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CHINESE CRUSADERS' LAWFARE AGAINST CHINESE EXCLUSION LAWS

Li Chen*

ABSTRACT

This article focuses on two of the earliest Chinese law students in the United States who deployed their legal knowledge and advocacy skills to fight against the Chinese Exclusion Act and its related laws in the early 1900s. Ho Yow, the fourth Chinese national to ever attend law school in the United States, performed this courageous task as Chinese consul to the United States. His fellow countryman Yeung Fong joined in this battle by conducting a full-fledged systematic study of the racist laws, becoming the first Chinese national who wrote a master's thesis on this controversial topic.

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INTRODUCTION

Since the 1870s, pioneer Chinese law students had begun taking advantage of their newly acquired Western legal education and advocacy skills to grapple with racially discriminating laws. Wu Tingfang, also known as Ng Choy, was the first Chinese person who had the opportunity to receive a systematic and full-fledged legal education. He did not hesitate to employ his remarkable reasoning, analytical, and argumentative skills to crusade against the anti-Chinese sentiments percolating California in the 1870s.¹ In June 1876, while still a law student in London,

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1. Li Chen, *Lawyers as the Emerging Diplomatic Elite in China: The Making of the First Chinese Barrister at the English Bar*, 2 *CHINESE J. COMP. L.* 337 (2014).

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he wrote to the editor of *The Times of London* to present his views on Chinese immigrants in California.² Wu adduced concrete examples and statistics to demolish numerous false claims in favor of Chinese exclusion. For example, to counteract the deep-seated accusation “that they do not invest their money in that country, do not buy but import from China most of the clothes they wear and food they consume, and send to China the proceeds of their labour”³ Wu argued, using the letter and spirit of the Declaration of Independence, that this was a nonissue:

Assuming this charge to be true, which it is not, it by no means constitutes a valid reason for getting rid of the Chinese in California Is it reasonable and politic that, before permitting a stranger to set his feet in your country, you should stipulate with him that, whatever money he may earn he is to spend it in the same place where it is fairly and honestly earned. Such an attempted restriction on natural liberty and infringement of one of the ‘inalienable rights with which,’ according to the Declaration of American Independence, ‘all men are endowed by their Creator,’ will not, I feel confident, be approved by any sound politician or statement.⁴

In another display of his well-honed argumentative skills, Wu tackled the prevalent charge that Chinese immigrants to America “chiefly belong to the criminal classes, and that they are filthy, immoral, and vicious people, who fill the prison and crowd the hospitals.”⁵ He posed a rhetorical question to reveal the absurdity and illogicality of this trumped-up accusation:

If the Chinese immigrants were really dirty, immoral, and vicious, as they have been represented to be, they would be shunned and hated . . . but their services being eagerly sought for Can it be that the American citizens will confide their business and households to filthy, dishonest and criminal servants?⁶

In fact, Wu was not an exceptional case; other Chinese law students who obtained a Western legal education furthered this lawfare by utilizing their newly acquired advocacy skills in their fight against entrenched anti-Chinese sentiments, which had by then been codified in the Chinese

2. Ng Choy, Letter to the Editor, *The Chinese in California*, *TIMES* (London), June 26, 1876, at 5. Wu explained the reasons for writing to the editor:

A letter from your San Francisco correspondent, published in *The Times* of the 25th of May last, upon which a leading article was based, showed clearly the hostile feelings of the Californians toward the Chinese immigrants and their complaints against them. Much has hitherto been said and written against the Chinese, but little, if anything, has been heard on their side; and as the question seems to have attracted some attention in this country, I trust that, in fairness to my countrymen, you will kindly insert a few facts and arguments, principally gathered from a brochure just sent to me.

Id.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

Exclusion Act of 1882 and other related laws.⁷ This Article attempts to reveal how two early Chinese law students in the United States deployed their legal education to fight against these exclusionary laws. Ho Yow—born to a Chinese Christian missionary and the fourth Chinese national to ever attend law school in the United States—performed this courageous task as Chinese consul to the United States. Yeung Fong—son of another Chinese Christian missionary—assumed a similar endeavor by writing a master’s thesis on the question of Chinese exclusion at Columbia University. Yeung was a significant figure in this fight because he was the first Chinese student to fully research and devote an academic thesis to oppose these racially discriminatory laws.

I. HO YOW AND HIS PUBLIC CAMPAIGN AGAINST CHINESE EXCLUSION

Ho Yow was born in November 1868 in Hong Kong to parents who were early Christian converts.⁸ His father was a Christian minister affiliated with the London Missionary Society.⁹ His elder brother Sir Ho Kai and brother-in-law Wu Tingfang were the first two Chinese nationals to be called to the English Bar as barristers at law.¹⁰ Another brother of his, Ho Wyson, was the first Chinese national qualified as a solicitor in England.¹¹ He soon followed in their footsteps to seek his legal education in England, and also pursued qualifications to be admitted as a solicitor. At that time, in order to qualify as a solicitor, Ho had to take three examinations and complete an article of clerkship with a practicing solicitor. He was successful in the preliminary examination and cleared the first hurdle in seeking admission in February 1885.¹² He did not follow through with his legal studies, however. It was not clear why he abandoned this pursuit, because his grasp of the English language and English history, as shown by his later writings, demonstrated that

7. Li Chen, *Pioneers in the Fight for the Inclusion of Chinese Students in American Legal Education and Legal Profession*, 22 *ASIAN AM. L.J.* 5 (2015).

8. Bureau of the Census, U.S. Dep’t of Commerce, Twelfth Census of the United States—Population: 1900, sheet 6A (1900) (schedules for San Francisco County); Yow Ho, Precinct 11 San Francisco City Ward 43, San Francisco, California, United States; citing sheet 6A, family 171, NARA microfilm publication T623, National Archives and Records Administration, Washington, D.C.

9. *The Home Life of Mrs. Ho Yow*, S.F. CALL, Feb. 25, 1900, at 7.

10. *Id.*

11. *Id.*

12. *Tee* [sic] *Incorporated Law Society*, *TIMES* (London), Feb. 28, 1885, at 4; LAW SOCIETY OF THE UNITED KINGDOM, NOTICE OF PRELIMINARY EXAMINATIONS BEFORE ENTERING INTO ARTICLES OF CLERKSHIP TO SOLICITOR (1885). The preliminary examination was held on the 11th and 12th of February 1885. It comprised 1) writing from dictation; 2) writing a short English composition; 3) Arithmetic—the first four rules, simple and compound; the rule of three; and decimal and vulgar fractions; 4) Geography of Europe, and history of England; 5) Latin—Elementary; 6) A choice of two languages from Greek, Latin, French, German, Spanish and Italian.

he possessed the academic aptitude to succeed in his journey.¹³ He subsequently returned to Hong Kong and served as private secretary to his brother-in-law, Wu Tingfang.

When Wu was appointed as the Chinese Minister to the United States in 1897, his private secretary, Ho, was also under consideration to assume the consul general position in San Francisco.¹⁴ Wu's diplomatic delegation arrived in San Francisco on April 10, 1897 by the steamship *Gaelic*.¹⁵ After a brief stay, they travelled to Washington D.C.¹⁶ Ho took an unusual step upon starting his diplomatic career in the United States—he immediately entered the summer program at Columbian University, the predecessor institution of the George Washington University,¹⁷ and put his name forward as a first year student at the university's law school.¹⁸ In 1897, the admission requirements were lenient, and applicants were only “required to furnish evidence of having received an education fitting him for the study of law.”¹⁹ The fall semester of Columbian University's law school commenced in October 1897.²⁰ Ho only attended his classes for about a month before being ordered by the Chinese Minister to take up the Vice-Consul position at the Chinese Consulate in San Francisco in November 1897.²¹

Despite the need to relocate to the West coast, Ho was determined to continue his legal education while working as a junior diplomat at the Consulate. He at once set out to explore the possibility of enrolling in the only law school in San Francisco—the Hastings College of Law, University of California. The admission requirements then were not difficult to satisfy, so he applied to the first-year law program. Each applicant had to provide the Registrar with a certificate of good moral character. They also had to present satisfactory certificates for, or otherwise pass examinations in, the subjects required for college admission, such as English, Mathematics, Government of the United States, and Latin. Because Ho had passed the first stage of examinations required for solicitor qualification in England, it was likely he was able to gain admission without any

13. LAW SOCIETY OF THE UNITED KINGDOM, LISTS OF CANDIDATES FOR PRELIMINARY EXAMINATION (1885). On his examination entry of the preceding lists, he was listed as seventeen years of age, and received education in Bromley, Kent. For the two language examinations, he offered himself to be examined in Latin and French. Incorporated Law Society.

14. *New Minister to Settle Matters, Consul Fung's Successor Named, Ho Yow is The Coming Man, Wu Ting Fang Talks About Exclusion, Favors a Liberal Policy Between This and His Own Country*, S.F. CHRON., Apr. 12, 1897, at 10.

15. *Under the Yellow Flag, Steamer Gaelic Arrives with Minister Woo Ling Fong*, L.A. TIMES, Apr. 12, 1897, at 2.

16. *Id.*

17. COLUMBIAN UNIVERSITY, CATALOGUE OF THE COLUMBIAN UNIVERSITY 1897–1898, 149 (1898).

18. *Id.* at 166.

19. *Id.* at 152.

20. *Id.*

21. *Changes in Chinese Embassy, Secretary Ho Yow to Go to San Francisco*, EVENING STAR (D.C.), Oct. 27, 1897, at 2.

further examination on the basis of this certificate.²² In October 1878, Hastings rejected the application of his predecessor Consul Sit Ming Cook on the basis of his Chinese race.²³ However, on this occasion a decade later, the law school, under the leadership of Dean Charles W. Slack, approved Ho's application.²⁴

In his first year at Hastings, Ho studied contracts, quasi-contracts, property, torts, criminal and elementary law and jurisprudence.²⁵ He successfully continued on to his second-year, during which he took courses in the laws of marriage and divorce, sales and personal property, bailments, carriers, and telegraphs, negotiable instruments, insurance, agency, partnership, private corporations, and wills and administrations.²⁶ However, perhaps due to the increased workload upon his promotion to Consul General of San Francisco in January 1899 while still in his second semester of the second year at Hastings,²⁷ Ho did not register for his third and final year at Hastings. Thus, he failed to graduate with his Bachelor of Laws degree.²⁸

Ho's unique legal background and his remarkable command of the English language equipped him to vigorously and effectively defend Chinese interests in California, just as his brother-in-law Wu Tingfang regularly did.²⁹ When the calls for Chinese exclusion hit a crescendo, it came as no surprise that Ho took to the media to highlight and rectify misconceptions about the Chinese people, and to cogently present Chinese views.³⁰ In a deft attempt to counter strong sentiments favoring Chinese exclusion, Ho deployed tactics acquired through his legal training to challenge objections to Chinese immigration by offering novel interpretations of some contested facts.³¹ An article he published in *Overland Monthly* in 1901 abundantly showcased his fine advocacy skills, which set him apart from many of his contemporaries in the young Chinese Diplomatic Service.³² It is argued that he was able to do so chiefly because of his legal education. At that time, the Labor Council of San Francisco had aggressively advocated for the exclusion of Chinese nationals from

22. LAW SOCIETY OF THE UNITED KINGDOM, *supra* note 13.

23. Chen, *supra* note 7, at 12.

24. UNIVERSITY OF CALIFORNIA, REGISTER 1897–98, 378 (1898).

25. UNIVERSITY OF CALIFORNIA, REGISTER 1898–99, 303–04 (1899).

26. *Id.* at 304–05.

27. *Promotion for Ho Yow, Succeeds Chang Ying Tang as Consul General*, S.F. CHRON., Jan. 31, 1899, at 5.

28. Successful completion of three years' study was required for the award of Bachelor of Laws degree at Hastings.

29. *Wu Ting-Fang Makes a Protest*, N.Y. TIMES, Mar. 29, 1902, at 3; *Minister Wu Ting-Fang Criticizes Gen. Otis, Declines to be His Fellow Guest at Genesee Society Dinner, Resents His Anti-Chinese Policy in the Philippines—Mr. Baldwin Talks on City Reform*, N.Y. TIMES, Feb. 8, 1901, at 1.

30. *Ho Yow Intercedes for His Countrymen: He Asks the Epworth League to Use Its Influence Against the Chinese Exclusion Act*, S.F. CHRON., July 21, 1901, at 4, *Representative Kahn Prepared to Fight Chinese Immigration*, S.F. CHRON., Nov. 17, 1901, at 24.

31. HO YOW, *The Chinese Question*, OVERLAND MONTHLY, July–Dec. 1901, at 249, 253.

32. *Id.* at 249.

the United States, but Ho penned an astute response, rebutting point by point five principal contentions asserted by the Council.³³ In particular, Ho expended a great deal of ink to fend off the popular notion that Chinese laborers were taking American jobs; the following is a good illustration of his impressive advocacy skills:

That they take away the work of the Americans: In our opinion this has very little effect on the labor market. We contend that the Chinese do a different class of work than the true white laborers. The Chinese work at manual, unskilled occupations, doing a lower class of work than the great majority of the whites. The Americans are more skilled, requiring and possessing technical education and high manipulative and administrative ability, fitting them particularly for foremen, engineers, draftsmen, high-grade mechanics, and the like, while the Chinese do more of fruit picking, truck gardening, and work of a lower type, and are not what would be considered skilled laborers. The Chinese, in a measure, do conflict with the imported pauper labor of Europe, which in no sense can be termed typical American white labor. We further submit that the exclusion of the Chinese will not do any good while the unskilled pauper laborers of different countries are allowed to come here. It is just like shutting the back door to the Chinese and letting all the others come in at the front. We do not for a moment advocate the exclusion of all such classes, but simply point out the folly of Chinese exclusion.³⁴

Ho also pointed to commercial interests arising from China's growing appetite for American goods to garner support for his anti-anti-Chinese campaigns:

By admitting the Chinese, they will, by constant intercourse with Americans, become a good medium for the introduction of your goods and products into their country No country can trade exclusively among themselves, for trade is barter. By placing a wall between China and the United States, the trade of the two countries must necessarily suffer. The demand in China for your products will, in time, be equivalent to about one-half of your total export trade to the world.³⁵

Ho concluded his article with an appeal to the American sense of justice and fair play: "I take this opportunity of bringing this matter before the American people, trusting to their high sense of honor and fairness, and believing that they will allow the Chinese their just rights, in keeping with Divine and common laws. For it is the Golden Rule to do unto others as you would that others would do unto you."³⁶

In the meantime, Ho published a seventeen-page essay entitled "Chinese Exclusion, a Benefit or a Harm?" in *The North American Review*.³⁷ This was another compelling example of his ability to deploy

33. *Id.* at 249–50.

34. *Id.* at 253–54.

35. *Id.* at 254–57.

36. *Id.* at 257.

37. Ho Yow, *Chinese Exclusion, a Benefit or a Harm?* 173 N. AM. REV. 314 (1901).

his legal training and argumentation tactics to expedite repealing the Chinese exclusion laws:³⁸

What are the crimes which our people are accused that render it needful that we should be treated as hostiles, or shunned as those likely to communicate contagions? What are the charges against us in the alleged truth of which these terrible laws seek justification and tolerance among a people so intelligent and just as are the great body of the Americans? I propose to examine them in this paper, and in doing so I shall grant the accusers of my people everything they say Upon the hypothesis of the truth of these assertions I believe I shall prove to the satisfaction of any reasoning mind that each and every one of them represents a condition which is to the highest advantage of this country, and, particularly, to the highest advantage of those who oppose the Chinese laborers, and at whose instance the laws were passed. I shall prove by their own case that the Chinese exclusion laws are fallacious and a mistake; that they are on the statute books unquestionably because the American people do not understand their cause and effect.³⁹

Ho also channeled his rhetorical skills to highlight the Chinese immigrants' advantages in helping the American working class to break free from menial work: "Released from the drudgery of menial toil, your laborer would aspire to higher things—learning, art, science, the aspirations of the soul and the pleasures of the mind. He would rise above drudgery, cease to be a slave, and become a fully rounded and noble man."⁴⁰ Ho was regularly interviewed about China and left a positive impression on journalists.⁴¹ One such journalist commented, "[h]e is a college man and has had social training in London; is a graduate of the law college and were it not for his nationality would be able to practice in any of the courts of the United States."⁴²

II. YEUNG FONG AND THE WORLD'S FIRST CHINESE-WRITTEN THESIS ON CHINESE EXCLUSION LAWS

Another protagonist in the crusade against the Chinese exclusion laws was Yeung Fong, who was born in 1888 in Canton, China.⁴³ In 1900, Dr. Rosewell Hobart Graves—a veteran medical missionary of the Southern Baptist Mission based at Guangdong, China—sent Yeung to travel with a returning missionary Rev. Robert. E. Chambers, also of

38. *Id.*

39. *Id.* at 315–16.

40. *Id.* at 325.

41. Ho Yow, *Between Devil and The Deep Sea*, SAN FRANCISCO CALL, July 22, 1900, at 19.

42. *Id.*

43. United States, National Archives and Records Administration. *Index to 'Chinese Exclusion' Case Files of the New York District Office of the U.S. Immigration and Naturalization Service, ca. 1882–1960*. New York, USA. National Archives and Records Administration—Northeast Region (New York), [Apr. 1998].

Guangdong, to the United States.⁴⁴ The plan was to educate Yeung at Richmond College, found by Virginia Baptists and now known the University of Richmond.⁴⁵ Yeung's father, also a Baptist, was Dr. Grave's assistant and had attended three years in an English school in Canton under Rev. Edward Thomas Snuggs of the same mission in Guangdong.⁴⁶

When Yeung arrived in the United States at the age of 12, he lacked enough academic preparation to directly enter Richmond College and was sent to Fork Union Academy to start preparatory academic work.⁴⁷ Dr. William E. Hatcher—an ordained minister at Grace Street Baptist Church in Richmond—founded Fork Union Military Academy, a private, military boarding school. He was also the President of the Board of Trustees of Richmond College.⁴⁸ Dr. Hatcher found Yeung hapless without any money in Virginia and took Yeung into his family, becoming Yeung's benefactor during his sojourn in the United States.⁴⁹ Dr. Hatcher also raised funds to support Yeung's education.⁵⁰ This "gifted Chinese boy" would later start attending the Academy in April 1901.⁵¹ Yeung's English made remarkable progress over the next few years, and on April 17, 1905, he participated in the annual contest for the declamation medal at the academy, an oratorical contest where the declamation medalist would be the final orator at that year's commencement.⁵² Yeung vanquished his American classmates and took the gold medal.⁵³ Alfonso Alexander Gray, a leader of the Piedmont, Virginia Bar gave a presentation address and presented Yeung with the declamation medal.⁵⁴ This achievement astonished the judges, teachers and fellow students: "That this Celestial should in four or five years, have acquired such command of the English language as to win this victory over ten native competitors, is a distinction of which he is justly proud."⁵⁵ As the declamation medalist that year, Yeung took the opportunity to deliver a powerful address entitled "The Attitude of the United States Towards Chinese Immigration" at that year's commencement.⁵⁶ This displayed his early interest in the Chinese Exclusion problem in the United States. The

44. ELDRIDGE BURWELL HATCHER, WILLIAM E. HATCHER, 452–54 (1915).

45. *Id.*

46. *Id.* at 452.

47. *Id.*

48. *Id.* at 407.

49. *Id.*

50. *Id.* at 486–87.

51. *Persons and Briefs*, RICH. DISPATCH, Apr. 21, 1901, at 24 ("Ah Fong Yeung, the gifted Chinese boy, who delighted so many Richmond audiences by his songs and talks on China, has entered the Fork Union Academy. He will not be regularly classed until next session . . .").

52. *Commencement at Fork Union, Stirring Days Full of Military and Academic Events*, TIMES DISPATCH (Rich.), May 26, 1905, at 5.

53. *Id.*

54. *Id.*

55. *Ah Fang Wins Debate, Dr. Hatcher's Chinaman Defeats Americans in Their Language*, TIMES DISPATCH (Rich.), Apr. 19, 1905, at 3.

56. *Closing of Fork Union Academy, Brilliant Academic and Military Exercises—Medals and Diplomas*, TIMES DISPATCH (Rich.), May 25, 1906, at 5.

delivery and substance of the oration were widely extolled: “By his grace of manner, his tribute to his own country and his delicate touches of humor, he won great applause.”⁵⁷

Yeung completed his studies at the Academy in May 1906.⁵⁸ Yeung was among the inaugural group of four who received a diploma in its commencement exercises.⁵⁹ He narrowly lost in the contest for the writer’s medal. His classmate Hugh Latane Holland captured it, “[t]hrough Mr. A. Fong Yeung was a very small fraction behind him”⁶⁰ However, Yeung was the valedictorian speaker and gave an “exceedingly graceful valedictory.”⁶¹

After high school, Yeung matriculated at Richmond College in September 1906 and enrolled in its liberal arts program.⁶² In his first year, he studied Latin, English, Mathematics, History, and Bible Studies.⁶³ After one year, on June 12, 1907, the College published a list of students who were successful in their examinations; Yeung was listed as having passed Mathematics Group A, History Group B, and English and Bible Studies.⁶⁴ In his second year, he focused on Latin, French, English, and Chemistry.⁶⁵ He only took three years to accumulate enough credits to receive his Bachelor of Arts Degree, and at the end of his third year, Yeung became one of nineteen students who received his Bachelor of Arts degree at the Commencement on June 16, 1909.⁶⁶

During college, Yeung was active in debating and public speaking. In May 1907, he gave an address to the Baptist Convention, leaving the audience in awe: “Mr. Ah Fong, a student at Richmond College, who made the most remarkable address of the evening. In eloquent and well-chosen words he told his story, in a voice so clear and strong that every sentence reaches his hearers and claimed their attention.”⁶⁷ A few days later, Yeung gave another address entitled “The Religion of Christ in China” to over 100 young men gathered in the Young Men’s Christian Association Auditorium.⁶⁸ It was billed as “one of the most interesting talks that have been

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. RICHMOND COLLEGE, CATALOGUE OF RICHMOND COLLEGE: SESSION 1906–1907, 28 (1907).

63. *Id.*

64. *Graduates and Promotions*, TIMES DISPATCH (Rich.), June 13, 1907, at 9.

65. RICHMOND COLLEGE, CATALOGUE OF RICHMOND COLLEGE: SESSION 1907–1908, 30 (1908).

66. RICHMOND COLLEGE, CATALOGUE OF RICHMOND COLLEGE: SESSION 1908–1909, 24 (1909).

67. *Great Meeting of Baptists at End, Final Sessions of Convention Held Yesterday Amid Enthusiasm*, TIMES DISPATCH (Rich.), May 21, 1907, at 1–2.

68. *Fine Address by Chinaman, Mr. Ah Fong Speaks Before Young Men and Discusses Work of Missionaries*, TIMES DISPATCH (Rich.), May 27, 1907, at 8.

heard at these Sunday afternoon meetings since they were inaugurated.”⁶⁹ At the bi-county convention of the Women’s Christian Temperance Union held at the Venable Street Baptist Church in March 1908, the evening was devoted to a gold medal oration contest, with five young ladies and gentlemen joining the contest among 65 delegates.⁷⁰ In the end, Yeung won the medal with his address “An Appeal to American Manhood.”⁷¹

As early as May 1907, Yeung had already evinced an intention to study law as described in a letter to the editor of a local newspaper: “Mr. Yeung is not preparing himself to be a missionary His mind tends rather towards the law and the service of his country”⁷² He also told a large assemblage in the Woman’s Club in May 1909 about his plans after graduation: “He has been in this country for about eight years, being at Fork Union before coming to Richmond, and anticipates taking a course in law at either Columbia or Harvard after his graduation here.”⁷³ It appears that for want of funding, this plan did not come through as originally envisioned, and he stayed at Richmond College for some time before going to New York City to earn money to enroll in Columbia the next academic year.⁷⁴ Yeung’s letter to his benefactor Dr. Hatcher’s illuminated the circumstances before his enrollment at Columbia:

I am happy and like this work [in a Chinese restaurant] When I first came here the other people had a hard time to explain themselves and I was in the same fix. But now I could understand some Chinese and could talk a little already. The Chinese comes back to me very rapidly With two exceptions all the waiters are Chinese students who are working their way through College. I hope to save at least seventy-five dollars per month, if not more, so that I may enter Columbia next fall.⁷⁵

Through his hard work and frugal living, Yeung saved enough money to matriculate at Columbia in September 1910.⁷⁶ He attended the Faculty of Political Science from September 1910 to June 1911, specializing in International Law and Economics,⁷⁷ and received his Master of Arts degree on February 20, 1912.⁷⁸ Meanwhile, Yeung had also applied to and was admitted as a first-year law student of Columbia Law School

69. *Id.*

70. *Chinese Student Won Gold Medal, Competed with Young Men and Women at W.C.T.U Meeting Here*, TIMES DISPATCH (Rich.), Mar. 11, 1908, at 10.

71. *Id.*

72. *A Tribune to John*, TIMES DISPATCH (RICH.), May 30, 1907, at 6.

73. *Social and Personal, Mr. Yeung at Club*, TIMES DISPATCH (Rich.), May 25, 1909, at 5.

74. E. B. HATCHER, *supra* note 44, at 593; CATALOGUE OF RICHMOND COLLEGE, SESSION 1910–1911, 16 (1911).

75. E. B. HATCHER, *supra* note 44, at 593–94.

76. Written confirmation from Mr. Bill Santin, Registrar’s Office of Columbia University (July 30, 2013) (on file with the author).

77. COLUMBIA UNIVERSITY CATALOGUE AND GENERAL ANNOUNCEMENT 1910–1911, 317 (1911).

78. CATALOGUE OF COLUMBIA UNIVERSITY 1912–13, 444 (1913).

in September 1911.⁷⁹ He did not complete his legal studies, however, and he left the law school in June 1912 to return home with his fellow Cantonese students Lee Yick Yee of Harvard and Wong Hin also of Columbia.⁸⁰ “He had hoped to finish his law course at Harvard [sic] before returning to China but so pressing is the plea of his friends that he return home at once and so boundless is his enthusiasm for the transformation of his country to a republic that he could not resist the impulse to go home,” his benefactor Dr. Hatcher wrote.⁸¹ A lack of funding may also have been a significant factor.⁸² In late March 1912, the trio departed for China via Victoria, British Columbia.⁸³

Despite not completing law school, Yeung’s legal studies at Columbia’s Faculty of Political Science culminated in a thoroughly researched master’s degree thesis on the Chinese exclusion question, a first of its kind exclusively focusing on this controversial topic by a Chinese scholar.⁸⁴ Yeung’s strong interest in the Chinese exclusion laws had first manifested in his oration at the commencement exercises at Fork Union Academy in 1905.⁸⁵ As Yeung vividly recounted, his first impression of the United States was how the Chinese exclusion laws subjected the Chinese to demeaning and ruthless ill-treatment by immigration officers:

Although the writer came with an American missionary to this country and was armed with a student certificate, he was, nevertheless, detained by one of the immigration officers, and kept in day time behind iron bars as if one of the worst criminals, and at night in a dirty and filthy shed, where he was fed with stale bread and prunes and water. The very sight of the place and the food was of a sort to make one shudder.⁸⁶

This issue proved to be a continuous concern for Yeung; he dedicated his master’s thesis to researching the phenomenon: “As a Chinese and one who has been a victim of the exclusion laws, the writer feels that as may be well understood, a profound interest in the matter, of which this

79. COLUMBIA UNIVERSITY CATALOGUE AND GENERAL ANNOUNCEMENT 1911–1912, 229 (1912).

80. Written confirmation from Mr. Bill Santin, *supra* note 76.

81. E. B. HATCHER, *supra* note 44, at 675–76.

82. *Id.* at 677.

83. *Chinese Students at Vancouver*, CHINESE STUDENTS MONTHLY, June 1912, at 664. They stopped over at Victoria, British Columbia and left therefrom on April 9, 1912. *Id.* at 665.

84. A search of all theses completed by the Chinese students in America that preceded Yeung Fong shows that no one wrote a thesis exclusively on the topic of the Chinese Exclusion Act. In 1911, Wong Ko-Ung, a Chinese undergraduate law student at the University of Wisconsin at Madison prepared and presented a satisfactory bachelor’s degree thesis titled “History and Constitutionality of the Chinese Exclusion Act.” This was the first attempt by a Chinese undergraduate student to do so. *See* The University of Wisconsin Fifty-Eighth Commencement Program (June 21, 1911) (On file with author).

85. *Commencement at Fork Union*, *supra* note 52.

86. Fong Yeung, *Chinese Exclusion*, (1912) (unpublished M.A. thesis, Columbia University) at 40.

paper is to treat. He would be unworthy indeed of the Chinese Empire who took no interest in the question affecting the Chinese so vitally. The present investigation is taken, however, without ill feeling."⁸⁷

Yeung's well-researched, fifty-page master's thesis was divided into five parts: first, a brief review of all international treaties between China and the United States concerning immigration matters; second, the Chinese Exclusion Act; third, an overview of the causes and motives that prompted Congress to pass the said laws; fourth, how the laws were administered in practice; and the last being a summary.⁸⁸

In the first part, Yeung discussed several provisions of the treaties between China and the United States relevant to the issue of immigration, and compared them with American legislation promulgated in connection with Chinese immigration. He identified the Burlingame Treaty signed in Washington on July 28, 1868 as the first treaty between China and the United States relating to the migration interests of these two nations.⁸⁹ The two most relevant provisions were Article V, which obligated the two sovereign States to "cordially recognize the inherent and inalienable right of men to change his home and allegiance, and also the mutual advantage of free migration and emigration of their citizens and subjects . . . for the purpose of curiosity, of trade, or as permanent residents,"⁹⁰ and Article VI, which dictates that "reciprocally, Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by the citizens and subjects of the most favored nations . . ."⁹¹ Due to domestic clamor and agitation in the United States, on November 17, 1880, the two countries agreed to a supplemental treaty, the most relevant provision of which is Article 1:

Whenever in the opinion of the Government of the United States, the coming of the Chinese labourers to the United States, or their residence therein, affects or threatens to affect the interests of that country as to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as labourers, other classes are not being included in the limitations.⁹²

After giving an overview of the relevant treaties and their main provisions in relation to immigration, Yeung devotes the second chapter to the relevant prohibitory municipal laws passed by the United States' Congress, particularly the Chinese Exclusion Act of 1882 that was

87. *Id.*

88. *Id.*

89. *Id.* at 1.

90. *Id.* at 2.

91. *Id.*

92. *Id.* at 12.

in flagrant violation of the American government's legal obligations to China.⁹³ He stated his considered legal opinion on the matter by relying on his public international law knowledge:

The existing Chinese exclusion laws are in direct violation of the treaty of 1880. The treaty clearly says that the United States may only 'regulate, limit, or suspend, but may not absolutely prohibit' Chinese labourers, and that 'legislation shall be reasonable.' The present exclusion laws neither are reasonable nor do they merely suspend Chinese labourers; but they absolutely prohibit Chinese immigration without limitation. Congress has not been deterred by international laws defining the sacredness of the treaty and the moral consequences of violating these laws, which are presumed to govern all civilized nations, and has not hesitated to put the United States before the world in the light of a strong nation taking the advantage over one too weak to defend itself.⁹⁴

Armed with the international law knowledge taught by famed Professor John Bassett Moore at Columbia, Yeung drew from the writings of Henry Wheaton, an eminent international law jurist from the United States, to posit that "[s]tudents of international law know well that no nation can properly enact law in violation of its treaty obligations, as all treaties being by nature sacred instruments."⁹⁵ He supplemented this assertion by invoking the writing of George Breckenridge Davis—another eminent international law scholar from the United States—to support his view that domestic law should not be allowed to undermine treaties with other nations:

Treaties entered into in conformity with these conditions are binding upon all the signatory parties and they continue in force, whatever changes may take place in the internal affairs of the participant states. Obligations created by treaties are of the most sacred character. Their violation operates to release the other signatory party from his obligation, and, if persisted in, or not atoned for, is regarded as constituting a just cause for war.⁹⁶

93. *Id.* at 24.

94. *Id.* After the treaty of 1880 was ratified, the first exclusion law, which was approved by the president on May 6, 1882, was put into effect. In 1884, this law was amended and made it more rigid. Four years later, Congress enacted a law, which is known as the "Scott Act"; absolutely prohibit[ing] the Chinese labourers; even the Chinese labourers who were here before and who have departed for China, could not reenter the United States under the return certificate granted under the act of 1882. In 1892–93, the laws became worse, it extended to Chinese persons and definitions given the exempt classes are entirely in contrast with the views of those who made the treaties. Under these laws, all the Chinese who are residing in the United States must have residents' certificates and other requirements imposed upon them. All these laws are clearly in violation of the treaty of 1880 By 1902 Congress declared that all the laws are to be in force without limitation, and extended them to all the territorial possessions belonging to the United States.

Id. at 45–47.

95. *Id.* at 23.

96. *Id.* at 23–24.

In the third chapter, Yeung responded directly to several commonly asserted justifications for Chinese exclusion, and he exerted his best efforts to demolish them one by one.⁹⁷ For instance, a common accusation propagated by anti-Chinese groups was that a large percentage of the Chinese immigrants were criminals.⁹⁸ In refutation, Yeung challenged these misinformed proponents to “[c]ompare the criminal records of the Chinese with these of other foreign countries and see whether they are lawless people. Reports of newspapers and other sources do not bear out such a claim.”⁹⁹ Rather than being criminals themselves, Yeung argued that the Chinese were more frequently victims, and that their disfavored and discriminated status resulted from the American law that rendered them especially vulnerable to abuse and mistreatment.¹⁰⁰ Once, it was alleged that there were secret societies organized in Chinatown, which were “composed of some bad characters.”¹⁰¹ Yeung developed a novel, plausible theory that instead of propagating criminal activities, these secret societies were in actuality the result of violent attacks on the Chinese community, where the Chinese people sought to gather strength in numbers for the sake of self-preservation:

Through faithfulness to their [Chinese laborers] employers, they soon outstripped the European immigrants, and thereby innocently created much jealousy and hatred against themselves. Their hatred went so far that they used force and violence against them, and a large number were killed and driven away. For their safety and protection, the Chinese grouped themselves together, as the first instinct of all men is self-preservation, and in this way, an organization was formed for mutual helpfulness, to resist any form of danger that might arise against them.¹⁰²

Yeung then exemplified this victimization of the Chinese community using concrete cases, one of which was set in the year 1900, in Lindsay, California. In that case, owing to the scarcity of white laborers, the orange growers had brought in some Chinese workers to rescue the crops.¹⁰³ The white labors immediately schemed against the Chinese and gathered with sticks and stones to drive them away.¹⁰⁴ Yeung noted that this typical phenomenon also existed in many American communities.¹⁰⁵ He thus used those examples to show how vulnerable were the Chinese immigrants, and that singling out a class of people for discrimination made them beyond the pale of legal protection:

97. *Id.* at 27.

98. *Id.*

99. *Id.* at 28.

100. *Id.*

101. *Id.* at 29.

102. *Id.* at 29–30.

103. *Id.* at 29.

104. *Id.*

105. *Id.* at 28–29.

[T]he exclusion laws exclude the victim rather than the perpetrators of the crime. If it has not been for the exclusion laws, which have stamped the Chinese as pariahs, this mob would not have dared to attack the Chinese labourers. This is only one case out of hundreds showing outrages committed by foreigners against the Chinese; yet the American Government seems to punish only these who live in peace, not the law-breakers themselves.¹⁰⁶

Yeung also blamed law enforcement officers for the illegal activities and violence done by the Chinese secret societies. He prefaced this opinion with the Chinese philosopher Lao Tse's oft-cited aphorism, "[t]rue words are always unpleasant to hear",¹⁰⁷ and proceeded to criticize the:

inefficient local officers [who] are largely responsible for the continuance of their violence, while the more peaceable Chinese must stand aside helpless. One can hardly be surprised that such troubles persisted, when it is known that the best friends of the Tongs [secret societies] are the police, the detectives and even some of the lawyers who receive money from them, and they become in fact their real protectors. Every Chinese would feel happier in America, if the local officers would carry out the laws to the letter and put these organizations out of existence.¹⁰⁸

Yeung next examined a common economic argument that by accepting low wages, the Chinese unfairly compromised non-Chinese workers' wage levels.¹⁰⁹ He rebuffed this assertion with empirical data borrowed from a government report, and laid out typical wages earned by the Chinese: "their [the Chinese] wages had always been more than the wages of those who were doing the same type of work in the Eastern part of the United States."¹¹⁰ Yeung invoked reasoning from his economics course at Columbia to demonstrate that it was irrational for the Chinese to sell their labor at a discount: "When the Chinese come to this country, they do not expect to work for low wages. They love the almighty dollar as well as the Americans do, and try to obtain the highest possible wages that they can obtain!"¹¹¹ Yeung interviewed Chinese laborers in New York City's Chinatown and learned that if the Chinese laborer were to be employed by white people, most of them would work as house servants and would not work for less than fifty dollars per month. Compared with data that hundreds of white men who were paid between 20 to 35 dollars per month in California,¹¹² Yeung dispelled the myth the Chinese were agreeing to "low wages" and thereby driving down working-class wages.¹¹³

As to the prevalent accusation that the Chinese live cheaply, Yeung inverted the argument and said that this was a virtue rather than a vice: "It

106. *Id.*

107. *Id.* at 30.

108. *Id.*

109. *Id.* at 30–31.

110. *Id.* at 31.

111. *Id.*

112. *Id.*

113. *Id.*

seems that they ought to be commended rather than to be condemned.”¹¹⁴ Yeung knew from personal experience that such a claim was wildly exaggerated because “the Chinese love high living and luxuries and that this charge against them is much exaggerated.”¹¹⁵ Yeung suggested that for argument’s sake, even if such an allegation were true, why should one pick on the Chinese? Public sources suggested that the Italian immigrant community had been accustomed to living on three-fifths the real wages of the American laborers.¹¹⁶ If this logic applied with same force, Yeung rhetorically asked why not exclude Italians on an equal basis?¹¹⁷

Another classic argument against Chinese immigrants was that they were heathens and regarded the Christian religion with contempt.¹¹⁸ Yeung vigorously disagreed with this view, as he believed the Foreign Mission Boards and their China-based missionaries were testaments to the contrary.¹¹⁹ If the Christian religion were indeed held in contempt by the Chinese, was not this because some Americans had held the Chinese in utter contempt as well? “How can Christianity be favorably regarded, when one hears such statements as this from one of the politicians during the investigation of the Chinese immigration question: ‘The Chinese have no souls, and if they have any, none worth saving.’”¹²⁰ To reinforce his point, Yeung quoted a piece of advice from Li Hung Chang, an eminent Chinese statesman: “Well, you needn’t come back to China; you had better reform the American people so that they will treat our Chinese labourers a little better.”¹²¹

Challenging the widespread belief went that the Chinese were incapable of assimilating and fulfilling their civic duties, Yeung argued “[h]ow can the Chinese mix with the whites when they are looked down upon with contempt. When they venture out into the streets, they always expect a stone flying toward their direction.”¹²² He used the example of early Chinese immigrants’ successful assimilation in Peru to demonstrate that in the absence of exclusionary law and racial discrimination, early Chinese immigrants were able to participate in the religious ethos—settle down, marry native women and willingly convert to the Catholic faith in Peru.¹²³ Given the American exclusionary laws that rendered the Chinese ineligible for naturalization and citizenship, how could the Chinese ever fulfill their civic duty?¹²⁴

114. *Id.*

115. *Id.* at 32.

116. *Id.*

117. *Id.*

118. *Id.* at 33.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.* at 36.

123. *Id.* at 36–37.

124. *Id.* at 36.

Yeung also attacked the popular view that the Chinese comprised an inferior race and ought to be excluded in order to preserve the American status quo.¹²⁵ He retorted that anyone who had read the books—written by Americans—about Chinese history and civilization would know “what we have done toward civilization and what we are capable of doing.”¹²⁶ He quoted Charles Harvey Denby, a former American Minister to China, to bolster his assertion that “[n]o one supposes that the Chinese are less intelligent than the Japanese. I do not depreciate the latter when I repeat that the universal opinion of persons who know both races is that the Chinese are more dignified, more serious, more steadfast than their insular rivals.”¹²⁷

In exploring the administration of these exclusion laws, Yeung—who had by then been educated in international law and United States’ constitutional law—asserted that while every independent state had a right to exclude certain classes of people in accordance with international law, this must be done in accordance with binding treaty obligations, and not beyond that limit: “So long as the United States excludes only the undesirable Chinese, China and her people will submit quietly. But the United States Government has not been content to stop with this. It has gone much further and taken away the rights of the exempt classes as well.”¹²⁸ Yeung stated that then-existing Chinese exclusion laws “not only provide for the ill-treatment of the Chinese at the ports of entry; but permit much inconvenience, annoyance, plundering and even imprisonment without cause.”¹²⁹

Although painfully aware of the injustices perpetuated by Chinese-exclusion laws, Yeung offered pragmatic solutions to mitigate humiliation and inconvenience inherent in the immigration process. Because Yeung was cognizant of the little chance of abrogating the exclusion law, he made sensible and practical propositions to revise the administration of the law to alleviate injustices inflicted upon the Chinese.¹³⁰ For example, Yeung suggested that the United States government should have officers stationed at ports of departure in China to confirm individuals’ eligibility for admission before allowing them to board steamers bound for the United States. “By this means, many Chinese will be saved from loss of time, money and serious disappointment in general.”¹³¹ Yeung even appealed to United States foreign policy interests in order to prove his point by arguing that the exclusion laws sullied the fair name and reputation of America.¹³² He characterized the United States’ Chinese exclusion policy as being comparable to the Chinese government’s former ignominious closed-door policy: “China’s closed doors have kept her from advancing and to-day she is in

125. *Id.* at 37.

126. *Id.*

127. *Id.*

128. *Id.* at 39.

129. *Id.* at 42.

130. *Id.* at 48–49.

131. *Id.* at 49.

132. *Id.*

the rear largely from this reason.”¹³³ Like many other Chinese advocates who challenged exclusion laws, Yeung argued China presented immense commercial opportunity for the United States, accessible only through abolishing exclusionary attitudes and policies, “for there is no nation offering so great a field for commercial enterprises as does China.”¹³⁴ “The American Government cannot afford to overlook this fact which relates itself so intimately and vitally to her interest.”¹³⁵

CONCLUSION

The experiences of Ho Yow and Yeung Fong demonstrate that the oppressed minority placed a high premium on the utility of legal education, legal knowledge and advocacy skills in seeking means to battle with racial discrimination and injustice. Ho pinned his hope on diplomacy and law to reduce the rigidity and harshness in enforcing the law. His fellow Chinese comrade, Yeung, expressed a strong conviction in the usefulness of international law in vindicating a weak party’s rights in the face of violation, particularly in the Chinese exclusion case. In fact, Yeung delved into a full-fledged, systematic examination of this issue, and made critical legal arguments that delegitimized the Chinese exclusion laws. Finding that they expressly ran afoul of the United States’ treaty obligations with China, Yeung exposed how international law would have been the proper agent for invalidating the discriminatory exclusion laws. Moreover, it was unfortunate that the ‘legally’ institutionalized racism embodied in the Chinese Exclusion Act was subsequently emboldened by the landmark Supreme Court case of *Chae Chan Ping*,¹³⁶ thereby categorically precluding these Chinese law students from achieving their objective of seeking the racist law’s abolition.

Yeung’s international law approach is presently highly relevant for revision. In particular, it is believed that Yeung’s call for an international law framework to retaliate against the Chinese exclusion laws could provide a basis for reexamining the intractable plenary power doctrine (formulated in *Chae Chan Ping*) in the context of Trump’s decried travel ban.¹³⁷ A recent article on “why the *Chae Chan Ping* Court got it right when it relied on international law to define the boundaries of a state’s exclusionary power, and how the Court can take advantage of *Chae Chan Ping* to further human rights by holding racial discrimination unlawful in exclusion cases,” appears to comport with Yeung’s approach, albeit taking a commendable creative approach to dealing with that precedent.¹³⁸ Hopefully that piece of student-written academic writing will garner greater impact than Yeung’s as we continue the fight against racial discrimination today.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Chae Chan Ping v. United States*, 130 U.S. 581, 606 (1889). The case is commonly known as the Chinese Exclusion Case.

137. Lauri Kai, *Embracing the Chinese Exclusion Case: An International Law Approach to Racial Exclusions*, 59 WM. & MARY L. REV. 2617, 2623 (2018).

138. *Id.* at 2625.