

³²*Cumming v. Richmond County Board of Education*, 175 U.S. 528 (1899).

³³Quan, 47.

³⁴*Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); 349 U.S. 294 (1955).

³⁵A.H. Kelly, W.A. Harbison, and H. Belts, *The American Constitution* (New York: Norton, 1983), 468.

³⁶A. Hunt, "Law, State and Class Struggle," *Marxism Today* 20 (1976): 178-87.

Critique

Law in the United States may of course be viewed through a number of different perspectives. Over the past several decades, racial minorities have used litigation and legislation to reform institutional policies and practices, and this has given impetus to perspectives of law as a significant tool of constructive social change. While such frameworks have validity, Malik Simba's paper is a relevant reminder of the ideological and coercive dimensions of law and of its long history as a means of oppressing racial minorities.

Simba presents critical legal theory as a fairly straightforward perspective that sees law as an ideological form which reflects the material interests of the dominant classes and helps structure society and its material base but at the same time obscuring this and performing a hegemonic function to lessen social antagonisms. Simba effectively uses this interpretation to describe the role of law in solidifying white supremacy in the post-Civil War South and to examine the theory's utility through the case of *Gong Lum v. Rice*.

Critical legal theory clearly has promise for the historical analysis of race relations law, though its basic concepts have broad meanings and implications and may require some specification before they can be applied to other situations. Also, as Simba correctly points out, critical legal theory has a serious shortcoming. Legal institutions have not functioned to veil inequality and injustice from racial minorities. Therefore, adjustments to critical theory must be made before this perspective can be applied to other circumstances.

Simba argues that, by the time of the *Gong Lum* case, the Chinese in Mississippi had achieved a marginal, interstitial status between the blacks and the whites. This is an area that requires further analysis because it may reveal another problem with critical legal theory. Sociologist Robert Quan contends that the Chinese were moving toward the creation of a tri-racial society. At the time of the *Gong Lum* case, they had achieved the first steps in this process through the immigration of wives and intact families, their conversion to Christianity, and the economic foundation of their grocery stores. This process was aided by the whites, who, for example, taught the Chinese the English language, American values, and Southern Baptist religion.¹ More needs to be known about the extent of white assistance and the nature of the emerging tri-racial society. But the whites clearly benefited from the latter. The tri-racial

society could accommodate the aspirations of the Chinese and their desire to maintain their ethnicity without being identified with the blacks, thereby lessening Chinese antagonisms toward the whites, and at the same time keep the Chinese from intruding on white economic power and privileges. The whites further benefited because the Chinese could serve as a kind of economic “middleman” between them and the blacks and help them deal with this despised population. However, in the Gong Lum case, the Mississippi Circuit Court for Bolivar County, the Mississippi Supreme Court, and the US Supreme Court did not render decisions compatible with a triracial society and with perhaps the actual interests of the whites, for instance, by ordering the construction with public funds of a separate school for Chinese children. Afterward, beginning in 1936, the whites did provide support for a Chinese school, and they later gradually allowed the Chinese to attend white public schools. Given all of the preceding discussion, it is possible to interpret the Gong Lum judicial decisions as suggesting that law at times may be only an imperfect reflection of the material interests of the dominant group. If this is indeed true for the Gong Lum case or in other situations, it is another shortcoming of critical legal theory.

Critical legal theory is actually one of several frameworks that can be used to examine race and law in the Gong Lum case. Gong Lum is part of a large body of Supreme Court cases in which the practices brought before the Court and/or the Court’s decisions reveal the pattern of racism against Asian American groups. Asian Americans were treated as racially subordinate and unwanted members of American society by denials of their civil rights and their rights for employment, education, land ownership, citizenship, and immigration to the US.² The Gong Lum case also may be seen as one element in a broader struggle by Asian American groups to challenge racial discrimination. This effort included thousands of legal cases as well as labor organizing, strikes, economic boycotts, and other forms of protest.³ In addition, the Gong Lum case may be viewed as part of a legal history involving the racial classification of Asian Americans. This history encompasses legislation such as antimiscegenation laws prohibiting marriages between whites and specified nonwhites (sometimes Asians), Supreme Court cases like *Ozawa v. United States* in which the Japanese plaintiff was denied the right of naturalization because he could not be categorized as either white or black, and other cases such as *People v. Hall* where the California Supreme Court ruled that a statute specifically limiting the rights of “Indians or Negroes” applied as well to the Chinese.⁴

Although Simba’s paper focuses on critical legal theory and the Gong Lum case, the primary subjects are the Mississippi Chinese, and there is a need for further research on this group. For example, Simba follows the lead of historian James Loewen in noting that it was the early Chinese laborers who later established grocery stores in black communities. This topic requires more investigation since work by Robert Quan and historian Shih-shan Henry Tsai supports an alternative hypothesis that most of the early Chinese left Mississippi and the adjacent state of Arkansas, but after World War I, a second wave of Chinese came to this region and were largely responsible for developing the

grocery store economy.⁵ Additional inquiry likewise is needed on the manner in which the Mississippi Chinese functioned as economic middlemen and on the similarities between this role and that of other Asians in the US, including Korean merchants in contemporary urban African American communities.⁶ And more research should be conducted on how the Chinese in Mississippi were able to maintain their sense of community, culture, and identity despite the fact that they were small in number, isolated from the large Chinese communities in the West and North, did not establish characteristic Chinese American community institutions, and had to carve out their position in a fairly rigid biracial social system.⁷ Whatever can be learned about their experience will contribute to the important accumulation of knowledge about the persistence of ethnicity.

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Notes

¹Robert Seto Quan, "The Creation, Maintenance, and Dissolution of Mississippi Delta Chinese Identities," in *The Chinese American Experience: Papers from the Second National Conference on Chinese American Studies*. Ed. Genny Lim (San Francisco: The Chinese Historical Society of America and The Chinese Culture Foundation of San Francisco, 1984), 183-84.

²Hyung-chan Kim, ed., *Asian Americans and the Supreme Court: A Documentary History* (New York: Greenwood Press, 1992).

³Sucheng Chan, *Asian Americans: An Interpretive History* (Boston: Twayne Publishers, 1991), 81-100.

⁴Chan, 48, 60, 93; Kim, 6-7, 35-37.

⁵James Loewen, *The Mississippi Chinese: Between Black and White*, 2nd ed. (Prospect Heights, IL: Waveland Press, 1988), 24-26, 32-34; Quan, 183; Shi-shan H. Tsai, "The Chinese in Arkansas," in *The Chinese American Experience: Papers from the Second National Conference on Chinese American Studies*. Ed. Genny Lim (San Francisco: The Chinese Historical Society of America and The Chinese Culture Foundation of San Francisco, 1984), 199-200; Shi-shan Henry Tsai. "The Chinese in Arkansas." *Amerasia Journal* 8, 1 (1981): 1-11; Robert Seto Quan, *Lotus Among the Magnolias: The Mississippi Chinese* (Jackson: University Press of Mississippi, 1982), 6-13.

⁶There are many publications, some of them critical, dealing with Asian American groups as economic middlemen. For a few examples, see: Edna Bonacich, "A Theory of Middleman Minorities." *American Sociological Review* 38, 5 (October 1973), 583-94; Edna Bonacich and John Modell, *The Economic Basis of Ethnic Solidarity: Small Business in the Japanese American Community*

(Berkeley and Los Angeles: University of California Press, 1980); Ivan Light and Edna Bonacich, *Immigrant Entrepreneurs: Koreans in Los Angeles, 1965-1982* (Berkeley and Los Angeles: University of California Press, 1988); Eugene Wong, "Asian American Middleman Minority Theory: The Framework of an American Myth." *Journal of Ethnic Studies* 13, 1 (Spring 1985): 51-88.

⁷Such research can build on the work of Loewen and particularly that of Quan. For another account of the Chinese in the South, especially Louisiana, see Lucy Cohen, *Chinese in the Post-Civil War South* (Baton Rouge: Louisiana State University Press, 1984).

Critique

For all intent and purposes the United States of America in 1927 was an apartheid state. The *Plessy v. Ferguson* decision in 1896 determined that the best social policy for this nation to pursue was one which required racial separation. The *Plessy* decision essentially capped a series of Supreme Court decisions which underscored the destruction of Reconstruction and the return of "states rights" to southern governments. Decisions like the *Slaughter House Cases* (1872) and the *Civil Rights Cases* (1883) gave clear evidence of the federal government's hasty retreat from serving as an advocate for the civil rights of African Americans.

The institutional milieu within which African Americans carried out life and living was shaped by the betrayal of federal government and an aggregation of outrageously racist southern state governments. And while living in the United States has not offered particularly "good times" for black people, living in the ex-confederacy was akin to living on the edge of hell for African Americans. In a color conscious society, black was a color which brought the wrath of the Ku Klux Klan, Knights of the White Camelia and other ya-hoo boys in both the North and South.

African Americans were not the only ethnic group on the receiving end of both the *de jure* and *extra jure* racist forces in the nation. Native Americans, Mexican Americans, and Asian Americans also had life experiences shaped by the cruelty of America's racial apartheid policies and practices.

In his paper, "*Gong Lum v. Rice: The Convergence of Law, Race, and Ethnicity*," Malik Simba provides an accounting of how this nation's racial apartheid practices affected the lives of Chinese Americans living in Mississippi during the 1920s. In particular, Simba's essay is about how the Supreme Court arrived at its decision in *Gong Lum v. Rice* (1927) that Chinese Americans, as determined by the dictum of *Plessy v. Ferguson* (1896), were to be relegated to the same social category as black Americans. That is, Chinese Americans were also social pariahs: separate and unequal.

This paper brings into focus the historical role of law as a device for shaping the institutional lives of people of color in this society. Law, its coercive power, can and has extended hegemonic control over the lives of people. Witness, for