

COVID-19 is a “Yellow Peril” Redux: Immigration and Health Policy  
and the Construction of the Chinese as Disease

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**Abstract**

During the COVID-19 pandemic, Asian Americans have endured a stark rise in discrimination, harassment, and violence. Public discourse regarding COVID-19 has also been filled with anti-Asian and xenophobic rhetoric, including former President Donald Trump’s usage of racially charged epithets like “China Virus” and “Kung Flu.” However, this is not the first time that Asian Americans, and specifically Chinese Americans, have been condemned as a public health threat. In the late 1800s, Chinese immigrants were stereotyped as the “Yellow Peril” and dirty disease carriers amidst growing anti-Chinese sentiment, culminating in the 1882 Chinese Exclusion Act. Additionally, San Francisco Chinatown was intentionally and unfairly targeted by public health officials in attempts to purge the bubonic plague at the turn of the century. While court cases like *Wong Wai v. Williamson* (1900) and *Jew Ho v. Williamson* (1900) determined that such public health campaigns violated the Fourteenth Amendment’s Equal Protection Clause by singling out Chinese individuals, their legal outcomes do not represent the overall social consensus, both historically and today. Thus, our current moment of surging anti-Asian rhetoric and racism must be contextualized within America’s long history of branding Asian and Chinese people as unwanted, filthy vectors of contagion to be excluded. This paper argues that the uptick in anti-Asian racial violence during the COVID-19 pandemic is a direct extension of xenophobic scapegoating, racial formation, and sociocultural representation of Chinese immigrants as harbingers of disease that rationalized the 1882 Chinese Exclusion Act and San Francisco’s racist public health measures in 1900. Ultimately, I argue that America’s

historical intersection of exclusionary immigration law and discriminatory health policy set the stage for COVID-19 to play out as a “Yellow Peril” redux.

### **Introduction**

The United States has a long history of intertwining exclusionary immigration legislation with discriminatory health policy. This has resulted in numerous incidents in which immigrants coming to America were accused of bringing disease and epidemics, including the first Asian immigrants to touch the shore: the Chinese. Thus, it is unsurprising that charges against Chinese immigrants as public health dangers accompanied attacks of their supposed threat to white American labor, capital, and way of life amidst efforts to pass America’s first-ever exclusionary immigration law on the basis of race—the 1882 Chinese Exclusion Act.<sup>1</sup> Clearly, the sociocultural representation of Chinese people as inherently infected and rotten only further supported anti-Chinese immigration advocates’ claims that “the Chinese must go!”<sup>2</sup>

However, sociocultural constructions are not static, allowing space for individual contestations of “common sense” norms for the benefit of civil rights and liberties.<sup>3</sup> In 1900, San Francisco Chinatown was subjected to an involuntary quarantine and compulsory vaccination order amidst bubonic plague fears.<sup>4</sup> In response, two Chinese residents, Wong Wai and Jew Ho, filed lawsuits arguing that the city’s public health order was discriminatory on the basis of the Fourteenth Amendment’s Equal Protection Clause.<sup>5</sup> Somewhat unexpectedly, the court ruled in

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<sup>1</sup> Chinese Exclusion Act (1882).

<sup>2</sup> Carlsson, “The Workingmen’s Party,” 1995.

<sup>3</sup> Omi and Winant, *Racial Formation*, 2014; Lopez, *White By Law*, 2006.

<sup>4</sup> Shah, *Contagious Divides*, 2001.

<sup>5</sup> Wong Wai v. Williamson, 103 Cal. 384 (1900); Jew Ho v. Williamson, 103 Cal. 10 (1900); U.S. Const. amend. XIV, § 1 (1868).

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favor of the plaintiffs, significantly concluding that Asians were discriminated against unfairly. Still, these judicial decisions do not represent the prevailing social consensus as social and legal outcomes are subject to ever-changing human motivations, sometimes resulting in complex and seemingly contradictory interactions.

Traveling forward in time to the present COVID-19 pandemic, it is essential to contextualize the recent uptick in anti-Asian discrimination and violence within the Asian American history of immigration exclusion and medical scapegoating. According to AAPI Data, more than two million Asian American adults have experienced discrimination, harassment, violence, or hate crimes since the beginning of the pandemic.<sup>6</sup> Former U.S. President Donald Trump’s frequent use of racist epithets like “China Virus” and “Kung Flu” further added fuel to growing anti-Chinese sentiment, personifying and racializing SARS-CoV-2 as Chinese.<sup>7</sup> Thus, we are currently witnessing a “Yellow Peril” redux, complete with xenophobic and accusatory rhetoric rooted in historical constructions of Asians as harbingers of disease.

This paper explores American nativist immigration law and discriminatory health policy to illuminate how anti-Asian discrimination within the pandemic is a direct descendant of sociocultural and legal constructions of Asians since their initial arrival in the U.S. I argue that despite victorious court cases overturning biased public health orders, the deep-rooted sentiment that Chinese people are vectors of contagion threatening American public health has prevailed from the 1882 Chinese Exclusion Act to our present moment. Therefore, I argue that we must look to the past to fully understand the present. The painting of Asians as medical scapegoats has persisted throughout history, and the “China Virus” is merely a “Yellow Peril” redux.

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<sup>6</sup> Lee and Ramakrishnan, “Anti-Asian Hate,” 2021.

<sup>7</sup> Chiu, “Trump has no qualms,” 2020; Lindaman and Viala-Gaudefroy, “Donald Trump’s ‘Chinese virus,’” 2020.

### **Boiling Anti-Chinese Sentiment: The 1882 Chinese Exclusion Act**

Already in 1849, when southern Chinese people first immigrated to San Francisco in pursuit of the Gold Rush, anti-Chinese sentiment was triggered.<sup>8</sup> Most white Americans saw Chinese immigrants as a threat to American culture and livelihood. The Chinese people’s willingness to work for lower wages and high work ethic positioned themselves as direct threats to white labor, leading white labor leaders to petition the government to penalize and stop them from stealing their jobs. In his 1878 address, Denis Kearney of the Workingmen’s Party of California (WPC) characterized the Chinese laborer as “the meanest slave on earth—the Chinese coolie,” whose primary objective in coming to America was “to meet the free American in the Labor market, and still further widen the breach between the rich and the poor, still further to degrade white Labor.”<sup>9</sup> White laborers, blaming the Chinese for their unemployment and low wages, lamented that employers’ preferences for cheaper Chinese laborers resulted in “[the reduction of] American labor... to the Chinese standard of rice and rats.”<sup>10</sup> The American Federation of Labor (AFL)’s infamous 1902 *Meat vs. Rice* pamphlet represented the epitome of white labor’s rhetoric, lamenting Chinese labor’s potential to degrade American labor and lifestyle,

In a sanitary point of view, Chinatown presents a singular anomaly. With the habits, manners, customs, and whole economy of life violating every accepted rule of hygiene; with open cesspools, exhalations from water-closets, sinks, urinals, and sewers tainting the atmosphere with noxious vapors and stifling

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<sup>8</sup> “Chinese Immigration,” PBS.

<sup>9</sup> Kearney and Knight, “Appeal from California,” 1878.

<sup>10</sup> “Democratic Ticket,” 1880.

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odors; with people herded and packed in damp cellars, living literally the life of vermin, badly fed and clothed...<sup>11</sup>

Consequently, it was not only implied that Chinese labor was a threat to white labor, but also that Chinese filthiness and supposed “[livelihoods] of vermin” imperiled American culture, standards of living, and public health and safety.

Amidst boiling anti-Chinese sentiment ignited by capital and labor conflict, Congress passed the nation’s inaugural exclusionary immigration law on the basis of race in 1882. The Chinese Exclusion Act suspended the immigration of Chinese laborers to the United States based on the rationale that “the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof.”<sup>12</sup> By framing Chinese exclusion in language such as “[endangering] the good order” of American society, the federal government translated the era’s xenophobic and racist anti-Asian sociocultural norms into exclusionary immigration legislation.<sup>13</sup> In addition to explicitly denying the Chinese citizenship and naturalization rights, the act also dehumanized the Chinese by forcing them to carry certificates of identification at all times and mandating that shipmasters must report lists of Chinese passengers much like lists of cargo.<sup>14</sup> Though the initial 1882 law suspended Chinese immigration for only ten years, subsequent exclusionary acts (1888 Scott Act, 1892 Geary Act, and 1904 Chinese Exclusion Law) prolonged and strengthened America’s exclusionary anti-Chinese immigration stance until its repeal in 1943 with the Magnuson Act.<sup>15</sup>

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<sup>11</sup> American Federation of Labor, “Meat Vs. Rice,” 1902.

<sup>12</sup> Chinese Exclusion Act (1882).

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Scott Act (1888); Geary Act (1892); Chinese Exclusion Law (1904); Magnuson Act (1943).

### **Racialization of Disease: San Francisco Chinatown Quarantined**

As labor and capital conflict fed anti-Chinese sentiment, racist and discriminatory rhetoric characterizing the Chinese as vectors of contagion reaffirmed anti-Chinese advocates' claims that the Chinese were inferior and must be excluded. In 1854, the San Francisco Common Council conducted its first health investigation of Chinatown, concluding unanimously that “the presence of the Chinese in the excessive numbers in which they have flooded the city, is dangerous to the health of the inhabitants, owing to the crowded state of the houses of Chinamen, the sickness which they introduce, and the extreme and habitual filthy condition of their persons and habitations.”<sup>16</sup> Amidst rising cholera fears during this time, the Council continues,

But [the committee] believes that *extraordinary diseases require extraordinary remedies*, and they further believe that it will yet become necessary to apply the extraordinary remedies above alluded to, to the Chinese immigrants. Should the Cholera break out among us... that dread destroyer of mankind would make short work of the Chinese in their quarters. But how many of our own citizens might also fall victim, because a false notion of abstract principles of right, had restricted us from removing from our midst the germs of pestilence.<sup>17</sup>

By explicitly labeling the new Chinese immigrants as “germs of pestilence,” the Council racializes and personifies disease as inherently Chinese.<sup>18</sup> Interestingly, it is during this heightened fear of “extraordinary diseases” and desire to enact “extraordinary remedies” that the Council creates the San Francisco Board of Health, reflecting how historically, American public health was not inclusive of all people in its definition of “public.”<sup>19</sup>

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<sup>16</sup> Shah, *Contagious Divides*, 2021; “Common Council,” 1854.

<sup>17</sup> “Common Council,” 1854.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

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In an 1880 investigation into Chinatown’s living conditions, the San Francisco Board of Health detailedly reported the numerous public health infractions found, such as “unnatural crowding,” “rooms barely 10 x 12 feet [in which] 12 persons eat and sleep... absolutely without proper ventilation,” and “mass[es] of filth” spilling over from sewers and waste pipes.<sup>20</sup> Neglecting to contextualize their findings of unsanitary living conditions within the reality that discrimination drove the Chinese into crowded and segregated quarters, the Board declared Chinatown a “nuisance to the public’s health and welfare,” advocating that the “Chinese cancer must be cut out of the heart of the city.”<sup>21</sup> At this time, the WPC candidate Issac Kalloch had control of the mayoralty and held direct influence over the Board of Health as its presiding officer.<sup>22</sup> Thus, white labor’s aggressive advocacy for Chinese immigration exclusion intersects with their simultaneous insidious efforts to conflate the Chinese with disease in the public eye.

Bubonic plague allegations and fears on March 6, 1900 led the San Francisco Board of Health to immediately quarantine Chinatown, unfairly only allowing white people to leave the area.<sup>23</sup> The Surgeon General telegraphed further instructions for the Board to “undertake immediate sulfur disinfection of Chinatown, treatment with a therapeutic serum developed by Alexandre Yersin for the infected, and inoculation of all Chinatown residents with Haffkine’s prophylactic vaccine.”<sup>24</sup> Because the experimental Haffkine vaccine was known to contain the same pathogens that produced the bubonic plague, many Chinese residents harbored a deep

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<sup>20</sup> Shah, *Contagious Divides*, 2001; Workingmen’s Party of California, “Chinatown Declared a Nuisance!” 1880.

<sup>21</sup> Ibid.

<sup>22</sup> Shah, *Contagious Divides*, 2001.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

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suspicion toward the public health officials’ efforts to mandate vaccination. Chinese residents were convinced that the authorities were poisoning them with the vaccine and exploiting their police powers supposedly for protecting the health of its citizens, which notably did not include the Chinese at the time.<sup>25</sup> Compounding the growing tensions, white medical experts like Dr. George F. Shradley called for the “[eradication of] Chinatown from the city” via the “radical measure of burning,” believing that only “destroying every Chinese habitation upon [San Francisco]” will get rid of the “Asiatic plague.”<sup>26</sup>

**Pushback and Success? *Wong Wai v. Williamson* and *Jew Ho v. Williamson***

It is within this escalating context that *Wong Wai v. Williamson* (1900) and *Jew Ho v. Williamson* (1900) were litigated, citing violations of the Fourteenth Amendment’s Equal Protection Clause.<sup>27</sup> Supported by the Chinese Six Companies, Wong Wai sued the Board of Health and the San Francisco Port federal quarantine officer for “requiring... [submission] to inoculation..., imprisoning, restraining, or confining [him and Chinese residents] until they have submitted..., and interfering with or restraining said Chinese residents in the exercise of their personal free liberty to freely pass.”<sup>28</sup> The U.S. Court of Appeals for the Ninth Circuit ruled that the regulations were discriminatory, “directed against the Asiatic race exclusively, and by name,” and in violation of the Equal Protection Clause by pointing out four prominent facts.<sup>29</sup>

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<sup>25</sup> Ibid.

<sup>26</sup> “Clean Out Chinatown,” 1900.

<sup>27</sup> *Wong Wai v. Williamson*, 103 Cal. 384 (1900); *Jew Ho v. Williamson*, 103 Cal. 10 (1900); U.S. Const. amend. XIV, § 1 (1868).

<sup>28</sup> *Wong Wai v. Williamson*, 103 Cal. 384 (1900).

<sup>29</sup> Ibid.

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First, the Court stated that the involuntary quarantine violated not only Wong Wai’s “personal liberty” but also his economic right to “the pursuit of lawful business.”<sup>30</sup> Second, the Court recounted that no evidence supported the claim “that this particular [Chinese] race is more liable to the plague than any other,” suggesting an absence of sufficient basis for the order to be justified.<sup>31</sup> Third, the Court considered that if an individual was already infected with the plague, “the Haffkine injection may produce fatal results,” illustrating the existence of genuine danger to Chinese residents’ health as the imposition of quarantine already suggested that public health officials believed them to be exposed.<sup>32</sup> Finally, the Court noted that it possessed the authority of judicial review “[i]f the legislature, in the interests of the public health, enacts a law, and thereby interferes with the personal rights of an individual,” asserting that courts possessed the authority to determine the balance between public health regulation and individual liberties.<sup>33</sup>

The litigation of *Jew Ho v. Williamson* (1900) followed similar argumentations and Court rationale.<sup>34</sup> In fact, the Court was even more explicit, determining that the San Francisco Board of Health’s involuntary quarantine of Chinatown was “unreasonable, unjust, and oppressive,” “contrary to the laws limiting the police powers of the state and municipality,” and in violation of the Fourteenth Amendment’s Equal Protection Clause.<sup>35</sup> Evidence of this “wanton and willful discrimination” included “persons of races other than Chinese... not [being] subjected to any of

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> *Jew Ho v. Williamson*, 103 Cal. 10 (1900).

<sup>35</sup> Ibid.; U.S. Const. amend. XIV, § 1 (1868).

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the restrictions or limitations” and “the exclusion from [Chinatown]... of all physicians employed by Chinese residents.”<sup>36</sup> Furthermore, the Court stated that by excluding non-Chinese people from the quarantine order, “[t]he evidence here [was] clear that this [was] made to operate against the Chinese population only” and characterized “administration of a law ‘with an evil eye and an unequal hand.’”<sup>37</sup> Finally, while the Court called into question whether the bubonic plague existed at all by pointing out conflicts between submitted affidavits from white medical experts and Board-appointed physicians, the Court explicitly yielded this authority to the Board of Health.<sup>38</sup>

### **The New “China Virus”: COVID-19 and Racism**

The recent surge in anti-Asian hate and racism accompanying our present COVID-19 pandemic is notably reminiscent of America’s history of racist rhetoric, exclusionary immigration legislation, and discriminatory public health policy. According to Stop AAPI Hate, more than 6,000 hate incidents were reported between March 19, 2020 and March 31, 2021.<sup>39</sup> The organization categorized the incidents into five major themes: “virulent animosity, scapegoating of China, anti-immigrant nativism, racist characterizations of Chinese, and racial slurs.”<sup>40</sup> The recent March 2021 Atlanta spa shootings that killed eight individuals, including six

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<sup>36</sup> Jew Ho v. Williamson, 103 Cal. 10 (1900).

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Jeung, Yellow Horse, and Cayanan, *National Report*, 2021.

<sup>40</sup> Jeung, Popovic, Lim, and Lin, *Anti-Chinese Rhetoric*, 2020.

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women of Asian descent, only increased Asian American community activists’ rallying cries to recognize and address COVID-19’s twin pandemic—anti-Asian racism.<sup>41</sup>

Activists and ethnic studies experts attribute the resurgence of anti-Asian sentiment to racist rhetoric forwarded by former President Donald Trump early in the pandemic. Trump’s consistent, intentional use of the term “China Virus” was evidenced by a photograph of Trump’s press briefing notes in which the word “corona” was explicitly crossed out to be replaced with “Chinese.”<sup>42</sup> Anti-Asian rhetoric has extended past Trump as well, with conservative media hosts and politicians actively overlooking the significance of using neutral language when referring to COVID-19.<sup>43</sup> Consequently, circulating racist phrases such as “China Virus” and “Kung Flu” have only served to fan the flames of anti-Asian sentiment.

In terms of policy and court litigation, there have been both affirmations and challenges of exclusionary anti-Asian sentiment. On January 31, 2020, following the declaration of COVID-19 as a public health emergency, President Trump signed a proclamation suspending the entry of aliens who were in the People’s Republic of China 14 days prior to the attempted entry.<sup>44</sup> Trump vested this order in Section 1185(a) of the United States Code and Section 212(a)(1) of the Immigration and Nationality Act, which together state, “[a]ny alien who is determined... to have of a communicable disease of public health significance” is “ineligible to receive visas and ineligible to be admitted to the United States.”<sup>45</sup> Contestation of legal and sociocultural anti-

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<sup>41</sup> Fausset, Bogel-Burroughs, and Fazio, “8 Dead in Atlanta Spa Shootings,” 2021.

<sup>42</sup> Chiu, “Trump Has No Qualms,” 2020.

<sup>43</sup> Ibid.

<sup>44</sup> Trump, *Proclamation on Suspension of Entry*, 2020.

<sup>45</sup> U.S.C. § 1185(a) (1999); Immigration and Naturalization Act § 212(a) (1965).

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Asian attitudes has also persisted from the past to the present. In May 2021, the Chinese Americans Civil Rights Coalition (CACRC) filed a lawsuit against Trump for his use of racially charged epithets in describing COVID-19 on charges of defamation.<sup>46</sup> After a change in leadership to the Biden Administration, the federal government has also taken the lead in combating anti-Asian sentiment institutionally and socially, passing the COVID-19 Hate Crimes Act in May 2021.<sup>47</sup>

### **Undesirable: The Intersection of Health and Immigration Policy**

As evidenced both in history and the present, health and immigration policy are thoroughly intertwined. Although these policies have often been created in the name of public safety and welfare, they have been riddled with exclusionary and discriminatory impacts. Public health law expert Wendy E. Parmet argues that “exclusionary immigration policy presents a handy tool” for public health law as “[i]mmigrants are easy scapegoats.”<sup>48</sup> This is evident in the persistent medical scapegoating of Chinese individuals in both labor and capital conflict and public health emergencies. The fact that white labor often resorted to racist rhetoric conflating the Chinese with “rats,” “open cesspools,” and “vermin” when advocating for Chinese exclusion highlights the deep-rooted relationship between anti-immigrant nativism and negative medicalized cultural representations.<sup>49</sup> Even the grounding of the Chinese Exclusion Act in the federal government’s opinion that Chinese laborers “[endangered] the good order” of American

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<sup>46</sup> Chinese Americans Civil Rights Coalition, Inc. v. Trump, 21-CV-4548 (S.D.N.Y. 2021).

<sup>47</sup> COVID-19 Hate Crimes Act, S.937 (2021).

<sup>48</sup> Parmet, “The Worst of Health,” 2019.

<sup>49</sup> “Democratic Ticket,” 1880; American Federation of Labor, “Meat Vs. Rice,” 1902.

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society showcases the profound ties between immigration policy and maintaining public safety and health.<sup>50</sup>

Parmet also maintains that “battles over immigration and health both reflect and shed light on... the underlying rationale for health policy and law.”<sup>51</sup> Considering white labor’s consistent warnings that Chinese labor would “degrade white Labor,” government health officials’ characterization of Chinese immigrants as “germs of pestilence,” and white medical experts’ calls to eradicate Chinatown to wipe out the “Asiatic plague,” the realms of immigration and health policy appear to only reiterate fundamental American values of individualism and self-sufficiency.<sup>52</sup> Therefore, such values elevating the American individual and lifestyle as the only acceptable standard form the bedrock of xenophobia and scapegoating of the foreign “other” that persists to this day. Within the San Francisco Common Council’s and Board of Health’s rationale for the involuntary quarantine and compulsory vaccination of Chinese individuals in Chinatown, there existed blatant xenophobic, racist, and exclusionary tones as well. By asking “how many of our own citizens might also fall victim” to disease because we did not “[remove] from our midst the germs of pestilence,” San Francisco government officials manifested the nativist mindset, deeming the public health emergency as an “us vs. them” conflict.<sup>53</sup> As Parmet writes, it is this “belief that noncitizens... are undeserving of publicly-

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<sup>50</sup> Chinese Exclusion Act (1882).

<sup>51</sup> Parmet, “The Worst of Health,” 2019.

<sup>52</sup> Kearney and Knight, “Appeal from California,” 1878; “Common Council,” 1854; “Clean Out Chinatown,” 1900.

<sup>53</sup> “Common Council,” 1854.

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supported health programs and create a threat to the public’s health” that underlies much of U.S. health policy, both previously, in the 1850s and now, in the 21st century.<sup>54</sup>

Therefore, it should be unsurprising that anti-Asian hate has resurged with such force since the dawn of COVID-19. Historically, Americans have sought to blame misfortunes ranging from unemployment to cholera and the bubonic plague on Asian immigrants. The coronavirus is only the most recent calamity to scapegoat Asians for, especially since the virus originated in China. Again we see government authorities, including former President Trump, resorting to racist rhetoric to pass discriminatory travel bans and point fingers at China and Asian Americans.<sup>55</sup> Once again, we are witnessing spikes in anti-Asian hate incidents, abound with scapegoating tied to national origins, xenophobia, and racial slurs and characterizations.<sup>56</sup> Clearly, the spike in anti-Asian hate during COVID-19 is a “Yellow Peril” redux and must be contextualized within America’s history of exclusionary immigration legislation and discriminatory health policy.

**Vectors of Contagion: The Construction of the Chinese as Disease**

The racial formation and social construction of Chinese people as “germs of pestilence” and the “Asiatic plague” that threatens American public health and way of life has persisted from the past to the present.<sup>57</sup> Still, the victories of *Wong Wai v. Williamson* (1900) and *Jew Ho v. Williamson* (1900) alongside growing present-day recognition and condemnation of anti-Asian

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<sup>54</sup> Parmet, “The Worst of Health,” 2019.

<sup>55</sup> Lindaman and Viala-Gaufrey, “Donald Trump’s ‘Chinese Virus,’” 2020; Peters and Grynbaum, “Right-Wing Pundits Covering Coronavirus,” 2020; Chiu, “Trump Has No Qualms,” 2020; Trump, *Proclamation on Suspension of Entry*, 2020.

<sup>56</sup> Jeung, Yellow Horse, and Cayanan, *National Report*, 2021.

<sup>57</sup> “Common Council,” 1854; “Clean Out Chinatown,” 1900.

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hate offer examples of contestations of the sociocultural construction of Chinese and Asian people as inherently diseased.<sup>58</sup> Sociologists Michael Omi and Howard Winant’s theory of racial formation posits that race is a dynamic concept that is constructed in accordance with the predominant “social structure and cultural representation” of the time.<sup>59</sup> Law professor Ian Haney Lopez goes further to argue that the legal construction of race interacts with the social construction of race, as “[t]he operation of law does far more than merely legalize race; it defines as well the spectrum of domination and subordination that constitutes race relations.”<sup>60</sup> Thus, legal outcomes and sociocultural norms cooperate with and challenge one another continually, and the construction of Chinese people as harbingers of disease offers a case study of this complex relationship.

While *Wong Wai* and *Jew Ho* signified important expansionary applications of the Fourteenth Amendment’s Equal Protection Clause, the theories of racial formation and legal construction of race position us to recognize that judicial decisions cannot fully represent the nuances of prevailing social norms.<sup>61</sup> I also argue that the fact that *Wong Wai* and *Jew Ho* were even litigated in Court epitomizes that the sociocultural representation of Chinese people as dirty and disease-ridden was being contested at the time. However, legal challenges and subsequent outcomes do not automatically or completely shift sociocultural norms. Similar to how litigation represents challenges to the social consensus, the fact that such policies and sociocultural norms

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<sup>58</sup> *Wong Wai v. Williamson*, 103 Cal. 384 (1900); *Jew Ho v. Williamson*, 103 Cal. 10 (1900); *Chinese Americans Civil Rights Coalition, Inc. v. Trump*, 21-CV-4548 (S.D.N.Y. 2021); *COVID-19 Hate Crimes Act*, S.937 (2021); Chiu, “Trump has no qualms,” 2020.

<sup>59</sup> Omi and Winant, *Racial Formation*, 2014.

<sup>60</sup> Lopez, *White By Law*, 2006.

<sup>61</sup> *Wong Wai v. Williamson*, 103 Cal. 384 (1900); *Jew Ho v. Williamson*, 103 Cal. 10 (1900); Omi and Winant, *Racial Formation*, 2014; Lopez, *White By Law*, 2016.

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have prevailed for so long without legal challenge demonstrates that the legal outcome does not encompass all the complexities of that moment in time. Therefore, in 1900, Asians were still predominantly socially constructed as disease, with the San Francisco Board of Health effortlessly making the logic jump from Chinatown’s squalid living conditions full of “masses of filth” to Chinese people themselves as a “Chinese cancer.”<sup>62</sup> The roots of perceiving Chinatown and Chinese people as a public health threat and “nuisance” shifted seamlessly from the social (living conditions) to the biological (race).<sup>63</sup>

Accordingly, the “China Virus” and “Kung Flu” are only the most recent sociocultural representations of Chinese and Asian people as disease.<sup>64</sup> The ease with which former President Trump utilized anti-Asian rhetoric and conflated Asian people with disease must be understood within America’s history of xenophobic constructions of Asians as harbingers of disease. Additionally, akin to how Wong Wai and Jew Ho endeavored to challenge the prevailing sociocultural construction of Chinese identity through court litigation, we see contestations such as CACRC’s lawsuit and the passage of the COVID-19 Hate Crimes Act within the present-day pandemic.<sup>65</sup> All these legal challenges have been pushed into the spotlight because the opportunity presented itself with the rise in anti-Asian hate crimes.<sup>66</sup> Therefore, the construction of the Chinese as disease has prevailed from the past to the present, facing legal and sociocultural contestation once again to determine if it persists into the next pandemic.

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<sup>62</sup> Shah, *Contagious Divides*, 2001; Workingmen’s Party of California, “Chinatown Declared a Nuisance!” 1880.

<sup>63</sup> Shah, *Contagious Divides*, 2001.

<sup>64</sup> Lindaman and Viala-Gaudefroy, “Donald Trump’s ‘Chinese virus,’” 2020; Chiu, “Trump has no qualms,” 2020.

<sup>65</sup> Chinese Americans Civil Rights Coalition, Inc. v. Trump, 21-CV-4548 (S.D.N.Y. 2021); COVID-19 Hate Crimes Act, S.937 (2021).

<sup>66</sup> Lee and Ramakrishnan, “Anti-Asian Hate,” 2021; Jeung, Yellow Horse, and Cayan, *National Report*, 2021.

### **Conclusion**

Overall, this paper demonstrates that America’s long-standing intersection of exclusionary immigration legislation and discriminatory health policy has effectively set the stage for the present-day’s resurgence of anti-Asian sentiment within the COVID-19 pandemic. Contextualizing our present in the past illustrates how Chinese people have been repeatedly socially constructed and racialized as disease throughout America’s history. However, as constructions of race are constantly in flux, contestations of characterizing Chinese people as medical scapegoats and harbingers of disease continue to this day, eventually providing the backdrop for the future as the past did for the present.

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