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Civic Membership, Family Status, and the Chinese in America, 1870s–1920s

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Chinese women and children, or their advocates, brought many legal challenges to decrees denying them entry into the United States or seeking to deport them. Relying on more than 150 reported habeas corpus cases decided in West Coast federal courts between 1875 and 1924, we examine how courts helped to structure the rise of the administrative state through controversies involving the boundaries of citizenship, legal residency, and familial status. Cases involving those particularly vulnerable individuals whose statuses were conditioned upon their familial bonds helped to shape the meaning and scope of civic membership. Amid political conflict within institutions of the American state and increasing pressure to curtail immigration, the courts gradually ceded primary decision-making authority to administrative agents, legalizing the administrative state. However, courts continued to supervise what kinds of decisions administrators could make, what kinds of procedures administrators had to use, and what kinds of evidence had to be considered in order to render legitimate the exercise of administrative discretion. Chinese women and children seeking recognition of their citizenship or permanent residency posed what were perceived as moral and civic dangers to the family and the state. This rendered their direct rights claims less enforceable as administrators' authority to determine status expanded.

Keywords *political development; family; citizenship; Progressive Era; Chinese immigration to the United States; gender*

In this article, we will argue that controversies about whether Chinese women and children were entitled to citizenship or residence in the United States during the

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late nineteenth and early twentieth centuries highlighted struggles between courts and emerging institutions of the administrative state. These struggles concerned who had access to courts, which institutions would make status determinations, and who had the right to have rights that courts might acknowledge. Studying these struggles shows how contested meanings and disputes over family and civic membership contributed to state-building.

Our story hews somewhat to the familiar Progressive Era narrative of the administrative state wresting power from the courts: Congress passed increasingly restrictive immigration legislation, and federal administrative agencies gained increasing authority and discretion to make decisions about which Chinese immigrants and denizens could enter or remain and who would be excluded or deported. However, we emphasize here the courts' agency in this process and illustrate the ways in which dilemmas over the determination of status encouraged the development and legitimation of administrative apparatuses.¹ Our review of cases from the Supreme Court and the Ninth Circuit trial and appellate courts between the late 1800s and the early 1920s reveals how judges managed, and sometimes constrained, the growth of administrative decision making. Rather than ceding the terrain entirely, courts maintained authority over what decisions administrators could make, what procedures administrators had to use, and what evidence had to be considered in order to constitute the legitimate exercise of administrative discretion. In doing so, the courts acquiesced to Congress's efforts to expand and protect administrative agents' discretionary power, but they retained the power to determine the scope and reach of administrative authority and to oversee the rules that administrators would have to use for making these determinations. The courts thus contributed to the legalization of the administrative state.

We analyzed reported decisions concerning habeas petitions brought on behalf of Chinese women and children.² Chinese women and children seeking citizenship or permanent residency to which they were not *legally* entitled posed perceived moral and civic dangers that prompted *administrative* policy changes and solutions. Administrative agents' primary task was to determine the status of individuals seeking entry or citizenship. During the period from the 1870s and the 1920s, Congress, which was responding to popular pressure that was especially

1. See Stephen Skowronek, *Building a New American State* (New York: Cambridge University Press, 1982).

2. We investigate only reported opinions in Chinese habeas cases from California federal courts and Ninth Circuit and Supreme Court cases originating there. Many additional dispositions appear only in docket records. The reported opinions do not allow generalization about the success rate of petitions. Nonetheless, they show how federal courts established legal categories, defined rights' boundaries, and interpreted the Supreme Court's frameworks.

strong in Western states, supplied legislation that afforded administrators increasing scope to make these determinations.

One tends to think of constitutional change at the end of the 1800s as a battle over rights and their scope. Concerns over how to manage Chinese migration through policy, however, eventually settled into a struggle primarily over status and how it conferred or failed to confer rights. Direct rights claims became increasingly difficult to articulate in the face of debate over the authority of administrators to determine status. And as vexing as questions about rights were when they depended on determining an adult man's status, they became doubly problematic for women and children, whose status was often contingent upon administrators' determinations regarding the legitimacy of their claims about their familial relations. The courts supervised these administrative solutions and set out the parameters within which administrators would have the authority to make status determinations by deciding how well individual Chinese immigrants and denizens fit judicial conceptions of family membership. As these conversations progressed, courts and administrative decision makers seemed to be increasingly unwilling to attribute the attachment and civic membership implied in familial relationships – under what McDonagh describes as the republican motherhood frame – if the families themselves were not sufficiently in tune with norms of exclusivity and national geographic stability.³

In the next section, we outline the framework established to manage Chinese migration. Then we address how rules shifted, allowing more administrative management and defining administrative discretion. We examine the administrative state's legalization through judicial opinions that established legitimate administrative practice and the threshold questions that would determine the location of binding authority over a person of questionable status. Struggles over family status and civic membership thus helped to build the legalized administrative state.

Background Legal Framework and Habeas Challenges

The motivations that drove the rapid development of restrictions on Chinese migration and residency were both racial and economic. Anti-Chinese sentiment

3. See Eileen McDonagh, "The Family-State Nexus and American Political Development: Explaining Women's Political Citizenship," *Polity* 48 (2016): 186–204. See also McDonagh, *The Motherless State: Women's Political Leadership and American Democracy* (Chicago: University of Chicago Press, 2009); Linda Kerber, "The Republican Mother: Women and the Enlightenment – An American Perspective," *American Quarterly* 28 (1976): 187–205. Note also that the suspicions with which fact finders viewed alleged Chinese familial bonds likewise undermined the implied benefits to the polity of republican motherhood, which presumed that legitimate American families would imbue their children with American values.

was an important spur to labor organizing in San Francisco in the 1870s and 1880s.⁴ Employers' practices, including the use of immigrant laborers as strikebreakers, fueled organized labor's hostility to new immigrant labor.⁵ Anti-Chinese sentiment also helped to shape unions' organizing strategy (protecting jobs against newcomers), as well as their outward-looking political strategy, which included pressing for legislative reform. The immigration question politicized the labor movement and nationalized labor politics.⁶ Organized labor's political argument spoke in terms of "the corruption by new immigrants of American virtues, standards, and traditions."⁷

As activists sought a political remedy for the problem of unregulated immigration, the gains they made in the legislature were at first rebuffed in the courts. The California Supreme Court struck down a number of early measures passed by the state legislature to tax or limit Chinese immigration, claiming that this was properly a power of the national government. The U.S. Supreme Court affirmed that immigration regulation was a power of the national government alone, while leaving undetermined where health and safety warranted the exercise of state police power. In addition, the Supreme Court struck down California measures enacted in 1866 and 1870 to ban the immigration of Chinese females.⁸ While frustrated with the courts, opponents of Chinese immigration had more success with Congress, which passed the Page Act in 1875, accomplishing some of the same purposes of California's bans on the importation of prostitutes. Pressure for more extensive federal regulation of Chinese entry persisted, leading to new rounds of legislative action.

Privileged expertise, too, helped frame the immigration issue in the Progressive Era. Experts "breath[ed] life into a dominant immigration narrative that resolv[e]d competing 'causal stories' and help[ed to] shape concrete policy responses."⁹

4. Gwendolyn Mink, *Old Labor and New Immigrants in American Political Development* (Ithaca, N.Y.: Cornell University Press, 1986), 72.

5. See Michael Goldfield, *The Color of Politics: Race and the Mainsprings of American Politics* (New York: New Press, 1997); Herbert Hill, *Black Labor and the American Legal System* (Washington, D.C.: Bureau of National Affairs, 1977) on the exploitation of racial divisions in the labor force. Use of immigrant and black labor as strikebreakers was especially pronounced in anthracite coal mining, steel, and textiles; and Mink, *Old Labor and New Immigrants*, 41 (see note 4 above).

6. Mink, *Old Labor and New Immigrants*, 73, 51 (see note 4 above).

7. *Ibid.*, 53.

8. Several federal court decisions struck down California laws measures such as head or capitation taxes dating from the 1850s, and others struck down San Francisco ordinances. A few important examples were *People v. Downer*, 7 Cal. 169 (1857) (striking down the 1855 capitation tax); *Lin Sing v. Washburn*, 20 Cal. 534 (1862) (striking down efforts to protecting white labor from coolie labor); *In re Ah Fong*, 1 F. Cas. 213 (C.C.D. Cal. 1874) (striking down the state ban on importation of Chinese women for purposes of prostitution); and *Chy Lung v. Freeman*, 92 U.S. 275 (1875) (affirming that any such power resided with the federal government).

9. Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton, N.J.: Princeton University Press, 2002), 9.

As Daniel Tichenor argues, non-incremental policy change must be understood in part through “the privileging of fresh expertise by the nation state” in the rationalization of new policy departures.¹⁰ Emerging elites contended that expertise and administrative leadership would counteract the ill effects of political parties, which were seen as mobilizing immigrant and ignorant voters. Newly professionalizing scientists, social scientists, social workers, and lawyers were important in pressing a vision of a new American state that was centered on administration by professionals. They were part of a constituency that worked to combat what were seen as the insidious effects of party and the newer working-class immigrants.¹¹ As immigration from southern and eastern Europe contributed to rising anti-immigrant sentiment, questions about immigrants’ suitability for American residence and/or citizenship were linked to thinking about racial differences.¹² Imbecility, criminality, tendency to disease, and lack of capacity for self-support all became racialized, and the incentives to move regulation of these phenomena into the administrative sphere were strong.

From the Page Act in 1875 to the National Origins Act of 1924, policy makers increasingly regulated the entry of persons of Chinese origin seeking to come to, return to, or remain in the United States. The Page Act, aimed at prostitutes and coolie labor, targeted the Chinese, as did the Chinese Exclusion Acts passed in 1882 and later years. The Chinese Exclusion Acts of 1882 placed a 10-year moratorium on the entry of Chinese laborers. The 1892 Geary Act required Chinese to acquire and carry certificates of residence and authorized the arrest and deportation of those lacking documentation. The Immigration Act of 1891 shifted administration to the federal government, created the Bureau of Immigration, and lodged the Chinese Exclusion Act’s administration in the Treasury Department. Collectors of customs became the decision makers admitting or denying Chinese arrivals in the United States.¹³ This system prevailed until the passage of the National Origins Act in 1924, which barred Asians and Pacific Island residents from immigrating.

The Page Act restricted the entry of prostitutes, felons, and unfree labor (as coolies were considered) into the United States.¹⁴ Alleged Chinese prostitutes were classified as undesirables rather than criminals, which gave them fewer rights

10. *Ibid.*

11. Skowronek, *Building a New American State*, 42 (see note 1 above).

12. See Tichenor, *Dividing Lines*, 12–13 (see note 9 above); Desmond King, *Making Americans: Immigration, Race, and the Makings of a Diverse Democracy* (Cambridge, Mass.: Harvard University Press, 2000), 51.

13. Congressional Research Service, *Report for the Select Commission on Immigration and Refugee Policy*, “History of the Immigration and Naturalization Service” (Washington, D.C.: United States Government Printing Office, 1980), 8–11. The Bureau of Immigration shifted to the Department of Commerce and Labor in 1903 and to the new Department of Labor in 1913.

14. Lucy Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995), 131.

than the latter. By the 1920s, even prostitutes who claimed U.S. citizenship could be summarily deported. Congress also denied entrance to active practitioners of polygamy in 1891 and excluded those admitting belief in the practice in 1907.¹⁵ The anti-polygamy fervor included Muslims and Mormons, but Chinese women were particularly suspected of involvement in polygamy or prostitution, which affected the perceived legitimacy of Chinese unions and offspring. As Gwen Alphonso's work illustrates, images of family provide frames for politics, and they also structure partisan alignments. Efforts by Chinese migrants and residents to secure rights on the basis of familial relationships clashed with political efforts to leverage exclusion, since politicians and policy makers were deeply suspicious about the genuine nature of these relationships and about Chinese immigrants' attachment to American familial norms and values. Rather than contributing to and driving policy differentiation between political parties, the efforts by Chinese immigrants to establish their families on the West Coast generated strong consensus around the development of administrative solutions to the problem.¹⁶

Family has long been a core value in American immigration policy,¹⁷ shaping immigration laws from their national inception as early as 1875. Statutes governed the admission of adult Chinese men, but women and children attempting to enter or remain as family members often faced a layered inquiry requiring determination both of their status and of the status of the men to whom they were attached. When Chinese faced orders of deportation or exclusion, they challenged the orders by filing habeas petitions. The judicial inquiry that these petitions triggered generated tension between the rights framework of habeas corpus, and the legislatively established status framework that Congress had intended to manage some aspects of immigration policy.

For all Chinese, status mattered. Independent Chinese men had to acquire certification to establish themselves either as merchants or permitted laborers, since the law distinguished between laborers and merchants as early as 1882; however, administrative process could change their status. A woman classified as a Chinese laborer who lacked proper certification (which was rarely available), faced exclusion. However, women could also claim residency based on their husbands' classifications. Habeas cases could therefore allege a woman's right to enter or stay based on her familial connection to a man with the appropriate status. Courts inquired about what constituted adequate proof of marriage, how to determine the status of the man to whom a woman was connected, and whether a man's changing status could change his wife's status. Lawmakers and policy

15. Immigration Act of 1907, 34 Stat. 898, Chapter 1134 Sec. 2, February 20, 1907.

16. Gwen Alphonso, "Resurgent Parenthood: Organic Domestic Ideals and the Southern Family Roots of Conservative Ascendancy, 1980–2005," *Polity* 48 (2016): 205–23.

17. See Patricia Strach, *All in the Family: The Private Roots of American Public Policy* (Stanford, Calif.: Stanford University Press, 2007).

interpreters considered what kinds of marriages to recognize and what kinds of children to privilege.

Chinese immigrants aggressively filed habeas corpus petitions in order to extricate individuals from detention and overturn orders of deportation.¹⁸ From 1891 to 1905, district and circuit courts heard more than 2600 habeas cases filed by Chinese seeking to land or remain in the United States.¹⁹ The federal courts were willing to hear such petitions, sometimes despite statutory language that limited their jurisdiction or lodged final power in an appeal to an executive branch official. Their willingness illustrates that courts understood themselves to have the power to manage their own obligations and discretionary authority and were willing to push back against what they viewed as administrative incursions and constitutional transgressions. While generally upholding federal laws that prevented the entry of Chinese immigrants and supporting administrative decisions mandating the removal of many Chinese litigants, federal court judges also questioned detention and deportation decisions on grounds that included procedural fairness and due process. Courts reinforced their own status as the institutions that defined their own power and that of administrative agencies. They articulated the legal framework within which administrative decisions were made and legitimated.

Litigation Involving Women's Status

Cases reported between 1874 and 1891 addressed two major issues: how women would fit into the new legislative frameworks, and where the boundaries between state and federal authority sat.²⁰ The courts quickly cemented authority at the national level. The Supreme Court and lower federal courts denied states the authority to interpose their own regulatory regimes to deal with Chinese immigration and immigrants. Defining who could enter the United States and remain there proved more challenging. When federal laws and policies that were designed to limit the influx of Chinese resulted in the detention of Chinese women who believed they should be permitted to enter or remain in the United States, case law established how to apply these laws and policies. The courts also tried, unsuccessfully, to limit litigation.

In 1884, California's circuit court tackled some of these questions. Under the new rules that disfavored laborers, entry for both laborers and merchants required procuring the necessary certificate, even if the party in question had been in the

18. When men initiated habeas petitions claiming ownership of young women as servants (who were likely intended for prostitution), the young women winning freedom through a writ of habeas corpus were often anything but free.

19. Salyer, *Laws Harsh as Tigers*, 34 (see note 14 above). Salyer located thousands of additional cases in docket books of the Federal District Court for California.

20. *In re Ah Fong*, 1 F. Cas. 213, 216 (C.C.D. Cal. 1874).

country previously. The court noted that “the wife or minor child of a man of the Chinese race entitled to come to the United States...is a ‘Chinese person’” and therefore could enter freely if they held their own independent certificate.²¹ However, if entrants could not establish their entitled status, they could rely on a husband’s or father’s status – if the husband or father had identified them, provided appropriate justification, and obtained official certification for them through his certification process.²²

After this initial period (1874–1891), courts and administrators established ground rules and processes arising from the federal statutory mandates. However, these combined efforts to clarify federal policy – by limiting the scope of Chinese immigration and empowering administrators to make independent and authoritative status determinations – ultimately failed in their attempt to drastically limit the courts’ need to consider habeas cases.

In the next phase, between 1892 and 1900, courts addressed how status affected the operation of these statutes with respect to women and children. Courts also addressed the issue of when judges would determine the critical issue of status. Statutory reforms allowed judicial challenges of administrative determinations, raising interpretive questions about how status functioned as a threshold issue for access to civic rights through the habeas process. Consider Gue Lim, who sought relief based on her status as a wife of a merchant, although she lacked the required independent certificate of registration. The judge ruled that the congressional statute was not designed to exclude “Chinese merchants with their families,” as it intended to support American commerce with China, thereby benefiting Americans.²³ The ruling emphasized the courts’ authority to interpret status and dependency, mandating judicial determination of the line between laborers and merchants. Courts also determined what constituted a valid Chinese marriage for immigration purposes,²⁴ and they privileged judicial decision making over administrative rulings in cases where a judge had previously determined an individual’s status.²⁵ Administrative findings prevailed if they met judicial standards,²⁶ but these standards were weaker than ordinary due process guarantees.²⁷

Between 1901 and 1910, a new administrative environment driven by federal statutory reform gave the federal Commissioner General of Immigration

21. *In re Ah Quan*, 21F. 182, 186 (CC D. Cal. 1884).

22. *Ibid.* See also *In re Chung Toy Ho and Wong Choy Sin*, 42F. 398 (D. Ore. 1890).

23. *United States v. Gue Lim*, 83 F. 316, 140 (D. Wash 1897) at 140.

24. *In re Lum Yin Ling*, 59 F. 682, 683 (D. Ore. 1894) at 683.

25. *United States v. Chung Shee*, 66 F. 953 (N.D. Cal 1895); *United States v. Chung Shee*, 76 F. 951 (9th Cir. 1896). Likewise *In re Gut Lun*, 84 F. 323 (N.D. Cal. 1897) upheld an Arizona ruling against a woman it had determined to be a laborer lacking a certificate.

26. See *United States v. Lao Sun Hu*, 85 F. 422 (N.D. Cal. 1898).

27. *In re Lee Lung*, 102 F. 132 (D. Ore. 1900).

consolidated power to enforce the Chinese exclusion laws.²⁸ Courts emphasized administrative discretion in making status determinations, and of the nine opinions about women's status in this period (concerning three wives and six alleged prostitutes), in only two were writs granted allowing entry, and one of these was overturned on appeal. The courts largely rejected litigants' attempts to challenge the commissioners' decisions through claims of inadequate evidence, and they rejected mere claims that legal residence or citizenship could be the basis for greater procedural protections or more substantive rights. The courts did, however, understand marriage to be a "trumping" status, ruling, for instance, that a female laborer who married a merchant with residency could remain because her deportation would implicate her new husband's rights as well as hers.²⁹

Questionable wifely status was different. In two cases, a woman's claim of marriage to an American citizen did not free her from the jurisdiction of either the Department of Commerce and Labor or the Commissioner of Immigration.³⁰ Under the Geary Act, the Ninth Circuit Court of Appeals ruled that "a proceeding may be instituted before a commissioner,"³¹ placing the burden of proof on the Chinese person to prove facts supporting the right to remain in the United States, rather than requiring the United States to establish conclusively that the Chinese person could be deported or denied entry.³²

Over time, opportunities for successful appeals of deportation orders narrowed as legislative changes limited courts' jurisdiction and public concern about Chinese prostitution increased, leading to judicial interpretive tightening. In the first of two Ninth Circuit cases addressing prostitution in 1902, the court found that, whatever the woman in question was, she was not a merchant and could be deported.³³ In the second opinion, engagement in prostitution classified a woman as a laborer, enabling deportation.³⁴ In 1907, Congress excluded prostitutes from entering the United States, and also demanded the deportation of "any alien

28. In 1900, authority for implementing the Chinese exclusion laws and attendant federal regulations shifted from the Customs Service to the Office of the Superintendent of Immigration (then in the Treasury Department).

29. *Tsoi Sim v. United States*, 116 F. 920, 925 (N.D. Cal. 1902).

30. *Hoo Choy v. North*, 183 F. 92 (9th Cir. 1910); *Haw Moy v. North*, 183 F. 89 (9th Cir. 1910).

31. *Fong Mey Yuk v. United States*, 113 F. 898 (9th Cir. 1902).

32. *Fong Mey Yuk v. United States*, 113 F. 898 (9th Cir. 1902). The Ninth Circuit Court of Appeals applied this ruling when Yee N'Goy objected that the commissioner lacked jurisdiction over her as a legal resident. The court confirmed that, without a certificate of registration, she had to prove her right of residence. *Yee N'Goy v. United States*, 116 F. 333 (9th Cir. 1902).

33. *Lee Ah Yin v. United States*, 116 F. 614, 615–16 (9th Cir. 1902).

34. *Wong Ah Quie v. United States*, 118 F. 920 (9th Cir. 1902). A Washington district court sympathized with her flight from prostitution by entering a marriage, likely arranged by a benevolent society. The court rejected the deportation order; it was reinstated by the circuit court. *United States v. Ah Sou*, 138 F. 775 (9th Cir. 1905).

woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution" within three years of her entry, even if her initial entry was legal.³⁵ The Ninth Circuit Court of Appeals rejected two appeals involving suspected prostitutes in 1909 and 1910 that turned on the sufficiency of the evidence, upholding administratively ordered deportations.³⁶

Perhaps reacting to the trajectory of public sentiment and Congress's implicit expression of disapproval through its limits on their jurisdiction, the courts became increasingly unwilling to question the sufficiency of evidence supporting deportation, whether a judge or administrative agent had weighed it. Resident Chinese women's legal status was never secure; they were always subject to administrative inquiries about whether their current or past status warranted deportation. While women were particularly scrutinized upon any hint of involvement in prostitution, they potentially faced administrative review of their legal status at any time, and as pressure to restrict immigration grew, they had increasing difficulty in interposing effective claims about rights in order to question administrative decisions about status.

Between 1911 and 1919, women suspected of prostitution faced deportation through challenge to their initial entry, even if they had lived a long time in the United States. They were simply undesirables. Some women entered the country as wives, but their marriages were questioned long after they had arrived. Without status as legitimate wives who were borrowing their husbands' status as citizens or legal residents, women had few legitimate grounds for establishing U.S. residency. Hence, widows or women who had been abandoned by their husbands were at risk. Courts decided when women could challenge adverse determinations of their wifely status, outlining the administrative boundaries of legitimate procedure and limiting the women's rights to independent judicial review.

Absent egregious procedural violations, Chinese women accused of prostitution found little refuge in the courts.³⁷ Women who resisted deportation by claiming marriage also had to show that there had been a procedural error.³⁸ While the administrative proceedings did not need to meet ordinary due process standards, the Ninth Circuit Court of Appeals ruled that if a deportation proceeding

35. 34 Stat. 898, February 20, 1907.

36. *Looe Shee v. North*, 170 F. 566 (9th Cir. 1909). The Supreme Court invalidated the statute's criminal penalties in *Keller v. United States*, 213 U.S. 138 (1909) as exceeding Congress's authority. See also 179 F. 110, 112 (9th Cir. 1910).

37. *Chu Tai Ngan v. Backus*, 226 F. 446, 447 (9th Cir. 1916). But see *Chan Kam v. United States*, 232 F. 855 (9th Cir. 1916), reversing the order; her statement was taken when she was in jail and not represented by counsel.

38. In *Ex parte Ung King Jeng*, 213 F. 119, 121 (N.D. Cal. 1914), the woman was forbidden to cross-examine four witnesses. See also *Low Kwai v. Backus*, 229 F. 481 (9th Cir. 1916), finding improper delegation to a local immigration commissioner.

had relied on confidential communications, denied the opportunity to cross-examine witnesses, or had not disclosed confidential evidence, this could undermine its legality.³⁹ However, the courts required appellants to show that the proceedings were manifestly unfair, or that executive officers had prevented a fair investigation or seriously abused their discretion.⁴⁰ Showing that there had been a lack of counsel at a preliminary examination or that evidence had come from an illegal search would not support reversal.⁴¹ Even claiming birthright citizenship did not help. The Ninth Circuit Court of Appeals found that a woman's being charged as a prostitute triggered immigration officials' jurisdiction, thereby overriding rights that would ordinarily accrue to citizens: "the burden of proof is not shifted upon the United States by the fact that the appellant claims to be a citizen of the United States."⁴² Rather, policy makers and courts appeared to agree that the nation's duty to protect against an influx of prostitutes and suspected prostitutes warranted expedient and restrictive action.

Wives who were not suspected of prostitution also struggled to remain in the United States, especially when they experienced a change of status; only if the inspectors blundered procedurally did women sometimes succeed.⁴³ However, courts occasionally made pragmatic rulings benefitting wives, as in the case of Chan Shee, who offered proof of two separate marriages, one conducted after deportation proceedings had been initiated. The district court ordered her admission: even if she were deported, "she could return upon the same boat, with full right to enter as the unquestionable wife of a domiciled merchant."⁴⁴ This case, however, was an outlier; the outcome was likely driven primarily by a general judicial interest in conserving institutional resources by forestalling future disputes that would have obvious winners and losers.

In the second decade of the twentieth century, the balance of reported cases shifted toward deportation over exclusion, often involving women who had been in the United States for some time. While inspectors and commissioners had to follow the statutory procedures, in the face of an even higher tide of anti-immigrant sentiment, courts increasingly signaled they would not demand high standards or rigorous due process. As long as Chinese women had formal (if impractical) opportunities to call and cross-examine witnesses and to consult attorneys, orders of exclusion or deportation were largely safe from reversal.

39. *Chew Hoy Quong v. White*, 249 F. 869, 870 (9th Cir. 1918).

40. *Choy Gum v. Backus*, 223 F. 487 (9th Cir. 1915).

41. *Jung Back Sing v. White*, 257 F. 416 (9th Cir. 1919); *Tsui Shee v. Backus*, 243 F. 551 (9th Cir. 1917).

42. *Chin Ah Yoke v. White*, 244 F. 940, 942 (9th Cir. 1917). See also *Tsui Shee v. Backus*, 243 F. 551 (9th Cir. 1917).

43. In *Ex parte Tsui Shee*, 218 F. 256 (N.D. Cal. 1914), the wrong administrative official heard the appeal. See also *Mah Shee v. White*, 242 F. 868 (9th Cir. 1917).

44. *Ex parte Chan Shee*, 236 F. 579 (N.D. Cal. 1916).

The outcomes for Chinese women between 1920 and 1925 were harsh. In seven reported cases, only one woman successfully resisted deportation.⁴⁵ Opinions illustrated the changed legal environment, facilitating the identification and removal of undesired residents and making it harder for Chinese people to enter or remain in the United States. The courts only grudgingly admitted Chinese family members.⁴⁶ The Ninth Circuit Court of Appeals emphasized Congress's discretion when interpreting new legislation that changed the rules for legal residents *post hoc*; claims of procedural irregularity were less successful.⁴⁷ Court rulings broadly legitimated administrative decision making as long as it complied with the (generously defined) parameters for administrative discretion that the courts had established. At this point, administrative officials held the authority, with very little oversight, to determine status and make decisions about individuals' rights to enter or remain in the country on that basis.

But Congress determined that even the stricter standards and increased suspicion implemented through the 1917 Asiatic Barred Zone Act and the 1921 Emergency Quota Act were insufficient to address fears about immigration. The tough Immigration Act of 1924 required visas from a U.S. consulate in China for wives and children of merchants and citizens. The Northern District of California confronted this requirement in a case involving multiple detained individuals who sought entry based on their status without the visas. The court rejected the merchants' wives' and children's claims that they had the right to enter the United States based on treaties with China. It held that congressional regulation, not treaties, determined the entry rights of non-citizens. Even for merchants, family ties alone could not forestall "the right of a sovereign state to dictate...what alien persons shall be permitted to come within its territorial boundaries."⁴⁸ Wives and children of citizens could have entered if the husbands had obtained proper visas. But lacking the visas, they had no right to enter.⁴⁹ The Ninth Circuit Court's 1924 decree upholding an alleged wife's deportation illustrated tighter standards: "The executive department has acted within its powers, and the courts will not interfere."⁵⁰

45. In one case, marriage under Hawaiian territorial law was deemed sufficient to secure a woman's status. *Halsey v. Ho Ah Keau*, 295 F. 636, 637 (9th Cir. 1924).

46. *Chan Gai Jan v. White*, 266 F. 869 (9th Cir. 1920); *Wong Wing Sing v. Nagle*, 299 F. 601 (9th Cir. 1924).

47. That is, Chin Shee objected that the Asiatic Barred Zone Act of 1917 was passed after she had gained resident status; in response, the Ninth Circuit Court of Appeals emphasized Congress's discretion "to exclude or expel aliens, or any class of aliens." *Chin Shee v. White*, 273 F. 801, 809 (9th Cir. 1921). See also *Chun Shee v. Nagle*, 9 F. 2d 342, 343 (9th Cir. 1925).

48. *Ex parte Cheung Sum Shee*; *Ex parte Chan Shee*, 2 F.2d 995, 997, 998 (N.D. Cal. 1924).

49. Contrast with Chan Shee – 236 F. 579 (N.D. Cal. 1916) – who could remain because she could simply get the appropriate wifely certification and re-enter the country.

50. *Leong Shee v. White*, 295 F. 665, 667 (9th Cir. 1924).

Over the years covered in our investigation, courts increasingly declined to interfere with the results of administrative hearings, as Salyer has shown. Wifely status no longer protected residents and immigrants, and those suspected of prostitution had even fewer protections. By 1925, Chinese women could never rest assured of their right to enter or remain in the United States, and it was evident that the courts largely would not defend them. Their status, which determined their access to rights, was now almost fully in the hands of administrators, who might question it for a variety of reasons based on the slimmest reeds of suspicion.

Jus Soli and Jus Sanguinis

The relationship between rights and status, as it played out in the context of familial ties, was central in cases involving children's challenges to orders of exclusion or deportation but worked out somewhat differently than in the cases involving women. Most women's capacity to enter or remain in the United States depended upon establishing their status based on their familial ties, although the statutes allowed them to have independent status as laborers. And for women, access to rights depended with increasing strictness upon the prior determination of their status. For children in the early portion of the period we are considering, the place of birth or identification of citizen parents could establish individuals as potential rights claimants. In the 1880s, courts set a pattern for handling *jus soli*⁵¹ citizenship cases. Justice Field, writing for the Ninth Circuit Court of Appeals, held that, even absent the certificate required by a law that had passed during a boy's sojourn in China, he was clearly "subject to the jurisdiction" of the laws of the United States through the Fourteenth Amendment. Both parents, including his merchant father, had resided in Mendocino for 20 years, and the boy's birth in the United States was undisputed. He could not be barred from re-entry unless he had been convicted of a crime. Field noted that the principle of birthright citizenship pre-dated the Fourteenth Amendment.⁵² Matthew Deady agreed for the Oregon Circuit Court soon afterward: the Fourteenth Amendment codified common law, whereby the status of citizen, "once acquired, can only be lost or changed by the act of the party when arrived at majority, and the consent of the government."

51. The United States recognizes two forms of birthright citizenship: *jus soli*, or citizenship premised on an individual's birth on American soil, and *jus sanguinis*, or citizenship premised on an individual's biological descent from an American citizen parent. Children of Chinese could claim citizenship on either basis, although, as this discussion will explain, Chinese children's access to *jus soli* citizenship was controversial.

52. *In re Look Tin Sing*, 21 F. 905 (C.C. D. Cal. 1884), citing an 1819 ruling in which a daughter born to two aliens in the United States was adjudged a citizen.

The status of an American-born child of a Chinese couple legally within the United States did not depend on the “political *status* or condition of its parents.”⁵³

Similarly, two 1888 cases held that the Chinese Exclusion Acts did not apply to citizens, even if the parents were laborers who had since relocated to China.⁵⁴ The Ninth Circuit Court of Appeals, acknowledging these precedents, insisted that “no act of Congress can be understood or construed as a bar to” a judicial determination through the habeas process of a case involving someone claiming to be a natural born citizen.⁵⁵ These cases laid the groundwork for the eventual success of constitutional claims that *jus soli* citizenship was a right, but individuals’ ability to claim this right was not always certain. *Jus soli* citizenship appeared on the surface to incorporate a liberal frame for citizenship that inferred individual attachment to the nation based on birth within its borders, but concerns about Chinese potential for integration into culture and society rendered the children of Chinese, even if born on American soil, subject to additional scrutiny based on familial ties.⁵⁶

The landmark Supreme Court case of *Wong Kim Ark* (1898) constitutionally established that children born on U.S. soil to Chinese immigrants were citizens, yet many individuals claiming citizenship on this basis nevertheless faced exclusion or deportation, filing habeas petitions to secure their civic rights. Wong Kim Ark, a Chinese laborer’s son born in San Francisco in 1873, resided with his parents until they returned to China in 1890. That year, he briefly visited China and returned without incident; he was denied re-entry after an 1894 visit. The California District Court reluctantly endorsed his admission, because neither governing precedent nor the common law understanding of citizenship had been repudiated by a higher court. Only executive action, not judicial fiat, could reverse the existing common law principle that extended citizenship to individuals born in the United States.⁵⁷

The United States appealed this ruling, but lost before the Supreme Court. Justice Gray, writing for the majority, explained that when the Fourteenth Amendment was adopted, international law did not contradict the ancient rule of citizenship by birth within the dominion, and “it is the inherent right of every independent nation to determine for itself and according to its own constitution and laws what classes of persons shall be entitled to its citizenship.”⁵⁸ Thus, the Fourteenth Amendment’s language extending citizenship to those born on

53. *Ex parte Chin King; Ex parte Chan San Hee*, 35 F. 354, 355–56 (C.C. D. Ore. 1888); emphasis in the original (at 355).

54. *In re Wy Shing* combined with *In re Wong Gan*, 36 F. 553 (C.C. N.D. Cal. 1888).

55. *Gee Fook Sing v. United States*, 49 F. 146 (9th Cir. 1892). However, the court refused to declare clear error in a finding of fact; at the petitioner’s district court hearing, only Chinese witnesses testified about his place of birth.

56. See McDonagh, “The Family-State Nexus” (see note 3 above).

57. *In re Wong Kim Ark*, 71 F. 382, 384, 392 (1896).

58. *United States v. Wong Kim Ark*, 169 U.S. 649, 667–68 (1898); quote at 668.

American soil was well within the nation's authority to implement, and any individuals born in the United States could claim citizenship as an entitlement on this basis.

Nevertheless, immigration officials and even courts often viewed Chinese people born in the United States as “accidental citizens” – citizens by technicality alone.⁵⁹ “Paper sons” who fraudulently claimed relationships with Chinese American fathers in order to circumvent immigration restrictions attracted suspicion, and officials aggressively demanded proof of those who claimed birthright citizenship. According to the Geary Act, when a person of Chinese descent was found to be unlawfully within the United States, that person bore the burden to satisfy the relevant justice, judge, or commissioner of his lawful right to remain – a principle that applied to purported citizens as well as to individuals claiming legal residency.⁶⁰ This generated tension between the Fourteenth Amendment's definition of birthright citizenship as a constitutional entitlement and Congress's creation of administrative discretion to determine status. By 1905, “published government guidelines instructed immigration officials to judge Chinese applicants ‘excludable until they could be proven otherwise.’”⁶¹

At the end of the nineteenth century, court opinions increasingly sustained administrative decisions to deny entry in cases involving alleged birthright citizens who had lived for a long time outside the United States (as a number of children of Chinese parents did). The courts found that mere allegations of citizenship did not warrant rigorous judicial review.⁶² For a girl who had left the United States at a very early age, though purportedly born there, the Ninth Circuit Court of Appeals claimed that the real question was “whether the evidence is so clear and satisfactory upon that point as to authorize this court to say that the [lower] court erred in refusing her to land.” In her case, the circuit court answered this question in the negative.⁶³ Upholding another young woman's deportation in 1901, this court underscored that although lower tribunals could not arbitrarily reject the testimony of Chinese witnesses, they had wide discretion in determining witness credibility.⁶⁴ Judges also disapproved of what they saw as attempts by Chinese

59. Salyer, *Laws Harsh as Tigers*, 208–09 (see note 14 above) on technical citizens; on accidental citizens, see Kristin A. Collins, “Illegitimate Borders: *Jus Sanguinis* Citizenship and the Legal Construction of Family, Race, and Nation,” *Yale Law Journal* 123 (2014): 2134–2235, at 2172–73.

60. *United States v. Chun Hoy* 111 F. 899, 901 (9th Cir. 1901). See also *Chew Hing v. United States* 133 F. 227 (9th Cir. 1904).

61. Collins, “Illegitimate Borders,” 2172 (see note 59 above); Erika Lee and Judy Yung, *Angel Island: Immigrant Gateway to America* (New York: Oxford University Press, 2010), 84–90; quote at 85, citing Rule 7 from U.S. Department of Commerce and Labor, Bureau of Immigration, “Treaties, Laws, Regulations Relating to the Exclusion of Chinese,” May 1905, 47. Wong Kim Ark himself faced suspicion upon his subsequent reentries; see Lee and Yung, *Angel Island*, 84.

62. *In re Louie You*, 97 F. 580, 581 (D. Ore. 1899). *Gee Fook Sing* (1892) reached a similar result.

63. *Lee Sing Far v. U.S.* 94 F. 834, 836 (9th Cir. 1889).

64. *Woey Ho v. United States* 109 F. 888, 890 (9th Cir. 1901).

petitioners and their lawyers to game the judicial system by “finding” additional necessary evidence after a determination had been made.⁶⁵

In 1905, Justice Holmes, writing for a seven-member majority in *United States v. Ju Toy*, found that even if the Fifth Amendment applied to a person who had been stopped at the border, executive decisions could meet its due process standards. A mere claim of citizenship was insufficient to trigger judicial review prior to application of the administrative machinery of exclusion. The majority relied on precedents upholding unquestioned executive authority in determining non-citizens’ status.⁶⁶ Nevertheless, the Supreme Court retained some oversight of administrative determinations in habeas cases involving birthright citizenship claims. In 1908, the Court granted a writ of habeas corpus for the limited purpose of determining whether “a hearing properly so called was denied” in a case in which a male was forbidden to obtain testimony or provide witnesses who supported his claim of birthright citizenship.⁶⁷

The *Ju Toy* decision influenced how the Ninth Circuit dealt with jurisdictional matters in birthright citizenship cases. The ruling produced an environment in which lower courts increasingly allowed deportations of detainees who purported to be American citizens, refusing to second-guess the conclusions that lower courts and commissioners reached based on evidentiary hearings in the absence of a clear record of arbitrary decision making.⁶⁸ As one court summarized the core principle, when executive officers found that individuals were not native-born citizens, “such action should be treated by the courts as having been made by a competent tribunal, with due process of law, and as final and conclusive, in the absence of a showing that there was abuse of discretion on the part of such executive officers.”⁶⁹ Deference to fact finding done elsewhere remained marked until the first World War. Judges repeatedly emphasized the heavy burden of proof upon the Chinese; only clear evidence of an incorrect conclusion would suffice.⁷⁰ Thus, administrators had wide latitude to determine status and effectively close off access to independent judicial determination for individuals who claimed citizenship by virtue of birth in the United States.

For those claiming birth on American soil and those claiming entry as sons or daughters of citizens, the Ninth Circuit seems to have become slightly more concerned with procedural fairness during and after the World War. In 1917, an

65. *Lee Sing Far v. U.S.* 94 F. 834, 835 (9th Cir. 1889).

66. *United States v. Ju Toy* 198 U.S. 253, 263 (1905).

67. *Chin Yow v. United States* 208 U.S. 8, 13 (1908).

68. Even Justice Field, who embraced Fourteenth Amendment birthright citizenship in 1884, supported administrative denials of landing and lower courts’ denials of writs of habeas corpus amid questionable evidence. See *Quock Ting v. United States* 140 U.S. 417 (1891).

69. *In re Tang Tun* 168 F. 448, 490 (9th Cir. 1909). See also *In re Can Pon*, 168 F. 479, 483 (9th Cir. 1909).

70. *Lee Yuen Sue v. United States*, 146 F. 670, 671, 673 (9th Cir. 1906). One 1915 case found clear error—that of *Backus v. Yep Kim Yuen* 277 F. 848 (9th Cir. 1915).

appellate panel found that inconsistencies cited in testimony were trivial and insufficient to invalidate the other evidence that supported a Chinese male's claim to be a natural born citizen.⁷¹ A year later, the Ninth Circuit Court of Appeals held that separate procedures created specifically for Chinese minors under Department of Labor guidelines when they claimed to be sons or daughters of U.S. citizens were discriminatory, stating: "We know of no law making a race distinction in American citizenship, and by reason of such distinction excluding the sons of citizens of the United States of Chinese birth."⁷²

In addition, several times around 1916, the district court for the Northern District of California rebuffed the federal Commissioner of Immigration, who had tried to exclude adult children of U.S. citizens on the grounds that the adults had shown no interest in the United States as minors or that the citizens themselves were insufficiently attached, often because they and/or their parents had spent substantial time abroad. While this might have offered a glimmer of hope for a few *jus sanguinis* claimants, the overall pattern from 1915 to 1925 remained that almost all foreign-born children of U.S. citizens of Chinese origin in our reported cases were denied entry to the United States and/or were deported.

By the 1910s, Chinese increasingly were claiming citizenship through a citizen father rather than through their own birth in the United States, possibly because there were more children of Chinese men who themselves held *jus soli* citizenship.⁷³ The default rules of the Bureau of Immigration and the Department of State extended citizenship far more readily to non-marital foreign-born children of American mothers than to non-marital foreign-born children of citizen fathers. But the rules, their application, and their administration were specified by ethnicity and race, and this pattern also prevailed in the courts.⁷⁴ Chinese children faced particular difficulty in establishing their status based on familial relations because of widespread distrust and suspicion about Chinese families, including the perceived tendency of Chinese men to claim as blood descendants children who were not "their own" in order to help them enter the United States. These suspicions led to actions contrary to the implicit framework that justified extending citizenship to the children of citizens by presuming that civic attachment would be transmitted through family structure.

For foreign-born children of American citizen fathers of Chinese heritage, the question often turned upon their legitimacy – or presumed illegitimacy. Children of such men, born in China, were often challenged when they tried to enter or

71. *Yee Chung v. United States*, 243 F. 126 (9th Circuit, 1917).

72. *Quan Hing Sun et al. v. White*, 54 F. 402, 404–05 (9th Cir. 1918).

73. The 1907 Expatriation Act provided that any American woman who married a foreign male took the nationality of her husband; subsequently, one would have to claim citizenship through a citizen father.

74. Collins, "Illegitimate Borders," 2158 (see note 59 above).

re-enter the United States. Even for children genuinely linked to citizens by blood, if the father's marriage in China was not exclusive, the child's landing in the United States was often challenged and denied. Children of second wives and concubines, who were legitimate heirs in China, were illegitimate in the United States. Marital exclusiveness mattered in determining the status of foreign-born children of American fathers and legal residents,⁷⁵ of those who naturalized prior to the 1882 ban on Chinese naturalization, and of natural born citizens with Chinese parents. As restrictions tightened, courts broadened the scope for administrative settlement of these issues, implicitly endorsing administrative agents' aggressive stances. Thus, public anxieties about polygamy and immigration triggered officials' doubts about Chinese marriages, thereby affecting the fate of women and children seeking entry to the United States through their family status.⁷⁶

By around 1920, the Supreme Court hinted at greater concern for procedural violations in both *jus soli* and *jus sanguinis* appeals. That year, an individual who had followed proper legal procedures – receiving from the Commissioner of Immigration pre-investigation and clearance of his claim to be an American citizen by birth, before leaving the United States – was refused re-entry to the country. Anonymous information had reached the San Francisco Immigration Office that he was neither who he claimed to be nor born in the United States. The Commissioner reconsidered his original decision but maintained the denial – a denial upheld by the district and circuit courts. The Supreme Court identified procedural violations, reversed the decision of the Secretary of Labor, and remanded the case to the district court for a trial on the merits. The unanimous opinion stated that the power that Congress gave to the Secretary of Labor over persons of Chinese descent is “a power to be administered, not arbitrarily and secretly, but fairly and openly.... It is the province of the courts, in proceedings for review...to prevent abuse of this extraordinary power.... It is better that many Chinese immigrants should be improperly admitted than that one natural born citizen of the United States should be permanently excluded from his country.”⁷⁷ Likewise, in 1922, the Supreme Court unanimously granted habeas relief to two individuals, allowing them to proceed to trial on the question of citizenship, because a claim of citizenship functioned as “a denial of an essential jurisdictional fact.”⁷⁸ Without the protection of habeas, an executive could order deportation independently “whatever his [the claimant's] race or place of birth.” Differentiating the situation in this case from the ruling in *Ju Toy*, the Court found that summarily deporting an individual

75. *Ibid.*, 2168.

76. Men were sometimes targeted, too. A merchant working in San Francisco for 30 years was denied re-entry for ostensibly having two wives in China; *San Francisco Call*, March 13, 1912.

77. *Kwock Jan Fat v. White*, 253 U.S. 454, 464 (1920).

78. *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922), following *Chin Yow* and *Kwock Jan Fat*.

who claimed citizenship fell short of the Fifth Amendment guarantee of due process of law.⁷⁹

Courts in the early 1920s occasionally addressed claims that the Secretary of Labor overstepped his jurisdiction when he acted as final authority on cases in which persons claimed American citizenship. Notably, during these years the Supreme Court increasingly engaged arguments about fundamental or foundational rights (speech, press), ruling both to expand the concept of liberty and to extend protection to some disfavored groups, such as religious minorities, under its rubric.⁸⁰ But this broader heightened judicial scrutiny of potential due process violations came just when the nation was further limiting immigration with literacy tests and quotas. The stakes for federal courts in flexing their muscles against arbitrary and capricious executive officers on immigration matters were reduced. As support for immigration waned and drastic new immigration measures were instated, nascent rights principles from the Supreme Court received only uncertain support in the lower federal courts and did little for those of Chinese heritage.

Conclusions

Through this period, courts wrestled with a changing statutory environment in order to determine the appropriate authority of and limits on administrative decision making. Judges were no more eager than were policy makers to allow large-scale Chinese immigration, but the former maintained some minimal evidentiary and procedural standards in order to manage the rules that mandated exclusion and deportation and that empowered administrators to determine immigrants' status. In doing so, the courts established the scope of their limited oversight and also legitimated administrative decision making as a final arbiter of status for many thousands who were swept up in the fervor to exclude Chinese.

Rather than seeing a simple reallocation of power from courts to administration, we have observed a dynamic relationship among federal courts, Congress, and administrative agencies. The courts played a crucial role in governing the gradual shift of authority toward administrators and validating the significance of status, including family status, as the categorical means for allowing or denying entrance into the United States or continued residence in it. Our study suggests that, in the matter of Chinese immigration, political conflict was pervasive within the institutions of the American state. As Orren and Skowronek have pointed out,

79. *Ng Fung Ho* at 284–85. Despite this ruling's limits on executive branch jurisdiction when citizenship was claimed, the Ninth Circuit Court of Appeals later interpreted the fair hearing mandate narrowly in cases involving women.

80. See, for instance, the Court's rulings in *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

“relations among political institutions are (at least) as likely to be in tension as in fit and the tension generated is an important source of political conflict and change.”⁸¹ In their dynamic conflict for control over the political status of Chinese women and children, courts and administrative agencies each sought to shape the evidentiary criteria by which families could be identified. In this way, family was an important dimension of state-building.

The Constitution and some federal statutes minimally protected the Chinese. From the Burlingame Treaty in 1868 to the National Origins Act of 1924, the wives and children of citizens could rely on their husbands’ or fathers’ status because of policy makers’ accommodations for the families of merchants and broader principles of citizenship. Their rights to enter or reside in the United States had eroded by the 1920s. While a married woman could claim either independent status or her status as a wife, she also experienced a dual threat: doubts raised about her husband’s status could undercut her own status, and after 1907, any hint of involvement in prostitution could place her before administrative fact finders who were empowered to order exclusion or deportation.

Beyond the Fourteenth Amendment citizenship clause, under the Supreme Court’s uncertain guidance, the lower federal courts sometimes insisted that those claiming birthright citizenship had Fifth Amendment due process rights concerning the procedures used to assess their evidence. Individuals who could credibly allege birthright citizenship sometimes could obtain habeas relief. Individuals claiming *jus soli* or *jus sanguinis* citizenship might have their day in court, but for much of this period, they could not challenge the initial jurisdiction of executive branch officials, nor could they get very far unless they established that major procedural or evidentiary blunders had been committed, or that a law had been misinterpreted. For both women and children, familial status was critically important and increasingly subject to determination by administrative agents. Positively identified family status could ground civic status as a rights-bearer, but for the Chinese, the legislative environment placed them in a continually defensive posture, with their status as legitimate wives, children, or birthright citizens always open to further questioning in subsequent proceedings, especially if they left the United States and sought re-entry, as did quite a few individuals who returned to China with a parent, or to visit, marry, or conduct business.

Our investigation confirmed that administrative discretion was increasing during the period we have studied. It also reveals an increase in administrative suspicion about Chinese families because they did not conform to strong norms about appropriate American families. Congress both enlarged the administrative

81. Karen Orren and Stephen Skowronek, “In Search of Political Development,” in *The Liberal Tradition in American Politics*, ed. David F. Ericson and Louisa Bertch Green (New York: Routledge, 1999), 29–42, at 39.

apparatus and enhanced its authority. This apparatus then acted stringently to limit Chinese people's entrance into the United States and threaten their continued residence in the country. It implemented these limits in accordance with national concerns about the legitimacy of the family ties claimed by many Chinese women and children and the capacity of these familial ties to translate a sense of American belonging. The courts played an important role in establishing and shifting the boundaries of their own authority, and in legitimating administrative decisions that definitively determined the status of thousands of individuals and affected many more.

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