

Analyzing Visual and Printed Documents Related to Chinese Exclusion Cases—A Primary Sources Activity

For use in conjunction with “Chew Heong v. United States: Chinese Exclusion and the Federal Courts,” by Lucy Salyer, available at <http://www.fjc.gov/history/home.nsf>. A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.

Activity Objectives

Through analysis and discussion of the primary sources in this case, students will understand the conflicts federal judges faced among public opinion, personal opinion, and the rule of law in the *Chew Heong* case. This unit will also examine the separation of powers between the federal judiciary and Congress.

Essential Questions

- How did U.S. treaties with China limit the Congress in its efforts to restrict Chinese immigration?
- What impact might public opinion have had on the federal court decisions related to Chinese exclusion laws?
- How does the judicial process discourage judges from relying on their personal opinions to decide cases?

Legal Issues Raised by the *Chew Heong* Case

The Chinese challenges to the various exclusion acts in the 1880s presented the federal courts with questions about the respective authority of treaties ratified by Congress and laws enacted by Congress.

Estimated Time Frame

Three 50-minute class periods, plus homework.

Recommended Prep Work

Teachers should review “*Chew Heong v. United States: Chinese Exclusion and the Federal Courts*,” by Lucy Salyer, especially the narrative (pp. 1–8) and “Legal Questions before the Federal Courts” (pp. 13–19) (*Note: All page numbers refer to the PDF version of the unit, available at <http://www.fjc.gov/history/home.nsf>*).

Prepare student copies of the following:

- “There’s Millions in It” (p. 58)
- Angell Treaty (pp. 38–39)
- Exclusion Act of 1882 (pp. 39–40)
- Exclusion Act of 1884 (pp. 40–42)

- Dissenting opinion of Judge Lorenzo Sawyer (pp. 50–51)
- Judge Lorenzo Sawyer on the “Chinese question” (pp. 65–66)
- Judge Ogden Hoffman’s appeal to Congress for relief from Chinese Litigation (pp. 66–68)

Description of the Activity

Step 1: Cartoon Analysis

Distribute copies of the cartoon “There’s Millions in It” (p. 58) to the entire class.

Ask students to write down three statements describing what is shown in the cartoon, and three questions about the cartoon.

Ask each student to share one statement or one question about the cartoon with the class, and write statements and questions on the board.

Lead a discussion to answer student questions, and give students some historical context about Chinese immigration and prevailing popular opinion on immigration. You may wish to cover the following talking points:

- The cartoon was published in 1884, the year that the Exclusion Act of 1884 was passed.
- The imagery of the cartoon—showing Judge Sawyer pouring people into the state of California (represented by a woman in classical dress)—is suggestive. Do students see the state as a powerless victim in this cartoon? What do they make of the depiction of the Chinese? Does the cartoon suggest that the cartoonist was anti-immigration?
- The title of the cartoon has a double meaning: it suggests that millions of Chinese might succeed in evading exclusion because of Judge Sawyer’s decision; it also refers to rumors that Judge Sawyer received bribes to allow Chinese to land.

Step 2: Statutory Interpretation

Give copies of the Angell Treaty (p. 38) to the class. Read the treaty and write the following list of people on the board:

- Chinese merchant
- Chinese teacher
- Chinese student
- Chinese laborer
- Wife of Chinese laborer

Ask the class to determine whether the people listed on the board would be allowed entry to the United States under the terms of the Angell Treaty. Write the answers on the board. Does the treaty authorize the United States to restrict entry of some groups? Which ones?

Now separate your class into two groups. Give Group 1 a copy of the Exclusion Act of 1882 (pp. 39–40). Give Group 2 a copy of the Exclusion Act of 1884 (pp. 40–42). Ask each group to consider whether, under the terms of the law they have been assigned, the following people would be permitted to enter the United States, and whether the law places any limitations on their right of entry.

- Chinese laborer who has never been to the United States
- Chinese laborer who lived in United States from 1879 until 1883, left the country and was issued a return certificate, and wants to reenter in 1884
- Chinese laborer who lived in the United States from 1879 until 1881, left the country and was not issued with a return certificate, and wants to reenter in 1884

(*Note:* The table provided at the end of this curriculum provides a summary of the effect of these acts.)

Also ask students to explain whether, in their opinion, the Exclusion Act they studied is consistent with the provisions of the Angell Treaty.

Ask each group to report back to the whole class. Each group should summarize the law it was assigned, and state which people on the list would be allowed into the country and why. When each group reports back, you should indicate on the board which groups of people would be permitted to stay. (Use a different color marker for each law, so that students can see any inconsistencies.) Students should also state whether they thought the law they studied was consistent with the provisions of the Angell Treaty.

Step 3: Conflict Between Personal Opinion and the Rule of Law

Ask students to read the dissenting opinion of Justice Sawyer in the case of *In re Cheen Hong* (pp. 50–51) (explain to students that “Cheen Hong” was a variant spelling of “Chew Heong”), and have them answer the following questions:

- In his dissenting opinion in the federal court, Judge Sawyer uses the terms of the Angell Treaty to guide his interpretation of the Exclusion Act. What reasons did he give for this approach?
- Why did Justice Sawyer believe that Chew Heong should have been readmitted to the United States?
- Read Article VI of the Constitution. What does it say about treaties and laws? How would you resolve an apparent conflict between treaties and laws?

Tell students that Judge Sawyer’s approach (the dissent in the circuit court decision) was subsequently adopted by the Supreme Court.

Ask students to read the letter (circa 1890) by Justice Sawyer on the “Chinese Question” (p. 65) (*Note*: this letter includes racial stereotyping), and have students answer the following questions:

- Did Judge Sawyer believe that permanent immigration of Chinese was a good thing? What reasons did he give for his opinion?
- What were Judge Sawyer’s opinions about rapid exclusion of the Chinese?
- To what extent is this letter consistent with Judge Sawyer’s dissenting opinion in *In re Cheen Hong*?
- How do you explain the apparent disparities between the opinions Judge Sawyer expresses in the letter and his decision in *In re Cheen Hong*? What do these two documents tell you about the way in which judges make decisions?

Step 4: A Balance of Powers

Ask students to read Judge Ogden Hoffman’s appeal to Congress (pp. 66–67), and have them write answers to the following questions:

- What effect did the Supreme Court’s decision in *Chew Heong* have upon the number of Chinese habeas corpus cases?
- What is Judge Hoffman’s opinion about passing legislation that is not consistent with the United States’ treaty obligations?
- What recommendations does Judge Hoffman make?
- Why might a judge write a letter like this to a member of Congress? (You may ask the class to brainstorm answers to this question if you wish.)

Step 5: Conclusion

Ask your class to read the Chinese Exclusion Act of 1888 (p. 42). Ask students to determine whether the people they considered in Part 2 of this lesson can enter the United States under the terms of the 1888 Act.

Explain to the class that this Act explicitly overruled the Angell Treaty and cancelled all return certificates. The 1888 law was upheld in the case of *Chae Chin Ping* (by Justice Sawyer in the federal court and Justice Field writing on behalf of a unanimous Supreme Court). Chinese immigrants continued to litigate immigration cases in the federal courts until Congress limited the jurisdiction of federal courts in 1905. The 1888 Act effectively closed the door on Chinese immigration for the next 55 years.

Assessment

- Informal evaluation of classroom discussion.
- Completion of a document analysis worksheet available at the National Archives website (<http://www.archives.gov/education/lessons/worksheets/index.html>).

- Creation of an annotated bibliography, properly citing all sources referred to, and explaining in one sentence how that source contributes to understanding of the time or event.
- Document-based essay on one of the primary sources studied (e.g., cartoon, decision of Justice Sawyer).

Alternative Modalities and Enrichment Activities

Enrichment Activity: Defining “Chinese”

How did government officials determine who was a “Chinese laborer” under the terms of the Exclusion Acts of 1882 and 1884? Read the description of two conflicting cases in “*United States v. Douglas*” and “*In re Ah Lung*” (pp. 18–19). What factors did the court use to decide the eligibility of the person to enter the United States in each case? Are both approaches consistent with the Angell Treaty? Why or why not? What approach was adopted in the 1884 amendment to the Exclusion Act? Do you agree with this approach?

Enrichment Activity: Judicial Decision Making—Comparing Justice Field to Justice Sawyer

Ask students to read Justice Field’s opinions in the cases of *In re Ah Fong*, *Chy Lung v. Freeman*, and *Ho Ah Kow v. Nunan* (pp. 16–17). What laws or provisions does he rely on in those decisions? What decisions does he reach?

Next, ask students to read the opinion of Justice Field in *In re Cheen Hong* (pp. 48–49). What reasons does he give for his decision that Chinese laborers with no return certificates should not be permitted to prove residency by other means?

Ask your students to consider the following questions:

- Does Justice Field’s opinion in the *Chew Heong* case reflect a change in his attitude to Chinese immigration? (You may wish to refer students to the biography of Justice Field (pp. 22–24), which suggests some reasons for Judge Field’s increasingly restrictive approach to Chinese immigration; note that this is a secondary source.)
- To what extent do the decisions of Justice Field and Justice Sawyer reflect prevailing public opinion on Chinese exclusion? To what extent do their decisions reflect the opinion of the democratically elected Congress?
- How does Justice Sawyer refer to the intent of Congress in his circuit court decision (pp. 50–51)? In what context does Justice Field refer to the intent of Congress in his Supreme Court decision (pp. 53–55)? Which appeal to the intent of Congress do you find more convincing?
- In your opinion, should social, political, and economic pressures influence judicial decision making on legal issues?

Alternative: Abridging the Activity

Parts 2 and 3 are the central focus of this activity. You may abridge the activity by omitting or limiting Part 1, 4, or 5.

Alternative Content Areas

This lesson may be used in several content areas, including language arts, civics and government, and world history.

Standards Addressed

Standards in Historical Thinking, Standards 1–5

U.S. History Standards (Grades 5–12)

Era 6—The Development of the Industrial United States (1870–1900)

Standard 2: Massive immigration after 1870 and how new social patterns, conflicts, and ideas of national unity developed amid growing cultural diversity.

World History Standards (Grades 5–12)

Era 7—An Age of Revolution, 1750–1914

Standard 3D: The student understands how China’s Qing dynasty responded to economic and political crises in the late 18th and the 19th centuries.

Standard 6A: The student understands major global trends from 1750 to 1914.

Annotations

- The letter by Judge Sawyer on page 65 includes racial stereotyping. You may wish to discuss the use of stereotypes with students.
- Note the circuit court case was called *In re Cheen Hong*, which was actually a misspelling of *Chew Heong*.
- Note that *Chew Heong* tried to reenter the United States from Hawaii, which was not annexed until 1898, and did not become a state until 1959.

Additional Resources

This table provides a summary of the effect of the Chinese Exclusion Acts of 1882, 1884, and 1888.

	Laborer who has never been to the U.S.	Laborer who has lived in the U.S., with return certificate	Laborer who has lived in the U.S., without return certificate
Angell Treaty	Entry permitted; under the treaty, the U.S. government could restrict but not prohibit further immigration of Chinese.	n/a	n/a
1882 Act	Entry denied.	Entry permitted.	Federal courts said entry permitted if laborer could produce evidence (including oral evidence) of residency prior to 1880.
1884 Act	Entry denied.	Entry permitted.	<i>Chew Heong</i> decision said that the 1884 requirement for certificates of residence only applied to Chinese laborers who were in the United States when the return certificates became available.
1888 Act	Entry denied.	Entry denied; all return certificates declared void.	Entry denied.