

MELTING POT BENEVOLENCE AND LIBERTY PATRIOTISM: THE IMPORTANCE OF THE MORAL COSMOPOLITANISM PRECEDENT IN ASIAN AMERICAN HISTORY

Will Sarvis*

ABSTRACT

Between the 1860s-1930s, there were a significant number of Chinese, Japanese, and various Caucasian peoples who embraced interracial friendships in the United States. Not only were these brave souls ahead of their time, but they exercised a moral cosmopolitan attitude amidst some of the fiercest racial discrimination in American history. Until recently, racism, exclusion, and ethnic discrimination have understandably dominated the historiography of Asian America. Scholars have also thoroughly documented formal legal remedies that proponents of interracial benevolence sought, largely in federal courts. The moral cosmopolitan precedent, on the other hand, offered an antidote to racism largely outside the confines of systematic law. In the tradition of populist constitutionalism, the moral cosmopolitan precedent of pre-Depression interracial goodwill among Asians and Caucasians created a minority societal dissent that later became the broad cultural basis for overturning institutionalized discrimination. This essay makes the case for legal and extra-legal moral cosmopolitanism, where a Melting Pot version of multiculturalism merged with a patriotism that embraced Enlightenment principles of universal human rights.

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I. INTRODUCTION

This study focuses on interracial goodwill during a time and place of intense racism and nativism, that of the United States during the 1850s-1920s. Part of its historiographical significance lies in its unprecedented telling. Asian-American historiography has focused mainly on racism, discrimination, and exclusion.¹ In 2001, Gary Okihiro wrote that “Anti-Asianism is the most discussed topic in Asian American history,”² with the Japanese-American relocation during World War II probably being the most-discussed topic within Anti-Asianism.³ There is good reason for this. The Chinese were the first immigrants to be excluded by race from the United States. Japanese-Americans suffered uniquely during World War II with forced relocation to internment camps, with resultant loss of income, property, and social relationships, not to mention peace of mind. Asian immigrants were the only ethnicity that the U.S. government completely excluded from immigration or banned from naturalization.⁴ Scholars have very thoroughly documented these sorts of stories. In recent years the field of Asian American history has finally begun to move in new directions, but the old beating boy of the evil trio (racism, discrimination, and exclusion) lives on. This work aims to contribute to the corpus of work that is now developing beyond the old evil trio.

A. NOMENCLATURE

In this essay I will use terms like “Asian” and Caucasian” in somewhat inexact ways, but compatible with racial views of the nineteenth and early twentieth centuries based almost exclusively upon physical appear-

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¹ Early scholars working in Asian American history were naturally preoccupied with documenting racism, exclusion, and discrimination against people of Asian descent. See HYUNG-CHAN KIM, *ASIAN AMERICAN STUDIES: AN ANNOTATED BIBLIOGRAPHY AND RESEARCH GUIDE* Sections 6, 7, 13 (1989). Unfortunately, this remains the preoccupation of the field. Conflicts, past and present, predominate in JEAN YU-WEN SHEN WU & THOMAS C. CHEN, *ASIAN AMERICAN STUDIES NOW: A CRITICAL READER* (2010).

² GARY Y. OKIHIRO, *THE COLUMBIA GUIDE TO ASIAN AMERICAN HISTORY* 75 (2001).

³ *Id.* at 100.

⁴ FRANKLIN ODO (ed.), *COLUMBIA DOCUMENTARY HISTORY OF THE ASIAN AMERICAN EXPERIENCE* 1 (2004).

ance. Therefore I will not explore contemporary ideas which rightfully dismiss any scientific basis for “race,” and see it for the social construct that it is and was. Unfortunately, too few hold these post-racial ideas now, but they would have been especially irrelevant to the vast majority of people living in the United States a century and more ago. Also, for convenience sake and because of dramatic demographic differences, this study concentrates on the U.S. mainland, most notably excluding Hawaii. Hawaii did not become an American territory until late in this study’s chronology (1898), but also featured proportionately far more Asian and indigenous peoples than the mainland. Race relations there deserve more particular, more focused studies that would likely contrast in major ways from the one offered here.

B. HISTORICAL MORAL COSMOPOLITANISM

Long before scholars re-discovered the philosophy,⁵ these interracial friends embraced an *attitude* of moral cosmopolitanism.⁶ They were not necessarily intellectually sophisticated people, nor were they likely to be self-consciously “citizens of the world” in an educated understanding of cosmopolitanism.⁷ But obviously race had not prevented the development of intimate friendships among them, and so they must have appreciated people unlike themselves, at least to some extent, as part of a greater family of humanity.⁸ In describing true friendships, Aristotle wrote “loving resembles an affection of the soul, whereas friendship resembles a disposition . . . reciprocal loving involves decision, and decisions flow from dispositions, and when people wish good things for those they love for these others’ sake, this is not a matter of affective state but of disposition.”⁹

⁵ Early references appear in John HIGHAM’s classic study of nativism. See JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925* 22, 122, 125 (1975). For more recent works, see Jeremy Waldron, *Minority Cultures and the Cosmopolitan Alternative*, 25 U. MICH. J.L. REFORM 751 (1992); DAVID A. HOLLINGER, *POSTETHNIC AMERICA: BEYOND MULTICULTURALISM* 3-5 (1995); Robert Fine & Robin Cohen, *Four Cosmopolitan Moments*, in *CONCEIVING COSMOPOLITANISM: THEORY, CONTEXT AND PRACTICE* 140 (Steven Vertovec & Robin Cohen, eds., 2003); RICHARD THOMPSON FORD, *RACIAL CULTURE: A CRITIQUE* 163-66 (2005); see generally KWAME ANTHONY APPIAH, *COSMOPOLITANISM: ETHICS IN A WORLD OF STRANGERS* (2006).

⁶ APPIAH, *supra* note 5, at xv; Steven Vertovec & Robin Cohen, *Introduction: Conceiving Cosmopolitanism*, in *CONCEIVING COSMOPOLITANISM: THEORY, CONTEXT AND PRACTICE* 13 (Steven Vertovec & Robin Cohen, eds., 2003).

⁷ FORD, *RACIAL CULTURE*, *supra* note 5, at 164; APPIAH, *supra* note 5, at xiii.

⁸ An excellent article on the history of cosmopolitan philosophy, from its Greek roots to the present time, may be found in the Stanford Encyclopedia of Philosophy. See Pauline Kleingeld & Eric Brown, *Cosmopolitanism*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Jul. 1, 2013), <http://plato.stanford.edu/entries/cosmopolitanism>.

⁹ NICOMACHEAN ETHICS (hereafter NE) § VIII.5, (Sarah Broadie & Christopher Rowe trans., Oxford Univ. Press 2002).

Disposition, inclination, or attitude thus becomes a core factor in a moral cosmopolitan worldview.

For purely organizational purposes, we might adopt Aristotle's ideas of tri-part friendships involving utility, pleasure, and deep, true friendship.¹⁰ Probably outside of Aristotle's tri-part categorization of friendships were the ambiguous relations fostered by churches, missionaries, charitable efforts, and various Caucasians who were sometimes only nominally anti-racist on culturally-specific and subjective moral grounds. This becomes especially true when considering the nineteenth century and the early twentieth century, when pseudo-scientific ideas of race hierarchy and Social Darwinism encouraged the development of an unfortunate cultural imperialism.¹¹ Nevertheless, it might be worth noting those who at least *meant* well, even if their own self-conceptions often colored their efforts. Cultural biases aside, pastors and churches were prominent in opposing enactment of the notorious 1882 Chinese Exclusion Act;¹² legislation that is easy to condemn now, but was unpopular to oppose then.

C. THE DREAM AND REALITY OF A NATION OF IMMIGRANTS

The United States is overwhelmingly a land of immigrants. The positive mythology surrounding this fact is one of multi-ethnicity and inclusiveness, the "bring me your huddled masses" inscription on the Statue of Liberty in New York City, supposedly protected by the Enlightenment era principle of all men (and eventually all women) being created equal. However, the dark reality of American history includes racism and nativism. Euro-Americans especially made aborigines, Africans, and their descendants the main targets of their racism, stealing land, resources, and labor and liberty from these peoples. During the late nineteenth and early twentieth centuries, nativists broadened the spectrum of discrimination to include anyone except themselves: white, Anglo-Saxon Protestants, the WASPs of American legend or notoriety.¹³ But regardless of specifics, racism has been a constant feature of American culture. Stricter immigration laws leading up to the 1924 Johnson-Reed Act¹⁴ mitigated nativist bigotry, but only because it assuaged their fears of being overwhelmed by foreign transplants. Eventually, the relegation of WASP ideology to numerical minority status,

¹⁰ *Id.* § VIII.3 .

¹¹ JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925 273 (1975); HYUNG-CHAN KIM, A LEGAL HISTORY OF ASIAN AMERICANS, 1790-1990 112 (1994).

¹² See the petition introduced by Massachusetts Senator George F. Hoar on behalf of various New York churches, 47 Cong. Rec. 2229 (1882); and the petition introduced by Ohio's Representative J. Warren Keifer on behalf of New York's east conference of the Methodist Episcopal Church, 47 Cong. Rec. 2840 (1882).

¹³ RICHARD HOFSTADTER, SOCIAL DARWINISM IN AMERICAN THOUGHT 172, 174 (George Braziller, Inc. 1959) (1944).

¹⁴ Pub. L. 68-139, 43 Stat. 153 (May 26, 1924). Also called the National Origins Act or the Immigration Act of 1924.

particularly after the influx of millions of Catholics, rendered nativism (ironically) irrelevant.

The truism of the United States being a land of immigrants is better known than its correlative, which is how successive generations tried to slam the door on further immigration. John Higham, in his classic study of nativism in general, *Strangers in the Land*, also described the anti-Chinese agitation of the 1870s and 1880s as the most violent expression of a long and varied attitude of American bigotry.¹⁵ The 1882 Chinese Exclusion Act became the only anti-immigration act in U.S. history to target a specific racial or ethnic group.¹⁶ Violence continued against the Chinese during the 1880s in a number of riots.¹⁷ California's Alien Land Laws of 1913¹⁸ and 1920¹⁹ targeted Japanese and attempted to prevent them from owning land. The Japanese ultimately experienced one of the most flagrantly racist violations of constitutional principles with their wartime internment.²⁰ Still, despite such prevalent racism, exclusion, and discrimination, there were numerous examples of interracial benevolence. In fact, the era's dominant racism and nativism makes such friendship all the more important when considering the aspirations of a multi-ethnic society such as the United States was or at least has come to be. Following is but a small sampling of the innumerable interracial friendships that existed among Asians and Caucasians before the Great Depression.

¹⁵ HIGHAM, *supra* note 11 at 25. See also Eiichiro Azuma, *A History of Oregon's Issei, 1880-1952*, 94:4 OREGON HISTORICAL QUARTERLY 315, 335-36 (1993-1994); Malcolm Clark, Jr., *The Bigot Disclosed: 90 Years of Nativism*, 75:2 OREGON HISTORICAL QUARTERLY 109 (June 1974); ROGER DANIELS, *THE POLITICS OF PREJUDICE: THE ANTI-JAPANESE MOVEMENT IN CALIFORNIA AND THE STRUGGLE FOR JAPANESE EXCLUSION* (1966); Daniel P. Johnson, *Anti-Japanese Legislation in Oregon, 1917-1923*, 97:2 OREGON HISTORICAL QUARTERLY 176 (Summer 1996); LAWRENCE M. FRIEDMAN, *AMERICAN LAW IN THE 20TH CENTURY* 145 (2002).

¹⁶ *Chinese Exclusion Act*, 22 Stat. 58, c. 126 (May 6, 1882); entitled "An act to execute certain treaty stipulations relating to Chinese."

¹⁷ CHARLES J. McCLAIN, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA* 173-74 (1994).

¹⁸ 1913 Cal. Stat. 206. See also FRANK F. CHUMAN, *THE BAMBOO PEOPLE: THE LAW AND JAPANESE-AMERICANS* 46-51 (1976); ROGER DANIELS, *ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850* 145 (1988); ROGER DANIELS, *THE POLITICS OF PREJUDICE: THE ANTI-JAPANESE MOVEMENT IN CALIFORNIA AND THE STRUGGLE FOR JAPANESE EXCLUSION* 58-64 (1966); KIM, *supra* note 11, at 126.

¹⁹ 1921 Cal. stats, lxxxiii. See also CHUMAN, *supra* note 18, at 76-80; DANIELS, *POLITICS OF PREJUDICE*, *supra* note 18, at 88-92; KIM, *supra* note 11, at 126.

²⁰ Commonly known as Executive Order No. 9066. See Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 25, 1942) available at <http://www.ourdocuments.gov/doc.php?flash=false&doc=74&page=transcript>

II. BEFORE THE PROGRESSIVE ERA

In 1882 Congress passed and the president signed the Chinese Exclusion Act,²¹ the only immigration act in United States history to target a specific ethnic or racial group. The act followed a period of labor agitation against the Chinese, most spectacularly perpetuated in California by Dennis Kearney (1847-1907) and his Workingman's Party.²² But labor competition with (mainly European) immigrant groups was a prominent theme in American nativism going back to the 1850s, and especially salient during the Progressive Era of the 1890s-1920s. For the Chinese to be excluded had to illustrate a more pure form of racial hatred. This makes friendships among Chinese and Caucasians all the more remarkable for the pre-1882 period.

The first huge wave of Asian immigration to the United States occurred in conjunction with the California gold rush of 1848-1850. Thousands of Chinese arrived (mainly from the impoverished and war-torn Guangdong Province) hoping to make their fortune and, for the most part, return to China. Few people, including the Chinese, got rich during the gold rush, and afterward Chinese began working in a number of professions. They worked in agriculture, as domestic servants, in Pacific coast fisheries,²³ and perhaps most notably, as railroad construction laborers building the most difficult and most dangerous leg of the America's first transcontinental railroad from Sacramento to Promontory Point, Utah.²⁴

In addition to whites who were personal and public friends of the Chinese, there were a few prominent Caucasians who fought anti-Chinese prejudice in the legal-political world. As early as 1868, Oregon's governor George L. Woods vetoed legislation that targeted Chinese for extra taxation,²⁵ a technique common in mining areas. In Idaho two federal officials — U.S. Marshal Henry W. Moulton and U.S. Attorney Joseph W. Houston — also opposed such as discriminatory taxation of the Chinese.²⁶ So even before 1882 there was a small minority of prominent white Americans who might be characterized, without too much exaggeration, as the forerunners of multi-culturalists. There were many more who did not cut such a conspicuous public profile. But if these moral cosmopolitans, prominent and obscure alike, had a spokesman, it was the popular writer Mark Twain.

Mark Twain famously defended the Nevada Chinese both in newsprint and his book *Roughing It* (1872). Twain, one of the most underrated anti-racists in American history, was also a defender of Native Americans

²¹ Chinese Exclusion Act (May 6, 1882) 22 Stat. 58, c. 126.

²² MCCLAIN, IN SEARCH OF EQUALITY, *supra* note 17, at 79-80.

²³ SUCHENG CHAN, ASIAN AMERICANS: AN INTERPRETIVE HISTORY 33 (1991); SHIH-SHAN HENRY TSAI, THE CHINESE EXPERIENCE IN AMERICA 10-13, 19-24 (1986).

²⁴ TSAI, *supra* note 23, at 15, 17.

²⁵ LIPING ZHU, "A CHINAMAN'S CHANCE" ON THE ROCKY MOUNTAIN MINING FRONTIER, in CHINESE ON THE AMERICAN FRONTIER 239 (2001).

²⁶ *Id.* at 240.

and an opponent of foreign imperialism. Twain championed the Chinese as “quiet, peaceable, tractable, free from drunkenness, and . . . industrious as the day is long.”²⁷ Further, Twain wrote, “A disorderly Chinaman is rare, and a lazy one does not exist.” Twain blamed anti-Asian agitation on lower class, ignorant whites²⁸ — an observation many other Caucasians echoed during the following decades. Periodically, over the last couple of decades, reactionary forces have denounced Twain as a racist for the language he used in *Huck Finn*. But surely this is a most superficial reading of Twain. Besides his other, precocious anti-racist writings,²⁹ Twain’s hero *Huck Finn* famously denounces his society and risks condemning himself when he decides to aid the slave Jim in his escape.³⁰ In any case, Twain might be considered a “policy” friend to the Chinese and other ethnic and racial groups, since he used his influential pulpit as a writer to propound his views. On a more immediate level regarding the Nevada Chinese of this era, Virginia City policeman George Downey gained a reputation for ignoring race in criminal matters. Downey made an almost novel attempt in working class circles to understand Chinese culture. Wealthy Chinese merchants pooled their money and bought him an expensive diamond ring as just one symbol of their friendship.³¹

In protesting the exclusion of Chinese court testimony in California based on ethnicity, the Reverend William Speer wrote in 1870 that for them to be “excluded on ethnological grounds, is simply contemptible on the eyes of men of science.”³² Speer continued, “if the Chinese are Indians, then we are Indians; if the Chinese are negroes [sic], then we are negroes [sic].”³³ Speer was a cosmopolitan. Like Mark Twain and a handful of oth-

²⁷ MARK TWAIN, *ROUGHING IT* 391 (Elizabeth Frank ed., Signet Classics 2008) (1872).

²⁸ *Id.* at 392. See also Mark Twain, *Disgraceful Persecution of a Boy*, in *THE COMPLETE ESSAYS OF MARK TWAIN* 7-10 (Charles Neider, ed., 1963). The latter was originally published in *The Galaxy* (May 1870).

²⁹ For one of the most prominent examples, see Twain’s *Pudd’nhead Wilson*, a detective story that also ridiculed the idea of 100% whiteness as the standard against which all other people were measured. MARK TWAIN, *PUDD’NHEAD WILSON* (Dover Publications 1999) (1894).

³⁰ Jabari Asim accurately assesses all this in JABARI ASIM, *THE N WORD: WHO CAN SAY IT, WHO SHOULDN’T, AND WHY* 107 (2007).

³¹ Russell M. Magnaghi, *Virginia City’s Chinese Community, 1860-1880* in *CHINESE ON THE AMERICAN FRONTIER* 133-134 (Arif Dirlik ed., 2003).

³² WILLIAM SPEER, *THE OLDEST AND NEWEST EMPIRE: CHINA AND THE UNITED STATES* 627 (1870).

³³ *Id.*

ers pioneering the conception of cultural relativism,³⁴ Speer was in this regard ahead of his time.³⁵

Twain, Downey, and Speer were unusual for their era, particularly in regard to the majority of Chinese, who at this time were laborers. During the flush economy of the immediate post-Civil War years, white laborers were generally not averse to allowing the Chinese to perform the Herculean task of blasting a rail path through the Sierra Nevada Mountains. Economic downturns, such as the Panic of 1873, frequently transformed grudging tolerance into overt racial targeting.³⁶ Labor competition was an early and frequent source of interracial and interethnic strife, but the Chinese and later Asians always bore the potential burden of a different physical appearance, which evoked racism rooted in the usual fear of the unknown.

Successful business relations required and require much social interaction, and congeniality must be present if such relations are to prosper. An enormous amount of Caucasian and Asian testimony supports the historical existence of many utilitarian friendships of this sort. Some developed further into true friendships, but all displayed the basic good will required of Aristotle's utilitarian friendships. Business interests became some of the most prominent and numerous protestors against the 1882 Chinese Exclusion Act.³⁷

In 1876 and 1886, during a nadir of anti-Chinese activity in the West, a number of prominent California businessmen, attorneys, pastors, and various others gave congressional testimony defending and praising the Chinese.³⁸ Joseph A. Coolidge (Secretary of the San Francisco Merchant's Exchange), Solomon Heydenfeldt (former associate justice of the California Supreme Court), and many others offered lengthy pro-Chinese testimony.³⁹ Frederick W. Macondray, of Macondray & Company and a twenty-four year resident of San Francisco, testified, "From all our dealings with them here and in China I do not know any class of merchants, I think, who are more honest and upright or who have a better reputation for integrity than the Chinese."⁴⁰ Macondray, who had lost money in his business dealings

³⁴ Franz Boas (1858-1942) deserves much of the credit for developing such ideas in the field of anthropology. See MAUREEN A. FLANAGAN, *AMERICA REFORMED: PROGRESSIVES AND PROGRESSIVISMS, 1890S-1920S* 263 (2006); Stephen Jay Gould, *The Mismeasure of Man* 140 (Norton, 1996) (1981); HIGHAM, *supra* note 11, at 125, 153, 304.

³⁵ Speer, however, had the Protestant missionary's bias that blinded him from valuing Chinese religious and philosophical traditions. See SPEER, *supra* note 32 at 605-24.

³⁶ HIGHAM, *supra* note 11, at 18.

³⁷ See the petition representing many business interests submitted by New York Senator Elbridge G. Lapham, 47 Cong. Rec. 2878 (1882); and the petition submitted by Massachusetts Senator Henry L. Dawes, 47 Cong. Rec. 3076 1st Sess. (1882).

³⁸ *Memorial of the Six Chinese Companies: An Address to the Senate and House of Representatives of the United States* 44th Cong. (1877); *The Other Side of the Chinese Question: Testimony of California's Leading Citizens* 49th Cong. (1886).

³⁹ *Id.*

⁴⁰ *The Other Side of the Chinese Question*, *supra* note 37, at 23.

with whites, testified he had never lost money with the Chinese. Furthermore, Macondray did all his business with the Chinese through verbal agreements. There was no need for written contracts.⁴¹ The bygone, evocative saying, “Their word was their bond,” evidently fit the Chinese merchants. These testimonies were remarkable. Out of jealousy, prominent businessmen of this and following eras of nativism tended to subvert successful immigrant businessmen, especially Jews.⁴² But in this singular context, a prominent class of whites defended a class of immigrant merchants. Equally remarkable defense of the Chinese arose in legal circles.

Benjamin Brooks and Frederick Bee were attorneys who came to champion Asian rights beyond the limits of professional duty. Bee defended Chinese miners in Nevada as early as 1855.⁴³ In 1876 he became the official spokesman for the Chinese Six Companies during Congressional hearings that received a majority of testimony against Chinese immigration.⁴⁴ Later Ch’en Lan-pin, Chinese minister to the United States, appointed Bee as consul out of the San Francisco office.⁴⁵ Both Brooks and Bee recognized the important economic role Asians had played in western United States development, denounced illegal anti-Asian activity, but also came to admire their Asian clients.⁴⁶ Writing as early as 1877, Brooks said,

The charges against this people . . . would in other lands be esteemed virtues; their undying love for native land, their devotion to their religious faith, their veneration for their parents and ancestors, their love and affection for their families, their generous contributions to their support and happiness, their untiring industry, their uncomplaining patience, their courageous venturing to the most distant lands where honest wages may be earned, their frugality, proud independence, resistance to oppression and partial laws If they cannot assimilate with us, can it be because these qualities are foreign to *our* nature? [original emphasis]⁴⁷

Obviously Brooks had gained some appreciation for the virtues of Chinese culture, and spoke with an amazing insight that has yet to characterize an appreciable number of white Americans, these 137 years later.

Judges, whose non-profit role allowed for more potential purity in their motives, became among the most stellar legal allies for Asians. J.S. Look, a Seattle-based Chinese businessman, remembered the strong anti-Chinese feeling of 1880s. “[But] there were a few big men in Seattle who sympathized with the Chinese race and who did much to bring about an era of good feeling,” Look recalled in 1924. “Some of these men I remember by name were Judge Jacobs, Judge [Thomas] Burke, Judge [C.H.] Han-

⁴¹ *Id.*

⁴² HIGHAM, *supra* note 11, at 26-27, 66-67, 92-94, 160-161.

⁴³ MCCLAIN, IN SEARCH OF EQUALITY, *supra* note 17, at 64.

⁴⁴ *Id.* at 86.

⁴⁵ *Id.*

⁴⁶ *Id.* at 64-65; 86.

⁴⁷ *Id.* at 310, n. 98.

ford, Mr. Denny and Mr. [H.L.] Yesler”⁴⁸ These and other prominent community leaders (such as Judge Roger S. Green, Justice of the Peace George G. Lyon, Reverend L.A. Banks, Seattle Fire Chief Gardner Kellogg)⁴⁹ with power and stature, had taken an unpopular stand during one of the most anti-Asian racist decades in West Coast U.S. history.⁵⁰

Those bent upon emphasizing ethnic and racial conflict might be tempted to say these white men were merely “law and order” types interested in preventing anarchy. But let us remember that a great many white authorities looked the other way (or covertly or overtly participated) in lawlessness directed against blacks in the U.S. South of the entire Jim Crow era (1877-1954) and beyond. In fact, when one racial group systematically allows domestic terrorism against another, such practices *become* a form of (racist) orderliness. So the Seattle authorities’ actions cannot be separated from the Chinese they sought to protect. They must be described as friends, albeit in a professional capacity executing their professional duty. Captain George Kinnear, leader of the Home Guards that helped quell the 1886 Seattle riot, recalled in 1911:

The deplorable situation and the cause of all our trouble was — two few men were willing to throw themselves into the breach to defend the right at any cost, and too many were afraid to do anything to check the tide of lawlessness. Professional men were afraid they would lose some of their clients. Merchants were fearful they would be boycotted. The merchants in the building in which Judge [Thomas] Burke had his office said he must vacate and leave the premises for fear the building would be fired [burned down] or blown up. But the Judge stayed. He was one of the men who put down the mob.⁵¹

Unsurprisingly, Judge Roger S. Greene’s wife started a Chinese school during this period to help teenagers like L.O. Dong (president of Seattle’s Chinese Association during the 1920s).⁵² These Caucasians cared about their community and its members, Asians and whites alike.

In Portland, Matthew P. Deady (Oregon’s first federal district judge) evolved from a pro-slavery advocate to one of the most vocal pro-Chinese

⁴⁸ J.S. Look Interview, SURVEY OF RACE RELATIONS, box 27, file 182, at 2 (on file with the Hoover Institution Archives, Stanford Univ.). Look is no doubt referring to some of those who, among other things, faced down the anti-Chinese rioters in Seattle in 1886. Upon the 25th anniversary of this sad event, George Kinnear (eye witness and law enforcement participant) published his memoir of the event. See GEORGE KINNEAR, ANTI-CHINESE RIOTS AT SEATTLE, WASHINGTON, FEBRUARY 8TH 1886 (1911).

⁴⁹ KINNEAR, *supra* note 48, at 6, 7, 10. KINNEAR names many others who risked their lives and enforced the law. For members of the 14th Infantry and Home Guard see KINNEAR, *supra* note 55, at 10, 16-17.

⁵⁰ William Henry White (1842-1914), U.S. District Attorney 1885-1889 under President Grover Cleveland, also appears to have joined the others in quelling the rioters. See SEATTLE DAILY TIMES (Apr. 29, 1914) at p. 3, c. 1.

⁵¹ KINNEAR, *supra* note 48, at 13-14.

⁵² Long O. Dong Interview, SURVEY OF RACE RELATIONS, box 27, file 171, at 2.

advocates.⁵³ Perhaps most outstanding was Judge Ogden Hoffman, who heard over 10,000 habeas corpus cases alone following the 1882 Exclusion Law.⁵⁴ This was not surprising to anyone who had observed Hoffman's earlier judicial performance. Between 1854 and 1872, California law forbade the admission of Chinese testimony in state courts. In Hoffman's federal court, however, Chinese were allowed to bring suit against fellow Chinese and non-Chinese alike. During Hoffman's entire tenure only two such plaintiffs received unfavorable judgments. Chinese convicted of crimes also generally received comparatively lenient sentences in Hoffman's court.⁵⁵ Clearly Hoffman and other federal judges of the northern California district were at least legal friends to the Chinese, despite holding personal racial biases that were common at the time. Apparently here, the institution of the law itself, particularly regarding habeas corpus and due process, became the driving forces behind the judges' decisions.⁵⁶ Hoffman maintained an alternative to California's shameful testimony prohibition as sort of a running dissent, even if in his limited judicial arena. Eventually the state legislature amended the California's civil and penal codes to reinstate Chinese testimony.⁵⁷

The prohibition against Chinese testimony in California state courts had its roots in 1849-50, when the state legislature passed an act that barred non-whites from giving evidence for or against whites. But the legislature only specified Indians and those of African ancestry.⁵⁸ The specification against the Chinese arrived a few years later with the infamous 1854 California Supreme Court case, *People v. Hall*.⁵⁹ A lower court had convicted one George W. Hall for murdering a Chinese man named Ling Sing and sentenced him to execution. Hall appealed upon the openly racist grounds that testimony from a Chinese witness, *ipso facto* incredible, had convicted him. The Court agreed, and cited the California legislature's Act Concerning Civil Cases, which prohibited the testimony of blacks or Indians against whites, as well as an 1850 criminal proceedings act which notoriously stated that "No Black, or Mulatto person, or Indian shall be allowed to give evidence in favor of, or against a white man."⁶⁰ California

⁵³ Ralph James Mooney, *Matthew Deady and the Federal Judicial Response to Racism in the Early West*, in *CHINESE IMMIGRANTS AND AMERICAN LAW* 241 (Charles McClain ed., 1994).

⁵⁴ Examples of habeas corpus cases may be found in *Immigration documents miscellany* on file with the Ethnic Studies Library, Univ. of California, Berkeley.

⁵⁵ CHRISTIAN G. FRITZ, *FEDERAL JUSTICE IN CALIFORNIA: THE COURT OF OGDEN HOFFMAN, 1851-1891* 213, 220 (1991).

⁵⁶ FRITZ, *supra* note 55, at 217, 223, 231, 233, 236, 241, 246-47, 248; LUCY E. SALYER, *LAW HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW* 18-19, 69, 70, 72, 75, 92 (1995).

⁵⁷ MCCLAIN, *IN SEARCH OF EQUALITY*, *supra* note 17, at 42.

⁵⁸ J.A.C. Grant, *Testimonial Exclusion Because of Race: A Chapter in the History of Intolerance in California*, 17 *UCLA Law R.* 193 (1969-70).

⁵⁹ *People v. Hall*, 4 Cal. 399 (Cal. 1854).

⁶⁰ *Id.* at 400.

Supreme Court Chief Justice Hugh C. Murray felt compelled to describe a lengthy, convoluted, and far-fetched rationale for why Chinese were co-equivalent with Indians, since Columbus had set sail for south Asia and thought he had arrived there in the West Indies of the Caribbean.⁶¹ Already openly racist, it seems (in retrospect) almost bizarre that Murray and the Court felt obliged to dress up their bigotry in the language of legal niceties; but so it went. As J.A.C. Grant pointed out, California's siding with the Union during the Civil War helped make the Chinese a substitute "devil to whip" in place of blacks. Regarding court testimony, in 1863 (halfway through the war) the state legislature amended its civil and criminal statutes to omit mention of blacks but to include "Mongolians, Chinese, or Indians."⁶²

The Reverend William Speer and other white elites denounced the *Hall* decision, as well as the 1870 *People v. Brady* decision that reiterated *Hall's* racism, despite imminent state legislative rectification, effective 1872.⁶³ After 1872, Chinese testimony experienced, at best, a mixed fate in and beyond California. Racists like U.S. Supreme Court Justice Stephen Field continued to condemn Chinese as somehow genetically dishonest.⁶⁴ Again in the minority, Judge Hoffman knew that Chinese witnesses could be dishonest, just like any other group of witnesses, but generally regarding them as competent witnesses.⁶⁵ In a more typical case, *Quock Ting v. United States* (1891), the majority decision dismissed Chinese testimony as unreliable,⁶⁶ in what amounted to an arbitrary and capricious decision. Judge John De Haven made at least one arbitrary and capricious dismissal of apparently consistent Chinese testimony (in *Woey Ho v. United States*, 1901), but more generally relied upon consistency or lack thereof in determining the reliability of Chinese witnesses, as did U.S. Commissioner of Immigration, E.H. Heacock.⁶⁷ On the other hand, collectors of customs in California regularly sought white witnesses to verify the citizenship of returning Chinese, which would have been detrimental were it not for the courts' and judges' counteracting policies.⁶⁸ Finally, Judge Maurice T. Dooling not only accepted Chinese testimony, but considered it no less than "ordinary fairness" for Chinese to be allowed to cross-examine witnesses against them in deportation cases.⁶⁹

Despite California's statutory rectification of disallowed Chinese testimony, a West Virginia court cited *Brady* in an 1877 case, claiming this

⁶¹ *Id.* at 401-03.

⁶² Grant, *supra* note 58, at 197.

⁶³ MCCLAIN, *In Search of Equality*, *supra* note 17, at 22, 36, 294, n.98; *People v. Brady* 40 Cal. 198 (Cal. 1870); Grant, *supra* note 58, at 201.

⁶⁴ FRITZ, *supra* note 55, at 237-38; Salyer, *supra* note 56, at 78.

⁶⁵ FRITZ, *supra* note 55, at 236, 241.

⁶⁶ *Quock Ting v. United States*, 140 U.S. 419 (1891).

⁶⁷ SALYER, *supra* note 56, at 79-80, 81.

⁶⁸ *Id.* at 83.

⁶⁹ *Id.* at 191.

meant racial discrimination in matters of testimony did not violate the Fourteenth Amendment.⁷⁰ In 1925, a Mississippi court claimed *Hall* justified their maintenance of white supremacy.⁷¹ One of the immediate and unfortunate reactions against *Hall* was the Chinese themselves making racist claims about their superiority over those of African and indigenous dissent.⁷² Although apparently not designed as such by the white majority, this effect was the equivalent to a “divide and conquer” strategy among racial and ethnic groups, at least for the time being.

III. UTILITARIAN FRIENDSHIPS DURING THE PROGRESSIVE ERA AND BEYOND

The Progressive Era in United States history spans the 1890s to the 1920s. Historians characterize this period as one containing multiple reform movements intent upon such diverse efforts as banning alcohol consumption, eradicating political corruption, limiting or banning child labor, improving sanitation in meat packing plants, and many more crusades. During the Progressive Era, University of Chicago especially became a center of multi-ethnic outreach, associated in part with the Settlement House movement design to help the urban poor, who were often immigrants.⁷³ University of Chicago Sociologist Robert Park in particular promoted a theory that immigrants would inevitably, if gradually, assimilate into American society.⁷⁴

For foreigners abroad and in the United States, the Progressive Era might have seemed like the best of times and worst of times. There was the multi-ethnic optimism of America as a haven for immigrants and native-born alike.⁷⁵ But this was also a period of intensifying nativism and immigrant resistance to or doubts about assimilation.⁷⁶ It was a time when ideas of Social Darwinism⁷⁷ and cultural absolutism⁷⁸ were on the rise, as well as

⁷⁰ *State v. Strauder* 11 W.Va. 745 (W.Va. 1877).

⁷¹ *Rice v. Gong Lum*, 139 Miss. 760 (Miss. 1925).

⁷² MCCLAIN, IN SEARCH OF EQUALITY, *supra* note 17, at 22. The racism of minorities remains hopelessly under-studied, perhaps mainly because of preoccupation with power differentials.

⁷³ MAUREEN A. FLANAGAN, AMERICA REFORMED: PROGRESSIVES AND PROGRESSIVISMS, 1890s-1920s, 35-39 (2007).

⁷⁴ STEPHEN E. CORNELL & DOUGLAS HARTMANN, ETHNICITY AND RACE: MAKING IDENTITIES IN A CHANGING WORLD 6, 43 (1998). Park led the gathering of information for the SURVEY OF RACE RELATIONS cited in this article. The collection is housed at the Hoover Institution Archives, Stanford Univ.

⁷⁵ CORNELL & HARTMANN, *supra* note 74, at 5, 6, 43; ALAN DAWLEY, STRUGGLES FOR JUSTICE: SOCIAL RESPONSIBILITY AND THE LIBERAL STATE 257 (1993); HIGHAM, *supra* note 11, at 133; MATTHEW F. JACOBSON, BARBARIAN VIRTUES: THE UNITED STATES ENCOUNTERS FOREIGN PEOPLES AT HOME AND ABROAD, 1876-1917 204-209 (2000).

⁷⁶ HIGHAM, *supra* note 11, at ch. 4; JACOBSON, *supra* note 75, at 209-213.

⁷⁷ HOFSTADTER, *supra* note 13, at 5; *see also* JACOBSON, *supra* note 75, at ch. 4.

⁷⁸ Dawley, *supra* note 75, at 263-64; HIGHAM, *supra* note 11, at 158, 165.

the beginnings of cultural relativism and the roots for modern cosmopolitanism.⁷⁹

Toward the end of the Progressive Era, the 1924 Johnson-Reed Act⁸⁰ created America's first quota system for immigration. This was the culminating triumph of years of nativist agitation⁸¹ and influenced the course for immigration policy until the mid-1960s.⁸² But the preceding decades had not been dominated by nativism alone. There were the usual surges of anti-immigrant sentiment associated with economic depression, especially 1893-97.⁸³ Still, the urban settlement house projects aimed primarily at immigrant workers⁸⁴ had mitigated, to some extent, anti-immigrant hostility.⁸⁵ On the foreign front, the United States boasted its first imperialist triumph with the 1898 conclusion of the Spanish-American War.⁸⁶ America gained control over the last major vestiges of Spain's old colonial empire, including the Philippines and Guam in the Pacific and Cuba and Puerto Rico in the Caribbean. Ironically, this victory brought both a renewed confidence in America's ability to absorb foreigners (the original "melting pot" concept)⁸⁷ and the imperialistic racism of the "White Man's Burden" variety.⁸⁸ The former represented the ongoing continental "mission" aspect⁸⁹ of the United States, while the latter reflected something of an Anglophile repetition of the "exclusive club" abroad.⁹⁰

The 1882 Chinese Exclusion Act⁹¹ did not pacify the racial nativists. 1885-1886 witnessed major property destruction and Chinese deaths in Rock Springs, Wyoming; Seattle and Tacoma, Washington; Los Angeles, and in Portland, Oregon.⁹² Extension and tightening of the 1882 Act arrived a decade later with passage of the 1892 Geary Act.⁹³ But violence and

⁷⁹ HIGHAM, *supra* note 11, at 22, 122, 125, 153, 304.

⁸⁰ Also called the National Origins Act of 1924. Pub. L. No. 68-139, 43 Stat. 153 (1924).

⁸¹ HIGHAM, *supra* note 11, at 186, 195, 204-12, 222-35, 261-63, 324-30.

⁸² ROGER DANIELS, *COMING TO AMERICA: A HISTORY OF IMMIGRATION AND ETHNICITY IN AMERICAN LIFE* 338-44 (2002).

⁸³ HIGHAM, *supra* note 11, at 68.

⁸⁴ FLANAGAN, *supra* note 73, at 35-39; HIGHAM, *supra* note 11, at 238-42.

⁸⁵ FLANAGAN, *supra* note 73, at 284; HIGHAM, *supra* note 11, at 117, 122.

⁸⁶ JACOBSON, *supra* note 75, at 263-65; HIGHAM, *supra* note 11, at 108-10, 144-45, 148; NELL I. PAINTER, *STANDING AT ARMAGEDDON: THE UNITED STATES 1877-1919*, 389 (1987).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ MIKISO HANE, *MODERN JAPAN: A HISTORICAL SURVEY* 400-401 (1986) (quoting Fosco Maraini in *THE JAPAN EXPERIENCE* 10-11 (Ronald Bell ed., (1973))). See also HIGHAM, *supra* note 11, at 22.

⁹⁰ This derived from the earlier, comparatively harmless "Cult of Anglo-Saxonism" that began to draw ominous racist overtones from 19th century German Romantic nationalism. See Fine & Cohen, *supra* note 5, at 145-146; HIGHAM, *supra* note 11, at 10, 132, 133, 134, 136-44; HOFSTADTER, *supra* note 13 at 172, 183; PAINTER, *supra* note 86, at 389-90.

⁹¹ Chinese Exclusion Act (May 6, 1882) 22 Stat. 58, c. 126.

⁹² MCCLAIN, *IN SEARCH OF EQUALITY*, *supra* note 17, at 173-74.

⁹³ Geary Act, 27 Stat. 25, ch. 60 (1892).

hatred continued against Chinese, of course, even while racial nativist fear of an impending “invasion” began to diminish. These anti-immigration policies targeting the Chinese would not be reversed until 1943⁹⁴ when, belatedly, China’s alliance with the U.S. during World War II won such a minimal concession. In any case, with Chinese immigration effectively reduced by the late nineteenth century, racial nativist Americans found a new “Yellow Peril” in Japan.⁹⁵

Japan was unique in the history of imperialism.⁹⁶ Unlike all other targets of Western domination, both Japan and Ethiopia⁹⁷ resisted direct colonization during the age of imperialism. But only Japan actually became an imperial power itself.⁹⁸ Japan defeated China in the first Sino-Japanese War, 1894-95,⁹⁹ then triumphed in the Russo-Japanese War of 1904-05.¹⁰⁰ Japanese territorial expansion proceeded into Taiwan and the Korean peninsula, and by the 1930s into Manchuria and China itself.¹⁰¹ Some Americans grudgingly respected Japan for its meteoric modernization and military industrialization, but many more feared her.¹⁰² Japanese immigrants to the U.S. noticed an immediate rise in prejudice. Californians formed the Asiatic Exclusion League in 1905,¹⁰³ and passed Alien Land Laws targeting the Japanese in 1913¹⁰⁴ and 1920.¹⁰⁵ Mirroring earlier anti-Chinese legislation, the 1924 Johnson-Reed Act ended Japanese immigration altogether.¹⁰⁶

Seemingly paradoxically, continuing and deepening racial nativism in the U.S. between the 1890s and 1920s did not deter interracial friendship.

⁹⁴ This was the Magnuson Act, also known as the Chinese Exclusion Repeal Act of 1943, Act Dec. 17, 1943, ch. 344, § 1, 57 Stat. 600 (1943).

⁹⁵ DANIELS, *POLITICS OF PREJUDICE*, *supra* note 18, at ch.5; HIGHAM, *supra* note 11, at 166, 173-174; HOFSTADTER, *supra* note 13, at 189.

⁹⁶ For an interesting overview approach to Western imperialism, see IAN COPLAND, *THE BURDEN OF EMPIRE: PERSPECTIVES ON IMPERIALISM AND COLONIALISM* (1990).

⁹⁷ MICHAEL W. DOYLE, *EMPIRES* 218-20 (1986). Although Ethiopia successfully resisted domination during the 19th century era of imperialism, it nevertheless fell under Italian domination during the World War II era. See CHARLES S. MAIER, *AMONG EMPIRES: AMERICAN ASCENDANCY AND ITS PREDECESSORS* 39, 105 (2000).

⁹⁸ HANE, *supra* note 89, at chs. 5-9.

⁹⁹ *Id.* at 157-62. See also S. C. M. PAINE, *THE SINO-JAPANESE WAR OF 1894-1895: PERCEPTIONS, POWER, AND PRIMACY* (2003).

¹⁰⁰ HANE, *supra* note 89, at 171-79. See also *THE RUSSO-JAPANESE WAR IN GLOBAL PERSPECTIVE: WORLD WAR ZERO* (John W. Steinberg et al. eds., 2005).

¹⁰¹ HANE, *supra* note 89, at 253-58, ch. 13.

¹⁰² HOFSTADTER, *supra* note 13, at 189.

¹⁰³ DANIELS, *POLITICS OF PREJUDICE*, *supra* note 18, at 27.

¹⁰⁴ 1913 Cal. Stat. 206. See also Chuman, *supra* note 18, at 46-51; DANIELS, *ASIAN AMERICA*, *supra* note 18, at 145; DANIELS, *POLITICS OF PREJUDICE*, *supra* note 18, at 58-64; KIM, *supra* note 11, at 126.

¹⁰⁵ Initiative Act of 1920, 1921 Cal. Stat. 1921, lxxxiii. See also Chuman, *supra* note 18, at 76-80; DANIELS, *POLITICS OF PREJUDICE*, *supra* note 18, at 88-92; KIM, *supra* note 11, at 126.

¹⁰⁶ HIGHAM, *supra* note 11, at 324.

In many cases Asians and Caucasians seemed to grow more accustomed to one another and extended utilitarian friendships into friendships of pleasure and even the most profound sort of personal friendship. Again, it is the harsh historical context that makes these benevolent interracial relationships so striking.

In the western United States a great number of prominent Asian businessmen, most of them property owners, cultivated very congenial exchanges with white businessmen.¹⁰⁷ Here the situation tended to become more overtly political, as economic considerations motivated white businessmen and their organizations to speak out in defense of their Asian associates amidst an atmosphere of discrimination, racism, and exclusion.¹⁰⁸ Still, while political economy might primarily occupy the motivations of business people, they also typically developed friendships that transcended such practical considerations. George Shima (1864-1926), the millionaire California “potato king,”¹⁰⁹ Chin Lung (another “potato king”),¹¹⁰ Lee Bing, Seid Back Sr., Seid Chee (California, Oregon, and Washington state businessmen),¹¹¹ Minori Yasui (Hood River business and community leader),¹¹² Lung On of John Day, Oregon,¹¹³ and a great many others had extensive business ties and friendships among white people.¹¹⁴

¹⁰⁷ GUNTHER BARTH, BITTER STRENGTH: A HISTORY OF THE CHINESE IN THE UNITED STATES, 1850-1870 181 (1964); PARDEE LOWE, FATHER AND GLORIOUS DESCENDENT 75-78 (1943); SALYER, *supra* note 56, at 105; LIPING ZHU, “A CHINAMAN’S CHANCE” ON THE ROCKY MOUNTAIN MINING FRONTIER, IN CHINESE ON THE AMERICAN FRONTIER 160, 164-66 (2001).

¹⁰⁸ CHUMAN, *supra* note 18, at 129-30; SALYER, *supra* note 56, at 167. *See also* *Memorial of the Six Chinese Companies: An Address to the Senate and House of Representatives of the United States* 44th Cong. (1877); *The Other Side of the Chinese Question: Testimony of California’s Leading Citizens* 49th Cong. (1886).

¹⁰⁹ DANIELS, ASIAN AMERICA, *supra* note 18, at 134-35; DANIELS, COMING TO AMERICA, *supra* note 82, at 253-54.

¹¹⁰ SUCHENG CHAN, THIS BITTERSWEET SOIL 209, 212, 357 (1989).

¹¹¹ JOSEPH GASTON, PORTLAND, OREGON: ITS HISTORY AND BUILDERS, VOL. III 347-48 (1911); Portland City, OREGONIAN (June 6, 1936) at p. 21, c. 5; Jeff David Pricco, Homeless Strangers Among Us: The Chinese Community of Portland, Oregon, 1860-1900 59 (1978) (unpublished M.A. thesis, Univ. of Oregon) (on file with the Univ. of Oregon Libraries); Rose Marie Wong, Sweet Cakes, Long Journey: A Social and Urban History of Portland Oregon’s First Chinatown 122, 129-33, (1994) (unpublished Ph.D. dissertation, Univ. of Washington) (on file with the Univ. of Washington Libraries).

¹¹² LAUREN KESSLER, STUBBORN TWIG: THREE GENERATIONS IN THE LIFE OF A JAPANESE AMERICAN FAMILY 28-33, 51, 70 (1993).

¹¹³ Canyon City, Oregon, BLUE MOUNTAIN EAGLE, June 17, 1927, at 1, c. 4; Canyon City, Oregon, BLUE MOUNTAIN EAGLE, Dec. 31, 1937, at 8, c.1-2; Canyon City, Oregon, BLUE MOUNTAIN EAGLE, Dec. 20, 1940, at 8, c. 4-5; Chia-lin Chen, A GOLD DREAM IN THE BLUE MOUNTAINS: A STUDY OF THE CHINESE IMMIGRANTS IN THE JOHN DAY AREA [OF] OREGON, 1870-1910, 120 (1972) (unpublished M.A. thesis, Portland State Univ.) (on file with the Branford P. Millar Library). *See also* Will Sarvis, *Gifted Healer: Ing Hay and the Chinese Medical Tradition in Eastern Oregon, 1888-1948*, 44:3 J. OF THE WEST 62 (2005).

Asian businessmen in general had much-lauded reputations for honesty and responsibility, which their white counterparts cherished all the more in an era of high speculation, volatile capitalism, bankruptcy, and cancellation of debts.¹¹⁵ Many whites reported losses with their white counterparts but, conspicuously, none with their Asian counterparts. A Caucasian president of an Oregon fruit co-op wrote to Masuo Yasui, "For a number of years we have taken quite an interest in financing various Japanese who have gone into the strawberry and fruit business in Hood River Valley and have done so largely because they have been connected with your firm . . ."¹¹⁶

Much more common than interaction in elite business circles were labor-employer relations. Long traditions of an industrious work ethic permeate East Asian cultures, which was bound to appeal to many white observers in America, steeped in their own Protestant work ethic.¹¹⁷ As early as 1884 the Milwaukee (Oregon) *Sentinel's* editor (Horace Rablee) acknowledged the efficacy of Chinese labor, citing industriousness, inexpensiveness, neatness, lack of complaining, and rapid learning on the part of the Chinese.¹¹⁸ The *Anacortes American*, a newspaper in the small coastal town of Anacortes, Washington, was usually filled with racist editorials and reports against Asians. Nevertheless, it reported a conversational exchange in 1900 that illustrated the grudging respect some racist whites held for industrious Asian workers. "You people always have a lot of Chinaman [sic] working here," remarked a Hotel Taylor guest, visiting from Whatcom County to the north. "And at Whatcom you've got a lot of loafing paupers who don't work," rejoined his companion.¹¹⁹

Before the 1924 Johnson-Reed Act, the *Anacortes American* and a great many other newspapers along the Pacific Coast generally expressed alarm at the influx of Asian workers. With Chinese immigration severely limited after 1882, racists began targeting the Japanese.¹²⁰ Fear over Japanese labor competition, apparently inflamed by American labor agitators, contributed to rioting in Vancouver, British Columbia, in September

¹¹⁴ See also the following interviews in the SURVEY OF RACE RELATIONS Collection: Mar Sui Haw Interview (box 28, file 244) at 3-5, 7; Andrew Kan Interview (box 27, file 178) at 10; Lew Kay Interview (box 27, file 194) at 4; J.S. Look Interview, *supra* note 49, at 6.

¹¹⁵ *Memorial of the Six Chinese Companies: An Address to the Senate and House of Representatives of the United States 44th Cong.* (1877); *The Other Side of the Chinese Question: Testimony of California's Leading Citizens 49th Cong.* (1886).

¹¹⁶ FRANK DAVEY, REPORT ON THE JAPANESE SITUATION IN OREGON 6-10 (1920); KESSLER, *supra* note 101, at 56-57. See also *supra* notes 38 and 39.

¹¹⁷ A prominent example of this can be found in the Rev. William Speer's observation, from a Protestant point of view. See SPEER, *supra* note 32, at 494, 495, 526, 529, 530, 582-83.

¹¹⁸ Portland City, OREGONIAN, July 22, 1884, at 4.

¹¹⁹ ANACORTES AMERICAN, Mar. 29, 1900, at 3.

¹²⁰ Examples include ANACORTES AMERICAN, Apr. 19, 1900, at 2; Apr. 26, 1900 at 2; Jan. 10, 1901, at 2; Jan. 12, 1905, at 4; Aug. 15, 1907; at 5; July 22, 1915, at 1.

1907.¹²¹ The American Federation of Labor (AFL) had previously joined nativists in opposing immigrant labor, though their focus had been the eastern United States and European immigration. During the 1893-97 depression, AFL president Samuel Gompers (an English Jew) had opposed the influx of Russian Jews into the cigar making industry. By the early 1920s, the AFL joined the clamor for immigration restriction that led to the 1924 quota law.¹²² So it was consistent for the AFL, in 1908, to oppose Asian labor, though they oddly specified the increasingly anachronistic “threat of Chinese labor.”¹²³

Still, there were remarkable exceptions to this labor competition and Caucasian disparaging of Asian and Asian-American labor. An anonymous Japanese servant published his employment experiences in the *New York Independent* on September 21, 1905.¹²⁴ This man’s employers ranged from intolerable to very friendly. One of his favorite employers was a Princeton graduate and his wife, both of whom treated him very kindly.¹²⁵ The servant worked for them almost three years while he finished high school, and only the absence of a local college or university compelled him to depart, which he wrote he “exceedingly” hated to do. His next employer was a haughty, dictatorial woman, and he left her employ almost immediately.¹²⁶ While in college this servant’s best position was as a cabin boy on a yacht, where he worked for a summer. He described the yacht’s owner and his wife as “very agreeable” and their children as “lovely and good-natured.” Unlike the dictatorial woman, who had made the social distance between them plain, the yacht people included their servant in conversations and helped him with his education expenses even after he had left their employ.¹²⁷

Similar to elite business relationships, true affection could also develop among non-elite Asian workers and the various whites who hired them. This was especially likely in domestic environments, when whites frequently described their Asian cooks or domestics as virtually “one of the family.”¹²⁸ Perhaps no clearer example of this was reflected in the life of Luke

¹²¹ Masako Iino, *Japan’s Reaction to the Vancouver Riot of 1907*, 60 BR. COLUM. STUDIES 60 28 (Winter 1983-84); Howard H. Sugimoto, *The Vancouver Riot and Its International Significance*, 64:4 PAC. NORTHWEST Q. 163 (1973).

¹²² HIGHAM, *supra* note 11, at 71, 305-06.

¹²³ SAMUEL GOMPERS AND HERMAN GUTSTADT, SOME REASONS FOR CHINESE EXCLUSION, MEAT VS. RICE: AMERICAN MANHOOD AGAINST ASIATIC COOLIEISM, WHICH SHALL SURVIVE? (1908).

¹²⁴ This article is reproduced in SURVEY OF RACE RELATIONS, box 26, file 109.

¹²⁵ *Id.* at 7-8.

¹²⁶ *Id.* at 8-9.

¹²⁷ *Id.* at 9-12.

¹²⁸ Wong Chin Foo, *The Chinese in New York*, COSMOPOLITAN, June 1888, at 300; EVELYN NAKANO GLENN, ISSEI, NISEI, WAR BRIDE: THREE GENERATIONS OF JAPANESE AMERICAN WOMEN IN DOMESTIC SERVICE 154-158 (1986); HAMILTON HOLT, THE LIVES OF UNDISTINGUISHED AMERICANS: AS TOLD BY THEMSELVES 166-171 (1906); HERBERT JOHNSON, DISCRIMINATION AGAINST THE JAPANESE IN CALIFORNIA 41-43 (1907); Evelyn

Chess. Luke Chess, born in 1890 to Chinese parents in San Francisco, moved to Genoa, Nebraska in 1910 to work for Mrs. Ed L. Burke of the Kent & Burke Cattle Ranch. In 1924 in his faltering command of English he wrote, “[S]he was the most kind hearted lady to me in my life, I took her as a mother to me, and her’s care take and love to me as to her own son [S]he not only known of my happiness, but my troubles and sorrow as well, until to to [sic] dated she is my best friend I have had.”¹²⁹

Obviously white employers could also be condescending and racist, but this should not discount other instances genuine good will.¹³⁰ In fact, genuine affection could sometimes be intermixed with the unfortunate bigotry and hierarchical cultural absolutism so typical of the era that failed to appreciate Asian culture in its own right. But what seems ambiguous or dubious now should not be imposed upon the past lest we commit the historian’s fallacy of presentism.¹³¹ In regard to Ye Gon Lun, a Chinese boy in California during the late nineteenth century, Ira M. Condit wrote,

He came into the home of Honorable N. Greene Curtis, of Sacramento, a little boy of only nine years of age, and fresh from his heathen home in China. He was meant to be only a servant boy. By the loveliness of his character, and his wonderful faithfulness to duty, he soon won his way into the hearts of this household. They learned to feel towards him and to treat him more as a son than as a servant. In natural uprightness and nobleness of nature he was far above the average of his countrymen, and soon became separated in sympathy from them, so that he scarcely seemed to be Chinese at all.¹³²

But there were other qualifications of the paternal-symbiotic situation, more positive even from a Western cultural perspective. Contrary to stereotypes of docility, dissatisfied Asian workers often left their individual jobs or sometimes collectively rebelled against employers through strikes and boycotts.¹³³ The family of John Reed, famous author of *Ten Days that*

Sibley Lampman, *As It Was*, OREGON HIST. Q., Dec. 1975, at 369, 371-72; ROSE LEE, GROWTH AND DECLINE OF CHINESE 218-19 (1978); MITZI ASAI LOFTUS, MADE IN JAPAN AND SETTLED IN OREGON 18-19 (1990); City of Portland, OREGONIAN, July 22, 1884, at 4; ROSSITER W. RAYMOND, STATISTICS OF MINES AND MINING IN THE STATES AND TERRITORIES WEST OF THE ROCKY MOUNTAINS 3-6 (1872); SHIH-SHAN HENRY TSAI, *supra* note 23, at 58.

¹²⁹ *Autobiography of Mr. Luke Chess*, Oct. 1924, SURVEY OF RACE RELATIONS, box 30, file 18, at 5.

¹³⁰ Paul Merriam dismisses such good will as a situation in which elite whites who were not competing in the work force valued the high quality of Chinese service. Obviously a good deal of truth must lie in this depiction, but the qualification of its over-simplicity presents a microcosm of this essay’s main thesis. Paul G. Merriam, *Portland, Oregon, 1840-1890: A Social and Economic History*, 71 (Univ. of Oregon, PhD dissertation, 1971).

¹³¹ DAVID HACKETT FISCHER, HISTORIANS’ FALLACIES 135-40 (1970).

¹³² IRA M. CONDIT, THE CHINAMAN AS WE SEE HIM 181 (1900).

¹³³ CHAN, THIS BITTERSWEET SOIL, *supra* note 110, at 332-33; GLENN, *supra* note 128, at 161-64; LEE MERIWETHER, THE TRAMP AT HOME 175-77, 191 (1889). *See also*

Shook the World, employed a Chinese domestic who was also a proud property owner, and thus hardly servile.¹³⁴ Evelyn Nakano Glenn, who described many good relations between Japanese servants and their employers, also described servants who tried (with varying success) to dictate the terms of their employment and, if necessary, resigned rather than tolerate demeaning or otherwise unhappy working conditions.¹³⁵ Ironically, some of today's purported proponents of interracial goodwill often ironically make cross-cultural mistakes, and inadvertently impose their values upon others. Regarding historic Asian-Caucasian friendships, American critics of paternalism sometimes fall directly into this trap. It is worth a more deep examination. A Chinese ranch worker will illustrate the point.

Ah Sam, a ranch hand for the Jewett family in California before World War II, insisted on removing himself to Chinatown after the Jewetts sold their ranch.¹³⁶ Fiercely loyal to the family, Ah Sam refused to work for another, not even Hugh Jewett's cousin. Hugh Jewett apparently failed to convey the fact that his own family was going out of the ranching business, and remained concerned for Ah Sam's future and well being.¹³⁷ Finally, it occurred to Hugh Jewett to appeal to Ah Sam's very sense of family loyalty. He informed Ah Sam that his cousin was ill, in dire need of his help, and that Ah Sam might consider the cousin a member of the extended Jewett family. The result was a new job for Ah Sam and the delivery of much needed high quality labor.¹³⁸

Probably without realizing it, Jewett had appealed to Ah Sam's Confucian sense of loyalty and constancy in friendship. From an Aristotelian point of view this was mainly a utilitarian sort of friendship,¹³⁹ but a Confucian perspective strongly suggests a much deeper sense of dedication than mere utilitarianism.¹⁴⁰ Beyond all particular cultural considerations, however, this relationship demonstrated an almost fierce element of good will.

As mentioned, scholars have criticized the paternalism that sometimes characterized these types of employer-laborer relationships, but this presents a potential Anglo-American cultural distortion and thus what David Hackett Fischer described as the "fallacy of ethnomorphism."¹⁴¹ Anglo-Americans, with their long and colorful heritage of hyper-individualism,

Anonymous Japanese Servant, N.Y. INDEPENDENT, Sept. 21, 1905, SURVEY OF RACE RELATIONS, box 26, file 109.

¹³⁴ Fred DeWolfe, Ed., *Portlander John Reed Remembers Lee Sing, His Family's Chinese Servant*, 97:3 OR. HIST. Q. 365 (1996).

¹³⁵ GLENN, *supra* note 128, at 160-64.

¹³⁶ "Ah Sam" (or "Yellow Sam"): from Hugh S. Jewett reminiscences (Call# BANC MSS 80/84 c: fol. 6, Bancroft Library, Univ. of California-Berkeley).

¹³⁷ *Id.*

¹³⁸ *Id.* See also CHAN, THIS BITTERSWEET SOIL, *supra* note 110, at 339-40; TSAI, *supra* note 23, at 35.

¹³⁹ ARISTOTLE, NICOMACHEAN ETHICS at 214 (Broadie & Rowe trans.) (c. 384 B.C.E.).

¹⁴⁰ CONFUCIUS, ANALECTS OF CONFUCIUS bks. V:25 and XV:5 at 114, 194 (Waley, trans.) (c. 206 B.C.E.).

¹⁴¹ FISCHER, *supra* note 131, at 224-25.

tend to disparage paternalism uniformly.¹⁴² East Asians, with even longer traditions of group-orientation, champion loyalty, honesty, diligence, and other forms of integrity in highly social relationships — all consistent with Confucian ideas of harmonious and virtuous social relationships.¹⁴³ Being dependent upon an employer, from an Asian perspective, was not necessarily dishonorable.¹⁴⁴ The noted scholar Sucheng Chan, in fact, does not necessarily describe these sorts of relationships as “paternal” at all, but rather as symbiotic.¹⁴⁵ Sucheng Chan makes an excellent point. There was good reason for recognizing these relationships outside of western notions of paternalism, even if symbiotic relationships were not always benevolent.

Mr. Preble of the Curtis Packing Company of Long Beach, California, highly praised their Japanese workers for their cleanliness, hard work, trustworthiness, cheerfulness, and high levels of education — but noted that they strongly resisted being “bossed” by whites, in contrast to complying with the orders of Japanese supervisors.¹⁴⁶

Monica Sone’s father, a Japanese hotel owner in pre-war Seattle, was “paternalistic” himself toward his Caucasian employees, who were “like family” to the Sones. For example, Joe Subotich, a white man down on his luck, experienced a change in fortune by meeting Mr. Sone. “Father trusted him,” his daughter remembered, “and Joe’s gratitude knew no bounds. Eventually Joe became our night watchman and Father’s loyal friend.”¹⁴⁷ Thus it remains important to avoid reading Anglo-American cultural preferences for individualism into pre-war Asian-Caucasian employee-worker

¹⁴² Leverenz goes on to describe paternalism as more complicated and ambiguous than its detractors. DAVID LEVERENZ, *PATERNALISM INCORPORATED: FABLES OF AMERICAN FATHERHOOD, 1865-1940* 1 (2003). *See also* ANDREA TONE, *THE BUSINESS OF BENEVOLENCE: INDUSTRIAL PATERNALISM IN PROGRESSIVE AMERICA* (1997). *See generally* BRANNON COSTELLO, *PLANTATION AIRS: RACIAL PATERNALISM AND THE TRANSFORMATIONS OF CLASS IN SOUTHERN FICTION, 1945-1971* (2007); MELTON A. MCLAURIN, *PATERNALISM AND PROTEST: SOUTHERN COTTON MILL WORKERS AND ORGANIZED LABOR, 1875-1905* (1971); JOHN DAVID SMITH, ED., *RACIST SOUTHERN PATERNALISM* (1993).

¹⁴³ CONFUCIUS, *supra* note 140, at 85, 86-87, 114, 170, 194, 205.

¹⁴⁴ The usual stereotype depicts Western culture as individualistic and East Asian culture as group-oriented. There may be more truth in this than the average stereotype, but of course this simplicity fades upon further examination. For the origins of individualism in Western culture, *see generally* COLIN MORRIS, *THE DISCOVERY OF THE INDIVIDUAL, 1050-1200* (1972). For Western philosophical ideas about the individual from the 17th century to modern times, *see generally* BRIAN MORRIS, *WESTERN CONCEPTIONS OF THE INDIVIDUAL* (1991). For ambiguities about the dichotomy of Western individualism and Eastern collectivism, *see generally* JOHN D. GREENWOOD ET AL, *INDIVIDUALISM AND COLLECTIVISM IN MORAL AND SOCIAL THOUGHT IN THE MORAL CIRCLE AND THE SELF: CHINESE AND WESTERN APPROACHES* 163-73 (2003).

¹⁴⁵ CHAN, *THIS BITTERSWEET SOIL*, *supra* note 110, at 176-78, 185, 187, 189, 243, 361-64, 368.

¹⁴⁶ William Kinchelve, *A Study of the Japanese Fishermen at Curtis Packing Company in Long Beach*, SURVEY OF RACE RELATIONS, box 30, file 30, at 1-5.

¹⁴⁷ MONICA SONE, NISEI DAUGHTER 30-33 (1979).

exchanges, even while recognizing the crucial aspects of potential and actual exploitation.

Asian salmon cannery workers, timber mill workers, agricultural laborers, domestic servants, farm cooks, and other workers all participated in various symbiotic-paternal situations with their employers. While clearly a utilitarian type of friendship, white employers repeatedly and consistently sung the virtues of their Asian workers during the entire late nineteenth and early twentieth century period.¹⁴⁸ Again, such Caucasian attitudes stood in marked contrast to the dominant racism of the period that contained no shortage of anti-Asian labor agitation among working class whites.

Hundreds of Japanese worked in the timber mill industries of Washington state during the 1920s. A certain Mr. Ninemire, president of N & M Lumber Company in Rochester, Washington, expressed the typical praise of his Japanese workers. In a 1924 interview he described them as more dependable, more consistent, and harder working than whites.¹⁴⁹ R. Ode, Japanese foreman of the Eatonville Lumber Company, described how his Japanese mill workers were in high demand for moonlighting positions as carpenters. Their reputation as diligent workers came from their regular employment at the mill. "All my boys have been here for a long time and they all work like hell," Ode said in 1924.¹⁵⁰ A great many similar descriptions from the 1920s can be found at numerous other Washington mills such as Carlisle Pennell Lumber Company (Onalaska), the Ernest Dolge mill (Tacoma), St. Paul and Tacoma Lumber Company (Tacoma), Grays Harbor Commercial (Cosmopolis), the Doty Lumber and Shingle Company (Doty), and many others.¹⁵¹ While clearly a mutually utilitarian relationship, these mills also experienced wider varieties upon the theme, in-

¹⁴⁸ See Pricco, *Homeless Strangers*, CALIFORNIA HISTORICAL SOCIETY 57 (1886); C.H. Burnett, *Interview and Social Document of George T. Meyers*, July 27, 1924, SURVEY OF RACE RELATIONS, box 27, file 185, at 1-2; Marjorie McComber, *A Japanese Agricultural Community Near Fullerton, California*, May 26, 1924, SURVEY OF RACE RELATIONS, box 26, file 118, at 3-4.

¹⁴⁹ R.L. Olson, *Interview with Mr. Ninemire, President of the Company*, July 22, 1924, SURVEY OF RACE RELATIONS, box 28, file 210, at 3, 4.

¹⁵⁰ Ronald L. Olson, *Impressions, Attitudes and Incidents*, SURVEY OF RACE RELATIONS, box 28, file 204, at 23.

¹⁵¹ Ronald L. Olson, *The Orientals in the Lumber Industry in the State of Washington*, SURVEY OF RACE RELATIONS, box 27, file 198, at 9, 10, 12, 15; *A.R. Johnson Interview*, SURVEY OF RACE RELATIONS, box 27, file 200, at 4; *Jimmy Harwell Interview and Mr. Patterson Interview*, SURVEY OF RACE RELATIONS, box 28, file 203, at 6, 9; Olson, *Impressions*, *supra* note 150, at 8, 10, 21; *Mr. Stout Interview*, *E.S. Bennett Interview*, *White Mill Truck Driver Interview*, SURVEY OF RACE RELATIONS, box 28, file 207, at 3, 5, 7; *Mr. Ellis Interview*, SURVEY OF RACE RELATIONS, box 28, file 201, at 5; *Mr. Matsui Interview*, *Mr. Holmes Interview*, *Mr. Rogers Interview*, *E.G. Griggs to Ronald L. Olsen*, August 19, 1924, SURVEY OF RACE RELATIONS, box 28, file 202, at 4, 8, 9, 12, 13; R.L. Olson, *Doty Lumber and Shingle Company*, SURVEY OF RACE RELATIONS, box 28, file 206, at 1, 6.

cluding exploitation of harder working Japanese, but also instances of interracial horseplay and even “true friendship.”¹⁵²

A certain Mr. Kier fished and bought fish in southern California for more than twenty years during the early twentieth century.¹⁵³ Of the multiple racial and ethnic groups in the area, Kier singled out the Japanese fisherman as the best. Kier admired their educated approach to their working class endeavor, wherein the Japanese studied weather and ocean conditions and how they affected various fish species.¹⁵⁴ Kier praised the Japanese for maintaining their boats and equipment better than other fishers, for the unequaled quality of fish they sold, and for their good will. “They have always been my friends, they always have a smile for you,” Kier said around 1924.¹⁵⁵

In some cases a delightful cultural interaction took place — such as the United States-Japan exchange that the Ike family organized for the McCombers in 1923.¹⁵⁶ The Ikes were Japanese tenant farmers on the McComber farm near Fullerton, California. They arranged for the McCombers to be received by various tourist bureau and chamber of commerce delegations when the latter visited Japan.¹⁵⁷ The Ikes performed this kindness for the McCombers just before California’s 1920 Alien Land Law took effect, excluding Japanese from leasing agricultural land.¹⁵⁸ It was a gesture of good will toward individual friends within a society becoming, at that time, increasingly discriminatory toward Japanese.¹⁵⁹

In Oakland, California, and Vancouver, British Columbia, there was apparently an easing of white-Asian racial tensions during the 1930s that may have indicated a wider pattern.¹⁶⁰ Why tensions would ease when economic depression increased competition for jobs remains unknown, but would seem to qualify to usual depiction of such conflict as a simple ex-

¹⁵² Olson, *Orientalists in the Lumber Industry*, *supra* note 151, at 15.

¹⁵³ Kinchelve, *supra* note 146, at 5-7.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ McComber, *A Japanese Agricultural Community*, *supra* note 148, at 5.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Incidentally, countless whites helped Asians circumvent alien land laws of the 1910s and 1920s by purchasing land in their own names and holding acreage for Chinese and Japanese. Such an arrangement required a great deal of trust. If Caucasians honored their side of the agreement, the arrangement resulted in stronger bonds of friendship. Betrayal, of course, was irredeemable, without legal recourse. In all their outcomes, such arrangements remained by necessity secret. See KAZUO ITO, *ISSEI: A HISTORY OF JAPANESE IMMIGRANTS IN NORTH AMERICA* 663-665 (1973); Amy K. Buck, *Alien Land Laws: The Curtailing of Japanese Agricultural Pursuits in Oregon*, 49-51 (MA thesis, Portland State Univ., 1999).

¹⁶⁰ KAY J. ANDERSON, *VANCOUVER’S CHINATOWN: RACIAL DISCOURSE IN CANADA, 1875-1980*, at 144-177 (1991); L. EVE ARMENTROUT MA, *HOMETOWN CHINATOWN: THE HISTORY OF OAKLAND’S CHINESE COMMUNITY* 87-108 (2000).

planation for earlier conflicts, especially between Chinese and Irish immigrants.¹⁶¹

Beyond the workplace, Asians continued to find benevolent allies in the legal and political realms.¹⁶² In 1915, San Francisco Mayor James Rolph, Jr. (1912-1931) used his political power directly to subvert discrimination.¹⁶³ The United States government had invited about twenty Chinese men to participate in the 1915 Panama-Pacific International Exposition in San Francisco. Rolph intervened with immigration authorities who refused to admit some of these men on the grounds of purported hookworm and trachoma infection — but apparently were actually detaining them aboard ship in order to extort them for expensive “medical treatment” of said maladies.¹⁶⁴ Rolph, who also served as president of the Exposition, pressured the immigration authorities to release the Chinese under his care and the Chinese participated as originally planned. David Young, a leader among the Chinese, remembered Rolph for his positive intervention and said Rolph also secured housing for the Chinese after the Exposition. Young attributed American prejudice to the laboring class and European immigrants, but clearly appreciated Rolph’s judicious exercise of political power.¹⁶⁵

The Chinese Six Companies regularly retained attorneys to handle cases, which often became the specialties of certain lawyers.¹⁶⁶ Unlike the legal fight for civil rights in the American South, there was often a great deal of money to be made in lawsuits affecting Asians.¹⁶⁷ Various ethnic

¹⁶¹ Much of this is associated with labor competition, epitomized by Dennis Kearney (1847-1907), co-organizer of the Workingman’s Party whose late 1870s anti-Chinese agitation helped instigate the 1882 Chinese Exclusion Act. See MCCLAIN, *IN SEARCH OF EQUALITY*, *supra* note 17, at 79-80, 309. See also HAMILTON HOLT, *LIVES OF UNDISTINGUISHED AMERICANS* 184-185 (1906); *Memorandum, Their Excellencies Pao and Li to the Commissioners*, 47th Cong., 2554 (Apr. 4, 1882); *The Chinese Panic*, HARPER’S WEEKLY, 306-307 (May 20, 1882). Several years before Kearney came on the scene, Mark Twain and the Rev. William Speer both blamed (“low class”) whites for anti-Chinese activity and sentiment, see generally MARK TWAIN, *ROUGHING IT* 391-392 (1872); SPEER, *supra* note 32, at 71, 530 (1870). For early 20th century accounts blaming the Irish and other European ethnic immigrants for anti-Asian racism, see generally *Mr. Banton and Anonymous White Engineer Interviews*, SURVEY OF RACE RELATIONS, box 28, file 208.

¹⁶² See also DANIEL JOHNSON, *ANTI-JAPANESE LEGISLATION IN OREGON, 1917-1923*, at 196-197 (1996); SALYER, *supra* note 56, at 62, 66 (1995); Robert R. Swartout, Jr., *In Defense of the West’s Chinese: Denny’s Brief for Li Hung-chang*, 83:1 OREGON HIST. Q. 27-29 (1982).

¹⁶³ *Life History and Social Document of David Young*, Aug. 29, 1924, SURVEY OF RACE RELATIONS, box 29, file 22, at 3-5.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ SALYER, *supra* note 56, at 40.

¹⁶⁷ *Id.* at 70-71.

organizations gathered dues to pool for lawsuits.¹⁶⁸ Churches and philanthropists also donated money.¹⁶⁹ In some circumstances attorneys must have enjoyed a lucrative trade, and therefore an interest in profit obscures their motives. In fact, one San Francisco lawyer (John Henry Boalt) was openly anti-Chinese, but suspended his personal beliefs to exploit pro-Chinese lawsuits.¹⁷⁰ In other cases, attorneys were on a retainer's fixed annual salary and were obliged to handle all cases, no matter how numerous, during that period.¹⁷¹ Some Caucasians and Asians simply remembered each other as honest businessmen and clients who had enjoyed an honest and fair exchange.¹⁷² Some attorneys likely had mixed motives involving economy and philanthropy. But some clearly came to have Asians' best interests at heart.

Every attorney, it should be remembered, faced potential public opposition for defending Asians at all, whether for profit, altruism, or mixed motives.¹⁷³ Louis Guernsey, a Los Angeles attorney with political ambition, publicly denounced his colleague, Robert Young, for representing local Japanese.¹⁷⁴ In fact, Guernsey claimed Young should be disbarred on these grounds.¹⁷⁵ Masuo Yasui, the Hood River leader, developed a very close friendship with Ernest C. Smith, a local lawyer.¹⁷⁶ Smith handled a great deal of legal work for the Hood River Japanese, but also invited Yasui to his house, served him tea, and suffered malicious backbiting and loss of business from area whites for his trouble.¹⁷⁷

¹⁶⁸ *Id.* at 47. Franklin B. Worley functioned as contract attorney for the Chinese League of Justice of America during the early 1900s, as did Carroll Cook for the Chinese Consolidated Benevolent Association (the "Six Companies") during the same period. See Carroll Cook correspondence (call# AAS ARC 2000/42, folders 2 and 14), and Chinese League of Justice of America miscellany (call# AAS ARC 2000/43) both Ethnic Studies Library, Univ. of California-Berkeley.

¹⁶⁹ CHUMAN, *supra* note 18, at 12-13.

¹⁷⁰ FRITZ, *supra* note 55, at 212.

¹⁷¹ MCCLAIN, *In Search of Equality*, *supra* note 17, at 336, 345-46.

¹⁷² Chin Cheung, leading Seattle merchant of the 1920s, spoke well of his attorneys, Walter Fulton and a certain Mr. Norman, *see Chin Cheung Interview*, SURVEY OF RACE RELATIONS, box 27, file 187, at 3. J.A. Russel, 35-year veteran criminal lawyer for the Seattle Chinese by 1924, described his clients as "very loyal and very honest," which, of course, were typical Confucian virtues, *see J.A. Russell Interview*, SURVEY OF RACE RELATIONS, box 24, file 27, at 2.

¹⁷³ FRITZ, *supra* note 55, at 212; MCCLAIN, *IN SEARCH OF EQUALITY*, *supra* note 17, at 64.

¹⁷⁴ Robert Young (Series A, #163; Series A, #306, #309, *Smith Collection*, available at Univ. of Oregon Special Collections).

¹⁷⁵ *Id.*

¹⁷⁶ KESSLER, *supra* note 112, at 61-62 (2008).

¹⁷⁷ *Id.* An anonymous critic of this paper for the *Pacific Historical Review* dismissed the idea of Masuo Yasui having any Caucasian friends because he eventually committed suicide. Aside from the ludicrous implication that friendlessness causes suicide or that people who commit suicide have no friends, this criticism also advances an inexcusably (and ironically) racist non-appreciation for Japanese culture, wherein suicide is sometimes the ultimate expression of honor. The place of suicide in Japanese culture has deep roots

In early 1923, San Francisco District Attorney Matthew Brady (in office 1919-1943) petitioned Angel Island's Commissioner of Immigration (a Mr. White) not to deport certain Chinese slave women after they had testified against their captors.¹⁷⁸ Brady, on the public payroll, likely had no other motive than good will. He accurately saw the women as victims and, after receiving their testimony, he wanted them paroled safely to Donaldina Cameron's much noted mission house.¹⁷⁹ Cameron (1869-1968), for all her flaws, was famous for going to great lengths to rescue Chinese slave women who were regularly kidnapped into prostitution.¹⁸⁰

Fred H. Lysons, 25-year veteran attorney for the Chinese in Seattle by 1924, actually became something of an amateur Sinologist. He first traveled to China in 1914 and ended up possessing an atypical appreciation for Chinese cultural phenomenon such as ancestor worship and *feng shui* (sometimes called Chinese geomancy).¹⁸¹ Aside from his legal work, then, perhaps Lysons might be credited with an interest in Asian culture, itself an anti-racist attitude.

While practically all benevolent pre-war legal affairs involved Asian clients and Caucasian attorneys and judges, the field of medicine exhibited something of a reversal in roles. Here Chinese doctors brought a centuries-old healing tradition so radically different from Western medicine as to attract an entire white clientele dissatisfied with orthodox practices. After all, orthodox Western medicine had recently sanctioned practices such as bleeding and purging, the latter definitely potentially harmful to ailing patients.¹⁸²

Chinese doctors had to endure inaccurate comparisons with late nineteenth and early twentieth century unorthodox healers, some of whom were the legendary "snake oil salesmen" charlatans of the American West.¹⁸³ Newspaper writers did not hesitate to equate Chinese physicians

in the centuries-old Samurai ethic and Zen Buddhism and is practically incomprehensible from a biased Western perspective with its notions of "suicide as sin." This misconstrued criticism illustrates the "fallacy of ethnomorphism;" see FISCHER, *supra* note 131, at 224-25.

¹⁷⁸ SAN FRANCISCO DAILY NEWS, Feb. 8, 1923.

¹⁷⁹ *Id.*

¹⁸⁰ For accounts on slave women, see generally SURVEY OF RACE RELATIONS, box 25, files 55 and 83. For an Interview with Cameron, see SURVEY OF RACE RELATIONS, box 26, file 129. Donaldina Cameron's work in San Francisco was arguably the most famous among Christian benevolent efforts. But behind Cameron's supposed benevolence lay a great deal of dogmatism, racism, intolerance and other negative features, see also Laurene Wu McClain, *Donaldina Cameron: A Reappraisal*, 27:3 PAC. HISTORIAN 24-35 (1983).

¹⁸¹ *Fred H. Lysons Interview*, SURVEY OF RACE RELATIONS, box 27, file 192, at 1-4.

¹⁸² Gevitz provides a highly informative work distinguishing what might be described as the "loose dichotomy" between conventional and unconventional Western medicine of the era, see NORMAN GEVITZ, *OTHER HEALERS: UNORTHODOX MEDICINE IN AMERICA* 17-18 (1988).

¹⁸³ *Id.* at 6; Haiming Lu, *The Resilience of Ethnic Culture: Chinese Herbalists in the American Medical Profession*, 1:2 J. ASIAN AM. STUDIES 179, 180, 183 (1998).

with quacks, while others were grudgingly respectful.¹⁸⁴ Clearly all sorts of Western unorthodox practitioners paid for regular newspaper advertising and did not suffer as much proportional deprecation.¹⁸⁵ Furthermore, police often extorted Chinese doctors for practicing medicine without licenses, while health boards opposed their practice.¹⁸⁶ Chinese physicians also probably endured an inordinate number of terminally ill patients who came to them only as a last resort.¹⁸⁷ Nevertheless, successful Chinese healers gained enduring and sometimes remarkably widespread followings.¹⁸⁸

The medical world saw major successes for Chinese doctors and their Caucasian patients. Li Putai,¹⁸⁹ Tan Fuyuan, Chang Yitang and Tan Feixuan (all of Los Angeles),¹⁹⁰ and Jin Yok Gong¹⁹¹ of San Francisco, and many Virginia City doctors (especially Hop Lock)¹⁹² developed favorable reputations among a white clientele that grew as exclusion laws diminished Chinese patients. Many of these doctors had large followings among white females with genealogical complaints.¹⁹³ Dr. Ah Sang gained respect and gratitude among white miners of the Sierra Nevada through his skillful healing abilities and hospital managerial skills.¹⁹⁴ The multi-generational Ah-Fong family of doctors enjoyed a much storied following in Idaho.¹⁹⁵ In

¹⁸⁴ Baker City, Oregon, BEDROCK DEMOCRAT, Feb. 7, 1872 at p.1, c.4 Canyon City, Oregon, BLUE MOUNTAIN EAGLE, Aug. 24, 1906 at 1, c.3-4 ; A.W. Loomis, *Medical Art in the Chinese Quarter*, 2:6 THE OVERLAND MONTHLY 496-506 (June 1869); William M. Tisdale, *Chinese Physicians in California*, 68 LIPPINCOTT'S MONTHLY MAGAZINE 411-416 (Mar. 1899).

¹⁸⁵ The *Blue Mountain Eagle* for 1909 alone is filled with many dozens of ads and fake news stories advertising unorthodox Western doctors. For specific examples, see Baker City, Oregon, BEDROCK DEMOCRAT, Jan. 31, 1872 at 4, c.6 ; Baker City, OREGON, BEDROCK DEMOCRAT, Apr. 17, 1872 at 4, c.5, c.6 ; Canyon City, Oregon, BLUE MOUNTAIN EAGLE, Sept. 30, 1910 at 2, c.1 ; Sarvis, *supra* note 113, at 66.

¹⁸⁶ Haiming Liu, *Resilience of Ethnic Culture: Chinese Herbalists in the American Medical Profession*, 1.2 J. ASIAN AM. STUDIES 180, 184-85 (1998); TSAI, *supra* note 23, at 38.

¹⁸⁷ For an example, see the sarcastic, racist account concerning Dr. Wing Lee's "failure" to cure a Mrs. L.A. Nye, who was in the final stages of tuberculosis in Canyon City in BLUE MOUNTAIN EAGLE Aug. 24, 1906, at 1, c. 3-4 .

¹⁸⁸ CHIA-LIN CHEN, A GOLD DREAM IN THE BLUE MOUNTAINS 124-25 (1972); Lee, *supra* note 117, at 204; MAGNAGHI, VIRGINIA CITY'S CHINESE COMMUNITY 128; Sarvis, *supra* note 113; STAN STEINER, FUSANG: THE CHINESE WHO BUILT AMERICA 123 (1980).

¹⁸⁹ Lu, *supra* note 183, at 178; (also spelled Li Po Tai, in Tisdale, *supra* note 184, at 412, 416).

¹⁹⁰ *Id.* at 178.

¹⁹¹ *Death of Legendary Ing Hay Closes Pioneer Story Era* in BLUE MOUNTAIN EAGLE, July 25, 1952 at 1, c.6 (noted for his reputation as perhaps the greatest Chinese doctor of his era). See also CHEN, *supra* note 188, at 122.

¹⁹² MAGNAGHI, *supra* note 188, at 128.

¹⁹³ JEFFERY BARLOW AND CHRISTINE RICHARDSON, CHINA DOCTOR OF JOHN DAY 58 (1979); Chen, *supra* note 177, at 123; CHRISTOPHER MUENCH, ONE HUNDRED YEARS OF MEDICINE: THE AH-FONG PHYSICIANS OF IDAHO 65 (1984).

¹⁹⁴ STEINER, *supra* note 188, at 123.

¹⁹⁵ MUENCH, *supra* note 193, at 51-80.

January 1900, when the Idaho Supreme Court ruled in his favor,¹⁹⁶ C.K. Ah Fong became perhaps the only doctor practicing traditional Chinese medicine in the United States to gain a standard medical license. Beginning in the late nineteenth century in the small town of John Day (in remote eastern Oregon) Ing Hay became a legendary physician who practiced for nearly sixty years and eventually drew clients from as far away as San Francisco and Alaska.¹⁹⁷ Local white doctors, apparently jealous of Ing Hay's popularity, tried unsuccessfully on at least two occasions to have Ing Hay prosecuted.¹⁹⁸ Utilitarian friendship, as the name indicates, includes an inherent mutual self-interest. Although impossible to measure, sometimes these friendships clearly went beyond the conviviality associated with an immediate professional exchange, as some of the examples above clearly demonstrate.

IV. PROGRESSIVE ERA FRIENDSHIPS OF PLEASURE AND VIRTUE

Churches sometimes functioned as institutions providing an arena of benevolent exchange and friendships among Asians and Caucasians.¹⁹⁹ In 1853 Presbyterians Dr. and Mrs. William Speer began a San Francisco mission to the Chinese.²⁰⁰ In 1859 Mr. and Mrs. A.W. Loomis took charge, and began preaching the gospel and teaching English.²⁰¹ The Loomises illustrate a complex and sometimes ambiguous aspect of this study because of considerations of cultural imperialism²⁰² and Christian arrogance.²⁰³ The age of imperialism included a major Christian missionary component, in which (for the United States) mainly Protestants evangelized abroad.²⁰⁴ The idea of converting the heathen masses is almost as ancient as Christianity itself, going back to Paul the Apostle and his travels to spread what even-

¹⁹⁶ Ah Fong v. McCalla, 59 P. 930 (Idaho 1900).

¹⁹⁷ Barlow and Richardson's *China Doctor of John Day* is, unfortunately, heavily flawed. A better source is Chen's *A Gold Dream in the Blue Mountains*.

¹⁹⁸ Canyon City, Oregon, BLUE MOUNTAIN EAGLE, May 21, 1915 at 3, c.5; BLUE MOUNTAIN EAGLE, Nov. 23, 1928 at 1, c.4; BLUE MOUNTAIN EAGLE, May 10, 1929, at 4, c.1; BLUE MOUNTAIN EAGLE, June 7, 1929; at 2, c.3; Sarvis, *supra* note 113, at 67.

¹⁹⁹ GUNTHER BARTH, BITTER STRENGTH 169 (1964); R. SEAGER, SOME DENOMINATIONAL REACTIONS TO CHINESE IMMIGRATION IN CALIFORNIA 53 (1959).

²⁰⁰ Seager, *supra* note 199, at 49.

²⁰¹ TSAI, *supra* note 23, at 43-44.

²⁰² Although he does not focus on the religious aspect, for the problematic definitions and usage of 'cultural imperialism', see JOHN TOMLINSON, CULTURAL IMPERIALISM: A CRITICAL INTRODUCTION 2-33 (1991).

²⁰³ The term 'cultural imperialism' has loose and variegated usages, but the disrespectful imposition of Christianity on non-Christian cultures cannot be denied, see generally KENNETH M. MACKENZIE, THE ROBE AND THE SWORD: THE METHODIST CHURCH AND THE RISE OF AMERICAN IMPERIALISM (1961); WILLIAM R. HUTCHISON, ERRAND TO THE WORLD: AMERICAN PROTESTANT THOUGHT AND FOREIGN MISSIONS (1987). For an inadvertent reflection of this biased orientation in the account of the Protestant minister William Speer, see generally SPEER, *supra* note 32, at 605-24.

²⁰⁴ *Id.* See also SEAGER, *supra* note 199, at 51.

tually became Christianity (Paul himself was not only a Jew, but a Pharisee).²⁰⁵ Unwittingly, in many cases, Christian missionaries thus became purveyors of cultural arrogance, for conversion to Christianity is absolute. This is because, according to the Hebrew Bible's classic requirement that has followed all monotheisms, the true believer must forsake "all other gods"²⁰⁶ before the One, whether that be Yahweh, God, or Allah.

Buddhism, on the other hand, historically spread far from its India birthplace in part because of its tolerance of established religions and thus a resulting polytheistic syncretism.²⁰⁷ For example, China's ancient tradition of Taoism heavily influence a school of Buddhism that came to be called *Ch'an* (*San* in Korean, but more familiar to Westerners in its Japanese pronunciation, Zen).²⁰⁸ By the time Japanese came to America they had lived for centuries as both Shintoists (the preceding tradition) and Buddhists (the imported foreign religion and philosophy).²⁰⁹ Buddhism had faded away as a popular religion in China, but Chinese continued to see no conflict in considering themselves both Confucianists and Taoists. A government official might see himself as a Confucianist by day and a Taoist by night, or a Confucianist during his career and a Taoist during retirement.²¹⁰ This difference in approach to religion helps explain why a foreign religion like Buddhism could be so successful, while Christianity was a comparative failure.²¹¹ The era of imperialism did not help matters. As Chinese scholar Monlin Chiang wrote, "Buddhism arrived in China on the back of an elephant. Christianity arrived on the deck of a gunboat."²¹² No

²⁰⁵ For a good introduction to Paul the Apostle, see GARRY WILLS, *WHAT PAUL MEANT* (2006).

²⁰⁶ *Exodus* 20:3. For an example of a historical application of this attitude, see LIAM M. BROCKEY, *JOURNEY TO THE EAST: THE JESUIT MISSION TO CHINA, 1579-1724*, at 60-61, 117, 296, 298-301 (2007).

²⁰⁷ ARTHUR F. WRIGHT, *BUDDHISM IN CHINESE HISTORY* 33, 36, 49, 62, 71, 97, 98-104 (1965).

²⁰⁸ *Id.* at 78-79; DAIGAN MATSUNAGA AND ALICIA MATSUNAGA, *FOUNDATION OF JAPANESE BUDDHISM* 194 (1974).

²⁰⁹ MATSUNAGA, *supra* note 208, at 55, 167-68, 174, 272, 294-95, 300-01.

²¹⁰ WILLIAM DE BARY, *SOURCES OF CHINESE TRADITION* 15, 48 (2d ed. 2000).

²¹¹ As recently as the 1950s Buddhism and Shintoism overwhelmingly represented religious adherents in Japan. For statistical tables, see WILLIAM K. BUNCE, *RELIGIONS IN JAPAN: BUDDHISM, SHINTO, CHRISTIANITY* 173-180 (2d ed. 1963). By 1991 still less than 1% of Japanese were Christians, see CAROLYN FRANCIS, *CHRISTIANS IN JAPAN* 134 (1991). Similar statistics characterize China, see ALAN HUNTER AND KIM-KWONG CHAN, *PROTESTANTISM IN CONTEMPORARY CHINA* 278 (1993); RICHARD MADSEN, *CATHOLIC CONFLICT AND COOPERATION IN THE PEOPLE'S REPUBLIC OF CHINA IN GOD AND CAESAR IN CHINA: POLICY IMPLICATIONS OF CHURCH-STATE TENSIONS* 93, 104 (Jason Kindopp & Carol Lee Hamrin eds., 2004).

²¹² The author first heard this quote translated by Dr. Young-tsu Wong in one of his Chinese history classes, ca. 1984. The quote comes from the book *Xi Chao, Jiang Mengling zhu* (*Tide from the West*) published by Monlin Chiang (1886-1964) in 1960. The author thanks his professor for remembering the source and refreshing his memory after all these years.

doubt Monlin Chiang was remembering Western imperialism²¹³ (particularly the gunboats of the British and French),²¹⁴ which included two opium wars (1839-1842)²¹⁵ and (1856-1860)²¹⁶ and the destruction of the Yuanming Yuan, one of the most magnificent gardens in world history.²¹⁷

Keeping all such considerations in mind, and sometimes in spite of such considerations, American churches sometimes became altruistic locales of interracial friendship among Asians and Caucasians. For example, Junro Kashitani, born in 1899 in southern Japan, got involved in various Christian social circles in the United States.²¹⁸ “I have made best friends in the world among genuine Christians here. I have two American good spiritual mothers who are better than my own parents, good many friends among young people who are dearer than my own kindreds [sic].”²¹⁹ Better than her own parents? This is an extremely strong statement that surely exceeded the bounds of mere politeness.

Mary Nobe was an American born Japanese who grew up among Caucasians in Los Angeles during the early twentieth century.²²⁰ She rarely associated with fellow Japanese and felt alienated from their social circles. Nobe found some of her closest white friends in her Presbyterian church’s Philathea class. “I have been with this Philathea class so much that I am one of them. I go to their homes, eat with them, sleep with them, and take part freely in all their activities.”²²¹ Someone as acculturated as Nobe, who associated almost only with whites, could only expect to find friendship in her chosen Caucasian social circles.

Louie Chin (Chin Ming Gum) was a Chinese labor contractor who worked as foreman for an Anacortes fish company from 1909-1915.²²² His death from kidney failure at the age of forty-eight in a San Francisco hospital made the front page of the local newspaper.²²³ Like all Chinese labor contractors, Chin acted as a liaison between cultures. At the very least, such a role necessitated a strong command of English. But Chin had gone further in his attempt to acculturate, for he and his family began attending Anacortes’s Westminster Presbyterian Church.²²⁴ In July 1915, the Westminster Presbyterian Church baptized the late Chin’s two sons and four

²¹³ IMMANUEL C.Y. HSÜ, *THE RISE OF MODERN CHINA* 92-105, 107-19, 139-150 (5th ed. 1995).

²¹⁴ *Id.* at 154-66, chs. 8-9, 215, 325-30.

²¹⁵ *Id.* at 184-93.

²¹⁶ *Id.* at 205-19 (also known as the “Arrow War”).

²¹⁷ *Id.* at 215, 308. For an in-depth study of the Yuanming Yuan’s history and destruction, see YOUNG-TSU WONG, *A PARADISE LOST: THE IMPERIAL GARDEN YUANMING YUAN* (2001).

²¹⁸ *Life History of Junro Kashitani*, SURVEY OF RACE RELATIONS, box 34, file 1, at 1, 3.

²¹⁹ *Id.* at 3.

²²⁰ *Mary Nobe Interview*, SURVEY OF RACE RELATIONS, box 25, file 81, at 1.

²²¹ *Id.*

²²² ANACORTES AMERICAN, 1 Apr. 29, 1915.

²²³ *Id.*

²²⁴ *Id.*

daughters.²²⁵ Apparently the widowed Mrs. Chin (Yin Look) mistook the baptism ceremony as one that received her and her children as formal members of the church.²²⁶ After discovering this mistake, the church congregation voted to accept the Chins as members.²²⁷ That the church and its members accepted the Chin family must reflect some degree of tolerance, if not complete acceptance.

Between 1923-1933, the Baptist Chung Mei Home for boys in Berkeley, California, provided assistance for some 200 Chinese orphans.²²⁸ In addition to receiving food, shelter, education, and clothing, the Chung Mei Home clearly indoctrinated the boys in Baptist ideology. Some of the boys grew up to become Baptist missionaries in China and the United States.²²⁹ But adult Asian interaction with American churches could be more complex, and charity was hardly the sole domain of mainstream Caucasian America. In fact, Japanese and Chinese had widespread reputations for helping white society with generous contributions of cash when others were in need.²³⁰

Public schools often became a major conduit of cultural and social contact between immigrant Asian families and mainstream American society.²³¹ Pre-war Washington and Oregon state law required school attendance of all children regardless of ethnicity.²³² In California there was much more school segregation.²³³ Japanese students were not allowed to attend “white” schools until after 1906, whereas the Chinese had to wait until the late 1920s.²³⁴ Where integrated, public schools — more than any other institution — became the location of Asian acculturation. Again, friendships did not necessarily develop. White children, especially if they had racist parents, often teased Asian children for being different.²³⁵ High academic

²²⁵ *Minutes of the Session and Church Register* (July 11, 1915) Westminster Presbyterian Church archives, Anacortes, Washington.

²²⁶ *Id.*

²²⁷ Westminster Presbyterian Church, Anacortes, Washington, THE NEW CHURCH REGISTER, Mar. 30, 1917.

²²⁸ Charles Shepard, *The Story of Lee, Wong and Ah Jing* (1885). This document appears to have been reproduced as Charles R. Shepherd, *The Story of Chung Mei* (1938).

²²⁹ *Id.*

²³⁰ SPEER, *supra* note 32, at 636; McComber, *A Japanese Agricultural Community*, *supra* note 148, at 4-5; A.R. Johnson Interview, *supra* note 140, at 3; Mr. Demarest Interview, SURVEY OF RACE RELATIONS, box 28, file 205, at 3.

²³¹ YAMATO ICHIHASHI, JAPANESE IN THE UNITED STATES 222 (1969); DAVID K. YOO, GROWING UP NISEI: RACE, GENERATION, AND CULTURE AMONG JAPANESE AMERICANS OF CALIFORNIA, 1924-49, at 29-30, 38 (2001).

²³² John E. Corbally, *Oriental in the Seattle Schools*, 16:1 SOCIOLOGY & SOCIAL RESEARCH 61-67 (1931); ELIOT G. MEARS, RESIDENT ORIENTALS ON THE AMERICAN PACIFIC COAST: THEIR LEGAL AND ECONOMIC STATUS 352-54, 363 (1928).

²³³ DANIELS, ASIAN AMERICA, *supra* note 18, at 111.

²³⁴ JOYCE KUO, EXCLUDED, SEGREGATED, AND FORGOTTEN: A HISTORICAL VIEW OF THE DISCRIMINATION AGAINST CHINESE AMERICANS IN PUBLIC SCHOOLS IN CHINESE AMERICA: HISTORY AND PERSPECTIVES 39, 40 (2000).

²³⁵ ZHU, *supra* note 107, at 175.

achievements,²³⁶ reflecting a profound and enduring legacy of Confucian values of learning²³⁷ sometimes inspired jealousy among Caucasian children.²³⁸ White teachers and school administrators, on the other hand, not surprisingly almost uniformly praised their Asian students.²³⁹ Such teachers often befriended Asian parents who, in turn, sometimes bestowed gifts upon the teachers.²⁴⁰ Thus, school relationships extended beyond the school itself. Among the school children authentic white-Asian friendships formed, and sometimes endured for many years beyond high school.²⁴¹ For Nisei, in fact, public school sometimes provided a refuge from intergenerational family tensions. Tadao Kimura, born in 1907 in Seattle, reflected upon his public education shortly after graduating in 1924 as class valedictorian from Franklin High School:

My school life has been a far more pleasant one [compared to life outside of school]. In the grade school we formed very close friendships and had no trouble at all. In the high school I missed the close friendships but that was impossible because of the frequent change of classes. But the friendly feeling was there and I enjoyed high school life very much. As valedictorian I thought there might be considerable trouble. But I was mistaken. Except for the contempt of a few worthless pupils, everyone was sincere in his congratulations.²⁴²

No doubt in part because of their diligence, Asian students like Tadao Kimura often formed close attachments to their Caucasian teachers. “The

²³⁶ DANIELS, ASIAN AMERICA, *supra* note 18, at 173-74; SHOTARO FRANK MIYAMOTO, SOCIAL SOLIDARITY AMONG JAPANESE IN SEATTLE 54 (1984).

²³⁷ In the United States most scholars and general readers think of Confucius as a philosopher. On the other hand, traditionally the Chinese revered Confucius as a teacher. The annual Teacher’s Day holiday in Taiwan (where traditionalism escaped the purges of the mainland’s Cultural Revolution of the 1960s) has a magnitude somewhat equivalent to the American Thanksgiving holiday, and is only outranked in magnitude by the Lunar New Year celebration. Even the author, a *yang gue tze* (i.e., “foreign devil”) English teacher in Taipei, Taiwan (from 1987-1988) received gifts from his students on Teacher’s Day.

²³⁸ JEAN PAJUS, THE REAL JAPANESE CALIFORNIA 179, 182 (photo. reprint 1971) (1937); EILEEN SARASOHN, THE ISSEI: PORTRAIT OF A PIONEER, AN ORAL HISTORY 62 (1983).

²³⁹ KAZUO ITO, *supra* note 159, at 676-79; HERBERT JOHNSON, *supra* note 128, at 33-36; LOFTUS, *supra* note 128, at 83; MEARS, *supra* note 232, at 363; J.S. TOW, THE REAL CHINESE IN AMERICA 62-65, 72 (photo. reprint 1970) (1923).

²⁴⁰ LOWE, *supra* note 107, at 78-80; MIYAMOTO, *supra* note 236, at 53-54.

²⁴¹ Sui Sin Far, *Leaves from the Mental Portfolio of an Eurasian*, 66:3138 THE INDEPENDENT 125-32 (1909); *Ruby Hirose Interview*, SURVEY OF RACE RELATIONS, box 27, file 159, at 2; *Florence Kojima Interview*, SURVEY OF RACE RELATIONS, box 29, file 15, at 2; *Susie Yamamoto Interview*, SURVEY OF RACE RELATIONS, box 25, file 77, at 1; ZHU, *supra* note 107, at 175-76 (the latter source may provide a somewhat idealized account based exclusively on Caucasian recollections).

²⁴² Ruth H. Greiner, *The Japanese Valedictorian of Franklin High School*, in SURVEY OF RACE RELATIONS box 25, file 82 at 6-7. (A copy of the Tadao Kimura essay also appears in the *Smith Collection*, Series A, #163). For another Nisei account of intergenerational difficulties, see “G.S.” Interview, SURVEY OF RACE RELATIONS, box 25, file 79, at 2.

teachers took a great interest in me and my work as I was different,” remembered J. Lim, a Californian-born child of early twentieth century Korean immigrants.²⁴³ “Studying was not difficult for me for behind me lay generations of students and scholars,” Lim said, again reflecting the Confucian value of education that permeated all of East Asia. “In my school work I was aided more than handicapped because of my racial differences.”²⁴⁴

Marjorie McComber was an adamant friend to the Japanese in the Fullerton, California area.²⁴⁵ In 1924 she remembered a fourteen-year-old Japanese boy called George who attended their school. He was her first Japanese friend. McComber recalled, “He was made a brother to us all. He entered in all our games. We children never even had a thought that he should play by himself and live in a place in the world away from us. This racial conflict did not enter in our lives. He helped and respected us and we helped and respected him.”²⁴⁶

Hida Watanabe was born in Japan around 1907 and moved to the United States with her family about three years later.²⁴⁷ They lived in Texas, Colorado, and Missouri before moving to Los Angeles around 1921. “My friends were American girls and I had intimate friends,” she wrote in 1925. “I never felt different from them.”²⁴⁸ Unlike some of the other Asian students mentioned in this study, Watanabe did not participate in extracurricular school activities, so her friendships must have developed through general school attendance.²⁴⁹

Some of the early twenty-first century Caucasian elders of Anacortes, Washington, still remembered their former schoolmates Sumi and Fumi, daughters of Charles and Sakaye Tanikawa.²⁵⁰ Charles immigrated to the United States in 1907; Sakaye, twelve years later, the same year they were married.²⁵¹ Both worked as fish boners for the Matheson codfish plant. In 1940, their daughters were nineteen and sixteen years old. Sadly, the United States government interned the Tanikawa family at the particularly harsh Tule Lake camp during World War II. Heartbroken and betrayed, Charles Tanikawa moved the family to Japan after the war, where Fumi, the youngest daughter, soon died of a ruptured appendix. But the reason the elderly whites of Anacortes know and remember this tragic story is be-

²⁴³ Life History of J. Lim, SURVEY OF RACE RELATIONS, box 29, file 270, at 2.

²⁴⁴ *Id.* For other examples of the teacher-student bond, *see* the S. Yamadee Interview, SURVEY OF RACE RELATIONS, box 29, file 264, at 4; and an anonymous Chinese Interview, SURVEY OF RACE RELATIONS, box 29, file 268, at 3.

²⁴⁵ Marjorie McComber Interview, SURVEY OF RACE RELATIONS, box 26, file 117, at 2.

²⁴⁶ *Id.*

²⁴⁷ Hida Watanabe Interview, SURVEY OF RACE RELATIONS, box 31, file 314, at 1.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ Wallie Funk Interview, (Oct. 16, 2001); Sarah Boynton Interview, (June 30, 2000) (both transcripts available in the Anacortes Museum); Virginia Boynton Perkins, telephone conversation with author (Dec. 11, 2001).

²⁵¹ 15th Census of the United States (1930).

cause they kept exchanging letters with the Tanikawas throughout the war and afterwards, as true friends would, of course.²⁵² Here is a clear example of “friendships of pleasure” that endured long after the circumstances that spawned them. This begins to suggest something closer to the nature of Aristotle’s “true friendship,” especially considering the detrimental factors of time and geographical distance, not to mention race-based internment.

Public school teachers and administrators sometimes found themselves at the center of racist controversies involving their Asian students. In the case of Tadao Kimura (described above), the *Seattle Star* took issue with a Japanese student being honored as valedictorian.²⁵³ In response, the school principal (a Mr. Reid) asked a teacher to write an editorial defending Kimura and the school in *Tolo*, the school paper.²⁵⁴

The *Seattle Star* raised another racist furor during the mid-1920s when Harrison School cast Fred Kosaka as George Washington in a school play.²⁵⁵ School principal Eugenie B. Parriseau defended the choice, citing popular student selection of Kosaka for the role. “I cannot see even now why anyone should object,” Parriseau protested; “being a citizen of this country why should he not play the role of the ‘Father of his country?’”²⁵⁶ The Sons of Veterans and the Women’s Auxiliary attacked Kosaka’s teacher, a Miss Waite (who ironically was a member of the Daughters of the American Revolution), and asked her to apologize or resign.²⁵⁷ Superintendent of Seattle Public Schools, a Mr. Willard, refused to ask the Board of Education intervene. Willard supported Waite and personally helped write a defensive response to her attackers.²⁵⁸

Good school relations continued into higher education, of course. Frank Ishi, a Long Beach High School graduate, enjoyed his college education at Stanford.²⁵⁹ “I mingled entirely with American boys and had an American room-mate,” he remembered in 1924. “I had a good time while there. I mingled freely in their social functions. I went to their dances where I was the only Japanese and danced with American girls.”²⁶⁰

²⁵² Funk *supra* note 250; Boynton *supra* note 250.

²⁵³ Greiner, *Japanese Valedictorian*, *supra* note 242, at 1-8.

²⁵⁴ *Id.* at 3.

²⁵⁵ Ruth H. Greiner, *Seattle’s Japanese George Washington*, in SURVEY OF RACE RELATIONS, box 27, file 164, at 2-3.

²⁵⁶ *Id.* at 3.

²⁵⁷ *Id.* at 4.

²⁵⁸ *Id.* at 5. Other cases were not so auspicious. In 1922 the Hollywood *Daily Citizen* helped agitate racism when the students at Le Comte Junior High School elected (with a 600 vote margin) John Aiso as student boy president. In this case, school administrators ultimately surrendered to public and media pressure and replaced the student form of government with a faculty council. The numerous *Daily Citizen* articles as well as interviews with participants are compiled in SURVEY OF RACE RELATIONS, box 29, file 266.

²⁵⁹ Frank Ishi Interview, SURVEY OF RACE RELATIONS, box 26, file 98, at 1.

²⁶⁰ *Id.*

While in Los Angeles, another anonymous Japanese graduate of Stanford carried on a lengthy correspondence between 1922 and 1923 with a certain Mrs. E. Snell of the Stanford placement office.²⁶¹ While technically trying to find the alumnus a position appropriate for his training in chemistry, Snell also apparently offered moral support and encouragement during a frustrating and disheartening time of lengthy unemployment or underemployment.²⁶² “Adelaide K.,” a Korean native, attended University of Southern California during the 1920s. “The friendships I have cultivated among the students on this campus for the last two years have been very precious and some of them are my real personal friends whom I talk to as tho [sic] they were my race,” she wrote.²⁶³

Laro Kanow attended University of Southern California’s engineering school and, through the civil service competition, became a draftsman for a city engineering office in the Los Angeles area.²⁶⁴ In a 1924 interview Kanow described himself as socializing mostly outside of Japanese circles, even though he was president of the Japanese Young Men’s Association in Long Beach.²⁶⁵ He criticized fellow Japanese for isolating themselves from Caucasians and maintained a personal attitude of determination in the face of adversity. “My relations in the engineering department of the city have been the very best,” he reported. “The other employees in the department treat me very well and I have encountered no unpleasantness whatsoever. I always go out to lunch with a group of the fellows.”²⁶⁶ But while Kanow favored social assimilation with the mainstream, he also wanted his behavior to reflect favorably on any future Japanese applicants²⁶⁷ — and in this regard very much reflected the group consideration of his Asian heritage.

Other friendships of pleasure involved Caucasians and Asians living in the same neighborhood.²⁶⁸ The fact that racial mixing could take place in residential neighborhoods at all was remarkable, considering the segregated South and the tendency toward ethnicity-specific urban immigrant neighborhoods in many cities. Non-racist whites lauded their Asian neigh-

²⁶¹ Anonymous Japanese student letters, SURVEY OF RACE RELATIONS, box 28, file 240.

²⁶² *Id.*

²⁶³ Adelaide K., *Autobiography*, in SURVEY OF RACE RELATIONS, box 30, file 33, at 2. Yung Wing, Lue Gim Gong, Huie Kin, No-Young Park, Emma Fong Kuno and her respective Chinese and Japanese husbands also reflected the generally greater amiability that contrasted college atmospheres from general American society. See YUNG WING, *MY LIFE IN CHINA AND AMERICA* 24-41 (1909). See also ROGER DANIELS, *COMING TO AMERICA: A HISTORY OF IMMIGRATION AND ETHNICITY IN AMERICAN LIFE* 247-48 (2002); KIN HUIE, *REMINISCENCES* chs. 7-8, (1932); NO-YONG PARK, *CHINAMAN’S CHANCE* 77-78, 85, 87, ch. 12 (3d ed. 1948); Emma Fong Kuno, *My Oriental Husbands*, SURVEY OF RACE RELATIONS, box 25, file 53.

²⁶⁴ Laro Kanow Interview, SURVEY OF RACE RELATIONS, box 29, file 269, at 1.

²⁶⁵ *Id.* at 3.

²⁶⁶ *Id.* at 2.

²⁶⁷ *Id.*

²⁶⁸ Liping Zhu describes some of the earliest examples pertaining to integrated mining camps of the mid-1860s. See ZHU, *supra* note 107, at 161, 167.

bors for their neatness, thrift, honesty and politeness — and sometimes emphasized their point by citing negative counter-examples among other Caucasians.²⁶⁹

Mrs. Ko Wing Kan grew up in a small town near Vancouver, British Columbia, where hers was the only Chinese family.²⁷⁰ She remembered many Caucasian women making friendly social calls on her mother. “I like the country people much better than the Canadians here [in the city],” she said in 1924 while being interviewed in Vancouver.²⁷¹ Susie Yamamoto had similar memories of San Bernardino after moving to Los Angeles.²⁷² In her San Bernardino high school she had been the only Japanese girl but was active in student affairs and remembered the other students treating her well. “Everybody in San Bernardino knew me and spoke to me. When I would go along the streets, the judge, district attorney, and mayor would speak to me. I was frequently called to court to act as interpreter.”²⁷³ Eileen S. Sarasohn remembered her Rainer Valley, Washington, neighbors as having been good to her family, to the point where the “neighbors competed in inviting my [Nisei] children to birthday parties.”²⁷⁴

An anonymous Fresno policeman (who had grown up in rural Vermont) countered the apparently prevalent criticism among California Caucasians of the 1920s about Asian women working in the fields.²⁷⁵ “I can remember in hay time and harvest, my mother and my sisters used to come into the field and rake hay and shock oats and work right along side of us men. It didn’t hurt them a bit.”²⁷⁶ The officer, whose beat was Fresno’s Chinatown, praised Asian industriousness. “These Japanese and Chinese young folks growing up will make good citizens,” he said.²⁷⁷

During the 1920s and 1930s, when demographics began to reflect the 1882 Chinese Exclusion Act, small town newspapers in the Pacific Northwest turned wistful at the disappearance of their elder Chinese. “The Last

²⁶⁹ McComber Interview, *supra* note 245, at 4; McComber, *A Japanese Agricultural Community*, *supra* note 148, at 1; Masa Higashida Interview, SURVEY OF RACE RELATIONS, box 27, file 158, at 4; St. Paul and Tacoma Lumber Company general information, SURVEY OF RACE RELATIONS, box 28, file 202, at 2; Mr. and Mrs. Ben Dick Interview, SURVEY OF RACE RELATIONS, box 28, file 203, at 3, 5; Olson, *Orientals in the Lumber Industry*, *supra* note 151, at 6; Mr. Gehrkins Interview, SURVEY OF RACE RELATIONS, box 29, file 254, at 3, 7-9; Mr. and Mrs. Sessions Interview, SURVEY OF RACE RELATIONS, box 29, file 5, at 2-3; SARASOHN, *supra* note 238, at 62; Chloe Holt, *Interview with Spaulding, Hollywood, in*, SURVEY OF RACE RELATIONS, box 29, file 258, at 1-2.

²⁷⁰ Ko Wing Kan Interview, SURVEY OF RACE RELATIONS, box 24, file 13, at 4.

²⁷¹ *Id.* An anonymous Chinese woman gave a similar account in *Story of a Chinese Girl Student*, in SURVEY OF RACE RELATIONS, box 25, file 56, at 3).

²⁷² Susie Yamamoto Interview, SURVEY OF RACE RELATIONS, box 25, file 77, at 1.

²⁷³ *Id.*

²⁷⁴ SARASOHN, *supra* note 238, at 62.

²⁷⁵ *Chinatown Police Squad, Fresno, California, in*, SURVEY OF RACE RELATIONS, box 28, file 228, at 1-2.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

of His Type,” reported eastern Oregon’s *Blue Mountain Eagle* in 1922 when “China Gyp” died in Canyon City.²⁷⁸ The front page story painted a sympathetic portrait of an individual isolated by language and cultural barriers and (in parlance common to such occasions) described him as “quite a character.”²⁷⁹ But then the writer continued, praising “Gyp” as “a good citizen, peaceful, law abiding, friendly and industrious.”²⁸⁰ Seven years later the final Chinese resident of Canyon City, an octogenarian called “China How,” departed for Asia with his “old time friend” Dr. J.H. Fell escorting him to Seattle.²⁸¹ Despite the reporter’s racist overtones, he nevertheless admitted that Canyon City residents themselves thought well of How, regretted his departure, and took up a collection to help pay for his ocean passage.²⁸² They knew they would never see him again. Later in 1930 the *Anacortes American* sung the virtues of Chin Toy upon his death.²⁸³ “Like most of his race, he was an honest man whose promise was equivalent to the mortgage bond of the general run of up-to-date white men. He paid his way to the end,”²⁸⁴ the paper reported in a remarkably disparaging comparison to the dominant race. Finally, in 1939, Grant County, Oregon’s “China Sam” died at 82. The newspaper writer remembered him as a patient and industrious worker, and again, isolated in the dominantly white society.²⁸⁵ All of these stories strike a regrettable note today, for they seem to reflect what were then lost opportunities. But, of course, they could have omitted writing these stories in the first place. Perhaps the aging Chinese, in this case, had won some well-deserved respect, even if belatedly.

Competitive adult sports also encouraged respect among whites and Asians.²⁸⁶ Asian boxers, tennis players, bicycle racers, golfers, baseball, football, and basketball teams all competed against Caucasians. Often they won respect and even affection. The sports press was no exception in racist depictions, and yet felt compelled to praise Ah Sing, a prize fighter of the early 1900s.²⁸⁷ George Yamauchi and Harry Honda, former baseball players, made the typical observation that athletic competition tended to dissolve discrimination, momentarily, if not longer.²⁸⁸ The white community of Wapato, Washington, even adopted the local Japanese American baseball team as their home team, which became the pride of both Japanese

²⁷⁸ BLUE MOUNTAIN EAGLE, Nov. 24, 1922, at 1, c.1.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ BLUE MOUNTAIN EAGLE, Dec. 27, 1929, at 1, c.6.

²⁸² BLUE MOUNTAIN EAGLE, Jan. 3, 1930, at 1, c.6.

²⁸³ ANACORTES AMERICAN, June 26, 1930, at 6.

²⁸⁴ *Id.*

²⁸⁵ BLUE MOUNTAIN EAGLE, Apr. 21, 1939, at 1, c.4.

²⁸⁶ DEENA K. NAKATA, *THE GIFT: THE OREGON NIKKEI STORY RETOLD* 49-50 (1995).

²⁸⁷ Joel S. Franks, *Chinese Americans and American Sports, 1880-1940*, in *CHINESE AMERICA: HISTORY AND PERSPECTIVE*, 135 (1996).

²⁸⁸ Michael L. Mullan, *Ethnicity and Sport: The Wapato Nippons and Pre-World War II Japanese American Baseball*, 26 *J. SPORT HIST.*, 106-7 (1999).

and Caucasians, especially during the 1934 and 1935 winning seasons.²⁸⁹ The Japanese lumber workers at Eatonville, Washington, formed a baseball team that encouraged inter-racial friendliness among players and spectators alike.²⁹⁰ J. Lim, the Korean high school student mentioned above, lettered in football, baseball, basketball and tennis — and even made captain of some teams. For his athletic and academic abilities Lim felt his classmates and friends respected him.²⁹¹ Kunitaro Yamada, Broadway High School student in Seattle summed up the potential effects of sports and other associations of pleasure:

As to the forms of associations that bring the most harmonious adjustment is the education in same school, various sports, association in church and in musical performances allowing both Americas and Japanese to hear or participate. In these places, we forget temporarily any feelings of race consciousness, and often arouse enthusiasm to go on to the high ideal in harmony.²⁹²

No doubt some of the relationships stemming from sports, school, and church blossomed into true friendship. Then, as now, personal “friendships of virtue” were the rarest of Aristotle’s three categories.²⁹³

During the early 1920s H. Fukasu was a college student in southern California, where he lodged with a Caucasian family.²⁹⁴ Fukasu had no intentions of befriending white people, but unexpectedly developed a close friendship with all three members of this family; the father, mother, and their 25-year-old son. After six months they became “real friends,” as Fukasu described it.²⁹⁵ “I forgot to think that they are Americans. Our friendship has continued until present and I call them American father and mother and they call me my child.”²⁹⁶ This friendship with individuals was all the more remarkable considering Fukasu’s detailed criticism of the United States in general. Fukasu denounced America for pseudo-Christian hypocrisy, imperialism, militarism, greed, international irresponsibility abroad and anti-Asian racism at home.²⁹⁷ But obviously he was not a rac-

²⁸⁹ Gail M. Nomura, *Beyond the Playing Field: The Significance of Pre-World War II Japanese American Baseball in the Yakima Valley*, in, BEARING DREAMS, SHAPING VISIONS: ASIAN PACIFIC AMERICAN PERSPECTIVES, 15-31 (1992).

²⁹⁰ OLSON, *Impressions, Attitudes and Incidents*, *supra* note 150, at 4-5, 22. See also Joseph R. Svinth, *Carving Out A Place: Japanese Americans in Eatonville, 1904-1942*, 16 COLUMBIA, 24-28 (2002).

²⁹¹ *Life History of J. Lim*, *supra* note 243, at 2.

²⁹² Kunitaro Yamada to Ruth H. Greiner, SURVEY OF RACE RELATIONS, box 27, file 151, at 3 (1924).

²⁹³ NICOMACHEAN ETHICS, *supra* note 139, at 212.

²⁹⁴ H. Fukasu, *Life History of an Oriental Student*, in, SURVEY OF RACE RELATIONS, box 32, file 14, at 5 (1924).

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 7-9.

ist, and distinguished governmental and social policies from personal friends.

That Fukasu's close friendship would develop in a familial setting wherein he developed an "American father and mother" should not be surprising considering Confucius's strong emphasis on filial piety²⁹⁸ and harmonious family relations as the key to all other social relations.²⁹⁹ Millennia before contemporary American political rhetoric championed "family values" Confucius had already made insightful observations about the crucial importance of humanity's smallest and most fundamental social unit.³⁰⁰ Fukasu was hardly the only one to experience friendship in these circumstances.

Many people would argue that any happy marriage must be based on the deepest of personal friendships. No doubt a loss of friendship precedes many divorces. Of course, at the most intimate level marriage remains a "sacred mystery"³⁰¹ unknowable to those outside the marriage, and perhaps somewhat mysterious even to the spouses. In any case, obviously the "true nature" of this intimate relationship presents a challenge to the historian attempting to document interracial friendship. On the other hand, friendship does not lend itself to scientific measurement in the first place. Still, extrapolating that at least some of the interracial marriages then (as now) were based in true love seems reasonable, particularly when repeated and widespread firsthand testimony supports such a conclusion. Here are some examples.

Grace Shelp Horikoshi of Hollywood, California, grew up in Iowa and met her future husband while teaching English to Japanese immigrants.³⁰² They knew each other for seven years before they married, and Mrs. Horikoshi felt divine providence had blessed their union. "God made of one blood all nations," she said in a 1924 interview.³⁰³ By then she was learning Japanese. "I have never regretted our marriage. We have now been married five years and it grows better all the time."³⁰⁴

Huie Kin, a New York City pastor, married Louise Van Arman (daughter of a Troy, New York industrialist) and raised nine children.³⁰⁵ Mrs. Yip Quong, the first white woman married to a Chinese man in Van-

²⁹⁸ ANALECTS OF CONFUCIUS §§ I:6, II:5-8, II:20, IV:18, IV:25, XIII:18 (Waley, trans., Macmillan 1938).

²⁹⁹ *Id.* at 86-87, 114.

³⁰⁰ Confucius observed that the family (as the smallest social unit) must be orderly if a society at large were to enjoy order. *See* CONFUCIAN ANALECTS, THE GREAT LEARNING & THE DOCTRINE OF THE MEAN §§ 4,5, (Legge, trans. & ed. 2013).. This teaching was carried on by Mencius (372-289 B.C.), probably the most famous and influential Confucian philosopher following Confucius himself. *See* THE GREAT LEARNING AND THE MEAN-IN-ACTION 179-80 (E.R. Hughes, trans., E.P. Dutton & Co., 1943).

³⁰¹ *Ephesians* 5:32.

³⁰² Grace Shelp Horikoshi Interview, SURVEY OF RACE RELATIONS, box 28, file 235, at 3.

³⁰³ *Id.*

³⁰⁴ *Id.* at 5.

³⁰⁵ HUIE, *supra* note 263, at ch. 6.

couver (where she arrived in 1904), got on well with both Chinese and Caucasians.³⁰⁶ Max Sui Haw, Seattle resident of the 1920s, had no objection to marrying a white woman as long as she was as educated as himself.³⁰⁷ R. Kado, owner of the Sunnyland Nursery in Los Angeles during the 1920s, said that both white and Japanese communities accepted the marriage between a local Japanese man and his Caucasian wife.³⁰⁸ There were innumerable other examples of Asian-Caucasian interracial marriages or those favoring these unions.³⁰⁹ In an ironic twist of the pseudo-science of the day, some even speculated that children of such “mixed” unions were more intelligent than “pure” children of either race.³¹⁰

All marriages have varying degrees of happiness and harmony and sometimes grow stronger or weaker. Pre-war interracial marriages were probably subjected to more overt racism than in recent years. But to assume that none of these marriages involved true friendship is as absurd as assuming that they were all perfectly happy unions.

During the early 1890s Emma Ellen Howse and Walter Ngong Fong both attended Stanford University. According to Howse, Fong was the only Chinese student at Stanford, and quite popular with many other students.³¹¹ Howse and Fong, however, shared a deeper attraction and decided to marry. In 1897 they circumvented California’s anti-miscegenation laws by getting married in Denver, Colorado. They returned and made Berkeley their home.³¹² Walter Fong went into law practice and then taught

³⁰⁶ Yip Quong Interview, *Smith Collection*, Series A, #11.

³⁰⁷ Max Sui Haw Interview, *Smith Collection*, Series A, #244.

³⁰⁸ R. Kado Interview, *Smith Collection*, Series A, #302.

³⁰⁹ D. A. Smith Interview, *Smith Collection*, Series A, #4; SAN FRANCISCO CHRONICLE, June 20, 1897, at p.20, c.3; SAN FRANCISCO CALL, Dec. 21, 1921; SAN FRANCISCO EXAMINER, Mar. 20, 1923; Kuno, *My Oriental Husbands*, *supra* note 263, at 1, 3-4; Hideo Oyama survey response, SURVEY OF RACE RELATIONS, box 25, file 60, at 7; Mr. and Mrs. Toyotomi Ujimasa, *Case Brief on Anglo-Japanese Marriage*, in SURVEY OF RACE RELATIONS, box 25, file 62; box 26, file 104; box 26 file 121, at 5; Mrs. S. Sasabe Interview, SURVEY OF RACE RELATIONS, box 27, file 174; K. Fujita Interview and Mr. Okabe Interview, SURVEY OF RACE RELATIONS, box 28, file, at 7, 13; J.K. Fukushima Interview, SURVEY OF RACE RELATIONS, box 28, file 227, at 2; Dr. F.T. Nakaya Interview, SURVEY OF RACE RELATIONS, box 28, file 247, at 12; Anonymous Chinese Interview, SURVEY OF RACE RELATIONS, box 29, file 18, at 5. *See also* Daniel Liestman, *Utah’s Chinatowns: The Development and Decline of Extinct Ethnic Enclaves*, 64 UTAH HIST. Q. 271 (1996). Perhaps the most celebrated Asian-Caucasian marriage of the nineteenth century centered around Polly Bemis; for a newspaper story documenting her deathbed testimony *see* the PORTLAND OREGONIAN, Nov. 5, 1933, § 5 at 1, c. 8. For examples of a more ambiguous attitudes toward interracial marriage *see* ANACORTES AMERICAN, Feb. 6, 1902, at 2; CHAN, *THIS BITTERSWEET SOIL*, *supra* note 110, at 196; YOO, *supra* note 231, at 78, 83-86.

³¹⁰ SAN FRANCISCO EXAMINER, Nov. 11, 1922; Mar Sui Haw Interview, SURVEY OF RACE RELATIONS, box 28, file 244, at 3-5, 7; Kuno, *My Oriental Husbands*, *supra* note 263, at 25.

³¹¹ Kuno, *My Oriental Husbands*, *supra* note 263, at 2.

³¹² *Id.* at 4, 5. *See also* SAN FRANCISCO CHRONICLE, June 20, 1897, at 20, c.3.

Chinese at University of California. The Fongs later traveled to China where Walter tragically died of bubonic plague, leaving his wife with two sons to raise.³¹³ Emma returned to the United States and eventually married her late husband's friend and colleague, Yoshi S. Kuno, who had taught Japanese at University of California.³¹⁴ Around 1921 she wrote, "I became the wife of Professor Kuno, a strong bond between us being affection for the one that was gone and a desire to make a home for the children."³¹⁵

Emma Fong Kuno was understandably closer to her first husband but enjoyed a happy marriage with her second husband as well. "It is a lack of character that makes marriage a failure regardless of race," she wrote. "Other things can be borne with or overcome."³¹⁶ She attributed a happy social life among university community Caucasians, Chinese, and Japanese in Berkeley to her marriages and became the informal "mother" to various Chinese and Japanese student groups.³¹⁷

Beyond the most intimate of friendships we should not forget the innumerable incidental kindnesses (what Aristotle might have called simple "good will") shown between Asians and Caucasians. According to Aristotle, good will was or could be an initial stage toward friendship; certainly friendship could not develop without it.³¹⁸ Moreover, he wrote, "generally good will occurs because of excellence, or a kind of decency, where one person appears to another a fine character, or courageous, or something like that."³¹⁹ While almost always fleeting, the pleasure and happiness these instances of good will brought, even if momentary, was possibly equal in magnitude to incidental racism and hatred which caused commensurate pain and suffering. Early twentieth century examples include Hideo Tashima being included in evening board games with his Seattle landlord's family.³²⁰ White street car riders in Los Angeles came to a Japanese dentist's defense when the latter was attacked because of his race. A certain Mrs. Carrier's Seattle University District rooming house became a preferred enclave of Japanese girls.³²¹ An elderly Vancouver lady gave the teenaged Ko Wing Kan English lessons late into the night.³²² Chinese throughout the American West had a reputation for being kind to white children, and often bestowed gifts of candy upon them.³²³ Chinese and

³¹³ Kuno, *My Oriental Husbands*, *supra* note 263, at 6.

³¹⁴ *Id.* at 7.

³¹⁵ *Id.*

³¹⁶ *Id.* at 26.

³¹⁷ *Id.* at 26-31.

³¹⁸ NICOMACHEAN ETHICS, *supra* note 139, at 231, 232.

³¹⁹ *Id.* at 232.

³²⁰ Hideo Robert Tashima Interview, SURVEY OF RACE RELATIONS, box 24, file 38, at 3-4.

³²¹ Chiye Shigemura Interview, SURVEY OF RACE RELATIONS, box 24, file 44, at 1.

³²² Kan, *supra* note 270, at 2.

³²³ ANACORTES AMERICAN, July 28, 1898, at 3; CHAN, THIS BITTERSWEET SOIL, *supra* note 110 at 362-63; Edith Robinson Interview, Mar. 8, 1973, at 7-9; Polly M. Bell, *A Pioneer Woman's Reminiscences of Christmas in the Eighties*, 49 OR. HIST. Q. 284, 284-96 (1948); THERESA TREBON, CULTURAL ARTIFACTS OF EBEL'S LANDING NATIONAL

Caucasian children alike regularly gathered around King Sing, an elderly Chinese doctor of early twentieth century Seattle who was apparently very kind hearted. When a certain white man died in the neighborhood, King Sing supported the widow and her children until the latter were old enough to begin earning some money of their own.³²⁴

Mrs. Peter Mayberg lived in the Asian section of Seattle for many years during the early twentieth century.³²⁵ She remembered her Chinese neighbors surnamed Sin, who tragically lost a three-year-old son when he was accidentally scalded to death. Mayberg was sensitive to the Chinese aversion to handling corpses, so she laid out the little boy in silk. From then on Mr. Sin would not accept payment from Mayberg when she shopped at his store. Finally, out of embarrassment, Mayberg had to stop shopping there altogether, for she felt the gifts were too generous.³²⁶

In addition to incidental kindness, a great deal might be said about the attitude of individuals involved in interracial friendships or potential friendships. Attitude, as mentioned, is a key component to moral cosmopolitanism.³²⁷ Kyo Inouye, a Los Angeles teenager in 1925, fondly remembered her Caucasian friends from high school.³²⁸ While she only counted one of them as an intimate friend, she enjoyed good relations with many others in the glee club and as captain of the baseball team.³²⁹ “You have to be friendly yourself, then they will be friendly too,” she wrote, and attributed certain instances of interracial indifference to Japanese reserve.³³⁰ Mrs. Florence Kojima, General Secretary of the Japanese YWCA in Los Angeles, said in 1924, “We of the present generation are the pioneers and I think the pioneers always have to suffer the hardships. It is for us to hope and work for better feeling. We know and keep telling our people that this [racism] is not the true spirit of America, that the true spirit of America is kind and fine and friendly.”³³¹ She added that eternal observation of non-racists everywhere, “When people come to know each other, they learn that people are all the same, the color of the skin makes no difference.”³³²

White friends of Asians objected to discrimination on the widest grounds of American nationalism. In 1920, Marjorie McComber (friend of the Japanese mentioned above) evoked the most idealistic notions of America to protest anti-Asian racism. “America is supposed to be the world’s

HISTORICAL RESERVE 482, 493, 524 (1998) (cultural resource management document deposited with the Wing Luke Asian Museum, Seattle, Washington); WHIDBEY NEWS-TIMES, Aug. 18, 1999, at A1.

³²⁴ Mrs. Peter Mayberg Interview, SURVEY OF RACE RELATIONS box 27, file 154, at 2.

³²⁵ *Id.* at 1.

³²⁶ *Id.*

³²⁷ APPIAH, *supra* note 5 at xiii, xv; Vertovec & Cohen, *supra* note 5, at 13; FORD, RACIAL CULTURE, *supra* note 5, at 164.

³²⁸ Kyo Inouye Interview, SURVEY OF RACE RELATIONS, box 31, file 6, at 3.

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ Florence Kojima Interview, SURVEY OF RACE RELATIONS, box 29, file 15, at 3.

³³² *Id.*

greatest democratic nation ... but does she really show it with the present problem of her true neighbor called Japan?"³³³ McComber advocated the classic Jeffersonian idea of "Democracy through Education."³³⁴ And again, certain people in the legal world objected to discriminatory laws on moral grounds. In the 1920s, when American nativism had seen its nadir, a certain Thomas Wilson of the San Francisco area said, "No legislation has ever been attempted in this country that pointed out a logical reason why Chinese should be discriminated against more than Englishman, Germans or people of any other European nation."³³⁵ Seattle attorney Henry A. Monroe agreed. "I think the new immigration law is a most unfortunate one," he said. "The friendship of the Chinese should be cultivated for the good of mankind and certainly for the advantage of the United States commercially."³³⁶

Pre-World War II benevolence among Asians and Caucasians carried on through the war and afterward, of course. So much attention has focused on Japanese-American internment and subsequent, belated redress that many have forgotten that a minority of Caucasians defended their fellow Americans of Japanese descent amidst the actual relocation.³³⁷ For example, some former missionaries to Asia and West Coast university people spoke out against the "evacuation." Others were merely acquaintances. In early June 1942, approximately 163 people of Japanese descent from a number of northwestern Washington counties gathered in Mount Vernon, Washington, for "evacuation" to internment camps. "A large majority of the Japanese being evacuated were young persons born, raised and educated in local communities," the *Anacortes American* reported sympathetically (remarkably, given its racist reporting in earlier decades). "Large numbers of their friends and neighbors were on hand at the station to seem them off."³³⁸ And while the overwhelming majority of Japanese-Americans were forced to sell their property at scandalously low prices, or lose such property through foreclosure, a few friendships involved whites who served as temporary caretakers for Japanese-American property throughout the war.³³⁹

³³³ McComber, *A Japanese Agricultural Community*, *supra* note 148, at 6.

³³⁴ McComber Interview, *supra* note 245, at 6.

³³⁵ Anonymous Chinese author, *The History and Problem of Angel Island*, in SURVEY OF RACE RELATIONS, box 27, file 150, at 6.

³³⁶ Henry A. Monroe Interview, SURVEY OF RACE RELATIONS, box 28, file 219, at 4.

³³⁷ Robert Shaffer, *Opposition to Internment: Defending Japanese American Rights during World War II*, 61 THE HISTORIAN 3, 597-619 (Spring 1999). See also BEYOND BARBED WIRE (Mac & Ava Films 1997).

³³⁸ ANACORTES AMERICAN, June 4, 1942, at 4.

³³⁹ Marta and Karl Olsen, helpless to aid the Sones of Seattle, nevertheless remained loyal friends. See SONE, *supra* note 147, at 164.

V. THE IMPORTANCE OF THE MORAL COSMOPOLITAN PRECEDENT

For all the damage that historic bigots accomplished, the unpopular few who went against their contemporary racism and nativism set important socio-legal precedents for what would eventually follow: a much richer social and economic integration of Asians and Asian-Americans into mainstream United States society, as well as less discriminatory immigration policies. As many scholars have pointed out, “precedent” as normally understood in law actually underlies and supersedes formal legalism, at least in a system of democratic constitutionalism, such as that of the United States. Thus, the popular will (including dissents) easily shapes constitutional law, and thereby also the nation’s character, even if indirectly and over protracted periods of time.³⁴⁰ One scholar even declared that “nonjudicial precedents are even more important than judicial precedents in shaping national identity.”³⁴¹ This line of activity and theory would generally fall into the tradition of what is variously called “populist” or “customary” constitutionalism.³⁴² In this context, judicial review becomes part of a step-by-step process whereby popular will, legislative actions, and the Supreme Court all interact, often over long periods of time, to realize the popular will’s long view (as opposed to momentary prejudices) which, in the best scenarios, comes to confirm Enlightenment principles of universal human rights.³⁴³ Populist constitutionalism is where moral cosmopolitans and nationalism have met and overlapped.³⁴⁴ Where populist constitutionalism got it wrong, as in the *Korematsu* decision and its widespread support,³⁴⁵ the moral cosmopolitan dissent became all the more important.³⁴⁶

³⁴⁰ RICHARD THOMPSON FORD, *RIGHTS GONE WRONG*, 127-29, 158 (2012); Anthony Lewis, *Historic Change in the Supreme Court*, N.Y. TIMES, June 17, 1962 at 7, 36, 38-39; SANDRA DAY O’CONNOR, *THE MAJESTY OF THE LAW: REFLECTIONS OF A SUPREME COURT JUSTICE* 166 (2004); WILLIAM G. ROSS, *FORGING NEW FREEDOMS* 206 (1994); MARK TUSHNET, *I DISSENT: GREAT OPPOSING OPINIONS IN LANDMARK SUPREME COURT CASES* xx, xxiv-xxv, 222, 223 (2008); MICHAEL J. GERHARDT, *POWER OF PRECEDENT* 3, 6, 171, 173, 175 (2008); MARK TUSHNET, *TALKING THE CONSTITUTION AWAY FROM THE COURTS* 182, 222n.12 (1999); Mark Tushnet, *Popular Constitutionalism as Political Law*, 81 CHI.-KENT L. REV. 991, 996-97, 999-1000 (2006); BARRY FRIEDMAN, *WILL OF THE PEOPLE* 4, 177, 196, 205, 236, 367, 368, 381-384 (2010); Jeremy Webber, *A Judicial Ethic for a Pluralistic Age*, in *MULTICULTURALISM AND LAW* 88, 93, 98 (2007).

³⁴¹ GERHARDT, *supra* note 340, at 171.

³⁴² This is a common theme of *I Dissent*, *People Themselves*, *Talking the Constitution Away from the Courts*, and *Will of the People*.

³⁴³ LARRY D. KRAMER, *PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* 208, 209 (2004); FRIEDMAN, *supra* note 340, at 238, 385.

³⁴⁴ TUSHNET, *supra* note 340, at 181, 191.

³⁴⁵ FRIEDMAN, *supra* note 340, at 372-73, 382.

³⁴⁶ TUSHNET, *supra* note at 340, at xix-xx, 124; KRAMER, *supra* note 343, at 332. GERHARDT, *supra* note 340, at 171; TUSHNET, *supra* note 340, at 191, 194.

The interracial friendships and examples of benevolence illustrated in this piece form sort of a backdrop of largely unorganized social dissent from the era's prevailing racism and nativism. There were, however, many examples of organized and institutionalized dissent that also reflected the moral cosmopolitan precedent, some of which appeared in various Supreme Court cases. Between Congressional institutionalization of Chinese exclusion in 1882 and the World War II era, Supreme Court cases dealing with Asians and Asian Americans involved important constitutional principles, yet in the broad view seem almost like legal technicalities within a context of overall societal acceptance of racial discrimination. And yet these dissents, no matter how momentarily inconsequential they may have seemed at the time, nevertheless offered continuity from Enlightenment ideals of universal rights and their eventual, more full realization during the late twentieth century.

In the much-noted case of *Yick Wo v. Hopkins* (1886) the U.S. Supreme Court declared a San Francisco ordinance in violation of the 14th Amendment because it specifically targeted Chinese laundry workers.³⁴⁷ The ordinance flagrantly discriminated against Chinese laundry operations without explicitly saying so, by declaring all wooden structures housing laundry facilities illegal.³⁴⁸ Few or none of the 80-plus Chinese laundries operated in masonry buildings, and yet some had been in operation for more than twenty years without incident. The city had reported no violation of fire regulations upon inspecting the many wooden laundries.³⁴⁹ The Supreme Court recognized the city ordinance for what it was, a would-be building code stipulation that actually unconstitutionally targeted a specific demographic. *Yick Wo v. Hopkins* was an unambiguous ruling against the prevailing racism of the era, and thus a ray of hope.

In *U.S. v. Jung Ah Lung* (1888), the defendant gained re-entry into the United States despite having lost his identification certificate.³⁵⁰ Somewhat remarkably, a California district court had originally granted Jung Ah Lung a writ of habeas corpus and ordered his release. Custom authorities balked and appealed the case to a California circuit court, which affirmed the district court's decision. The U.S. then appealed to the Supreme Court, where it lost, despite a dissent focusing on technicalities of the 1882 Exclusion.³⁵¹

In 1891, the Supreme Court denied sixteen-year-old Quock Ting entry into the United States. Custom officials detained Quock Ting in San Francisco and cited the 1882 Exclusion Act as grounds for denying admittance. Quock Ting and his father testified that he had been born in San Francisco, traveled to China at age ten, then tried to return to the United States six years later. As mentioned earlier, the Court decided Quock Ting's and his

³⁴⁷ *Yick Wo v. Hopkins*, 6 S.Ct. 1064 (1886).

³⁴⁸ *Id.* at 1066.

³⁴⁹ *Id.* at 1066-67.

³⁵⁰ *United States v. Jung Ah Lung*, 124 U.S. 624, 636 (1888).

³⁵¹ *Id.* at 623-24, 636-40.

father's sworn testimony were insufficient for establishing what would have been his birthright citizenship.³⁵² From Justice David Josiah Brewer's perspective, as expressed in his dissent, the Court's majority opinion failed to recognize the testimony as valid specifically because the witnesses were Chinese.³⁵³ In other words, Brewer's dissent echoed the rectification of the then-recent past of barring Chinese testimony in California state courts. A later generation would have called this "racial profiling," and certainly the dissent would prevail. But Brewer was only initiating his legacy of moral cosmopolitan dissent that would reverberate for many decades to come. Brewer had an unusual perspective for his time, and appreciated what we would now call anthropological relativism. In *Fong Yue Ting* (1893) Brewer reflected upon the legacy of legal discrimination of "the foremost Christian nation" against the Chinese, then wondered rhetorically about the irony of Christian missionaries seeking converts in China.³⁵⁴ It would be Brewer's dissent in *Fong Yue Ting* that would prove to be his greatest legacy regarding immigration law in general and deportation in particular.

Fong Yue Ting v. U.S. (1893) involved the expulsion of three Chinese men who had apparently failed to obtain certificates of residence, as required by the 1892 Chinese Deportation Act.³⁵⁵ The Act, incidentally, required at least one white witness to attest for the residency of an alien — and so federal law perpetuated California's forty-year old precedent, despite later amendment.³⁵⁶ In any case, Justice Horace Gray wrote the Court's majority opinion and described the various ways the three petitioners had failed to obtain certificates of residence. He affirmed a lower court's dismissal of writs of habeas corpus, stating that such action was consistent with both international law and United States constitutional law.³⁵⁷ On one level, this conclusion may have seemed straightforward, even purely procedural. But Justice David Brewer saw it in a different light. First, he dissented from the majority because he saw the Chinese men as legal residents and therefore constitutionally protected. More importantly, he saw the 1892 Chinese Deportation Act as denying due process, and therefore unconstitutional.³⁵⁸ To Brewer, the 100,000 Chinese living in the United States at that time were "not travelers, but resident aliens."³⁵⁹ Then, Brewer went on in eloquent exposition regarding a great legal and historical tradition of immigrants finding new homes in distant places, and how these new homes eventually came to supplant former homes.³⁶⁰ Attorneys

³⁵² *Quock Ting v. United States*, 140 U.S. 422, 425 (1891).

³⁵³ *Id.* at 422, 425.

³⁵⁴ *Fong Yue Ting v. United States*, 13 S.Ct. 1035 (1893).

³⁵⁵ *Id.* at 1016-17, 1030; *Chinese Deportation Act*, 27 Stat. 25 (1892).

³⁵⁶ *Fong Yue Ting*, 13 S.Ct. 1017 (referring to the *Chinese Deportation Act*, 27 Stat. 25, sec. 6 (1892)).

³⁵⁷ *Fong Yue Ting v. United States*, 13 S.Ct. 1030 (1893).

³⁵⁸ *Id.*

³⁵⁹ *Id.* at 1031.

³⁶⁰ *Id.* at 1032-33.

for Fong Yue Ting had argued that deportation constituted cruel and unusual punishment in violation of the Eighth Amendment,³⁶¹ and apparently Brewer wholeheartedly agreed. Brewer wrote, “But it needs no citation of authorities to support the proposition that deportation is punishment. Every one knows that to be forcibly taken away from home and family and friends and business and property, and sent across the ocean to a distant land, is punishment, and that oftentimes most severe and cruel.”³⁶² Brewer’s view would find resonance in later cases such as *Harisiades v. Shaughnessy* (1952), *Galvan v. Press* (1954), *Gastelum-Quinones v. Kennedy* (1963), and *U.S. v. Restrepo* (1992).³⁶³ More contemporaneously, his perspective found a kindred spirit in the remarkable Judge Learned Hand.

Law professor Geoffrey R. Stone described Learned Hand as the author of some 4,000 opinions and “the greatest judge of the twentieth century never to sit on the Supreme Court.”³⁶⁴ Hand’s lower court opinions were often cited by Supreme Court justices, and Hand himself was naturally very knowledgeable about the high court’s historical and recent decisions. He almost definitely knew of Brewer’s position regarding deportation, and sounded similar sentiments as early as *Klonis v. Davis* (1926) regarding a Polish immigrant. Walter Kronis came to the United States as a boy, ten years old at most, and unfortunately proceeded to live a life of crime that included two prison terms. It was a final crime involving “moral turpitude” that occasioned his deportation hearing. Fully acknowledging Kronis’s criminal past, Hand nonetheless wrote,

we think it not improper to say that deportation under the circumstances would be deplorable. Whether the relator came here in arms or at the age of ten, he is as much our product as though his mother had borne him on American soil. He knows no other language, no other people, no other habits, than ours; he will be as much a stranger in Poland as any one born of ancestors who immigrated in the seventeenth century. However heinous his crimes, deportation is to him exile, a dreadful punishment, abandoned by the common consent of all civilized peoples. Such, indeed, it would be to any one, but to one already proved to be incapable of honest living, a helpless waif in a strange land, it will be utter destruction. That our reasonable efforts to rid ourselves of unassimilable

³⁶¹ SALYER, *supra* note 56, at 49.

³⁶² *Fong Yue Ting*, 13 S.Ct. 1033.

³⁶³ See *Harisiades v. Shaughnessy*, 342 U.S. 600 (1952); *Galvan v. Press*, 347 U.S. 535 (1954); *Gastelum-Quinones v. Kennedy*, 374 U.S. 469, 480 (1963); *U.S. v. Restrepo*, 802 F.Supp. 791 (E.D.N.Y., 1992).

³⁶⁴ GEOFFREY R. STONE, *PERILOUS TIMES: FREE SPEECH IN WARTIME FROM THE SEDITION ACT OF 1798 TO THE WAR ON TERRORISM* 200 (2004). See also the editor’s comments in *LEARNED HAND, THE ART AND CRAFT OF JUDGING: THE DECISIONS OF JUDGE LEARNED HAND* 62 (Hershel Shanks, ed., Macmillan, 1968) as well as *JEROME FRANK, A MAN’S REACH: THE PHILOSOPHY OF JUDGE JEROME FRANK* 70 (1965).

immigrants should in execution be attended by such a cruel and barbarous result would be a national reproach.³⁶⁵

Hand maintained this viewpoint in later cases of the 1930s and 1940s.³⁶⁶ Brewer's precedent regarding deportation of Chinese is older than Hand's, of course, and took place amidst the nadir of nativism and in defiance of the 1892 Chinese Exclusion Act. Hand came later, after 1920s immigration restrictions assuaged the worst of the nativist frenzy. But obviously both were contributing to the same moral cosmopolitan tradition, and both continued to be cited throughout the twentieth century.

The prevailing racist society of the late nineteenth, early twentieth centuries did not render the Supreme Court unreasonable, even if the Court sent mixed signals. In 1892 the Supreme Court ordered the release of imprisoned Lau Ow Bew based upon habeas corpus rights.³⁶⁷ Justice Stephen Johnson Field, who spewed dogmatic racist ideology in *Chew Hoeng* (1884),³⁶⁸ nonetheless dissented along with Justice Brewer in *Fong Yue Ting* (1893)³⁶⁹ — even while remaining proud and unrepentant of his earlier decision. Field also dissented in part from the majority opinion in *Wong Wing v. U.S.* (1896), which involved a customs official sentencing four Chinese men to hard labor. The customs official concluded that the men were in the United States illegally, then utilized a provision in the 1892 Chinese Exclusion Act to sentence them to hard labor rather than immediate deportation.³⁷⁰ Field predictably upheld deportation of undocumented aliens, but denounced the government's failure to grant said aliens full constitutional and legal protection while temporarily in the United States.³⁷¹ These may seem like trivial objections on Field's part, given his adamant support of the 1882 Exclusion Act, but they illustrate the retention of important constitutional principles even on the part of an avowed racist.³⁷²

In 1898, despite dissents from Justice Fuller and Harlan, the majority of the Court remarkably upheld birthright citizenship in *U.S. v. Wong Kim Ark*, even when the parents were non-citizens.³⁷³ Wong Kim Ark was born in San Francisco in 1873. Customs officials detained him upon his return to California in 1895, after a visit to China, denying him entry and refus-

³⁶⁵ *United States, ex rel. Klonis v. Davis*, 13 F.2d 630, 631-32 (2d Cir. 1926). For later cases citing this passage, see *United States, ex rel. Kowalenski v. Flynn*, 17 F.2d 526 (D.C. Cir. 1927); *Haller v. Esperdy*, 397 F.2d 214 (2d Cir. 1968); *Velez-Lozano v. Immigration and Naturalization Service*, 463 F.2d 1309 (D.C. Cir. 1972).

³⁶⁶ See *United States, ex rel. Guarino v. Uhl*, 107 F.2d 399 (2d Cir. 1939); *Di Pasquale v. Karnuth*, 158 F.2d 880 (2d Cir. 1947).

³⁶⁷ *Lau Ow Bew v. United States*, 144 U.S. 59, 65 (1892).

³⁶⁸ *Chew Heong v. United States*, 112 U.S. 562-63, 569-70 (1884).

³⁶⁹ *Fong Yue Ting v. U.S.*, 149 U.S. 747, 751, 761 (1893).

³⁷⁰ *Wong Wing v. United States*, 163 U.S. 230 (1896); Chinese Exclusion Act, 27 Stat. 25 § 4 (1882).

³⁷¹ *Wong Wing*, 163 U.S. 240, 244.

³⁷² For examples of Field's racism, see FRITZ, *supra* note 55, at 225, 237-38, 247, 248.

³⁷³ *United States v. Wong Kim Ark*, 169 U.S. 706 (1898).

ing to recognize his citizenship status.³⁷⁴ A lower court reversed this action and the United States government appealed, but the Supreme Court affirmed the lower court's ruling.³⁷⁵ This point of law stemmed from the 1866 Civil Rights Act,³⁷⁶ and was reaffirmed in the Fourteenth Amendment in 1868,³⁷⁷ but the Court had now removed any doubt that the law applied to people of Asian descent; an exceptional victory amidst the nativist era.

U.S. v. Sing Tuck (1904) involved five Chinese trying to enter the United States by way of Canada. There was some question about their American citizenship status, and Justice Oliver Wendell Holmes reversed an appellate court's order to investigate said status, stating that "A mere allegation of citizenship is not enough."³⁷⁸ In his dissent, Justice Brewer again sounded the moral cosmopolitan clarion cry:

The time has been when many young men from China came to our educational institutions to pursue their studies; when her commerce sought our shores, and her people came to build our railroads, and when China looked upon this country as her best friend. If all this be reversed and the most populous nation on earth becomes the great antagonist of this republic, the careful student of history will recall the words of Scripture, 'they have sown the wind, and they shall reap the whirlwind,' and for cause of such antagonism need look no further than the treatment accorded during the last twenty years by this country to the people of that nation.³⁷⁹

Justice Brewer had occasion to dissent again the following year in *U.S. v. Ju Toy*. Here the Court denied habeas corpus rights to Ju Toy, after the Secretary of Commerce and Labor denied him re-entry into the United States, despite Ju Toy claiming American citizenship.³⁸⁰ Justice Brewer found this "appalling" and cited numerous precedents to support his dissent.³⁸¹ He described the Court as banishing a citizen and stripping him of his rights in violation of congressional intent and constitutional protection.³⁸² Brewer's influence may have carried weight as soon as three years later in a somewhat similar case, *Chin Yow v. U.S.* (1908), when Justice Holmes' granted habeas corpus rights for citizenship determination. Where Holmes had stated in *Ju Toy* that due process did not require a judicial trial,³⁸³ in *Chin Yow* he seemed to reverse his previous stance by writing, "The courts must deal with the matter somehow, and there seems to be no

³⁷⁴ *Id.* at 650.

³⁷⁵ *Id.* at 706.

³⁷⁶ Civil Rights Act 1866, 14 Stat. 27-30, §1.

³⁷⁷ U.S. CONST., amend. XIV, §1.

³⁷⁸ *United States v. Sing Tuck*, 194 U.S.171 (1904).

³⁷⁹ *Id.* at 183.

³⁸⁰ *United States v. Ju Toy*, 198 U.S. 253 (1905).

³⁸¹ *Id.* at 270-74.

³⁸² *Id.* at 280-81.

³⁸³ *Id.* at 264.

way so convenient as a trial of the merits before the judge.”³⁸⁴ Brewer naturally concurred.

These seemingly small victories of the late nineteenth and early twentieth centuries nevertheless laid some important groundwork. In 1905 Holmes deferred to the Secretary of Commerce and Labor in *Ju Toy* regarding habeas corpus, but by 1920 Justice John Hessin Clarke was asserting judicial supremacy over the Secretary in the same matter.³⁸⁵ The nativist hysteria was dying down with the overall shift to circumscribed immigration. In this changing context, Clarke made the remarkable declaration that, “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.”³⁸⁶

For Asian American history, perhaps the most remarkable case of the 1920s was *Farrington v. Tokushige* (1927), wherein the Supreme Court upheld the right of Japanese Americans to educate their children in Japanese language schools.³⁸⁷ *Farrington v. Tokushige* constituted the third in a trio of remarkable victories against the nativist insistence upon WASP culture, the much-noted predecessors being *Meyer v. Nebraska* (1923)³⁸⁸ and *Pierce v. Society of Sisters* (1925).³⁸⁹ *Meyer* and *Pierce* were the pioneer cases against nativist reactions against white Catholic schools, but *Farrington* pushed the envelope further by extending Supreme Court jurisprudence into Asian language parochial schools.³⁹⁰ *Meyer* and *Pierce* dealt with ethnic groups of different languages and religion then found in mainstream WASP America, whereas *Farrington* more specifically dealt a blow (almost inadvertently) against prejudice against a different language and a different race. In *Farrington v. Tokushige*, Justice James Clark McReynolds wrote, “it would deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful. The Japanese parent has the right to direct the education of his own child without unreasonable restrictions; the Constitution protects him as well as those who speak another tongue.”³⁹¹ This was a remarkable multicultural inroad for the 1920s, but the Hawaiian context must be considered here, with its much larger proportional population of people of Asian descent. On the mainland, particularly in California and Washington, the discriminatory land laws alone reflected nativism’s enduring legacy.³⁹²

³⁸⁴ *Chin Yow v. United States*, 208 U.S. 14 (1908).

³⁸⁵ *Kwock Jan Fat v. White*, 253 U.S. 465 (1920).

³⁸⁶ *Id.*

³⁸⁷ *Farrington v. Tokushige*, 273 U.S. 284 (1927).

³⁸⁸ *Meyer v. Nebraska*, 262 U.S. 390 (1923).

³⁸⁹ *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus*, 268 U.S. 510 (1925).

³⁹⁰ *ROSS*, *supra* note 340, at 5-6.

³⁹¹ *Farrington*, 273 U.S. at 299.

³⁹² See *Cockrill v. People*, 268 U.S. 258 (1925); *Frick v. Webb*, 263 U.S. 326 (1923); *Porterfield v. Webb*, 263 U.S. 225 (1923); *Terrace v. Thompson*, 263 U.S. 197 (1923); *Webb v. O’Brien*, 263 U.S. 313 (1923).

The Great Depression put a damper upon previous nativistic controversies, partly because immigration to the United States dramatically dropped in light of high unemployment rates and the absence of an economic incentive to immigrate.³⁹³ The next era of racist frenzy against Asians occurred after the Japanese bombing of Pearl Harbor, Hawaii, that initiated World War II for the United States. The Chinese were wartime allies with the United States against Japan and benefitted accordingly, notably beginning with the Chinese Exclusion Repeal Act the 1943.³⁹⁴ Yet even amidst this period, when anti-Japanese racists exploited the wartime emergency, the moral cosmopolitan dissent far from disappeared. In fact, in some ways it grew more vehement.

The notorious *Korematsu*³⁹⁵ and famous *Endo*³⁹⁶ decisions evoked strong responses from the legal community.³⁹⁷ Justice Frank Murphy's dissent in *Korematsu* may be his most famous, in which he called upholding the constitutionality of Japanese-American internment as falling into the "ugly abyss of racism."³⁹⁸ Murphy acknowledged the legitimacy of wartime emergencies as expressed in martial law, but ultimately saw the internment as an unconstitutional over-reaction and a dangerous civilian surrender to military authority.³⁹⁹ This last point alone is quite profound, but equally so was Murphy's adoption of the concept of racism, then a fairly new idea that arose in response to the Nazis' Aryan super race mythology.⁴⁰⁰ Murphy openly confronted the "questionable racial and sociological grounds"⁴⁰¹ that racists and nativists had actually used to rationalize their discrimination against Asians since the mid-nineteenth century. Murphy repeated his charges of racism in his concurrence with the unanimous decision in *Endo*,⁴⁰² which ruled to release one Mitsuye Endo from wartime detention.⁴⁰³

³⁹³ William S. Bernard, *A History of U.S. Immigration Policy*, in IMMIGRATION, at 99 (1982).

³⁹⁴ 78 Cong. Ch. 344, Dec. 17, 1943, 57 Stat. 600.

³⁹⁵ *Korematsu v. United States*, 323 U.S. 214 (1944).

³⁹⁶ *Ex parte Endo*, 323 U.S. 283 (1944).

³⁹⁷ For examples, see Maurice Alexander, *Wartime Control of Japanese-Americans*, 28 CORNELL L.Q. 385, 1942-1943; Robert E. Cushman, *Some Constitutional Problems of Civil Liberty*, 23 B.U. L. REV. 335, (1943); Nanette Dembitz, *Racial Discrimination and the Military Judgment: The Supreme Court's Korematsu and Endo Decisions*, 45 COLUM. L. REV. 175 1945; MILTON R. KONVITZ, *THE ALIEN AND THE ASIATIC IN AMERICAN LAW* 277 (1946); Eugene V. Rostow, *The Japanese American Cases—A Disaster*, 54 YALE L.J. 489, (1944-1945).

³⁹⁸ *Korematsu*, 323 U.S. at 234.

³⁹⁹ *Id.* at 235-37.

⁴⁰⁰ GEORGE M. FREDRICKSON, *RACISM: A SHORT HISTORY* 5 (2002).

⁴⁰¹ *Korematsu*, 323 U.S. at 237.

⁴⁰² *Endo*, 323 U.S. at 308.

⁴⁰³ *Id.* at 305.

In 1942, Mitsuye Endo petitioned for habeas corpus after being forcibly relocated to the Tule Lake internment camp.⁴⁰⁴ The basis for her habeas corpus claim was her loyalty as a United States citizen, absence of any criminal record, and her detainment against her will. The Department of Justice and even the War Relocation Authority concurred in all these claims and the Supreme Court agreed, granting habeas corpus and ruling that Endo was entitled to release. Justice William O. Douglas, writing the Court's majority opinion, noted, "A citizen who is concededly loyal presents no problem of espionage or sabotage. Loyalty is a matter of the heart and mind not of race, creed, or color."⁴⁰⁵ Even amidst the war, the moral cosmopolitan cause was gaining some ground.

Colorado Governor Ralph Carr (1939-43) significantly protested the internment of Japanese-Americans in his state's federally-designated Granada Relocation Camp, claiming that such internment was a violation of civil rights.⁴⁰⁶ Colorado voters must have sympathized. Anti-Japanese war-time hysteria hit Colorado in 1944 with the state house proposing a constitutional amendment prohibiting landownership by people of Japanese descent. Colorado voters, however, decided against the amendment by a significant margin, 184,458 to 168,865.⁴⁰⁷ Douglas R. Hurt interpreted this vote as a reflection of both high-minded anti-racism as well as pragmatism, for denying one group of immigrants or their descendants land ownership rights would have ominous future implications for other immigrants and their descendants.⁴⁰⁸ Historically, ethnic minorities and their mainstream allies have had to organize and finance their arguments for establishing these new social norms,⁴⁰⁹ and this Colorado instance was a stellar example of such an effort.⁴¹⁰ Although nativist and racist elements will always remain, after the 1920s nativists either began to take assurance with new laws limiting immigration or, as William G. Ross argues, slowly recognized that their WASPish values and ethnic minorities need not necessarily exclude the other,⁴¹¹ or perhaps some combination of both and other factors.

Even during the World War II era, and definitely afterward, the United States began to take a leadership role in international race relations,

⁴⁰⁴ *Id.* at 285-86, 295.

⁴⁰⁵ *Id.* at 303.

⁴⁰⁶ *Ralph Carr Award to Honor Japanese-Americans Supporters*, DAILY YOMIURI ONLINE (July 18, 2012), available at <http://www.yomiuri.co.jp/dy/world/T120717003926.htm>; THE GOVERNOR RALPH L. CARR COLLECTION at the Colorado State Archives, available at <http://www.colorado.gov/dpa/doit/archives/govs/carr.html>.

⁴⁰⁷ BILL HOSOKAWA, COLORADO'S JAPANESE AMERICANS: FROM 1886 TO THE PRESENT 118 (2005); DOUGLAS R. HURT, THE GREAT PLAINS DURING WORLD WAR II 300-301 (2008).

⁴⁰⁸ HURT, *supra* note 407, at 300, 301.

⁴⁰⁹ ROSS, *supra* note 340, at 205-06; Webber, *supra* note 340, at 88.

⁴¹⁰ HOSOKAWA, *supra* note 407, at 118.

⁴¹¹ ROSS, *supra* note 340, at 205.

particularly regarding upholding the United Nations charter.⁴¹² The booming economy of the 1950s also helped mitigate employment competition antagonism associated with immigrants. Certainly the moral cosmopolitan precedent was not the only factor in the amelioration of anti-Asianism and rectification for past nativist and racist wrongs. So this is not to advocate a determinist argument, in which the moral cosmopolitans were “leading up to” what later happened. Instead, the moral cosmopolitans set examples of an alternative social reality that placed it well within the scope of Enlightenment principles, and thus hardly representative of a radical fringe, then or now. For a variety of reasons, including the United States’ post-war role in the United Nations’ advocacy of universalist human rights, American society gradually shifted away from institutionalized nativism and racism to embrace what their moral cosmopolitan predecessors had exemplified during the nineteenth and early twentieth centuries. It would be impossible to make a scientific cause-and-effect connection between the moral cosmopolitan precedent and the later liberalization of immigration law, and yet the change in social, legislative, and judicial mood must have some basis in the past. Large historical movements never come out of a vacuum. Christianity had centuries of cultural preparation in Judaism and the Eastern Mystery religions.⁴¹³ Marxism had many precursors among French “utopian” socialists.⁴¹⁴ The American Civil Rights era of the 1950s-1960s, in fact, had decades of preparation and pump-priming in the efforts of the NAACP’s Legal Defense Fund and in the work of Charles Hamilton Houston at Howard Law School alone.⁴¹⁵ The current study is no exception. The post-war liberalization of immigration law and improved social, economic, educational, and political advancement for Asians and Asian-Americans had a small but crucial precedent prior to and in the middle of the most dire forces against them.

The moral cosmopolitan precedent came to fruition during the post-war era. Liberalized immigration laws particularly benefited Asian peoples, as did the general sweep of the Civil Rights Movement and Affirmative

⁴¹² FORD, *Rights Gone Wrong*, *supra* note 340, at 127-29, 158 (2012); *Oyama v. California*, 332 U.S. 633, 674 (1948); *Sei Fujii v. State*, 242 P.2d 617, 721, 725, 742 (Cal. 1952).

⁴¹³ See generally SAMUEL ANGUS, *THE MYSTERY-RELIGIONS AND CHRISTIANITY: A STUDY IN THE RELIGIOUS BACKGROUND OF EARLY CHRISTIANITY* (1925); RICHARD REITZENSTEIN, *HELLENISTIC MYSTERY-RELIGIONS: THEIR BASIC IDEAS AND SIGNIFICANCE* (John E. Steely trans., 1978).

⁴¹⁴ A study of a specific utopian socialist may be found in JONATHAN BEECHER, *CHARLES FOURIER: THE VISIONARY AND HIS WORLD* (1986). See generally KEITH TAYLOR, *THE POLITICAL IDEAS OF THE UTOPIAN SOCIALISTS* (1982).

⁴¹⁵ RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* 126 (1976); GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* Ch. 6 (1983); MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961* 6, 7 (1994); Leland Ware, *Charles Houston’s Transformation of Legal Education*, 32 HOWARD L. REV. 479, 479-93 (1989).

Action. The aforementioned 1943 Chinese Exclusion Repeal Act⁴¹⁶ began the liberalization of immigration, albeit with extreme modesty. In *Oyama v. California* (1948)⁴¹⁷ the Supreme Court finally rejected alien land law, and the West Coast states eventually followed this precedent.⁴¹⁸ A very modest liberalization of the immigration quota for Japanese arrived with the 1952 McCarran-Walter Act.⁴¹⁹ The crowning legislation of liberalized immigration arrived at the apex of the Civil Rights Movement with the Immigration and Nationality Act of 1965.⁴²⁰ The Civil Liberties Act of 1988 tried to make amends and offered reparations for the wartime Japanese internment.⁴²¹ There were many other pieces of legislation that fit into this general civil rights revolutionary context,⁴²² but by the mid-1960s law and society were clearly beginning to reflect a sea change in America that the earlier generations of moral cosmopolitans had favored all along.

All together, here we might examine how moral cosmopolitanism of the pre- and post-Civil Rights eras came to mesh with old and new ideas regarding “melting pot” America. Describing the contemporary socio-political climate, James E. Bond delineates a useful dichotomy between “Melting Pot” multiculturalists and “Salad Bowl” multiculturalists.⁴²³ Melting Pot multiculturalists see cultural assimilation as central to the American vision, with numerous reasonable provisos for accommodating cultural difference.⁴²⁴ Salad Bowl multiculturalists, on the other hand, are the post-Civil Rights Era celebrators of cultural difference, who have ironi-

⁴¹⁶ Chinese Exclusion Repeal Act, 78 Cong. Ch. 344, Dec. 17, 1943, 57 Stat. 600 (1943).

⁴¹⁷ *Oyama*, 332 U.S. 633.

⁴¹⁸ *Kenji Namba v. McCourt*, 204 P.2d 569 (Or. 1949); *Sei Fujii*, 242 P.2d 617; Thomas E. Stuen, *Asian Americans and Their Rights for Land Ownership*, in HYUNG-CHAN KIM, *ASIAN AMERICANS AND THE SUPREME COURT* 620 (1992).

⁴¹⁹ Formally known as the Immigration and Nationality Act, Pub.L. 82-414, 66 Stat. 163, 82nd Congress (June 27, 1952).

⁴²⁰ Immigration and Nationality Act, Pub.L. 89-236; 79 Stat. 911, 89th Congress (Oct. 3, 1965).

⁴²¹ The Civil Liberties Act, Pub.L. 100-383, 102 Stat. 903 (Aug. 10, 1988).

⁴²² See e.g., *Takahashi v. Fish & Game Comm’n* 334 U.S. 410 (1948). Other examples affecting Asians included the War Brides Act, Pub. L. 79-271; 59 stat 659, 79th Cong. (Dec. 28, 1945) and Alien Fiancées and Fiancés Act, Pub. L. 79-471; 60 stat. 339, 79th Cong. (June 29, 1946). Huping Ling is one of the few scholars to acknowledge the importance of these comparatively minor changes in law. See HUPING LING, *CHINESE CHICAGO: RACE, TRANSNATIONAL MIGRATION, AND COMMUNITY SINCE 1870* 205-07 (2012). A list that places all these pieces of legislation within a chronological context may be found at

<http://library.uwb.edu/guides/usimmigration/USimmigrationlegislation.html>

⁴²³ James E. Bond, *Multiculturalism: America’s Enduring Challenge*, SEATTLE J. FOR SOC. JUSTICE 1, 59-70 (Spring/Summer, 2002).

⁴²⁴ *Id.* at 60-61.

cally re-segregated American society along ethnic lines,⁴²⁵ with varying degrees of cultural authenticity.⁴²⁶

Bond's dichotomy has profound implications that partly coalesce with notions of nationalism ("patriots of soil") and patriotism ("patriots of liberty").⁴²⁷ I'm using the term "nationalists" to refer to the exclusionary movements that arose during the nineteenth and twentieth centuries, particularly associated with Germany, but clearly manifested in the United States and elsewhere.⁴²⁸ This was, perhaps, the darkest aspect of the Romantic period, which otherwise offered many valuable artistic and cultural contributions and aspirations. So "patriots," in this context, would then mean loyalty to Enlightenment era ideals of universal human rights, moral cosmopolitanism, tolerance, and acceptance of human differences⁴²⁹—hence the concept of "patriots of liberty."

In one of our greatest post-war ironies, Salad Bowl multiculturalists and nationalists have ended up with a common bigotry that dismisses Melting Pot multiculturalism, the latter embodying a patriotism of liberty, with favorable moral cosmopolitan implications that have always included interracial benevolence. The latter is the historic focus of this study, which contemporary Salad Bowl multiculturalists have concertedly dismissed.

⁴²⁵ *Id.* at 61.

⁴²⁶ The latter point involves self-conscious culture, usually for opportunistic ends. *See* BRIAN BARRY, *CULTURE AND EQUALITY: AN EGALITARIAN CRITIQUE OF MULTICULTURALISM* 259 (2002); FORD, *RACIAL CULTURE*, *supra* note 5, at 35, 39, 41, 44, 61, 134; RICHARD THOMPSON FORD, *RACE CARD: HOW BLUFFING ABOUT BIAS MAKES RACE RELATIONS WORSE* 192, 278 (2008). This phenomenon certainly occurs outside the United States. *See generally* *THE INVENTION OF TRADITION* (Eric Hobsbawm & Terence Ranger eds., 1992).

⁴²⁷ Here I follow MAURIZIO VIROLI, *FOR LOVE OF COUNTRY: AN ESSAY ON PATRIOTISM AND NATIONALISM* (1995). "Patriots of soil" is a term from Enlightenment era philosopher, Earl of Shaftesbury. *See* ANTHONY ASHLEY COOPER, EARL OF SHAFTESBURY, *CHARACTERISTICS OF MEN, MANNERS, OPINIONS, TIMES* 403 (Lawrence E. Klein, ed., Cambridge Univ. Press, 1999) (1711). "Patriots of liberty" is Viroli's term, implicated in contrast. *See* VIROLI at 59, 184-85.

⁴²⁸ BARRY, *supra* note 426, at 308-09; Dorothy E. Roberts, *Why Culture Matters to Law: The Difference Politics Makes*, in *CULTURAL PLURALISM, IDENTITY POLITICS, AND THE LAW* 102 (Austin Sarat & Thomas R. Kearns eds., 1999). For a contemporary reaction against German nationalism in particular, but not uncritical of Britain and the United States, see CHARLES WALDSTEIN, *PATRIOTISM, NATIONAL AND INTERNATIONAL: AN ESSAY* (1917).

⁴²⁹ VIROLI, *supra* note 427, at 2, 8-9, 57, 58, 184-85; WALDSTEIN, *supra* note 428, at 145, 146, 149.

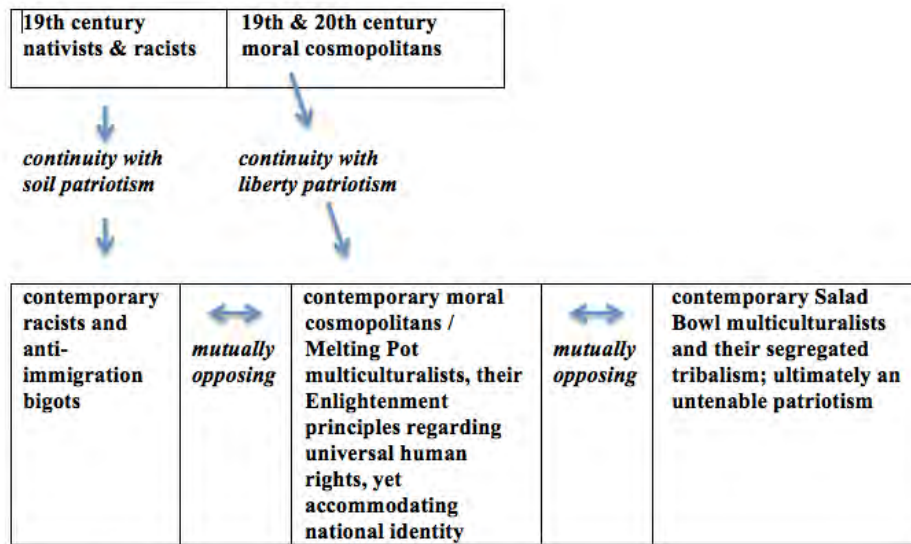


Table 1. Scheme of terms and concepts used in this essay

We should briefly consider what is or should be a central virtue of Melting Pot multiculturalism, that of what I call “enrichment assimilation.” Assimilation is inevitable in American culture, yet Salad Bowl multiculturalists use the word as shorthand for discrimination.⁴³⁰ Salad Bowl multiculturalists’ self-conscious creation of segregated, artificial “culture” presents a hindrance to moral cosmopolitan Melting Pot multiculturalism that is almost as formidable as racism and nativism.⁴³¹ Of course, Salad Bowl multiculturalists are often merely naked opportunists serving their own, more narrow narcissistic ends;⁴³² whereas, nativists and racists served their own socioeconomic ends married to an alarming vision of hierarchical racialized humanity (with them on top, of course).

The only egregious version of assimilation, as far as this study is concerned, was the WASP nativists’ insistence that non-WASPs assimilate to *their* culture, and their culture only; a sort of domestic version of cultural imperialism consistent with soil patriotism. In equal proportions this effort was naive, discriminatory, and impossible. One of the more astonishing historical relics involves educated people insisting that Asian people could never assimilate into American society.⁴³³ In reality, assimilation in American history has been an unstoppable continuous process. What has changed is that the WASP entity is no longer the majority nor the controller of mass culture, and minorities have the legal empowerment to control

⁴³⁰ FORD, RACE CARD, *supra* note 426, at 153, 347.

⁴³¹ FORD, RACIAL CULTURE, *supra* note 5, at 42.

⁴³² FORD, RIGHTS GONE WRONG, *supra* note 340, at 11, 13, 18, 25, 27, 199.

⁴³³ ODO, *supra* note 4, at 51-56.

their own assimilation.⁴³⁴ In the broadest sense, however, minority cultures have constantly contributed to the ever-evolutionary mainstream. This “enrichment assimilation” is a salient feature in a land of immigrants such as the United States, consistent with liberty patriotism. Mainstream American culture today barely resembles mainstream culture of previous decades. For a moral cosmopolitan advocate, this is what makes mainstream American culture so wonderful. Some of the fringe cultures are interesting; some frightening. But the self-consciously manufactured “minority cultures” are mainly the tools of opportunists who have to invent something that supposedly distinguishes them.

Outside of academia, many people would find enrichment assimilation merely a matter of common sense. The late newspaper columnist, writer and historian Bill Hosokawa offered a sober antidote for the Salad Bowl perspective. Hosokawa unabashedly attributed the great success of Japanese-Americans to a mixture of both mainstream American cultural traits as well as those rooted in the old country, such as filial piety, a strong sense of family and family honor (and, by extension, a strong sense of community) as well an attitude of humility, duty, and making the most of difficult circumstances.⁴³⁵ “Isn’t the melding of cultures what America is all about?” Hosokawa asked.⁴³⁶ No complaining about the model minority stereotype here. Instead, Hosokawa praised the “happy combination of the more admirable of Japanese traits being nurtured in the freedom and openness of American society” as responsible for stellar success of Japanese-Americans.⁴³⁷ Sam Chan expressed a similar pro-assimilation sentiment in a 1943 letter to his congressman, Representative B. Carroll Reece of Tennessee. Chan wrote, “I dislike to boast, but our people in America are loyal, honest, and obedient to your laws. No other race can show such an enviable record.”⁴³⁸ As Huping Ling has demonstrated, there is a deep tradition among Chinese immigrants to America for promoting assimilation into the mainstream through “Americanization” or at least “hybrid” social organizations that helped bridge the two cultures.⁴³⁹ Chinese intellectuals in particular saw themselves as cultural liaisons or cultural agents whose duty it was to help bridge the two cultures.⁴⁴⁰

⁴³⁴ FRIEDMAN, *AMERICAN LAW*, *supra* note 15, at 343, 545; DAVID M. KENNEDY, *FREEDOM FROM FEAR: THE AMERICAN PEOPLE IN DEPRESSION AND WAR, 1929-1945* 306 (1999); JAMES S. OLSON, *EQUALITY DEFERRED: RACE, ETHNICITY, AND IMMIGRATION IN AMERICA, SINCE 1945*, 11, 144-49 (2002).

⁴³⁵ HOSOKAWA, *supra* note 407, at 247, 248, 250.

⁴³⁶ *Id.* at 250.

⁴³⁷ *Id.*

⁴³⁸ Sam Chan to Rep. B. Carroll Reece, June 8, 1943, 78th Cong., 1st sess., *Appendix to the Congressional Record* at A2857.

⁴³⁹ LING, *supra* note 422, at 38-42, 149, 163.

⁴⁴⁰ *Id.* at 172, 173, 189.

VI. LIBERTY PATRIOTISM IMPLICATIONS

Soil patriots rally around the flag and ignore the ambiguity and potential shallowness of its symbolism. Interviews with various people about the meaning of the Confederate flag illustrate this point quite vividly. Liberty patriots, on the other hand, rally around constitutionalism. They fully recognize the historic mistakes of constitutionalism, both in its formal and populist manifestations. They see constitutionalism as an eternal arena for debate and disagreement, but also as one of the nation's greatest tools for aspiring toward future ideals. To state the obvious, this is particularly important for moral cosmopolitanism to survive in a nation of immigrants and such cultural variety.

Tribal or clan units are among our oldest social structures.⁴⁴¹ Early people, like other mammal groups (lions, wolves, horses, and all primates) banded together out of necessity for survival.⁴⁴² Native American tribes often had names for themselves that simply meant "the people,"⁴⁴³ meaning us, our group. Group security or insecurity centered around the gathering of and competition for resources. The tribal punishment of ostracism,⁴⁴⁴ sometimes equivalent with a death sentence since solitary survival was almost impossible, illustrated the profound group-orientation of early people.⁴⁴⁵ After the historical era arrived, people continued affiliations to clans and developed all sorts of orientations to geographical neighbor-

⁴⁴¹ KENNETH S. CARLSTON, *SOCIAL THEORY AND AFRICAN TRIBAL ORGANIZATION: THE DEVELOPMENT OF SOCIO-LEGAL THEORY* 3, 15, 16, 65 (1968).

⁴⁴² See e.g. JAN VANSINA, *HOW SOCIETIES ARE BORN: GOVERNANCE IN WEST CENTRAL AFRICA BEFORE 1600* 26-33 (2005).

⁴⁴³ Phil Konstantin has compiled a long list of such tribal names. See Phil Konstantin, *Tribal Name Meanings and Alternative Names*, available at <http://americanindian.net/names.html>.

⁴⁴⁴ An evocative depiction of tribal ostracism may be found toward the end of the remarkable, multiple award winning film, *FAST RUNNER* (2002), shot among the Canadian Inuit. For another aboriginal example pertaining to the Cheyenne, see KARL N. LEWELLYN & E. ADAMSON HOEBEL, *The Tribal Ostracism and Reinstatement of Sticks Everything Under His Belt*, in *THE CHEYENNE WAY* 145, 154-7 (1941). For an Afghanistan tribal example, see Jiloufer Qasim Mahdi, *Pukhtunwali: Ostracism and Honor Among the Pathan Hill Tribes*, 7 *ETHOLOGY AND SOCIOBIOLOGY* 295 (1986); see also Patrice H. Kunesh, *Banishment as Cultural Justice in Contemporary Tribal Legal Systems*, 37 *N.M. L. REV.* 85 (2007); Eric A. Posner, *The Regulation of Groups: The Influence of Legal and Nonlegal Sanctions on Collective Action*, 63 *U. CHI. L. REV.* 133 (1996). Unfortunately, the much-publicized use of "traditional" Tlingit ostracism to punish two Tlingit boys by banishing them to a remote southeastern Alaska island apparently turned out to be fraudulent on at least two levels: Rudy James falsely represented himself as a Tlingit tribal judge and Tlingit culture has no tradition of ostracism. See Timothy Egan, *Indian Boys' Exile Turns Out to be a Hoax*, *N.Y. TIMES* Aug. 31, 1994.

⁴⁴⁵ After the Greeks abandoned strictly tribal orientation and began developing democratic politics, exile and ostracism became a more institutional practice (later apparently influencing the Romans). See generally SARA FORSDYKE, *EXILE, OSTRACISM, AND DEMOCRACY: THE POLITICS OF EXPULSION IN ANCIENT GREECE* (2005).

hoods,⁴⁴⁶ religions, economic systems, military rivalries, kingdoms, and empires. Nationalism or soil patriotism is a comparatively new phenomenon, not beginning to develop fully until the nineteenth century.⁴⁴⁷ Particularly with the post-World War II formation of organizations such as the United Nations,⁴⁴⁸ UNESCO, the World Bank, Amnesty International, Environmental Law Alliance Worldwide, Doctors without Borders (and many other organizations) we have more fully entered a trans-national or supra-national era. Moral cosmopolitans may embrace trans-nationalism, but generally do not advocate ending localism or nationalism.⁴⁴⁹ The point is, “tribalism” in a general sense is part of the human condition, yet obviously we are fully capable of aspiring toward and even realizing the greater ideal of understanding the universality of humanity. The United States would seem to have been a natural laboratory for fostering moral cosmopolitanism in a polyglot nation. But, advocacy and idealism aside, provincialism continues and will continue to manifest itself in soil patriotism mold.⁴⁵⁰ Still, the liberty patriotism alternative has been demonstrated, and continues to be demonstrated, by the moral cosmopolitan disposition.

Imperialism abroad and domestic racism and nativism live on in the United States, of course. If Indian tribal names mean “the People,” a great many Americans continue to consider themselves the chosen people, still showing the world what it is all about from their city upon the hill.⁴⁵¹ But moral cosmopolitans can nevertheless serve their local tribe through education, example, and by discouraging racism, bigotry, and hyper-nationalism.

⁴⁴⁶ CARLSTON, *supra* note 442, at 15, 16. Carlston deals with the rise of the state at 27-28.

⁴⁴⁷ A short list of the voluminous literature about nationalism might include FRANK COPPA, *THE ORIGINS OF THE ITALIAN WARS OF INDEPENDENCE* (1992); DENNIS E. SHOWALTER, *THE WARS OF GERMAN UNIFICATION* (2004); STANFORD J. SHAW, *HISTORY OF THE OTTOMAN EMPIRE AND MODERN TURKEY*, v2: REFORM, REVOLUTION, AND REPUBLIC: THE RISE OF MODERN TURKEY, 1808-1975 (1977); JAMES M. MCPHERSON, *BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA* (1988).

⁴⁴⁸ For the beginnings of the United Nations, see STEPHEN C. SCHLESINGER, *ACT OF CREATION: THE FOUNDING OF THE UNITED NATIONS, A STORY OF SUPERPOWERS, SECRET AGENTS, WARTIME ALLIES AND ENEMIES, AND THEIR QUEST FOR A PEACEFUL WORLD* (2003). For a more recent assessment (false dichotomy of the title notwithstanding), see *IRRELEVANT OR INDISPENSABLE?: THE UNITED NATIONS IN THE TWENTY-FIRST CENTURY* (Paul Heinbecker & Patricia Goff eds., 2005).

⁴⁴⁹ Kleingeld & Brown, *supra* note 8, at §§ 3.0, 3.3.

⁴⁵⁰ FORD, *RACIAL CULTURE*, *supra* note 5, at 164-65.

⁴⁵¹ John Winthrop’s famous 1630 phrase, “city upon a hill,” is often cited as the earliest example of Americans’ Calvinistic self-conception of exceptionalism. This cultural trait reemerged with industrial force during the 19th century under the banner of Manifest Destiny, in which the deity had ordained that Americans overtake what became the continental United States, and which then spilled into the Pacific with the domination of Hawaii, Guam, the Philippines, and other islands. See FREDERICK MERK, *MANIFEST DESTINY AND MISSION IN AMERICAN HISTORY: A REINTERPRETATION* (1963). For John Winthrop’s sermon, see *A Modell of Christian Charity* (1630), available at <http://history.hanover.edu/texts/winthmod.html>.

This essay has attempted to make the case for the historic significance of one, loosely-constructed such group.

In the most tolerant and most broadminded sense, perhaps we can forgive the people of the nineteenth century for their notions of race, racial hierarchy, and race supremacy that all seem ludicrously disturbing to us now. They were just discovering the wider world and that was their cosmopolitan moment. Already they had outgrown the Greeks' ancient concept of cosmopolitanism,⁴⁵² if for no other reasons than the advancement of transportation, communication, and cartography. Some remained mired in a contradictory Kantian cosmopolitanism which claimed to embrace the world while nevertheless allocating highest status for one's own tribe.⁴⁵³ But now it is our cosmopolitan moment. Many feel that cosmopolitanism is now "an urgent moral necessity."⁴⁵⁴ Will we embrace the best virtues of cultural relativism that cosmopolitanism necessitates? Or will we continue believing the self-righteous parochial myth of the United States as a City Upon a Hill?

VII. CONCLUSION

If racism derives from ignorance, fear, and hatred, then non-racism must derive from an absence of these negative qualities. Moreover, racists perceive and definitely attempt to impose inequality upon the targets of their discrimination.⁴⁵⁵ Friendship, as Aristotle and other philosophers have recognized, requires equality.⁴⁵⁶ Recognizing the place of interracial friendship among Asians and Caucasians amidst a harsh era of prevailing malevolence is an important, if largely ignored, aspect of (Asian) American history. It adds a vital dimension to a subject perhaps rightfully preoccupied, until recent years, with injustice.

Legal dissent is most obviously significant when a later judicial decision relies upon it to overturn the *status quo* and thus advance a new line of jurisprudence. Within the theoretical framework of populist constitutionalism, the moral cosmopolitans established a populist dissent that re-

⁴⁵² Kleingeld & Brown, *supra* note 8, at § 1.1.

⁴⁵³ Fine & Cohen, *supra* note 5, at 145.

⁴⁵⁴ *Id.* at 162. Also see Kleingeld & Brown, *supra* note 8, at § 3.3; Waldron, *supra* note 5, at 754, 777, 778.

⁴⁵⁵ Although employing the fallacy of the lonely fact (FISCHER, *supra* note 131, at 109-10), Kwame Appiah makes an important point regarding the dubious links between ignorance and racism by citing the example of the famous world traveler, Sir Richard Burton (1821-1890). Despite Burton's unusually high exposure and experience with numerous ethnic groups around the world, he nevertheless remained prejudiced against the non-English in the almost stereotypical Anglophile fashion. See APPIAH, *supra* note 5, at 1-8. However, Appiah's point does reinforce the moral cosmopolitan idea that an *attitude* or disposition toward embracing other peoples and cultures on their own terms (mainly regardless of actual physical proximity) is what constitutes a solution to provincialism, parochialism, and the prejudice that all too often accompanies such worldviews.

⁴⁵⁶ NICOMACHEAN ETHICS, *supra* note 139, at 214, 216, 217 Marilyn Friedman, *Friendship and Moral Growth*, 23 J. OF VALUE INQUIRY 1, 3 (1989).

mained largely sublimated in the national consciousness until the 1940s and afterward. This is not to argue for determinism in historical causation, nor to commit the presentist fallacy by reading modern values into the past.⁴⁵⁷ But the fact remains that the moral cosmopolitans were part of enormous (if sometimes amorphous) evolutionary forces that witnessed the gradual interpretation of “all men” created equal meaning landowning white males to then, quite literally, all peoples or at least all citizens and citizen aspirants. The confines of patriotism must remain, and perhaps they always will; but at least it can be a patriotism of liberty. The seeds of universalism were there in the Enlightenment, but obviously it has taken a great deal of time for them to reach their contemporary degree of partial fruition. To say that the moral cosmopolitans were ahead of their time commits the aforementioned historical causation problems. To say they and we share the same values commits the universalist fallacy.⁴⁵⁸ Instead, the moral cosmopolitans had an ultimately incalculable array of both personal and practical inclinations for defying the predominant racism and nativism of their era. They were braver and lonelier than contemporary cosmopolitan Americans. They were unselfconscious in their benevolence, which they expressed naturally without the influences of political correctness and the absence of even a shadow of affirmative action. They had a conception of humanity that was unusually generous for these earlier time periods. They knew the United States was a land overwhelmingly populated by immigrants, but disagreed that expansionist immigration would harm the country. It is difficult not to view them as heroic people.

⁴⁵⁷ FISCHER, *supra* note 131, at 135-40, 166-67, 183-86.

⁴⁵⁸ *Id.* at 203-07.