive council of the Federation be instructed to work out some plan that will prevent the employment of white women in ‘chop suey’ or ‘noodle’ houses.”).

<sup>187</sup> *Rich: Why Try to be Popular*, ARIZONA REPUBLICAN, Mar. 25, 1916, at 8.

<sup>188</sup> *Segregation Orders: Police May Prevent White Women from Working for Chinese or Japanese Restauranters*, L.A. TIMES, Sept. 4, 1912, at II7.

Chief of Police Sebastian to exclude white girls as cashiers or waitresses from restaurants and cafes run by Japanese or Chinese.”<sup>189</sup>

In 1910, the Pittsburgh City Council passed an ordinance restricting the operating hours of Chinese restaurants, and banning all women from entering them as patrons or employees. Newspapers reported that the parents of Pittsburgh pleaded for the law to “stop the infamous license, which is allowed in the Chinese restaurants . . . and which is ruining the young men of the city.”<sup>190</sup> Mrs. Stella C. Masters, a leader in Pennsylvania’s temperance movement, insisted that “[Chinese] restaurants should not be allowed to remain open all night,”<sup>191</sup> and alluded to activities “in these places, which, if published, would chill the blood of the right minded citizen.”<sup>192</sup> Many girls “are enticed into the restaurants on the plea of getting something to eat, and because of the novelty of the situation. Then they are persuaded to stay until it is too late for a girl to go a home, whose home rules are strict. The Chinese restaurants are only the opening wedge for worse resorts.”<sup>193</sup>

Charlie Dean, secretary of the Chinese Merchant’s Association objected that “Women are not kept out of other restaurants.”<sup>194</sup> State Senator Charles H. Kline, attorney for the Association, claimed that “such legislation by councils would be unconstitutional. . . . They can’t close Chinese restaurants and leave any other kind open.”<sup>195</sup> The Captain of Detectives agreed, stating: “We have never had any trouble with those restaurants. The Chinese give us less trouble than any other class. I don’t think it is necessary to make them close at 11 o’clock.”<sup>196</sup>

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<sup>189</sup> *Bar White Girls as Jap Waitresses*, L.A. HERALD, Mar. 10, 1914, at 3. *But see To Draw Race Line: Councilman Complains of Conditions in Oriental Cafes and Would Put White Men in Charge*, L.A. TIMES, Sept. 29, 1917, at I9 (“when the Japanese or Chinese proprietors play to the trade of Americans and employ white girls to assist them there should be a stop to the practice.”)

<sup>190</sup> *Mrs. Masters Is Fighting the Chinese Restaurants*, PITTSBURGH PRESS, Sept. 12, 1910, at 1.

<sup>191</sup> *Mrs. Masters Is Fighting the Chinese Restaurants*, PITTSBURGH PRESS, Sept. 12, 1910, at 1.

<sup>192</sup> *Mrs. Masters Is Fighting the Chinese Restaurants*, PITTSBURGH PRESS, Sept. 12, 1910, at 1.

<sup>193</sup> *Mrs. Masters Is Fighting the Chinese Restaurants*, PITTSBURGH PRESS, Sept. 12, 1910, at 1.

<sup>194</sup> *Mrs. Masters Is Fighting the Chinese Restaurants*, PITTSBURGH PRESS, Sept. 12, 1910, at 2.

<sup>195</sup> *Chinese Will Not Obey Restaurant Ordinance*, PITTSBURGH PRESS, Nov. 30, 1910, at 9.

<sup>196</sup> *Mrs. Masters Is Fighting the Chinese Restaurants*, PITTSBURGH PRESS, Sept. 12, 1910, at 2.

Nevertheless, both houses of the City Council passed the measure, on a total vote of 49-2.<sup>197</sup> The Chinese restaurant keepers considered appealing to their ambassador under their treaty rights if any action was taken against them.<sup>198</sup> But the Mayor vetoed the bill.<sup>199</sup> In a virtuoso explanation of the legal objections, he explained:

While the ordinance apparently treats the “Chinese” in an impersonal sense, it is plainly directed against the Chinese as a race for we must assume that at least a majority of these restaurants are conducted by Chinese and no provision is made for or reference to French, German or in fact any other kind of reference whatever. The legal objections to this enactment are numerous and varied but I shall sum them up as to unreasonableness and discrimination as follows:

First: It invests the Director of the Department of Public Safety with unlimited discretion to grant or refuse said license, because he is not to grant the same “to any person who is not of good moral character,” and it need scarcely be said that what is or is not good moral character may be purely an arbitrary opinion.

Second: By implication it permits the Director to revoke said license in case of “the visit of disreputable persons to said restaurant or chop suey houses,” and here again the right to do business is subject to an arbitrary opinion of the director.

Third: The ordinance forbids the visit of women or girls to these restaurants, thus arbitrarily confining and limiting the business of the same.

Fourth: The hours for doing business at these places is fixed from six A.M. until midnight which is a restriction not imposed on any other restaurant in the city.

In short the ordinance contains throughout provisions which are unreasonable and plain discriminations and are clearly illegal and invalid under the laws of Pennsylvania as well as under the provisions in the Federal Constitution and have been so held in the courts both Federal and State.<sup>200</sup>

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<sup>197</sup> 43 MINUTES AND PROCEEDINGS OF THE COUNCIL OF THE CITY OF PITTSBURGH at 221, 323, 989, available at [http://books.google.com/books?id=0X0zAQAAMAAJ&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](http://books.google.com/books?id=0X0zAQAAMAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false); *Chop Suey Ordinance Passed*, GAZETTE TIMES, Dec. 28, 1910, at 1.

<sup>198</sup> *Chop Suey Ordinance Passed*, GAZETTE TIMES, Dec. 28, 1910, at 1.

<sup>199</sup> MINUTES AND PROCEEDINGS, *supra* note 197, at 343.

<sup>200</sup> MINUTES AND PROCEEDINGS, *supra* note 197, at 343-44. See also *Mayor Magee Gives Advice to Councils*, GAZETTE TIMES, Jan. 10, 1911, at 2.

Notably, this proposal, applied to all women, not just white women. Accordingly, to the extent that it was a paternalistic but good-faith effort to protect women, at least it did not leave women of color unprotected.

Massachusetts would see a protracted effort to regulate Chinese restaurants. In 1910, Representative Donovan introduced the “yellow peril bill,”<sup>201</sup> prohibiting all women under 21 from entering Chinese restaurants as patrons or employees, and requiring a non-Asian male escort for women over 21.<sup>202</sup> Many legislators regarded the bill as unconstitutional,<sup>203</sup> some noting that the law made no exception for Chinese women married to Chinese men, and therefore forbade a Chinese woman from dining with her Chinese husband.<sup>204</sup> Nevertheless, the bill passed the House on March 21, 1910, by a vote of 126 to 30,<sup>205</sup> and passed a second reading on April 4, 1910, 111 to 80.<sup>206</sup> But on April 11, Attorney General Dana Malone found that the bill “discriminates against the Chinese by reason of their nationality, and, therefore, if passed, would be unconstitutional and void.”<sup>207</sup> This turned the tide; the House rejected the bill 117 to 53 on April 22, 1910.<sup>208</sup>

Representative Newton of South Boston reintroduced the bill in January, 1911.<sup>209</sup> Representative Donovan had insisted that the Attorney General’s opinion was not definitive;<sup>210</sup> to settle the question of the bill’s constitutionality, the House asked the Supreme Judicial Court

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<sup>201</sup> *Yellow Peril Bill in Bay State*, THE TELEGRAPH, Mar. 22, 1910, at 3.

<sup>202</sup> See JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS 224 (1910) (showing a bill introduced by Mr. Donovan on January 27, 1910); *City Solicitor Appeared At Hearing In Boston Today*, LOWELL SUN, Feb. 25, 1910, at 13; see also *Dr. Eliot Opposes Actors*, N.Y. TIMES, Feb. 26, 1910, at 8.

<sup>203</sup> *Dr. Eliot Opposes Actors*, N.Y. TIMES, Feb. 26, 1910, at 8.

<sup>204</sup> *No Exception Made*, BOSTON DAILY GLOBE, Feb. 28, 1910, at 8.

<sup>205</sup> JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS 687-88 (1910); *House Adopts Donovan Bill*, BOSTON DAILY GLOBE, Mar. 22, 1910, at 7.

<sup>206</sup> JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS 838-39 (1910).

<sup>207</sup> *Opinion of April 11, 1910*, in THE COMMONWEALTH OF MASSACHUSETTS, REPORT OF THE ATTORNEY GENERAL FOR THE YEAR ENDING JANUARY 18, 1911 at 18.

<sup>208</sup> JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS 1015 (1910); *Donovan Bill Killed*, BOSTON DAILY GLOBE, Apr. 23, 1910, at 8.

<sup>209</sup> BOSTON DAILY GLOBE, Jan. 15, 1911, at 51.

<sup>210</sup> LOWELL SUN, Apr. 26, 1910, at 29.

for an advisory opinion.<sup>211</sup> On March 22, the Court unanimously found that the law would violate the Fourteenth Amendment.<sup>212</sup> The Court stated:

The business of keeping a hotel or restaurant . . . may be conducted legally or illegally, by a person of any nationality. The proposed law, without reference to the way in which it is conducted, puts a restraint upon it . . . whenever it is carried on by a person of a particular nationality . . . . By the strict terms of the proposed law it would be a criminal offense for a Chinese proprietor of a hotel or restaurant to permit his wife, if she was under the age of 21 years, or his grown-up daughter of less than that age, to enter his hotel or restaurant, or to be served with food or drink therein. This is a very great interference with the liberty of the subjects of a foreign ruler, lawfully residing within the jurisdiction of this state. It is a harmful discrimination against persons of the proscribed class, founded wholly upon their race and nationality . . . . It subjects Chinese to an oppressive burden that deprives them of liberty which all others enjoy, and interferes with their right to carry on business, acquire property and earn a livelihood, and denies them the protection of equal laws.

...

There are good hotels and bad hotels, good restaurants and bad restaurants, kept by men of the Caucasian race, and there are others of both kinds kept by men of other races. This legislation does not refer to the character or condition of the hotel or restaurant that a young woman may not enter, but refers only to the nationality of the person who conducts it. . . . It forbids the entry of a young woman into the hotel or restaurant of a Chinese proprietor, even if it is a model of orderly and moral management, and it permits the entry of young women into a hotel or restaurant kept by an American, when it is known to be maintained in part for the promotion of immoral or criminal practices. The classification of hotels and restaurants into those that are open to young women and those that are closed to young women is not founded upon a difference that has any just or proper relation to the professed purpose of the classification.<sup>213</sup>

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<sup>211</sup> JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS 595, 611-14 (1911); *Debate in the Senate*, BOSTON DAILY GLOBE, Mar. 10, 1911, at 13; *see also Chinese Restaurant Bill*, BOSTON DAILY GLOBE, Mar. 11, 1911, at 5.

<sup>212</sup> JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS 748-51 (1911); *Prohibited by Constitution*, BOSTON DAILY GLOBE, Mar. 23, 1911, at 15; *Chinese Restaurants*, THE SUN, Apr. 27, 1911, at 8.

<sup>213</sup> *In re Opinion of the Justices*, 94 N.E. 558, 560 (Mass. 1911).

The bill was withdrawn the next day.<sup>214</sup>

In April, 1913, Representative Donovan brought his proposal to another venue, calling for Boston's Mayor and City Council to bar girls from Chinese restaurants.<sup>215</sup> Also, he asked the Mayor to limit the number of Chinese, and claimed that the expansion of Chinatown was a "menace."<sup>216</sup> He wondered openly "how it was possible, under the strict immigration laws of this country that so many Chinese may now be found in Chinatown whose ages run as low as 12 years."<sup>217</sup>

Serious attention was given to the idea in several other jurisdictions. San Francisco officials discussed legislation preventing white women for working in Chinese restaurants in 1913.<sup>218</sup> The Board of Health asked the City Attorney if contemplated legislation barring employment of white women in Greek and Chinese restaurants would be constitutional.<sup>219</sup> The City Attorney declared that while the legislation aimed at Greek restaurants amounted to "class legislation" and thus would be unconstitutional, validity of legislation aimed at Chinese restaurants "was a debatable question."<sup>220</sup> He reasoned that "if such places as generally operated are against the welfare of white women, it is more than probable that the constitutionality of the legislation as to them would be upheld on the ground of a reasonable exercise of the police power."<sup>221</sup>

On February 1, 1915, the Montana State Federation of Labor convened; on its agenda was a proposal, later introduced as a bill, "to prohibit the employment of white women with, by

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<sup>214</sup> JOURNAL OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS 779 (1911).

<sup>215</sup> *Asks Mayor to Limit Chinese*, BOSTON DAILY GLOBE, Apr. 6, 1913, at 8.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *May Prohibit White Chop Suey Waitresses*, S.F. CALL, Oct. 4, 1913, at 3; *see also Advises Against Passage of Proposed Ordinance*, Municipal Record, City and County of San Francisco, Vol. 6, No. 41 Oct. 9, 1913, at 323, available at <http://books.google.com/books?id=nkQ4AQAAMAAJ&dq>.

<sup>219</sup> *Id.*

<sup>220</sup> *Employment of Females in Greek and Chop Suey Restaurants*, Sept. 29, 1913, at 428 in OFFICIAL OPINIONS OF PERCY V. LONG, CITY ATTORNEY OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA (1917).

<sup>221</sup> *Id.*



or for males of the Chinese or Japanese races.”<sup>222</sup> The delegates emphasized the proposal’s economic impact, noting: “this bill, if enacted into law, will go a long way towards decreasing the popularity of the Chinese restaurants in the State.”<sup>223</sup> The bill made it “unlawful for any person or association of persons, either as employer or agent, to employ in any restaurant, eating house, laundry or other occupations owned, conducted or controlled by persons of the Asiatic race, any female as a servant, waitress or employee therein within the State of Montana, except females of the Asiatic race.” It provided for a fine of \$50-100, and 1-90 days imprisonment, “each and every day that any person shall violate the provisions of this act shall be deemed a separate offense.”<sup>224</sup>

The bill passed the Montana Senate 31-0 with nine abstentions.<sup>225</sup> However, the House received a letter in opposition from the U.S. Secretary of State William Jennings Bryan.<sup>226</sup> In April of 1915, a report to the *Mixer and Server* from Great Falls, Montana explained what happened:

The bill passed the senate, but no sooner was it turned over to its proper committee in the house than the wheels of opposition began to turn, and they did not stop until they reached the ‘big house’ in Washington, D. C., from whence returned an administration mandate signed by ‘Grape Juice’ Bryan, to the effect ‘That legislation of that character was very objectionable to the ‘royal’ dignitaries from the Orient,’ also, that the Secretary of State of the United States, was very much opposed to the passage of the bill.<sup>227</sup>

In 1919, Oregon Senator Norbald introduced S.B. 183, prohibiting the “employment of white help in Chinese restaurants.”<sup>228</sup> Some argued in opposition that “legislation against immorality should apply to all races, and that it was unfair to select one race and pillory it before

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<sup>222</sup> 24 MIXER & SERVER No. 3, March 15, 1915, at 32.

<sup>223</sup> 24 MIXER & SERVER No. 3, March 15, 1915, at 32.

<sup>224</sup> 25 MIXER & SERVER No. 7, July 15, 1916, at 4.

<sup>225</sup> HOUSE JOURNAL OF THE FOURTEENTH LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA 584 (1915).

<sup>226</sup> 24 MIXER & SERVER No. 4, April 15, 1915, at 30.

<sup>227</sup> 24 MIXER & SERVER No. 4, April 15, 1915, at 30.

<sup>228</sup> *White Help With Chinese*, 16 OR. VOTER 399 (1919).

the public as so base as to deserve special legislation on a moral question.”<sup>229</sup> According to the *Oregon Voter*: “All restaurants where immoral practices prevail should be cleaned up, in so far as it is within the police power to clean them up. But there would seem to be no reason in justice or fairness to single out the restaurants conducted by members of one race for obloquy.”<sup>230</sup> The bill failed in the Senate 13-14.<sup>231</sup>

A number of other jurisdictions saw more limited consideration of segregative measures. In Iowa, in 1911, Judge De Graff of the Ninth District Court issued an order enjoining the owner of a Chinese restaurant from serving women. However, he quickly reversed himself, finding that it was “not equitable to enjoin the owner of a chop suey restaurant to prevent women from going to the restaurants.”<sup>232</sup> Despite complaints from the saloonkeeper in the story below the restaurant about the “rough house” caused by women upstairs, the judge found that it “was not fair” to exclude the women from the restaurant when men were permitted to dine.<sup>233</sup>

In 1912, the Arizona legislature reportedly considered a bill designed prohibiting white girls from working in Chinese restaurants,<sup>234</sup> but there was no apparent progress. In January, 1913, the outgoing Governor of Washington recommended the prohibition of white female help in all Chinese and Japanese restaurants;<sup>235</sup> a bill was introduced in the Washington Senate but did not get out of committee.<sup>236</sup>

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<sup>229</sup> *White Help With Chinese*, 16 OR. VOTER 399 (1919).

<sup>230</sup> *White Help With Chinese*, 16 OR. VOTER 399 (1919).

<sup>231</sup> *White Help With Chinese*, 16 OR. VOTER 399 (1919). But according to the Journal of the Oregon Senate, on February 20, 1919 the “bill failed to pass” with 14 yeas, 13 neas, 2 absences, and 1 excused. Oregon Legislative Assembly, *Proceedings of the Senate*, Journals of the Senate and House 256 (1919), available at [http://books.google.com/books?id=4tIaAQAAIAAJ&pg=PA15&lpg=PA15&dq=oregon+183+1919+norblad+senate+white+women&source=bl&ots=8FmKh4RVCR&sig=qCD\\_rzOZleFCRsNYPBT10ivf060&hl=en&sa=X&ei=mkozU7XwIs\\_LsASb64GIBQ&ved=0CCKQ6AEwAA#v=snippet&q=183&f=false](http://books.google.com/books?id=4tIaAQAAIAAJ&pg=PA15&lpg=PA15&dq=oregon+183+1919+norblad+senate+white+women&source=bl&ots=8FmKh4RVCR&sig=qCD_rzOZleFCRsNYPBT10ivf060&hl=en&sa=X&ei=mkozU7XwIs_LsASb64GIBQ&ved=0CCKQ6AEwAA#v=snippet&q=183&f=false).

<sup>232</sup> *Women May Eat Chop Suey*, THE BEE: OMAHA, Oct. 11, 1911, at 2.

<sup>233</sup> *Id.*

<sup>234</sup> *Special Session of the Arizona Legislature Appears a Certainty*, EL PASO HERALD, May 7, 1912, at 5. A 1916 report from Arizona in the *Mixer & Server* claimed, “Arizona should have such a law on its statute books” and that it “must come sooner or later.”<sup>25</sup> MIXER & SERVER No. 7, July 15, 1916, at 4.

<sup>235</sup> *Thousands Greet Governor Lister*, MORNING OREGONIAN, Jan. 16, 1913, at 7.

<sup>236</sup> An Act prohibiting the employment of females of the white or Caucasian race by Chinese, Japanese or other Mongolians, and providing for the punishment thereof, S. 146, 13th Leg., Reg. Sess. (Wash. Jan. 27, 1913).

By the 1920s, in the United States, at least, it seemed clear that legislation targeting Chinese restaurants per se would be constitutionally doubtful. Harvard Professor William Bennett Munro wrote

The provisions of an ordinance must apply equally to all persons in the same category. For example, it would not be a discrimination to provide that all restaurants shall be closed on Sundays while hotel dining rooms are permitted to remain open for the use of bona fide guests; but to stipulate that all Chinese restaurants shall remain closed while other restaurants are privileged to remain open would be a clear case of discrimination.<sup>237</sup>

Nevertheless, there was another tool of control: Emergency police authority. Even today, there is a plausible argument that the police can order people to “move on” at their whim, and arrest them if they do not.<sup>238</sup> Of course, police are free to act unilaterally, even forcibly, in exigent circumstances to protect lives and property.<sup>239</sup> Even today, authorities can discriminate on the basis of race when necessary to meet a pressing exigency.<sup>240</sup> In addition, the war against Chinese restaurants was fought in a largely pre-modern era of law. Because many of the provisions of the Bill of Rights did not apply to the states, the police were much freer. In that era, police regularly made “arrests on suspicion,”<sup>241</sup> i.e., without probable cause or reasonable suspicion.<sup>242</sup> New York Police Captain Alexander Williams reportedly stated “There is more law in the end of a policeman’s nightstick than in a decision of the Supreme Court.”<sup>243</sup> These

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<sup>237</sup> WILLIAM BENNETT MUNRO, *THE GOVERNMENT OF AMERICAN CITIES* 118 (4th ed. 1926).

<sup>238</sup> Stephen E. Henderson, “*Move on*” Orders As Fourth Amendment Seizures, 2008 B.Y.U. L. REV. 1 (2008).

<sup>239</sup> *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006).

<sup>240</sup> *Johnson v. California*, 543 U.S. 499, 512 (2005).

<sup>241</sup> William O. Douglas, *Vagrancy and Arrest on Suspicion*, 70 *YALE L.J.* 1, 13 (1960). See, e.g., *Chambers v. Florida*, 309 U.S. 227, 238 (1940) (describing “the drag net methods of arrest on suspicion without warrant” where dozens of young African American men were taken into custody and interrogated based on a crime committed by one unknown person).

<sup>242</sup> See, e.g., *Chinese Woman Allowed to Go*, *OGDEN STANDARD*, July 17, 1917, at 7 (reporting that Chinese woman was acquitted of vagrancy after an arrest for visiting the Alhambra Café at 2:00 a.m. and then going to the room of a male “childhood friend” along with another Chinese man.)

<sup>243</sup> *YALE BOOK OF QUOTATIONS* 810 (Fred Shapiro ed. 2006).

factors may explain why police believed they had broad authority to force compliance with what they deemed important rules of conduct. If white women or girls placed themselves at great and immediate risk by consorting with Chinese, the police had the authority to order them away or arrest them.

Most prominently in the wake of the Sigel murder but also on other occasions, police ordered white women and girls out of Chinese restaurants or neighborhoods. In 1909, the probation officer of Kallspell, Montana ordered that “all white girls under twenty years of age working in Chinese restaurants of the city surrender their positions.”<sup>244</sup> The head of the Washington Police Department issued orders forbidding all “young white girls” from entering Chinese restaurants.<sup>245</sup>

Not surprisingly, New York, the site of the murder, saw an intense police reaction. Police vowed to end the “slumming” expeditions and the tourist attractions of Chinatown.<sup>246</sup> In 1910, New York Deputy Police Commissioner Driscoll announced that he was going to “force white women away from Chinatown and keep them away.”<sup>247</sup> He went after the fraudulent opium joints where tourists “were taken to be shown white women rolling opium pills in company with decrepit Chinese.”<sup>248</sup> He also went after a “chop suey restaurant where white girls ate in company with Chinese residents of the community.”<sup>249</sup> Officers also took note of places where white women resided with Chinese in order to turn a list over to the “Tenement House Inspectors” because the police believed that housing law was better suited for the occasion.<sup>250</sup>

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<sup>244</sup> HARLOWTON NEWS, Aug. 13, 1909, at 1 (stating the move “will be heartily endorsed by everyone who knows of the degrading influences surrounded by any establishment operated by an oriental”).

<sup>245</sup> *Officers Keep Eye on Restaurants*, WASH. TIMES, Aug. 6, 1909, at 13; *Practice Broken Up: Girls No Longer Visit Chinese Restaurants Alone*, WASHINGTON EVENING STAR, Aug. 6, 1909, at 2; *Opposes “Slumming”*, WASH. POST, Nov. 1, 1910, at 16. In 1922, men and women were targeted: “The male and female vamps and street and restaurant loafers without visible means of support, who infest the principal thoroughfares of the city and certain Chinese restaurants must go. This is the edict of the police department, and as an evidence that they mean business, a number of young men and women are now under arrest awaiting trials under a charge of vagrancy.” *Vampire Round-up Started by Police: Both Men and Women are Targets of Police Crusade*, WASH. EVENING STAR, Nov. 30, 1922, at 1.

<sup>246</sup> *See First-Vice Attack Made on Chinatown*, N.Y. TIMES, Oct. 24, 1910, at 1.

<sup>247</sup> *Raids By Driscoll Fill Night Court*, N.Y. TIMES, Oct. 26, 1910, at 18.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

The New York police commissioner also reinstated a former rule “that all whites are to be driven out of [Chinese quarter] and the restaurants and other places kept by Chinese are to be closed at midnight.”<sup>251</sup> With policeman patrolling each block, all visitors were asked where they were going.<sup>252</sup> Unless the visitor had a satisfactory explanation, they were asked to leave the Chinese quarter.<sup>253</sup> “The order came as a hard one to the ‘rubber neck’ men and to the Chinese themselves, many of whom have waxed fat and rich on the dollars of morbid and curious visitors to the numerable chop suey restaurants and fake opium ‘joints.’”<sup>254</sup>

Newspapers reported that on April 14, 1918 police carried out “chop suey raids” all over New York.<sup>255</sup> The *Washington Herald* reported: “Thirty chop suey restaurants in New York’s tenderloin, from Broadway and Forty-second streets, through the upper West Side as far north as 110<sup>th</sup> street, were entered early today by scores of police and detectives in one of the most spectacular raids ever made here.”<sup>256</sup> The restaurant doors were blocked,<sup>257</sup> Officers asked approximately 1000 people why they were in Chinese restaurants, and they asked women to show a wedding ring in order to prove that they were married to their male companions.<sup>258</sup> If the woman could not, she was sent to the police station.<sup>259</sup> Of those questioned, 178 were ordered to the police station for further questioning by Assistant District Attorney James E. Smith.<sup>260</sup> *The Sun* reported:

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<sup>251</sup> *New York Closes Chinatown to Night Tourist*, TOLEDO NEWS BEE, Oct. 24, 1910, at 5.

<sup>252</sup> *Barred from Chinatown*, N.Y. TRIBUNE, Oct. 25, 1910, at 7.

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Police Capture 178 In Chop Suey Raids*, N.Y. TIMES, Apr. 15, 1918, at 8.

<sup>256</sup> *300 Arrested as N.Y. Police Raid 30 Joints*, WASH. HERALD, Apr. 15, 1918, at 8.

<sup>257</sup> *Chop Suey Uplift*, N.Y. TRIBUNE, Apr. 17, 1918, at 12.

<sup>258</sup> *Police Capture 178 In Chop Suey Raids*, N.Y. TIMES, Apr. 15, 1918, at 8; *300 Are Captured in Chop Suey Raids*, THE SUN, Apr. 15, 1918, at 14; *300 Arrested as N.Y. Police Raid 30 Joints*, WASH. HERALD, Apr. 15, 1918, at 8.

<sup>259</sup> *300 Arrested as N.Y. Police Raid 30 Joints*, WASH. HERALD, Apr. 15, 1918, at 8.

<sup>260</sup> *Police Capture 178 In Chop Suey Raids*, N.Y. TIMES, Apr. 15, 1918, at 8.

As daylight came on and the world appeared in all its brilliancy and loveliness, he sat as a just judge in the house of misfortune . . . among [those detained] were some placid and philosophic Chinese . . . These were the keepers or the tray bearers in the chop suey restaurants that had just been raided and emptied by Smith and his fifty policemen . . . . Many girls, some of them not 16 were taken to the station house from these Chinese restaurants . . . .<sup>261</sup>

The price of freedom for each detainee was a promise that “he or she would not be found in a Chinese restaurant after hours.”<sup>262</sup> District Attorney Smith claimed that he realized that the “chop suey places are the worst dives in the city” and that he didn’t “care a snap about the protest that may be made after these raids.”<sup>263</sup> The raid led to no arrests — for that was not Smith’s purpose — he wanted to collect evidence with which to prosecute “the real owners of certain Chinese restaurants.”<sup>264</sup> District Attorney Smith claimed that parents of the community called him to action by sending over 100 letters claiming that their daughters had “been lured to chop suey houses and have been evilly treated or menaced.”<sup>265</sup>

By April, 16, 1918, the Chinese restaurant owners of New York hired attorneys in order to prevent their businesses from closing.<sup>266</sup> According the *New York Sun*:

An up to date tong war seems to be brewing between the allied Chinese restaurants proprietors of New York and the District Attorney’s office. Four of the most prosperous chop suey dispensers indicated through their counsel yesterday they propose to make a stand against the authorities for the raids on Sunday morning, which they consider unwarranted and illegal.

At the same time James E. Smith, Assistant District Attorney, who conducted the visiting parties to thirty establishments, took the first step against the proprietors by applying for the names of the owners of each of the buildings in which the restaurants

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<sup>261</sup> *300 Are Captured in Chop Suey Raids*, N.Y. SUN, Apr. 15, 1918, at 14.

<sup>262</sup> *Police Capture 178 In Chop Suey Raids*, N.Y. TIMES, Apr. 15, 1918, at 8.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Raided Chop Suey Men Hire Counsel*, THE SUN, Apr. 16, 1918, at 6.

are situated. When he obtains these names from the city records he will ascertain who owns the restaurants. Later, it is understood, the proprietors will be subpoenaed to the Criminal Courts Building. . . . District Attorney Swann replied last night to the statement that his raid on the chop suey places was illegal by one of his mysterious, uncommunicative smiles.<sup>267</sup>

The attorney for the restaurants protested: “It was illegal to order persons that were dining who were dining peaceably in these restaurants to leave.”<sup>268</sup> The District Attorneys planned to charge the restaurant owners with maintaining a public nuisance and urged the Board of Aldermen to require that chop suey places must hold licenses in order to operate.<sup>269</sup> According to the New York Tribune, “The explanation from [District Attorney] Swann and his office are ingenious and various. . . . There seems no reason why Mr. Swann’s chop suey uplift campaign shouldn’t keep right on forever.”<sup>270</sup> The *Washington Herald* reported that “James E. Smith, assistant district attorney of the county of New York . . . has declared war to the death on the chop suey caravansaries.”<sup>271</sup>

#### B. *Licensing and Enforcement Practices*

Fairly early in the 20<sup>th</sup> century, it became clear that there were serious constitutional doubts about legislative authority to prohibit Chinese restaurants, or even to restrict white women from patronizing or working in them. However, there was another avenue available to those hostile to Chinese restaurants. As boycotting unions in El Paso and Brockton, Massachusetts recognized, regulators could apply facially neutral laws to deny licenses and permits selectively, or could selectively enforce the law.

*Policy of Denial.* In a number of jurisdictions, court decisions and newspaper reports reflect a policy of denying licenses to Chinese restaurants or a recognition that they present

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<sup>267</sup> *Raided Chop Suey Men Hire Counsel*, THE SUN, Apr. 16, 1918, at 6.

<sup>268</sup> *Raided Chop Suey Men Hire Counsel*, THE SUN, Apr. 16, 1918, at 6.

<sup>269</sup> *Chop Suey Uplift*, N.Y. TRIBUNE, Apr. 17, 1918, at 12; *Raided Chop Suey Men Hire Counsel*, THE SUN, Apr. 16, 1918, at 6; *Swann to Proceed Against Owners of Chop Suey Places*, N.Y. TRIBUNE, Apr. 17, 1918, at 9.

<sup>270</sup> *Chop Suey Uplift*, N.Y. TRIBUNE, Apr. 17, 1918, at [no page]

<sup>271</sup> O. O. McIntyre, *New York Day By Day*, WASH. HERALD, May 2, 1918, at 6.

particular dangers.<sup>272</sup> Illustrative is the 1891 rejection of a challenge to the city of Pittsburgh's denial of incorporation to a Chinese club and restaurant. The court explained that incorporation was only authorized "where there is a worthy object, which cannot well be accomplished without incorporation" and "[c]onsidering who the subscribers are, and the purposes set forth in the articles of association, there would be great danger of the association being perverted to purposes injurious to the community."<sup>273</sup>

Similarly, in 1932 the New Jersey Supreme Court upheld the denial of a dance license to a Chinese restaurant because of the potential moral corruption of local youth:

this license for music and dancing was desired by a corporation, some of whose officers were Chinamen and nonresidents of New Jersey, and . . . the restaurant in which the music and dancing was desired was on the second floor of a building at Journal square, and which is being conducted as a Chinese restaurant with the help entirely Chinese and the active management Chinese, and the indications are that its most active hours are in the evening, perhaps late at night, and that the equipment inside of the restaurant consists in part of secluded booths.

Now bearing in mind that the reason for the refusal to grant the license was, amongst other things, that it was detrimental to the young people of the neighborhood, it certainly cannot be said that there was an abuse of discretion.<sup>274</sup>

There are many reports where licenses were denied as a matter of policy by boards or commissions. In 1907, the Hong Kong Restaurant in Los Angeles was denied a license because "serving drinks with meals there [did] not meet the [police] chief's approbation."<sup>275</sup> The *Los Angeles Herald* reported that "the police are opposed to Chinese chop suey restaurants outside of

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<sup>272</sup> Of course, blanket denial of licenses was not a universal policy. In Havre, Montana in 1905, unions requested that the city issue no licenses to Chinese; city officials refused for fear of lawsuits. *From the Standpoint of the Optimist*, HAVRE HERALD (MT), May 12, 1905, at 1. See also *id.* ("If the labor organizations were desirous of ridding the city of Chinese restaurants, that they had better influence its members not to patronize them.")

<sup>273</sup> *Chinese Club*, 1 Pa. D. 84 (Ct. Com. Pleas, Allegheny Co. 1891). See also, e.g., *Legal News*, BUTLER CITIZEN (PA.), Apr. 17, 1902, at 3 ("Charles Schutte, who has a saloon on federal street, was refused [a license], and it is thought that the refusal is occasioned by the fact that Schutte rents a portion of the building he occupies for a Chinese restaurant.")/

<sup>274</sup> *Hudson Royal Restaurant v. Mayor and Aldermen of Jersey City*, 160 A. 218 (N.J. 1932) (per curiam).

<sup>275</sup> *Police Oppose Liquor in Chop Suey Places*, L.A. HERALD, Mar. 6, 1907, at 4.



Chinatown,”<sup>276</sup> because they have a “tendency to disturb the peace.”<sup>277</sup> Similarly, in 1905, the *San Francisco Call* reported on the denial of a license to a Chinese restaurant: “There has never been a Chinese business house in Palo Alto and it has been the policy of the citizens to keep such places out at all hazards.”<sup>278</sup>

In 1911, Bo Sing Young lost his Omaha, Missouri Chinese restaurant.<sup>279</sup> The Excise Board closed his restaurant after a “vigorous crusade” by a local pastor.<sup>280</sup> “The preacher, after a slumming expedition, made the charge that liquor was served in the Chinese restaurant to boys and girls, and demanded that the police stop the unlawful practice.”<sup>281</sup> Though the restaurateur sued Day for defamation, “Day continued to fight until the Excise Board, without admitting the truth of the preacher’s charges, issued an order closing all the chop suey restaurants, and giving as the reason for its action that the public sentiment appeared to be strongly opposed to such places.”<sup>282</sup>

In 1905, the *Minneapolis Journal* reported that the liquor license of a Chinese restaurant owner had been revoked. “It is not likely that another license will be granted to a Chinese

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<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Do not Relish “Chop Suey”*: *Citizens of Palo Alto Oppose Opening of Chinese Restaurant in College Town*, S.F. CALL, July 29, 1905, at 6 (describing denial of license to Mok Wo & Co.). *See also Palo Alto is Aroused*, S.F. CALL, July 6, 1905, at 6 (“The citizens have never permitted a Chinese business place of any sort to become established in Palo Alto. This has ordinarily been prevented by peaceful means, but on one occasion both the Chinaman and the landlord were given twenty-four hours to leave town—and they went.”). *The Call* reports that the restaurateurs sued, prevailed in the trial court, and the City appealed to the Supreme Court. *Ready to Appeal*, S.F. CALL, Oct. 7, 1905, at 6 (noting that “[t]he sentiment of the people is strongly against the Chinese.”). The restaurant operated without a license for some time and then, evidently before any Supreme Court action, closed. *Palo Alto Chinese Defy the Officials*, S.F. CALL, Oct. 3, 1905, at 6; *Wily Chinese Make Dupes of Palo Alto Merchants*, S.F. CALL, Dec. 5, 1905, at 6. The *International Chinese Business Directory of the World* (Wong Kin Ed., 1913), lists no Chinese businesses of any kind in Palo Alto or Stanford.

<sup>279</sup> *Chinese Sues Pastor for Defamation*, ST. LOUIS POST, Dec. 17, 1911, at 14.

<sup>280</sup> *Chinese Sues Pastor for Defamation*, ST. LOUIS POST, Dec. 17, 1911, at 14.

<sup>281</sup> *Chinese Sues Pastor for Defamation*, ST. LOUIS POST, Dec. 17, 1911, at 14.

<sup>282</sup> *Chinese Sues Pastor for Defamation*, ST. LOUIS POST, Dec. 17, 1911, at 14.

restaurant keeper as the mayor considers them incapable of handling boisterous, bibulous Americans.”<sup>283</sup>

In March, 1914, the Massachusetts Commission for the Investigation of White Slave Traffic investigated over 500 places, including many Chinese restaurants, and reported counting “over 6,649 women of the type under investigation.”<sup>284</sup> The same year, the licensing commissions of Massachusetts were blamed for failing “to properly regulate hotels, cafes, and saloons,” leading to improprieties continually found there.<sup>285</sup> A series of license denials followed. On June 2, 1914, Yee Toy of Lynn was denied a license, despite having recently invested \$12,000 in remodeling a building.<sup>286</sup> The commissioners reasoned that “there should be no more Chinese restaurants in the city and that Chinese restaurants shouldn’t be allowed to compete with those of Americans as they have no interest here.”<sup>287</sup> Mr. Toy requested reconsideration, showing a petition in his favor bearing 2000 names.<sup>288</sup> Mr. Toy received his license,<sup>289</sup> but the following month, the Chief of Police charged Mr. Toy with the offense of “assuming to be a common victualer.”<sup>290</sup> Mr. Toy was summoned to appear in the district court on July 30<sup>th</sup> in order to decide the constitutionality of the Chiefs actions in light of the fact that Mr. Toy was an American citizen.<sup>291</sup> What happened to his case is currently unknown.

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<sup>283</sup> *Chinaman Loses License: Sam Jay Was Unable to Keep his International Café Orderly*, MINNEAPOLIS J., Feb. 13, 1905, at 6.

<sup>284</sup> *Politicians Blamed for White Slavery*, WASH. HERALD, Mar. 1, 1914, at 1; see THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS, REPORT FOR THE INVESTIGATION OF THE WHITE SLAVE TRAFFIC 16 (1914).

<sup>285</sup> *Politicians Blamed for White Slavery*, WASH. HERALD, Mar. 1, 1914, at 1

<sup>286</sup> *Deny Chinaman License*, BOSTON DAILY GLOBE, June 3, 1915, at 9.

<sup>287</sup> *Id.* Massachusetts law provided:

The licensing authorities are not now required to grant any licenses to common victuallers. Whether any such licenses shall be granted and, if any, the number to be granted rest in the sound judgment of the licensing board as to the demands of the public welfare in the respective communities.

*Liggett Drug Co. v. Bd. of License Comm’rs of City of N. Adams*, 4 N.E.2d 628, 634 (Mass. 1936).

<sup>288</sup> *Petition with 2000 Names*, BOSTON DAILY GLOBE, June 16, 1915, at 2.

<sup>289</sup> *See Old Blue Law Invoked*, BOSTON DAILY GLOBE, July 27, 1915, at 3.

<sup>290</sup> *Id.*

<sup>291</sup> *See id.*

In July, 1915, the Mayor of Malden refused to sign a license because the restaurant employed no Americans.<sup>292</sup> The Supreme Judicial Court of Massachusetts issued a writ of mandamus requiring him to sign the license.<sup>293</sup> In 1918, Charles Shue, one of Boston's "best-known Americanized Chinamen" unsuccessfully applied for a restaurant license.<sup>294</sup> Before Mr. Shue, another Chinese restaurateur had received a license but the board decided that "no more licenses for Chinese restaurants would be granted in the city."<sup>295</sup>

Another possible example of the courts using licensing techniques to suppress a Chinese restaurant is *Chung Mee Restaurant Co. v. Healy*,<sup>296</sup> a case concerning New Hampshire laws requiring licenses for public dances.<sup>297</sup> The issue was whether the license requirement applied only to dance halls and public events focused on dancing, or also applied to incidental dancing offered to restaurant patrons; the court held that it did. But the rule in other states was to the contrary; the Attorney General of Wisconsin concluded that "that the majority view expressed in the Illinois and New York decisions is supported by the better reasoning."<sup>298</sup> While there is no overt racial reasoning in the case, one wonders whether the majority rule would have been applied if a majority restaurateur had sought the ruling. In any event, the reported cases indicate that authorities had ample power to regulate Chinese restaurants through the use of facially neutral statutes.<sup>299</sup>

*Requiring Citizenship for Licensure.* An easy way to eliminate Asian restaurateurs would have been to require citizenship for licensure; as they were ineligible for citizenship, this would likely constitute an insurmountable barrier.<sup>300</sup> Portland, Oregon had such a requirement;

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<sup>292</sup> *Summon Mayor Blakely*, BOSTON DAILY GLOBE, June 11, 1915, at 15.

<sup>293</sup> *To Ask Mandamus Writ*, BOSTON DAILY GLOBE, July 1, 1915, at 3.

<sup>294</sup> *Oppose Licensing of a Chinese Restaurant*, BOSTON DAILY GLOBE, Nov. 24, 1915 at 8.

<sup>295</sup> *See id.*

<sup>296</sup> 171 A. 263 (N.H. 1934).

<sup>297</sup> *Id.* at 263.

<sup>298</sup> *Counties-Dance Halls*, 1934 Ops. Wisc. Atty. Gen. 478, 481.

<sup>299</sup> *Commonwealth v. Wallace Y. Hong*, 158 N.E. 759, 759 (Mass. 1927) (upholding conviction for allowing underage actress to perform in Chinese restaurant); *State ex rel. Lamey v. Young*, 234 P. 248 (Mont. 1925) (upholding closing of Chinese restaurant and related premises as a nuisance).

<sup>300</sup> For a collection of older licensing cases, see G. V. I., *Constitutionality Of Discrimination Against Aliens In Legislation Relating To Licenses*, 39 A.L.R. 346 (1925).

in 1911, four Chinese restaurants were denied a liquor license on the ground that the owners were “not citizens and under the charter cannot be permitted to sell liquor.”<sup>301</sup> Newspapers reported that the “Chinese places fought” back, but it was the white-owned Pekin that challenged the denial.<sup>302</sup>

The media reported several attempts by Chicago officials to use a citizenship requirement to outlaw Chinese restaurants. In 1906, the City Council considered a bill requiring special licenses of “chop suey” restaurants:<sup>303</sup> “It shall not be lawful for any person to keep, conduct or manage any place in this city where any fruit, ice cream or chop suey is sold . . . unless a license therefor is first obtained.”<sup>304</sup> According to the *Chicago Tribune*, “[w]hen it was pointed out that the Chinese would be barred permanently as they cannot become citizens,” Alderman Harkin said the city “could get along without any chop suey places.”<sup>305</sup> In 1918, it was reported that “Chicago’s Chinese colony was given a severe jolt when it was announced at the city collector’s office that many of them owning chop suey restaurants and other eating places would have to go out of business through inability to obtain licenses.”<sup>306</sup> By 1922, the Chicago Municipal Code required those seeking restaurant licenses to have “good character and reputation,” and be “suitable for the purpose,”<sup>307</sup> leaving ample room for discretion. But there was no requirement that applicants be citizens.

In 1918, Massachusetts legislators proposed to limit victualer’s licenses to citizens. In November, 1917, a union report from Springfield explained that “The Chinese question here is indeed a serious one,”<sup>308</sup> and it hoped to find a way to deal with it. On January 14, 1918,

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<sup>301</sup> *Licenses of Chinese Taken*, MORNING OREGONIAN, Dec. 22, 1911, at 18.

<sup>302</sup> See *Chinese Places Fought*, MORNING OREGONIAN, Jan. 20, 1912, at 7; *Licenses to Be Given*, MORNING OREGONIAN, Jan. 11, 1910, at 16 (stating that the Pekin’s lawyer said it was owned by whites).

<sup>303</sup> *Law Will Check Chinese*, CHICAGO DAILY TRIB., Apr. 28, 1906, at 5.

<sup>304</sup> PROCEEDINGS OF THE CITY COUNCIL, Chicago. Illinois Regular Meeting, Mar. 5, 1906, at 2836-37. See also PROCEEDINGS OF THE CITY COUNCIL, Chicago. Illinois Regular Meeting, Monday, Feb. 5, 1906, at 2504.

<sup>305</sup> *Id. Chop Suey for Citizens: Chicago Ordinances May Drive Chinese and Greeks Out of Business*, EVENING STATESMAN (WA.), May 8, 1906, at 8 (“The ordinance provides that such licenses shall be issued only to citizens of the United States of good moral character. As Chinese are barred from citizenship and most of the Greeks and Italians are not citizens, many of these places will be forced to change ownership or go out of business.”).

<sup>306</sup> *Chicago Law to Bar Chinese Restaurants*, BEMIDJI DAILY PIONEER (MN.), Apr. 12, 1918, at 1.

<sup>307</sup> *The Chicago Municipal Code of 1922* § 3452 (Samuel Adams Ettelson, ed.).

<sup>308</sup> 26 MIXER & SERVER No. 11, Nov. 15, 1917, at 19.

Representative Crowley introduced legislation providing that “only persons who are citizens be granted victualers’ licenses.”<sup>309</sup> But the legislation failed.<sup>310</sup> The Springfield union reported to the *Mixer and Server*: “Our bill prohibiting any except citizens from engaging in the hotel or restaurant business received an unfavorable report from the committee on legal affairs: they claim that the bill aims at Chinese restaurants and as the Chinese are not citizens and cannot become citizens that the bill is unfair.”<sup>311</sup>

Laws requiring citizenship to operate a restaurant were probably doomed. California Superior Court Judge Ygnacio Sepulveda invalidated an 1880 statute providing that “[n]o license to transact any business or occupation shall be granted” by any government “to any alien not eligible to become an elector of this State.”<sup>312</sup> *Truax v. Raich* in 1915 recognized that noncitizens had the right to work; the case involved a restaurant. In 1924, in a case involving a Japanese immigrant, the Supreme Court invalidated a Seattle ordinance requiring that those seeking pawnbroker licenses be U.S. citizens.<sup>313</sup> Accordingly, requiring U.S. citizenship for restaurant licensure was not a silver bullet. But the decision came late in the conflict, and of course an invalid statute, ordinance, or policy could be defeated only by a litigant able to hire counsel.

*Selective Enforcement of the Law.* To be sure, some misconduct allegedly uncovered in Chinese restaurants, or for which Chinese restaurateurs were convicted of crimes, represented actual wrongdoing. However, the special focus on Chinese may well have played a part. There is little reason to believe that Chinese were disproportionately inclined to lawbreaking. As David Harris has argued, “there is a connection between where police look for [crime] and where they find it.”<sup>314</sup> Thus, the many reports of apparent selective enforcement, or promises to place Chinese restaurants under particular scrutiny, suggest at least the possibility that Chinese were arrested or deprived of licenses for conduct which would not have led to adverse action if committed by members of other groups.

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<sup>309</sup> 139 JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE COMMONWEALTH OF MASS 76 (1918).

<sup>310</sup> *Id.* at 462.

<sup>311</sup> 27 MIXER & SERVER No. 4, Apr. 15, 1918 at 59.

<sup>312</sup> *People v. Quong On Long*, 6 P. Coast L.J. 116, 117 (Cal. Super. Ct. 1880).

<sup>313</sup> *Asakura v. City of Seattle*, 265 U.S. 332, 340 (1924). *See also* *Poon v. Miller*, 234 S.W. 573, 576 (Tex. Civ. App. 1921) (Chinese person entitled to license to sell fish; citizenship requirement void).

<sup>314</sup> David Harris, *The Stories, the Statistics, and the law: Why “Driving While Black” Matters*, 84 MINN. L. REV. 265, 301 (1999).

In 1899, the Boston Police commissioners ordered all Chinese restaurants to close by midnight.<sup>315</sup> The *Boston Daily Globe* reported that the action was “part of the commissioners plan to drive the Chinese places from Boston.”<sup>316</sup> A month later, the *Boston Daily Advertiser* debunked “a rumor, which somehow got about town yesterday, to the effect that the board of police commissioners is seriously considering the question of closing up those Chinese restaurants for good and for all. It is doubtful whether any power is vested in the board to issue an arbitrary order of that kind.”<sup>317</sup> However, the paper noted that “It goes without saying that public morals would be much promoted by shutting them up and keeping them shut.”<sup>318</sup>

In Portland, Maine, in 1902, a Chinese restaurant popular with soldiers and sailors attracted “lewd” women and rowdy behavior.<sup>319</sup> Misbehavior by restaurant patrons led to the restaurant’s closure, notwithstanding the lawyer for the restaurateur’s claim that closing this restaurant, while ignoring misconduct in others, amounted to racial discrimination.<sup>320</sup> In 1908, police raided a Portland Chinese restaurant on the mere suspicion that a young unescorted white girl had frequented the restaurant.<sup>321</sup>

Chicago authorities also paid special attention to Chinese restaurants. In June 1905, the Chicago City Council considered a resolution calling for investigation of Chinese restaurants,<sup>322</sup> and by October 1, the restaurants were under investigation by the State Attorney’s Office and the staff of the Police Chief.<sup>323</sup> Officials were concerned about the presence of women during the

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<sup>315</sup> *No Chop Suey After 12*, BOSTON DAILY GLOBE, July 3, 1899, at 17.

<sup>316</sup> *No Chop Suey After 12*, BOSTON DAILY GLOBE, July 3, 1899, at 17.

<sup>317</sup> *The Chinese Restaurants*, BOSTON DAILY ADVERTISER, Aug. 12, 1899, at 4.

<sup>318</sup> *The Chinese Restaurants*, BOSTON DAILY ADVERTISER, Aug. 12, 1899, at 4.

<sup>319</sup> See Gary W. Libby, *Historical Notes on Chinese Restaurants in Portland, Maine*, CHINESE AM. HIST. & PERSPECTIVES 47, 48 (2006).

<sup>320</sup> *Id.*

<sup>321</sup> *Id.* at 49; see also *Rescued from Opium Den*, DAILY ARDMOREITE, Nov. 26, 1908, at 2 (raiding a Chicago Chinese restaurant merely because two white girls entered but failed to promptly return). Portland also had an ordinance restricting the use of private booths which was enforced against Chinese restaurants. *Local Dine and Dance Place Balks At Cutting Booths*, LEWISTON DAILY SUN, Aug. 7, 1930, at 18 *May Refuse License to Restaurant is Report*, LEWISTON DAILY SUN, Apr. 13, 1931, at 18.

<sup>322</sup> *Attack Segregation of Vice*, CHICAGO DAILY TRIB., June 10, 1905, at 7.

<sup>323</sup> *Ordered to Fight Vice*, CHICAGO DAILY TRIB., Oct. 1, 1905, at 2.

night and the early hours of the morning.<sup>324</sup> They believed that the restaurants had taken the place of wine rooms, which had been banned by a previous mayor.<sup>325</sup> Both the wine rooms and the restaurants were similar in that they could serve liquor at all hours of the night while saloons had to close by 1:00 am.<sup>326</sup>

In 1905, Reverend J. E. Copus reported in the *Rosary Magazine* that “[t]he police department has promised to ‘get after’ the ‘chop suey dump.’”<sup>327</sup> By November 9, 1905, the Chicago Chief of Police ordered “[r]igid inspections at frequent intervals” of Chinese restaurants and ice cream parlors.<sup>328</sup> Furthermore, the chief ordered “the prohibition of young girls or youths after reasonable hours” in such establishments.<sup>329</sup> In December 1905, a Chicago Police Lieutenant recommended revocation of the license of a Chinese restaurant for violating the midnight closing ordinance.<sup>330</sup> The officer promised to begin “a crusade on the many Chinese restaurants in his district.”<sup>331</sup> In 1909, a Chicago Police Inspector noted that “Young white girls are daily insulted and even attacked by Celestials . . . .”<sup>332</sup> The following year, the Chicago police chief issued a “special order” against the sale of liquor in Chinese establishments; this announcement was followed by a number of raids.<sup>333</sup>

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<sup>324</sup> *See id.*

<sup>325</sup> *See id.* A similar event happened in New York in the year 1900 when larger resorts were closed; there was “a flocking of women to cheap Chinese restaurants.” *Police Grant New License*, N.Y. TIMES, Mar. 19, 1900, at 2.

<sup>326</sup> *Id.*

<sup>327</sup> Rev. J. E. Copus, *Chicago’s Under-World The Criminal Aspect*, 27 ROSARY MAG. 457 (1905).

<sup>328</sup> *Mayor Defended By Foe*, CHICAGO DAILY TRIB., Nov. 9, 1905, at 3.

<sup>329</sup> *Id.*

<sup>330</sup> *May Close Chop Suey Place*, CHICAGO DAILY TRIB., Dec. 8, 1905, at 2.

<sup>331</sup> *Id.*

<sup>332</sup> *Search for White Slaves*, MARION DAILY MIRROR, Dec. 31, 1909, at 1.

<sup>333</sup> *See Chinese Men Mix Sin with Chop Suey*, CHICAGO DAILY TRIB., Mar. 27, 1910, at 3; *Search for White Slaves*, MARION DAILY MIRROR, Dec. 31, 1909, at 1.

The Sigel murder had continuing effects on policing.<sup>334</sup> The St. Louis Chief of Police stated: “The Chinese chop suey restaurants and Hop Alley will be closely watched by the police of St. Louis, who had their attention called to the Chinese problem in American cities by the murder of Elsie Sigel in New York.”<sup>335</sup> The Chief explained:

I cannot understand a white women’s desire to go into a Chinese restaurant and eat, but that is a problem for the women herself. We cannot molest her, and the restaurant has the right to stay open and the women the right to go there in preference to a white man’s restaurant if she desires.

But we can and will watch these places strictly. . . .

In my opinion, the immigration laws are too lax. There are too many Chinese of bad character permitted to enter the United States as things are now.<sup>336</sup>

In 1909, the Chinese restaurants of Detroit were under close watch by the police and who commonly searched the restaurants on demand without warrant.<sup>337</sup> For example, the police “maintain[ed] a sharp lookout” on Sam Lee’s restaurant because there were “reports that white men and women have languished in the dark, smutty rooms under the restaurant and lived in the fumes of the opium rather than face the world as it is.”<sup>338</sup> Officers commonly searched the back rooms of his restaurant; according to the article, “It’s a common occurrence for Sam. Very few police officers on duty downtown have not gone through the little restaurant.”<sup>339</sup> In 1911, the *Tulsa World* reported, “Two new enforcement officers . . . selected the much raided Chop Suey restaurant . . . for the scene of their first operations.”<sup>340</sup> In January 1911, a *Pittsburg Press*

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<sup>334</sup> Huping Ling, “Hop Alley”: *Myth and Reality in the St. Louis Chinatown*, 28 J. URBAN HIST. 184, 209 (2002) (stating that more than a year after the murder, St. Louis Police raided a Chinese restaurant in hopes of finding Leon Ling).

<sup>335</sup> *St. Louis Police Will Regulate Chinese Resorts*, ST. LOUIS POST, June 21, 1909, at 3.

<sup>336</sup> *St. Louis Police Will Regulate Chinese Resorts*, ST. LOUIS POST, June 21, 1909, at 3.

<sup>337</sup> *Chinese Fear That Sing Pui, Denied Dream Drug, Will Die*, DETROIT FREE PRESS, Aug. 1, 1909. *See also Chink Arrested for Opium Sale*, DETROIT FREE PRESS, May 23, 1909, at 1.

<sup>338</sup> *Chinese Fear That Sing Pui, Denied Dream Drug, Will Die*, DETROIT FREE PRESS, Aug. 1, 1909.

<sup>339</sup> *Id.*



reported headline reported “Big raid at Greensburg: Crusade against Chop Suey Dens and Foreign Restaurants.”<sup>341</sup> In Washington, D.C. in 1914, the District Attorney advised officers to pay special attention to “restaurants where liquor is served to women, motion picture theaters, and Chinese restaurants.”<sup>342</sup>

In May 1918, in Portland, Oregon the police raided over 65 establishments under the guise of an ordinance prohibiting “barred-doors” — the “victims of the anti-gambling crusade were mostly Chinese.”<sup>343</sup> As evidence of illegality, the officers carried the doors with them back to the station.<sup>344</sup> One complaint charged the Chief of Police himself with violating the ordinance by having a barred-door on his office in the station; in fact, the chief was later required to get a permit for his door.<sup>345</sup> A judge declared that, as the law is written, every church in the city is in violation of the law.<sup>346</sup> Attorneys for the Chinese restaurants threatened to sue the city for the damage to their doors.<sup>347</sup> Also, lawyers for the Chinese accused the police of drinking their beer and stealing several watches during the raids.<sup>348</sup>

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<sup>340</sup> *New Enforcers Raid Chop Suey*, TULSA DAILY WORD SUNDAY MORNING, Aug. 8, 1911, at 5.

<sup>341</sup> *Big Raid at Greensburg: Crusade Against Chop Suey Dens and Foreign Restaurants*, PITTSBURG PRESS, Jan. 20, 1911, at 15, available at <http://news.google.com/newspapers?nid=1144&dat=19110120&id=5hUbAAAAIIBAJ&sjid=5kgEAAAIAIBAJ&pg=2180,4609623>.

<sup>342</sup> *Drastic Orders to Make Washington Morally Clean City*, WASH. TIMES, Feb. 9, 1914, at 1, 10. William Leavitt Stoddard, *Red Lights of Washington D.C.*, 31 PEARSON’S MAG. 233-40 (1914);

<sup>343</sup> *100 Doors Smashed by Axes of Police*, MORNING OREGONIAN, May 9, 1919, at 21

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> *Id.*

<sup>348</sup> *Id.*

### C. Prohibition of Private Booths

Chinese restaurants in the early decades of the 20<sup>th</sup> century typically had private booths.<sup>349</sup> A national movement to prohibit booths and private rooms was aimed at least in part at Chinese restaurants. The United States Public Health Service published a model ordinance prohibiting booths in restaurants, explaining:

recurring complaint was made that in “chop suey” places and in other types of refreshment places the boxes, partitions, and booths made favorable places of solicitation and operation for pimps and prostitutes. By requiring the partitions to be removed the entire establishment was thrown open to public gaze and opportunity of unlawful acts destroyed.<sup>350</sup>

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<sup>349</sup> See Jan Whitaker, *Restaurant Booth Controversies*, RESTAURANT-ING THROUGH HISTORY (Aug. 27, 2012 7:13 PM), <http://restaurant-ingthroughhistory.com/2012/08/27/restaurant-booth-controversies/>; see also *After Chinese Restaurants*, SALT LAKE TRIB., Apr. 28, 1903, at 3 (referring to the “winerom” system in Chinese restaurants); *License Denied Six*, MORNING OREGONIAN, Dec. 21, 1909, at 15 (stating that the liquor licenses of two Chinese restaurants may be granted provided “the horrid boxes are removed”); *Humor Is Not Beyond the Stoic Chinaman*, LOGANSPOUT REPORTER, Aug. 14, 1911, at 8 (quoting the Mayor of Minneapolis as ordering that “all booths be torn out of Chinese restaurants”); G.F. Rinehart, *Regulation a Failure*, ARIZONA REPUBLICAN, July 8, 1914, at 12 (discussing the failure of liquor regulation due to, *inter alia*, closed booths in Chinese restaurants); *Girls Drink Beer At All Hours in Chop Suey Houses*, CHICAGO DAILY TRIB., May 16, 1914, at 1 (stating that “nearly the entire floor space” of a Chinese restaurant in Chicago had a “series of private booths”); *To Make War on Restaurants Drinks*, EL PASO HERALD, Oct. 5, 1913, at B4; see also *State v. Ito*, 131 N.W. 469, 469 (Minn. 1911) (“This is a Chinese restaurant and chop suey house. We went into a private booth and ordered a meal, which was served to us by the defendant.”); *Chinese Obey Law*, MORNING OREGONIAN, Aug. 25, 1908, at 14 (quoting the Chief of the Portland city bureau for the protection of girls and women stating in regards to booths that “I will never vote again to grant a liquor license to any restaurant that puts up screens . . . whether it is a Chinese restaurant or the finest white restaurant in town”).

<sup>350</sup> U.S. PUBLIC HEALTH SERVICE, *VENEREAL DISEASE ORDINANCES 29* (1919), available at <http://books.google.com/books?id=DqJIAQAIAAJ&dq=chop%20suey%20ordinance&pg=PA29#v=onepage&q=chop%20suey%20ordinance&f=false>. According their critics, closed booths in restaurants allowed them to “defy regulation” with nothing more “than a flimsy curtain between the hilarious and a possible policeman.” G.F. Rinehart, *Regulation a Failure*, ARIZONA REPUBLICAN, July 8, 1914, at 12; see also *To Make War on Restaurants Drinks*, EL PASO HERALD, Oct. 5, 1913, at B4. *Police Commissioners Make Good Their Threats to Punish Saloon Men by Suspension of Many Licenses*, DAILY L.A. HERALD, Sept. 2, 1900, at 5 (The Woman’s Christian Temperance Union stated: “We, representing the motherhood of our beloved state, do beseech you to listen to our appeals and that of all good citizens to abolish the stronghold of Satan called the booth.”).

As the Supreme Court has noted, targeted zoning requirements can be implemented to impose a “substantial obstacle”<sup>351</sup> on disfavored entities. But as late as 1971, the Supreme Court was reluctant to invalidate facially neutral laws because of discriminatory motivation. In *Palmer v. Thomson*, the majority wrote: “no case in this Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it.”<sup>352</sup> Accordingly, law prohibiting booths could be enacted with the frank purpose of disadvantaging Chinese restaurants. While *Yick Wo* prohibited discriminatory enforcement, those targeted would have to prove governmental misconduct.<sup>353</sup>

Ogden, Utah was the site of a prolonged battle against Chinese restaurants and repeated tests of prohibitions on booths. A version of the prohibition on booths ultimately sustained is still on the books.<sup>354</sup> An April 4, 1902 article in the *Ogden Standard* reported that for “some years past it has been difficult for the restaurants, owned by white men and in which none but white employes [sic] is hired to make enough profit.”<sup>355</sup> There were four Chinese restaurants in the city, but the article warned that more were coming — two restaurants proprietors recently “purchased valuable business property.”<sup>356</sup> Some proposed that the Chinese of Ogden had formed a “syndicate for the establishment and running of restaurants.”<sup>357</sup> In 1902, the hotel and

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<sup>351</sup> *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2316 (2016).

<sup>352</sup> *Palmer v. Thompson*, 403 U.S. 217, 224 (1971). *See also, e.g., Yee Gee v. City & Cty. of San Francisco*, 235 F. 757, 760 (N.D. Cal. 1916) (“The mere allegation of an improper motive of a legislative body in adopting a measure is not, standing alone, sufficient to disclose invalidity. So long as the act is fair upon its face, and capable of even-handed and impartial application to all who come within its terms, the mere motive actuating its enactment cannot be inquired into as a ground for avoiding it.”) (citations omitted).

<sup>353</sup> *See, e.g., Ex parte Quong Wo*, 118 P. 714, 716 (Cal. 1911) (upholding laundry zoning ordinance).

<sup>354</sup> A current ordinance in Ogden, Utah provides:

It is unlawful for any licensee holding a class B, class C, class D license or liquor consumption license to arrange to keep the licensed premises, or any booth, stall, furniture, fixtures, screens or curtains thereon, so as to impede a full view of the premises and all of the occupants therein from the main floor entrance thereof. All stalls and booths must conform to the requirements specified for stalls and booths in restaurants.

OGDEN MUNICIPAL CODE § 5-3D-4(H).

<sup>355</sup> *Chinese Restaurants*, OGDEN STANDARD, Apr. 4, 1902, at 5.

<sup>356</sup> *Chinese Restaurants*, OGDEN STANDARD, Apr. 4, 1902, at 5.

<sup>357</sup> *Id.*

restaurant employees of Ogden, Utah organized hoping that “in the near future that more of the laborers patronage will be turned to the restaurants owned by white men and employing white help.”<sup>358</sup>

By March, 1903, some union men of Ogden were reportedly “playing unfair,”<sup>359</sup> and thereafter, the Central Trades and Labor Council declared that by “unanimous decision . . . all members of various labor unions cease from patronizing Chinese restaurants.”<sup>360</sup> The union also warned the City Council that “Chinese restaurants are simply private saloons, and that are all selling liquor promiscuously and without any apparent regard for the law, and women and young girls are nightly seen coming from these places under the influence of liquor.”<sup>361</sup> They asked the City Council to “prohibit girls under 18 years of age from going to these places and asks the Council to abolish the winerom system in vogue in such places.”<sup>362</sup> One Council member strongly advocated for the abolition of booths, stating that “there was hardly a night passed but what scores of young girls were taken to these places and given liquor, and often became intoxicated” and that the booths were “simply a shield for vices.”<sup>363</sup> The booths also reportedly caused trouble for the police, as they were “often . . . the scene of drunken orgies and other disreputable conduct.”<sup>364</sup> The booth ordinance was passed, and it was predicted that it would require remodeling of a “dozen . . . Chinese restaurants on Twenty-fifth street alone.”<sup>365</sup>

The *Salt Lake Tribune* reported that the ordinance was “aimed at Chinese restaurants, as it appears, they were the only ones called upon to comply with the law.”<sup>366</sup> On June 1, 1903, the

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<sup>358</sup> *Chinese Restaurants*, OGDEN STANDARD, Apr. 4, 1904, at 5. *see also* 12 MIXER & SERVER No. 4, April 15, 1903 at 20.

<sup>359</sup> OGDEN STANDARD, Mar. 22, 1904, at 8; *Are Union Men Unfair*, SALT LAKE HERALD, Mar. 21, 1904, at 5. *Salt Lake City and Neighborhood*, INTERMOUNTAIN CATH., Mar. 26, 1904, at 8.

<sup>360</sup> *Boycott Inaugurated*, SALT LAKE TRIB., Apr. 10, 1903, at 7; *Boycott on Chinese Restaurants*, DESERET NEWS, Apr. 10, 1903, at 8; *Utah State News*, DAVIS CO. CLIPPER, Apr. 17, 1903, at 2.

<sup>361</sup> *After Chinese Restaurants*, SALT LAKE TRIB., Apr. 28, 1903, at 3; *Council Protests on Removal of Mail Clerks*, OGDEN STANDARD, Apr. 28, 1903, at 5.

<sup>362</sup> *After Chinese Restaurants*, SALT LAKE TRIB., Apr. 28, 1903, at 3.

<sup>363</sup> *After Chinese Restaurants*, SALT LAKE TRIB., Apr. 28, 1903, at 3.

<sup>364</sup> *Screened Booths Unlawful*, DESERET EVENING NEWS, Oct. 13, 1903, at 1.

<sup>365</sup> *After Chinese Restaurants*, SALT LAKE TRIB., Apr. 28, 1903, at 3.

<sup>366</sup> *Ogden Restaurant Keepers Win Case*, SALT LAKE TRIB., Mar. 5, 1904, at 5.

*Salt Lake Herald* reported that Ogden's Chinese restaurants were "hard to kill off" and were "thriving in spite of opposition."<sup>367</sup> By late June, some restaurant owners retained a lawyer,<sup>368</sup> who argued that "the proprietors have a right to arrange their rooms as they please, but that disorder there may be punished there as elsewhere."<sup>369</sup> On October 13, Municipal Court Justice Howell declared the booths in Chinese restaurants unlawful, and fined each offender \$30.<sup>370</sup> But Judge Henderson, who appeared on behalf of the defendants, appealed,<sup>371</sup> and in March, 1904,<sup>372</sup> Judge Rolapp of the District Court declared the booth ordinance invalid.<sup>373</sup>

A 1906 article in the *Ogden Standard Examiner* warned that danger "to the morals of young men and young women lies in the 'chop suey' houses."<sup>374</sup> It described scenes of Chicago's Chinese restaurants (almost verbatim what appeared in the *Rosary Magazine* in the previous year),<sup>375</sup> "three or four 'draws' of inhaled smoke and the pill is burned up, and the consumer is in the land of pleasant dreams . . . until the deadly fumes begin to wear off . . . The reaction creates a craving for more, and the smoker in an incredibly short time is a slave to the habit."<sup>376</sup> In 1908, the Police Chief of nearby Salt Lake City warned that "one of the greatest evils in the city is restaurants where intoxicating liquor is sold."<sup>377</sup> He advised the city council to quickly pass an ordinance "requiring all partitions to be removed from the booths."<sup>378</sup> After

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<sup>367</sup> *Hard to Kill Off*, SALT LAKE HERALD, June 20, 1903, at 7.

<sup>368</sup> See OGDEN EXAMINER, June 22, 1903, at 22; *Will Fight Ordinance*, SALT LAKE TRIB., June 20, 1906, at 3.

<sup>369</sup> *Restaurant Ordinance Attacked*, SALT LAKE HERALD, July 2, 1903, at 3.

<sup>370</sup> *Screened Booths Unlawful*, DESERET EVENING NEWS, Oct. 13, 1903, at 1.

<sup>371</sup> *Screened Booths Unlawful*, DESERET EVENING NEWS, Oct. 13, 1903, at 1.

<sup>372</sup> THE DESERET NEWS, Feb. 25, 1904, at 9; *Civil Matters in District Court*, OGDEN STANDARD EXAMINER, Mar. 1, 1904, at 6.

<sup>373</sup> *Ogden Restaurant Keepers Win Case*, SALT LAKE TRIB., Mar. 5, 1904, at 5.

<sup>374</sup> *Reform in Ogden*, OGDEN STANDARD EXAMINER, Feb. 10, at 4.

<sup>375</sup> See *supra* note \_\_\_\_.

<sup>376</sup> *Reform in Ogden*, OGDEN STANDARD EXAMINER, Feb. 10, at 4.

<sup>377</sup> *The Restaurant Evil*, SALT LAKE HERALD, Jan. 21, 1908, at 10.

<sup>378</sup> *Id.*

several months, the Salt Lake City Council was considering legislation requiring liquor licenses for restaurants, and the removal of booths from restaurants serving liquor.<sup>379</sup> The following year Ogden Police Chief Browning issued an order requiring removal of all screens, curtains, and booths from restaurants and cafes in Ogden.<sup>380</sup> The Chief explained that the order was necessary to curtail the use of wineroms in restaurants and cafes “where women sometimes congregate.”<sup>381</sup> The Chief stated that “the order was readily complied with” and within a few hours “practically all the screens and curtains had been removed.”<sup>382</sup>

The police order evidently did not settle matters. In January 1918, another booth controversy arose in Ogden, which would lead to a definitive resolution.<sup>383</sup> Chinese restaurant proprietors claimed that the ordinance (represented racial prejudice, agitated by the restaurant trust and directed against all [O]riental in that business here.”<sup>384</sup> By April 1918, an ordinance regulating the Chinese restaurants passed and the police started a “crusade against the booths in the cafes and restaurants.”<sup>385</sup> Many restaurants complied immediately, but some refused; “one of the Chinese restaurants has open booths of cherry wood that cost approximately \$1500.”<sup>386</sup> According to the ordinance, a restaurant’s license depended on passing an inspection; police subsequently arrested several Chinese restaurant owners.<sup>387</sup>

Judge Pratt of the District Court declared the ordinance invalid.<sup>388</sup> In an attempt validate it, the Ogden city commissioners amended the ordinance (presumably by making it generally

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<sup>379</sup> *Booths in Cafes Under Fire*, THE DESERET EVENING NEWS, Nov. 13, 1908, at 12; *Law Committee Gets Very Busy*, SALT LAKE CITY TRIB., Nov. 28, 1909, at 2; *May Be New Ordinance Comprehensive in Scope*, SALT LAKE HERALD, Nov. 20, 1908, at 6; *Will Abolish All Wine Rooms*, SALT LAKE HERALD, Nov. 28, 1908, at 8.

<sup>380</sup> *Browning Issues Order*, THE OGDEN STANDARD, Apr. 27, 1909, at 7.

<sup>381</sup> *Id.*

<sup>382</sup> *Id.*

<sup>383</sup> *See Private Booths in Restaurants*, THE OGDEN STANDARD, Jan. 23, 1918, 4 PM edition, at 7.

<sup>384</sup> *Chinese Protest Ban on Booths*, SALT LAKE HERALD, Jan. 29, 1918, at 2.

<sup>385</sup> *Crusade Starts on Chinese Restaurant Booths*, OGDEN STANDARD, Apr. 3, 1918, 3:30 edition, at 6; *May Issue Warrant to Test Booth Ordinance*, OGDEN STANDARD, Apr. 6, 1918, at 32.

<sup>386</sup> *May Issue Warrant to Test Booth Ordinance*, OGDEN STANDARD, Apr. 6, 1918, at 32.

<sup>387</sup> *Crusade Starts on Chinese Restaurant Booths*, OGDEN STANDARD, Apr. 3, 1918, 3:30 edition, at 6; *May Issue Warrant to Test Booth Ordinance*, OGDEN STANDARD, Apr. 6, 1918, at 32.

<sup>388</sup> *Section of Anti-Booth Ordinance is amended to meet the Situation*, DESERET NEWS, June 25, 1918, at 5.

applicable).<sup>389</sup> Officials arrested several restaurant owners under the new provision, but there still appeared to be selective enforcement.<sup>390</sup> One Ogden citizen who rented space to a Chinese restaurant complained that this “appeared to him like persecution against the Chinese,” asking: “Why don’t you go after the white men who are violating the city laws as well as the Chinamen?”<sup>391</sup>

On, February 2, 1919, Ogden prevailed in the lower court when the proprietor of a Chinese restaurant, the Alhambra Café,<sup>392</sup> was convicted of violating the ordinance.<sup>393</sup> The case was appealed to the Utah Supreme Court.<sup>394</sup> In the predictable affirmance, the Utah Supreme Court stated:

We . . . are required to presume that the local conditions in Ogden City are such as to justify the city authorities to regulate the conduct of restaurants or eating houses in the manner prescribed in the ordinance. . . .

We know, as all men know, that the best and largest dining rooms everywhere are open, and that the respectable and law-abiding men and women do not seek closed booths or dark rooms when they go to a public eating place to eat their meals. The fact that an ordinance like the one in question here was deemed necessary to regulate public eating places is no reflection either upon the good morals or the law-abiding propensities of the good people of Ogden. It reflects credit upon the city authorities rather than discredit.

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<sup>389</sup> *Id.*

<sup>390</sup> *Beginning of the Legal Fight Against The Booths in The Local Restaurants*, OGDEN STANDARD, July 18, 1918, at 6.

<sup>391</sup> *Id.*

<sup>392</sup> The Alhambra Café was a Chinese restaurant in the sense that owner John Doe Leo was Chinese. *Stamping out the Liquor Offenses*, OGDEN STANDARD, Feb. 22, 1916, at 3. In addition, Chinese people were among its patrons and employees. *See supra* note 242; *Chinese Cook, Hit by Auto, Dies on Way to Hospital*, OGDEN STANDARD, Oct. 25, 1918, at 10 (reporting death of Lee Hun Poye, Alhambra Café cook). However, the restaurant advertised “regular dinner served every day. Short orders served any time.” *E.g.*, OGDEN STANDARD, Jan. 16, 1915, at 2. Therefore it is not known if it served Chinese food along with its American cuisine.

<sup>393</sup> *City Wins Fight on Private Booths*, SALT LAKE TELEGRAM, Feb. 27, 1919, at 9.

<sup>394</sup> *Booths Must Go Now That Supreme Court Has Decided in Favor of City of Ogden*, OGDEN STANDARD, June 27, 1919, at 14.

Similar ordinances might well be adopted and enforced in any city of the size of Ogden.<sup>395</sup>

The *Ogden Standard* reported that “a number of other cases of Oriental restaurant men have been pending in the courts,” predicted that the charges would be dismissed and the restaurateurs given “a few days’ time” to comply with the ordinances.<sup>396</sup>

Other booth regulations appeared across the country. In some cases it was clear that the regulations targeted Chinese restaurants. For example, in 1911, the Mayor of Minneapolis ordered the closure of a Chinese restaurant for selling liquor without a license and concurrently ordered that “all booths be torn out of Chinese restaurants.”<sup>397</sup> Given the major union boycott in Minneapolis,<sup>398</sup> and the Mayor’s reported policy of denying liquor licenses to Chinese restaurants,<sup>399</sup> this is hardly surprising. Following the “chop suey raids” of 1918, the New York District Attorney “the abolishment of private rooms in chop suey restaurants.”<sup>400</sup> In other instances, news accounts, at least, do not make an explicit connection between the Chinese nature of the restaurant and the regulation. However, many jurisdictions banning booths also implemented or seriously considered other anti-Chinese restaurant measures, or had strong union activity against the restaurants.

In 1900, the Los Angeles Board of Police Commissioners ordered “the removal of boxes, booths, stalls, and private rooms.”<sup>401</sup> Los Angeles had passed ordinances prohibiting white

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<sup>395</sup> *Ogden City v. Leo*, 182 P. 530, 532-33 (Utah 1919).

<sup>396</sup> *Booths Must Go Now That Supreme Court Has Decided in Favor of City of Ogden*, *OGDEN STANDARD*, June 27, 1919, at 14.

<sup>397</sup> *Humor Is Not Beyond the Stoic Chinaman*, *LOGANSPORT REPORTER*, Aug. 14, 1911, at 8.

<sup>398</sup> *See supra* note 58, and accompanying text.

<sup>399</sup> *See supra* note 283, and accompanying text.

<sup>400</sup> *Police Capture 178 In Chop Suey Raids*, *N.Y. TIMES*, Apr. 15, 1918, at 8.

<sup>401</sup> *Police Commissioners Make Good Their Threats to Punish Saloon Men by Suspension of Many Licenses*, *DAILY L.A. HERALD*, Sept. 2, 1900, at 1. *See also Police Chief Will Now Act*, *L.A. HERALD*, Sept. 8, 1900, at 5. Other California cities banned booths. *Mayor Approves Box Ordinance*, *S.F. CALL*, Nov. 22, 1910, at 8 (Oakland booth ban); *See also San Rafael May Bar Restaurant Booths*, *S.F. CALL*, May 15, 1911, at 3 (“is probable that the booths will be abolished.”). The issue was raised repeatedly in San Francisco, but there is no report of an actual ban. *Vice Commission Appointed*, *S.F. CHRON.*, Feb. 23, 1917, at 7N; *Protection of Young Women Urged by Research Workers*, *S.F. CHRON.*, Oct. 23, 1916, at 3; *Scandal Draws Toward Close*, *S.F. CALL*, Dec. 9, 1904, at 16; *No Dark Places*, *S.F. CALL*, July 7, 1893, at 3.



women from working on Asian restaurants,<sup>402</sup> restricting Asian restaurant employment,<sup>403</sup> and reportedly had a policy of denial of licenses to “chop suey” joints outside of Chinatown.<sup>404</sup>

In 1904 “Private drinking booths in restaurants and in rear rooms of saloons were outlawed in Chicago by an ordinance passed by the city council.”<sup>405</sup> Chicago had imposed restrictive zoning on Chinese,<sup>406</sup> considered or temporarily adopted a restriction on restaurant licenses to U.S. citizens,<sup>407</sup> and law enforcement attention included the promise of a “crusade” against Chinese restaurants.<sup>408</sup>

Phoenix banned booths in 1909,<sup>409</sup> Tucson did so in 1921.<sup>410</sup> Both cities had anti-Chinese restaurant boycotts.<sup>411</sup> In addition, Arizona had enacted a law restricting non-citizen employment, invalidated in *Truax v. Raich*,<sup>412</sup> and had considered a law prohibiting white women from working in Chinese restaurants.<sup>413</sup>

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<sup>402</sup> See *supra* note 188-189, and accompanying text.

<sup>403</sup> See *supra* note 182, and accompanying text.

<sup>404</sup> See *supra* note 275, and accompanying text.

<sup>405</sup> *Chicago Council Knocks Out Another Saloon Adjunct*, BEMIDJI DAILY PIONEER, July 1, 1904, at 4; see also, PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF CHICAGO 2219-20, 2652 (1904), available at <https://archive.org/stream/proceedingsofcit52chic#page/2651/mode/2up/search/saloon>; *Bishop Sumner Urges Action: Advises Enforcement of Laws*, S.F. CHRON., Jan. 27, 1917, at 4 (“Even before we started the campaign against vice, Chicago had got rid of its closed booths in restaurants.”) (statement of Bishop W. T. Sumner).

<sup>406</sup> See *supra* note 169-172, and accompanying text.

<sup>407</sup> See *supra* note 303-307, and accompanying text.

<sup>408</sup> See *supra* note 330, and accompanying text.

<sup>409</sup> *No More Sequestered Drinks*, ARIZONA REPUBLICAN, Jan. 21, 1909, at 6.

<sup>410</sup> *Curtained Booths Must Go*, ARIZONA REPUBLICAN, Mar. 21, 1921, at 4.

<sup>411</sup> See *supra* note 55, and accompanying text.

<sup>412</sup> See *supra* note 181, and accompanying text.

<sup>413</sup> See *supra* note 234, and accompanying text.

Massachusetts banned booths where liquor was sold in 1915.<sup>414</sup> The Bay State had been the site of a serious effort to ban women from Chinese restaurants,<sup>415</sup> which may well have passed if it had been constitutional, as well as boycotts,<sup>416</sup> in some cities an evident policy of denying licenses,<sup>417</sup> had considered a statewide ban on restaurant licenses for non-citizens,<sup>418</sup> and Boston law enforcement had promised “to drive the Chinese places from Boston.”<sup>419</sup>

In Oregon, cities including The Dalles,<sup>420</sup> St. Helens,<sup>421</sup> and Portland<sup>422</sup> banned private booths. Oregon had considered a bill prohibiting white women from working in Chinese restaurants,<sup>423</sup> and the city of Portland had used a citizenship requirement for liquor licenses to deny them to Chinese restaurants.<sup>424</sup>

There are other facially neutral laws enacted at least in part by a desire to control Chinese restaurants. In 1910, Minneapolis Mayor J.C. Haynes wrote to the City Council which was considering an ordinance regulating restaurants and hotels. The mayor requested that the power of revocation be added to the law because of “certain abuses in some of these places, notably

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<sup>414</sup> *Review of Liquor Laws Passed by States This Year*, ST. LOUIS POST, June 21, 1915, at 14; *see also* EL PASO HERALD, June 21, 1915 at 6; *Great Progress Is Made In Prohibition Legislation*, BISMARCK DAILY TRIB., June 23, 1915, at 6.

<sup>415</sup> *See supra* note 201-217, and accompanying text.

<sup>416</sup> *See supra* note 84, and accompanying text.

<sup>417</sup> *See supra* note 286-295, and accompanying text.

<sup>418</sup> *See supra* note 308-311, and accompanying text.

<sup>419</sup> *See supra* note 316, and accompanying text.

<sup>420</sup> *Private Boxes Doomed*, MORNING OREGONIAN, April 28, 1911, at 3; *see also* *Boxes Ordered Removed From Dalles Restaurants*, EAST OREGONIAN, April 28, 1911, at 7.

<sup>421</sup> *Ordinance No 110*, OREGON MIST, June 2, 1911, at 1 (providing the text of the ordinance).

<sup>422</sup> *License Denied Six*, MORNING OREGONIAN, Dec. 21, 1909, at 15. *Licenses to Be Given*, MORNING OREGONIAN, Jan. 11, 1910, at 16. *See Licenses Opposed First, Then Given*, MORNING OREGONIAN, Dec. 30, 1909, at 11.

<sup>423</sup> *See supra* note 228, and accompanying text.

<sup>424</sup> *See supra* note 301, and accompanying text.

certain cafes and so-called chop suey houses.”<sup>425</sup> The ordinance as enacted accordingly provided that licenses “shall be subject to revocation at any time by the City Council, in its discretion, or by the Mayor.”<sup>426</sup>

In Connecticut, the unions succeeded in passing a facially neutral law apparently aimed at suppressing Chinese restaurants. A December, 1918 report in the *Mixer and Server* from Norwich, Connecticut stated:

We are also putting up a fight against the Chinese restaurants, of which there is a large number established in the city of Hartford — considering the size of the city — and are well patronized by the working class. It is going to take some time and energy to educate the union men and women that no white man can compete with the Chinese restaurants as their mode of living, the low wages and the long hours and other conditions prevailing in their establishments they can afford to sell at a lower price than a white man. It is to be regretted to see union men, sneaking in the side doors of Chinese restaurants.

I have presented our proposition to the Hartford Central Labor Union, and at the first meeting in January we expect to have them take action and a committee appointed to assist us in our campaign.<sup>427</sup>

The Connecticut Legislature passed a labor law limiting the hours that women and children could work in hair dressing and manicuring establishments, photograph galleries, restaurants, cafes, and barber shops, and prohibiting them from working between the hours of ten p.m. and six a.m.<sup>428</sup> A 1918 government report stated that, “As a practical proposition, the law affected the restaurants only . . . [and] with the exception of the Chinese restaurants, there were very few

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<sup>425</sup> 36 PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS, MINNESOTA FROM JANUARY 1, 1910 TO JANUARY 1, 1911 810 (1910)

<sup>426</sup> *Id.* at 1063.

<sup>427</sup> 28 MIXER & SERVER No. 1, Jan. 15, 1919, at 22-23.

<sup>428</sup> A 1918 government report said that the law was passed by the last legislature; it is evidently An Act Concerning the Hours of Employment of Minors and Women, Ct. Pub. Acts Ch. 300, at 2433 (1917).

where women were employed at night.”<sup>429</sup> The report claims, “[t]he effect of the law has been salutary and has justified the expectations of those in favor of it.”<sup>430</sup>

### III. VICTORY AND NATIONAL IMMIGRATION POLICY

As the nineteen-teens turned into the twenties, something seemed to have changed. A 1919 union report indicated that in Boston there was “progress in the fight on the Chinese restaurants.”<sup>431</sup> A 1921 report in the *Mixer and Server* from Detroit, Michigan suggests that by then union goals had been achieved: “I take pleasure in saying that the worst enemy that we have had to contend with here is beginning to wane and vanish, and we all wish him a speedy exit.”<sup>432</sup>

If union members and competing restaurateurs sensed that the Chinese had been vanquished, they were correct. The Census, reported 107,488 Chinese in the continental United States in 1890, 89,863 in 1900, and 71,531 in 1910.<sup>433</sup> The 1920 Census showed a further decline to 61,639.<sup>434</sup> Anti-Chinese policies had reduced the population by almost half. And of course, ratification of the 18<sup>th</sup> Amendment added a new set of legal tools to control Chinese restaurants.

The political goal sought by the unions had been almost fully realized by 1924. All persons of races native to Continental Asia had been barred by the Immigration Act of 1917.<sup>435</sup> While Japanese immigration had been restricted by the Gentlemen’s Agreement of 1907-08,<sup>436</sup> in 1924 they were explicitly barred by statute.<sup>437</sup> In the Immigration Act of 1924, Congress tied immigration eligibility to racial eligibility to citizenship. The Naturalization Act of 1790 had

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<sup>429</sup> STATE OF CONNECTICUT, REPORT OF THE DEP’T OF FACTORY INSPECTION FOR THE TWO YEARS ENDING SEPT.30, 1918 12 (1918) *Id.*

<sup>430</sup> *Id.*

<sup>431</sup> 28 MIXER & SERVER No. 2, Feb. 15, 1919, at 38.

<sup>432</sup> 30 MIXER & SERVER, No. 9, Sept. 15, 1921, at 63.

<sup>433</sup> BUREAU OF THE CENSUS, CHINESE AND JAPANESE IN THE UNITED STATES 7 (Bulletin 127 1910).

<sup>434</sup> III Fourteenth Census of the United States taken in the Year 1920: Population 11 (1922)

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limited eligibility to “free white persons,” people of African nativity and descent were made eligible after the Civil War. The Immigration Act of 1924 operated to provided that those racially ineligible to naturalization were also ineligible to immigrate. In addition the Immigration Act of 1921 had put temporary limits on European immigration, which in similar form would be made permanent in the national origins quota system included in the 1924 immigration law. For all of these reasons, native workers had reason to think that a permanent solution to the problem of Asian immigration and competition with white workers and businesses had been achieved.

Unions had argued that Chinese should not be allowed to compete with whites because they were not allowed to become citizens. Their precarious immigration and citizenship status made it easier for whites to be confident that they were no threat. Indeed, keeping Chinese restaurants facilitated discrimination. Those suspected of being undocumented could be targeted by law enforcement. The Police raided New York’s Chinatown in 1925,<sup>438</sup> but this time their purpose was not the suppression of Chinese restaurants. The raid resulted in the “largest seizure of Chinese under the Exclusion act ever made” in New York City,<sup>439</sup> and perhaps the entire United States up until that time. “More than 500 Chinese were gathered in by 100 detectives and half as many Federal agents, in Chinatown and environs.”<sup>440</sup> The *New York Times* reported: “[t]he expulsion of so many Chinese badly crippled the Chinese chain restaurant and laundry business throughout the metropolitan district.”<sup>441</sup> In addition, employers could threaten recalcitrant workers with deportation.<sup>442</sup> Chinese immigration, and Chinese restaurants, had apparently been tamed.

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<sup>438</sup> *New Tong Murders; 500 Chinese Seized*, N.Y. TIMES, Sep. 19, 1925, at 1.

<sup>439</sup> *Id.*

<sup>440</sup> *Id.* The raid illustrated state-federal cooperation in immigration enforcement. *See also, e.g., Smugglers Caught: Entry of Chinamen from Canada Checked*, REPUBLICAN NEWS ITEM, Nov. 29, 1900 (describing arrests in Chinese laundry and restaurant by “Chinese Inspector” and local police).

<sup>441</sup> *72 More Chinese Ordered Deported*, N.Y. TIMES, Sept. 20, 1925, at 1.

<sup>442</sup> *Chinese May Organize*, WASH. EVENING STAR, May 24, 1919, at 2 (noting that many immigration “arrests of restaurant employes were made as a result of animus on the part of their employers and that the underlying motive for these arrests was membership in the union.”). In addition, because the restaurants were community centers, immigration officials knew where to look. *Chicago Briefs*, THE DAY BOOK (CHICAGO), Mar. 9, 1917, Noon ed., at 31 (“Three Chinese, thought to have been smuggled into U. S., seized in raid on Chinese restaurant, 1209 S. Kedzie av.”). This has been a continuing issue. *See, e.g., Note, Temporary Detentions of Aliens for the Purpose of Interrogation are subject to the Terry Doctrine*, 72 COLUM. L. REV. 593 (1972) (discussing

Moreover, the perception of Chinese restaurants was in the process of changing. In New York in 1921, the Health Commissioner said “that a report had been made to him that the Chinese restaurants were the cleanest in New York.”<sup>443</sup> The next year the Connecticut Department of Labor and Factory Inspection reported that “[t]he Chinese restaurant is a feature in all towns and it is clean in its kitchen, cleaner than many other sorts in its linen and gives a more varied menu at a lower price, invariably.”<sup>444</sup>

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

Broadway between Time Square and Columbus Circle was home to fourteen big ‘chop suey jazz places.’ One Chinese night club owner, a former Essex Street laundryman, supposedly wore a huge diamond ring, rode in an imported car, and squired around a bottle-blond burlesque dancer. In San Francisco, most of these new nightspots were in Chinatown . . . . Featuring all-Chinese singers, musicians, chorus lines, and even

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immigration raids on Chinese restaurants). As Judge Mackinnon explained, being Asian near a Chinese restaurant can be a component of probable cause:

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

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

<sup>443</sup> 3,000 *N.Y. Chinese in Protest Parade*, N.Y. HERALD, Sept. 17, 1921, at 6.

<sup>444</sup> STATE OF CONNECTICUT, REPORT OF THE DEPARTMENT OF LABOR AND FACTORY INSPECTION FOR THE YEAR 1921-22, at 132 (1922). *See also, e.g.*, CHARLES C. DOMINGE & WALTER O. LINCOLN FIRE INSPECTION AND UNDERWRITING (6th ed. rev. enl. 1948) (reporting that “CHINESE RESTAURANTS, generally speaking, are cleaner than the usual run of restaurants.”); Emanuel B. Halper, *Food Service Lease and Exclusive Use Clauses*, 32 REAL PROP., PROBATE & TRUST J. 455, 509 (1997) (“Chinese restaurants maintain a more attractive environment than most”).

strippers, clubs like the Forbidden City attracted a clientele of politicians, movie stars, and businessmen out for an exotic good time.<sup>445</sup>

Bob Hope, Bing Crosby, Ronald Reagan and other celebrities patronized the Forbidden City, a pioneering nightclub in San Francisco's Chinatown.<sup>446</sup> The first major Chinese cookbook was published in English in 1945; by then, Chinese food was tame enough to have around the house.<sup>447</sup>

And yet, unions had been absolutely right to fear that Chinese restaurants could be a Trojan Horse, an economic toehold giving the Chinese community a chance to grow. As Daniel Moynihan and Nathan Glazer noted in *Beyond the Melting Pot*, restaurants could be centers of economic activity for the larger community: "[t]he Chinese restaurant uses Chinese laundries, gets its provisions from Chinese food suppliers, provides orders for Chinese noodle makers."<sup>448</sup> In addition, a scholar explaining why Chinese Exclusion was partially repealed in 1943 explained that

[a]n important factor . . . was their entrance into characteristic occupations held as a natural monopoly, notably, the hand laundry and Chinese restaurant . . . This occupational specialization destroyed 'white' labor's fear of competition, while enjoyment of the Chinese cuisine and other services won for the "Celestial" the patronizing good-will, if not the friendship, of a substantial section of the American public.<sup>449</sup>

One lesson from the story is that Asian Pacific American legal history, and, for that matter, history, has been under-investigated. An important related point is that anti-Asian

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<sup>445</sup> ANDREW COE, CHOP SUEY: A CULTURAL HISTORY OF CHINESE FOOD IN THE UNITED STATES 189 (2009).

<sup>446</sup> Harley Spiller, *Late Night in the Lion's Den: Chinese Restaurant-Nightclubs in 1940s San Francisco*, 4 GASTRONOMICA No. 4 94-101 (Fall 2004).

<sup>447</sup> Charles W. Hayford, *Open Recipes, Openly Arrived at: "How To Cook And Eat In Chinese" (1945) And the Translation of Chinese Food / 食譜的開放與普及：《中國菜的烹調與食用方法》及其翻譯問題*, 45 J. ORIENTAL STUDS., No. 1/2 67 (2012).

<sup>448</sup> NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, *BEYOND THE MELTING POT: THE NEGROES, PUERTO RICANS, JEWS, ITALIANS, AND IRISH OF NEW YORK CITY* 31 (2d ed. 1970).

<sup>449</sup> FRED W. RIGGS PRESSURES ON CONGRESS A STUDY OF THE OF CHINESE EXCLUSION 29, 30 (1950). See also Ivan Light & Charles Choy Wong, *Protest or Work: Dilemmas of the Tourist Industry in American Chinatowns*, 80 AM. J. SOCIOLOGY 1342 (1975).

attitudes existed nationally. It is no surprise that Arizona, California, Montana, Oregon, and Utah targeted Asian economic activity; those states enacted, for example, laws prohibiting Asians from intermarrying with whites,<sup>450</sup> and owning land.<sup>451</sup> Given their animus, additional related actions were predictable. But Illinois, Massachusetts, Minnesota, Ohio, and Pennsylvania had no race-based miscegenation or land laws.<sup>452</sup> Yet, those states or cities within them carried on prolonged and creative anti-Chinese restaurant legal activities.

The phenomenon is also an example of what Douglas Ne Jaime has called winning through losing.<sup>453</sup> Unions and law enforcement declared war on Chinese restaurants, and the Chinese restaurants won. The innovative tool invented for the fight, banning white women from eating in Chinese restaurants, was enacted almost nowhere, and even at the time was likely illegal. Yet, as with state efforts to regulate immigration in our own time, the failure and even unconstitutionality of local measures did not make political impulses disappear, it channeled them to the branch and level of government with the power to act. The drumbeat of the economic and moral danger posed by Chinese restaurants (and other Asian activities) undoubtedly contributed to a climate in which Asian Exclusion could dramatically expand in 1917 and 1924. In resolution after resolution, argument after argument, the rationale for regulating Chinese restaurants was linked to national immigration policy.

Relatedly, it is an example of how legal ideas propagate. In this case, innovation occurred not through the National Conference of Commissioners on Uniform State Laws or the American Law Institute, but by labor organizations and the motivated private citizens who belonged to them.

The episode also helps explain the idea of Asian Americans. Of course, Chinese, Japanese, Koreans, Indians, and members of all other Asian national groups have different cultures and histories, often different languages, and sometimes distinct appearances. Yet, for legal purposes, they were often amalgamated, because the public perception of them was that they were all part of the same yellow peril.

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<sup>450</sup> Hrishi Karthikeyan & Gabriel J. Chin, *Preserving Racial Identity: Population Patterns and the Application of Anti-Miscegenation Statutes to Asian Americans, 1910-1950*, 9 *ASIAN L.J.* 1, 15 (2002).

<sup>451</sup> McGovney, *supra* note 10, at 7-8.

<sup>452</sup> *But see Committee Kills Bills Presented on Miscegenation: Detroit Negroes Elated over Failure of House to Get Vote*, *THE BROAD AX (UT.)*, Mar. 22, 1913, at 2 (“Agitation which resulted in the determination to press the inter-racial marriage prohibition began immediately after the Jack Johnson-Lucile Cameraon union, and received a local impetus when a Chinese restaurant keeper married a White girl.”)

<sup>453</sup> Douglas Ne Jaime, *Winning Through Losing*, 96 *IOWA L. REV.* 941 (2011).



Because Chinese restaurants were not in fact wiped out, one wonders how effective various techniques actually were systematically. But as applied to individuals, the denial of a license, or selective enforcement of a regulatory provision could be catastrophic. Accordingly, the widespread indications of animus and selective enforcement coupled with the absence of any suggestion that *Yick Wo* actions were successful is suggestive. Even with a group like Chinese merchants who sometimes had access to counsel, fighting a hostile city hall is hard.

News reports of regulation of Chinese restaurants indicate that the police have or had remarkably broad power. Even if it is clear that legislatures cannot make decisions based on race, it appeared that the police could use their discretion to exclude people from neighborhoods on the basis of race.

Even now, Chinese restaurants run for people of all races often by American-born U.S. citizens seem to contribute to the conceptualization of Asians as natural foreigners. During a moment of tension with China, “[a] radio station disc jockey in Springfield, Illinois suggested boycotting Chinese restaurants.”<sup>454</sup> In addition, it appears that Wen Ho Lee, a scientist of Chinese racial ancestry wrongly accused of spying for China may have been charged in part because of Chinese restaurants. One witness testified that “investigators had a subtle bias that the perpetrator had to be ethnic Chinese”; indications of bias included “noting something nefarious about the number of Chinese restaurants in Los Alamos.” Another witness quoted an investigator as saying “just the fact that there are five Chinese restaurants here meant that the Chinese government had an interest.”<sup>455</sup>

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<sup>454</sup> Bill Ong Hing, *Vigilante Racism: The De-Americanization of Immigrant America*, 7 MICH. J. RACE & L. 441, 447 (2002).

<sup>455</sup> Miriam Kim, Note, *Discrimination in the Wen Ho Lee Case: Reinterpreting the Intent Requirement in Constitutional and Statutory Race Discrimination Cases*, 9 ASIAN L.J. 117, 131–32 (2002).