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From Exclusion to Equality: Chinese Americans' Century-Long Legal Struggle for Public Education Access, 1785–1954

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ABSTRACT

*The earliest documented Chinese presence in the United States dates to the year of 1785, yet it was not until the California Supreme Court's landmark ruling in **Tape v. Hurley** (1885) that Chinese Americans gained a stable, legally recognized right to attend public schools. Although the **Burlingame Treaty** of 1868 ostensibly obligated the federal government to shield Chinese immigrants from discrimination, amendments to California's 1860 school code in 1870 and 1872 effectively barred Chinese children even from the segregated "separate schools" open to other racial minorities. This article reconstructs the century-long campaign waged by Chinese Americans to obtain access to public education. It juxtaposes the Tape family's judicial triumph with the U.S. Supreme Court's adverse decision in **Lum v. Rice** (1927), tracing a trajectory that ran from outright exclusion, through legally mandated segregation, to the incremental dismantling of race-based schooling. Spanning nearly ten generations, the struggle culminated in the watershed **Brown v. Board of Education** decision (1954), after which Chinese Americans finally secured full and equal educational opportunities. By illuminating this protracted fight, the study highlights both the resilience of Chinese American communities and the pivotal role of education in their broader quest for civic inclusion.*

Keywords: Education, rights, exclusion, segregation, legal pursuit, equality

1. Introduction

On August 12, 1785, the *Pallas* arrived in Baltimore, and onboard were 3 Chinese sailors, the first documented Asian immigrants to America [1]. However, it wasn't until 1848 that Chinese immigration surged, meeting needs for manpower in American expansion and development including the Gold Rush and the Transcontinental Railroad [2]. While some were fleeing the economic and political chaos in China at the time, others were drawn to California with the hopes of finding gold. The reality was that finding little gold [3], many found employment in the

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railroad or mining industries [4], laboring in grueling conditions while receiving less pay than Caucasian workers.

Seeking refuge and community, many Chinese immigrants formed ethnic enclaves like San Francisco's Chinatown and started families there. Because Chinese children weren't allowed to attend public schools, thirty Chinese families petitioned the San Francisco school board to establish a primary school for children in August 1859 [5]. With support from Reverend Speerl, the school board approved [6] and the Chinese School, located in Speerl's church, was founded in September 1859 [7]. However, only 4 months later, the school board shut down The Chinese School, citing a lack of funds [8]. The White community strongly protested, fearing integration, and the Chinese School opened again [9]. Though modest, the Chinese School represented Chinese Americans' first step in a long journey for educational rights.

Following the Panic of 1873 and the recession that followed, Many Americans bla-med Chinese immigrants for stealing jobs and worsening economic conditions [10]. Anti-Chinese sentiment was fueled by political movements such as the Workingmen's Party of California, which rallied around the slogan "The Chinese Must Go." [11] This hostility led to vio-lent attacks, including the 1871 Chinese Massacre in Los Angeles, where a mob lyn-ched 18 Chinese residents [12]. Other riots erupted in places like Rock Springs, Wyoming [13], and Tacoma, Washington [14], where entire Chinese communities were forcibly ex-pelled. Chinese immigrants were considered "inferior and unassimilable," [15] and "tran-sients whose loyalties remained with China [16]".

In 1870, 63,199 Chinese resided throughout the United States [17] and 80% of them we-re in California [18]. Despite the Burlingame Treaty of 1868 between China and U.S. [19] requiring public education for Chinese immigrants in America, the policy changed from "Americanizing the Chinamen" [20] to exclusion. In 1870 and 1872 respectively, the Cali-fornia legislature revised the 1860 School Code to prevent Chinese children from receiving education, even in segregated schools. The school board officially closed the Chinese School in 1871 [21], and the Chinese lost the right to get educated from the public school system su-pported by their taxes [22].

Due to a series of legislations including the Chinese Exclusion Act, the Chinese were also excluded from land ownership, voting, courts, employment, interracial marriages, and naturalization [23] until 1943. Other marginalized communities, including African Americans, Mexi-can Americans, and Native Americans, also faced systemic barriers to education [24]. For ex-ample, African Americans endured racial segregation under Jim Crow laws, and cases such as Plessy v. Ferguson [25] upheld the doctrine of "separate but equal," which Chinese Ameri-cans also confronted. However, despite these obstacles, the Chinese American community remained resilient, challenging discriminatory policies through persistent legal battles and civic

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engagement. ultimately serving as an important predecessor to the Civil Rights movement and eventually paving the way for increased responsibility and participation in American society.

2. From Exclusion to Segregation

Without public education for the Chinese community, only two education options remained after the public school was closed in 1871 [26]. One option was to attend the pri-vate Chinese language school that taught traditional Chinese culture and values [27]. The Chi-nese language school "operates as if it were located in China, hiring teachers with recog-nized Chinese degrees and licenses and offering a curriculum identical with that of Chinese institutions" [28]. The other option was to attend church programs operated by Christian mi-ssionary organizations. Meanwhile, until 1876, around 5,500 Chinese enrolled in church programs, with the average attendance being about a third of those enrolled [29]. The Chi-nese community made continuous efforts to petition the school board for a dedicated public school [30] in 1872 and 1878, collecting 13,000 signatures in total [31], but neither got ap-proved. "This action by the Chinese dramatically demonstrated their continual interest in public education even in the midst of a hostile environment" [32].

Despite their relentless efforts to establish educational opportunities, the Chinese community continued to encounter institutional resistance. In 1885, an American-born daughter of an Americanized Chinese immigrant, Mamie Tape, was denied admission to Spring Valley school in San Francisco [33]. Mary Tape, Mamie Tape's mother, expressed her frustration in a letter: "Is it a disgrace to be born a Chinese? Didn't God make us all" [34]. The Tapes got support from the San Francisco Imperial Chinese Consulate, who wrote to Superintendent Andrew Moulder: "to renew the request to admit the child and all other Chinese children resident here who desire to enter the public schools under your charge." [35] In response, Moulder sought support from the State Superintendent William Welcher, who mentioned that the California Constitution called the Chinese "dangerous to the well-being of the state" [36] and believed only citizens could be allowed for public schooling [37]. The Chinese consulate's formal request was denied by Moulder [38], and the Tapes chose to sue the school board in the court. The Tapes' attorney asserted that the whole family had assimilated into American society by adopting the habits, customs, language, dress and religion, and argued Mamie was not a child of "vicious habits or suffering from any contagious diseases" [39]. The State Superior Court announced: "To deny a child, born of Chinese parents in this State, entrance to the public schools would be a violation of the law of the State and the Constitution of the United States [40]." However, the Superior Court also commented "The Legislature possessed the power to provide separate schools for distinct races [41]." With the court decision in Tape v. Hurley, the State Legislature amended the school laws to provide the Chinese American students a separate school [42]. This amended Section 1662 established "separate schools for children of Mongolian or Chinese descent. When such

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separate schools are established, Chinese or Mongolian children must not be admitted into any other school [43].” Soon thereafter, a segregated Chinese school was opened, closing off any opportunity for Mamie Tape to go to an integrated school [44].

This moment marked a pivotal turning point—not just for Chinese Americans, but for the broader struggle against segregation in the U.S. education system. The ruling in Tape v. Hurley was one of the earliest judicial acknowledgments of the constitutional rights of non-white minorities in public education. Although the decision ultimately led to segregation rather than full inclusion, it laid the groundwork for future challenges to the legitimacy of “separate but equal” doctrine. By asserting that Chinese American children were entitled to public education under the Fourteenth Amendment, the case helped redefine citizenship and belonging in a nation still grappling with its identity as a multiracial democracy.

In 1885, the School Board established a segregated but equal Chinese Primary School, and Mamie Tape “attended the first day of the Chinese Primary School opening [45]”. Unli-ke the Chinese School established in 1859, this Chinese Primary School was equipped with the full weight of legal precedent supporting the lawful segregation [46]. Chinese Ameri-can children attended the public school with an average daily attendance of 900 students in 1923 [47]. By 1929, the enrollment of students at that School was 1500 [48]. However, al-though the Tape case was a victory for the Chinese American community for obtaining public education [49], the fight for equal, integrated education wasn’t over.

3. From Segregation to Integration

On September 15,1924, Martha Lum, a nine-year-old Chinese American girl and her older sister were denied access to an all-white school in Mississippi [50]. Gong Lum, the girls’ father, filed a petition in the Circuit Court of Mississippi, the state’s trial court, and alleged his daughter should gain access to the all-white school [51]. The state’s trial court granted Lum’s petition, but the School Board of Trustees and the State Superintendent of Education appealed the case to the State Supreme Court [52]. In May 1925, the Mississippi State Supreme Court held that Chinese American children were part of the non-Caucasian race under the state constitution [53], so the “plaintiff is not entitled to attend a white public school [54].” “Therefore the judgement of the court below will be reversed and the petition dismissed [55],” overruling the trial court’s decision [56].

The Lums appealed this decision [57] to the United State Supreme Court in October of 1927. Thus, the United States Supreme Court received its first case to challenge the constitutionality of racial segregation in southern public schools, 26 years before the landmark *Brown v. Board of Education* decision [58]. The Court reexamined the State Supreme Court’s discussion and

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asserted the states established “separate but equal” schools without violating the Fourteenth Amendment [59]. The Supreme Court also claimed that “she is not denied, under the existing school system, the right to attend and enjoy the privileges of a common school education in a colored school [60].” Challenging segregation by questioning its constitutionality failed because government documents never changed the label “Mongolian [61].”

This failure underscored how deeply entrenched racial hierarchies were in American law. The Lum v. Rice decision reinforced the idea that non-white groups—regardless of birthplace or cultural assimilation—were legally classified outside the dominant racial framework. It revealed how the judiciary could uphold segregation even when plaintiffs presented compelling arguments rooted in equality and citizenship. Yet, the very act of litigation itself became a form of resistance. Families like the Lums challenged the logic of racial classification and demanded recognition of their place within the American social contract.

However, Chinese Americans persisted in fighting for the right to attend non-segregated public schools, and exceptions to the segregation were made [62] despite white parents’ protests, especially in districts without established Chinese schools [63]. For example, in San Jose, Chinese American students were admitted to the white school after 1885 [64]; and a Chinese American student successfully enrolled in the white school in 1899 [65].

The Chinese American community created organizations supporting school integration, such as the Native Sons of the Golden State [66], the North Beach Promotion Association, Nor-thern Federation of Civic Organizations, Chinese Young Women’s Christian [67] Association , actively challenging segregation through legal battles, petitions, and lobbying. Consequently, “by the late 1920s, the elementary school barrier was broken, and Chinese children were no longer confined [68].” These organizations also collaborated with African American and La-tino activists, leveraging court victories like Mendez v. Westminster to push for full integration. Nevertheless, California Code 1662, which relegated Chinese Americans to segregated status, remained valid until 1947, when the 9th Circuit Court of Appeals held that segregation of school children against their will violated the Fourteenth Amendment [69]. The School Bo-ard was compelled to review segregation, during which the efforts of Chinese Americans during World War II was recognized, so the segregation provisions were repealed [70]. La-ter, in 1954, the Supreme Court ruled a nationwide ban on segregated schools in *Brown v. Board of Education.* [71]

4. Conclusion

The first Chinese immigrants stepped on American soil 9 years after the signing of the Declaration of Independence [72], yet for many decades, Chinese Americans waged a relentless

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struggle for educational justice. The pivotal lawsuit of *Tape V. Hurley* gave Chinese Americans the right to public, albeit segregated, education [73], while the Lums' fight served as an important predecessor to the *Brown v. Board of Education* decision that ended segregation for good. For centuries, Chinese pursued education rights and assimilated, then correspondingly, made continuous contributions to perform their responsibility with passion and diligence.

However, educational equality conflicts did not end with desegregation. Currently, Chinese Americans continue to navigate challenges in the education system, particularly regarding affirmative action debates, with some arguing that race-conscious admissions policies disadvantage Chinese American students in college admissions. The landmark Students for Fair Admissions v. Harvard case highlights this persisting issue, and the Chinese American struggle for equal education remains a critical part of the broader narrative of civil rights in America.

Today, Chinese Americans stand at a crossroads—celebrating their historical triumphs while confronting new forms of structural inequality. Their legacy of perseverance, advocacy, and service continues to inspire younger generations to engage in civic life, pursue higher education, and advocate for equity in all spheres of American society. Their story is not just one of survival, but of transformation—a testament to the enduring promise of America when its ideals are matched with action and justice.

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