

Restaurants and Regulation

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Gabriel J. Chin & John Ormonde, [The War Against Chinese Restaurants](#), **67 Duke L.J. 681-741** (2018).

In the [The War Against Chinese Restaurants](#), Gabriel J. Chin and John Ormonde describe how state and local actors in the late nineteenth and early twentieth centuries used legal tools to try to drive Chinese restaurants out of business. Chin and Ormonde describe a wide array of legislative, regulatory, and prosecutorial activity targeting Chinese-owned restaurants—some of it successful, some not—and argue that these local (but often nationally coordinated) efforts demonstrate white Americans' intertwined concerns about work, immigration, urbanization, gender, and ethnicity in this era. And these concerns, once moved to the national stage, motivated Congress in 1917 and 1924 to ban almost all immigration from Asia.

Why did Chinese restaurants come in for particular scrutiny? Restaurants were among the very few business opportunities available to Chinese workers in the United States in the late nineteenth century; white lawmakers and union officials relied on restrictive licensing laws and pervasive anti-Chinese prejudice to bar Chinese workers from most jobs. Small businesses like restaurants and laundries, however, offered a path to economic independence. The history of racially discriminatory regulation of laundries is familiar to readers of [Yick Wo v. Hopkins](#); here Chin and Ormonde describe how restaurants were similarly targeted. Chinese restaurants succeeded by offering a popular product and paying their workers less than the market standard. White restaurant owners opposed such restaurants' success; so too did white male workers and their unions, who resisted competition from underpaid workers and resented Chinese workers' success even in this limited market segment. Calls for boycotts failed, so, as the authors note, "[s]ince there was no law reserving the food business to whites, the unions sought to create one." (P. 698.) White men looked to the state to drive these restaurants out of business, demanding police raids, employment restrictions, licensing laws, and zoning rules.

Chin and Ormonde draw on a rich set of primary sources—including local newspapers, industry publications, union proceedings, and legislative records—to describe a loosely coordinated nationwide effort to use whatever legal tools were at hand to drive Chinese restaurants out of business. As the authors demonstrate, white men and their unions argued that such laws were needed not to protect male workers but rather to protect white women from the allegedly degenerate and "morally hazardous" influences of Chinese restaurants. Restaurants, they argued, posed particular dangers for white women, given the (rumored) availability of interracial interactions, vice, and opium; the presence of curtained private booths only underlined the risks to white women as customers and as employees. The highly publicized murder in 1909 of Elsie Sigel, a white woman found dead in a Chinese waiter's apartment after what appeared to be an affair gone wrong, exemplified these fears.

Motivated by these arguments, many cities and states tried to ban white women from working in and/or eating in Chinese restaurants. As Chin and Ormonde make clear, white workers' and their unions' efforts to restrict Chinese economic activity through legislation were often stymied by political weakness or constitutional limitations. Unions were not always sufficiently powerful to push these proposals through, and even when they were, courts often struck down blatantly discriminatory laws as violations of the due process and equal protection clauses of the Fourteenth Amendment. These decisions (framed around race, not gender, discrimination) build on and complicate the conventional story about late

nineteenth-century judges' concern for property rights and hostility to certain forms of state-sponsored racial discrimination that trampled on these property rights.

But legislative efforts were only one part of this story. Responding to workers' demands, police used their discretionary emergency authority to raid restaurants, establish curfews, and, on occasion, simply order white women to leave Chinatowns. Lawmakers also used their administrative discretion to make it harder for Chinese restaurants to operate. Although proposals to limit restaurant licenses to citizens often failed, more broadly worded statutes that gave bureaucrats discretionary authority over licenses had the desired result. Bureaucrats denied licenses for Chinese restaurants; courts then generally deferred to these administrative decisions.

The inclusion of both unsuccessful and successful legal efforts allows the authors to tell a story focused less on legal change than on the pervasive political hostility these efforts represented and magnified. Chinese restaurants remained a popular presence in American life, but this regulatory "war" "helped propagate the idea that Chinese immigrants were morally and economically dangerous, and contributed to the passage of the Immigration Acts of 1917 and 1924, which almost completely eliminated Asian immigration to the United States." (P. 684.) These federal laws took a much broader and more uniform approach to protecting white men's dominance in the workplace; as the authors argue, "the unions ha[d] their cake and ate it too, as they restricted competition with Asian workers through federal immigration laws, without having to forego the opportunity to eat in Chinese restaurants." (P. 734.)

The article makes a compelling case for studying unsuccessful legal reform alongside successful efforts and for including police enforcement practices (not just laws on the books) in this story. Taken together, Chin and Ormonde demonstrate just how much effort unions dedicated to driving Chinese workers out of one of the few areas where they had found success. The authors argue that this research fills in a gap in scholarship on Chinese restaurants specifically and Asian American history generally; although the article is less grounded in other areas of scholarship, it is also a useful contribution to existing research on labor history, gender history, immigration history, and the Progressive era more generally.¹

The authors conclude by comparing these efforts to more recent state and local ones targeting immigration. "The failure and unconstitutionality of local measures did not make political impulses disappear; rather, it channeled them to the branch and level of government with the power to act, just as the drumbeat of the economic and moral danger posed by Chinese restaurants and other Asian activities—and the inability to regulate them at the state level—contributed to a climate in which Asian exclusion dramatically expanded in 1917 and 1924." (P. 735.) And by drawing this link between local and federal action, the article demonstrates the importance of studying reform efforts at different levels of government and across multiple jurisdictions. Legal historians already do this, of course; studies of railroad and antitrust regulation in the late nineteenth century, for example, demonstrate how (and why) reform pressures began in the states and then moved to the federal level. Chin and Ormonde, however, tell a broader story of anti-Chinese lawmaking that ties local restaurant regulation to federal immigration law—to fascinating effect.

1. The article would have benefited from more engagement with these literatures; this narrative fits somewhat awkwardly into the traditional story of Progressive-era protectionist labor legislation in ways that could use more attention.

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