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Respectability & the Quest for Citizenship

Angela M. Banks[†]

INTRODUCTION

Historically, immigration and citizenship law and policy in the United States has been shaped by the idea that certain immigrant populations present a threat to American society. Such ideas justified the Alien and Sedition Acts,¹ the Chinese Exclusion Act,² the enactment of new deportation grounds in 1917,³ and the adoption of national origin quotas in 1924.⁴ These ideas continue to operate today and influence law and policy. For example, on January 27, 2017, President Donald J. Trump declared that the entry of Iranian, Iraqi, Libyan, Somalian, Sudanese, Syrian, and Yemeni citizens along with Syrian refugees to the United States is “detrimental to the interests of the United States.”⁵ Two days

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¹ Naturalization Act of 1798, ch. 54, 1 Stat. 566, *repealed by* Act of Apr. 14, 1802, ch. 28 § 5, 2 Stat. 153, 155; Alien Friends Act of 1798, ch. 58, 1 Stat. 570 (expired 1800); Alien Enemies Act of 1798, ch. 66, 1 Stat. 577 (codified as amended at 50 USC §§ 21–24 (2012)); Sedition Act of 1798, ch. 74, 1 Stat. 596 (expired 1801) (these four acts are commonly referred to as the Alien and Sedition Acts).

² Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58. The Chinese Exclusion Act prohibited Chinese laborers from coming to the United States, and prohibited the naturalization of Chinese immigrants. *Id.* at 59.

³ Immigration Act of 1917, ch. 29, § 19, 39 Stat. 874.

⁴ Immigration Act of 1924, ch. 190, §§ 4–6, 13(c), 43 Stat. 153.

⁵ Exec. Order No. 13,769, 82 Fed. Reg. 8977, §§ 3(c), 5(c) (Feb. 1, 2017) (announced Jan. 27, 2017). The Executive Order cites to Section 217(a)(12) of the Immigration and Nationality Act and suspends the entry of individuals from countries mentioned in that section. That section refers to three categories of countries: Iraq & Syria (specifically named), countries designated as state sponsors of terrorism, and other countries designated as countries of concern. *Id.*; *see* Exec. Order No. 13,780, 82 Fed.

earlier he described noncitizens who entered the United States without inspection as a “significant threat to national security and public safety.”⁶ He also stated that “[c]ontinued illegal immigration presents a clear and present danger to the interests of the United States.”⁷ President Trump declared that these immigrant groups are responsible for drug trafficking, human trafficking, terrorist activity, and criminal activity, and suggested that these immigrant populations present additional unspecified threats.⁸ These opinions led the President to prohibit the entry of Iraqi, Libyan, Somalian, Sudanese, Syrian, and Yemeni citizens and Syrian refugees, and to reallocate immigration enforcement resources.⁹

The repeal or revision of the Alien and Sedition Acts, the Chinese Exclusion Act, and the 1924 national origin quotas required discrediting the immigrant threat narratives justifying the acts. Immigrants and their advocates have worked to discredit these threat narratives by demonstrating immigrants’ respectability—their commitment and adherence to mainstream American values, norms, and practices.

Within the citizenship context, exclusionary criteria have often been rooted in the belief that certain groups did not share mainstream American culture.¹⁰ For example, Asian immigrants, American Indians, and the inhabitants of U.S. territories have all been denied U.S. citizenship at various points in history because legislators, judges, and administrative officials believed

Reg. 13,209, § 1(b) (Mar. 6, 2017) (Executive Order 13,780, which supersedes Executive Order 13,769, explains which countries fall into each of these categories).

⁶ Exec. Order No. 13,767, 82 Fed. Reg. 8793, § 1 (Jan. 30, 2017) (announced Jan. 25, 2017). A different memo moderates the previous claim by stating that many rather than all “aliens who illegally enter the United States or those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety.” Exec. Order No. 13,768, 82 Fed. Reg. 8799, § 1 (Jan. 30, 2017) (announced Jan. 25, 2017).

⁷ Exec. Order No. 13,767, 82 Fed. Reg. 8793, § 1.

⁸ See, e.g., Exec. Order No. 13,780, 82 Fed. Reg. 13,209, § 1; Exec. Order No. 13,769, 82 Fed. Reg. 8977, § 1; Exec. Order No. 13,767, 82 Fed. Reg. 8793, § 1; Exec. Order No. 13,768, 82 Fed. Reg. 8799, § 1 (noting that the national security and public safety threat “is particularly so for aliens who engage in criminal conduct in the United States” suggesting that the threats exist for those noncitizens not engaged in criminal activity).

⁹ See *supra* note 5 and accompanying text. The President has also called for building a wall along the United States-Mexico border, detaining individuals who enter without inspection, and returning those who enter from Mexico or Canada to that country while their immigration proceedings move forward. Exec. Order No. 13,767, 82 Fed. Reg. 8793, §§ 1, 4–7.

¹⁰ “Culture,” as used in this article, refers to values, norms, and practices. Adopting the sociological understanding of values and norms, values as used in this project refer to “abstract ideals” and norms refer to “principles and rules of social life that people are expected to observe.” ANTHONY GIDDENS, ET AL., INTRODUCTION TO SOCIOLOGY 54–55 (2012).

that individuals within these groups were undemocratic, did not share Christian values, or were not self-sufficient.¹¹

Individuals and groups seeking to reform exclusionary citizenship criteria have used respectability narratives in an attempt to change legal decision makers' understanding of excluded groups' values, norms, and practices. Respectability narratives depict members of the excluded categories as individuals who have adopted, and are committed to, mainstream American culture. These narratives seek to counter negative perceptions by showing that the excluded immigrant groups are culturally indistinguishable from mainstream Americans.

DREAMers are the most recent group to utilize this strategy, as exemplified by a 2010 demonstration.¹² During the height of college graduation season five students dressed in caps and gowns sat on the floor of Senator John McCain's Washington, D.C. office and refused to leave.¹³ The students were DREAMers seeking Senator McCain's support for the DREAM Act.¹⁴ Caps and gowns have become ubiquitous at rallies and demonstrations in support of immigration reform. This attire signals DREAMers' commitment to education and the American Dream.¹⁵ It is an attempt to present unauthorized

¹¹ See generally JANET A. McDONNELL, *THE DISPOSSESSION OF THE AMERICAN INDIAN, 1887–1934* (1991); MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 37 (2004) [hereinafter *IMPOSSIBLE SUBJECTS*]; José A. Cabranes, *Citizenship and the American Empire: Notes on the Legislative History of the United States Citizenship of Puerto Ricans*, 127 U. PA. L. REV. 391 (1978).

¹² DREAMers are young people who lack lawful immigration status in the United States, but have lived the majority of their lives in the United States. The DREAM Act is the Development, Relief, and Education for Alien Minors Act, and it would create

a pathway to lawful immigration status for individuals who entered the United States under the age of [sixteen], have been physically present for at least [five] years, earned a high school diploma or a GED, have good moral character, and are not inadmissible or deportable based on criminal activity or national security concerns. The DREAM Act would grant these individuals conditional LPR status. The conditional LPR status would be valid for [ten] years. If within that [ten]-year period the individual completed [two] years of college or military service and maintained good moral character, then he or she could apply for regular, not conditional, LPR status. They would become green-card holders who could eventually apply for citizenship.

Angela M. Banks, *Closing the Schoolhouse Doors: State Efforts to Limit K-12 Education for Unauthorized Migrants*, in *THE RESEGREGATION OF SCHOOLS: RACE AND EDUCATION IN THE TWENTY-FIRST CENTURY* 63, 78 (Jamel K. Donnor & Adrienne D. Dixon, eds. 2013); see also DREAM Act of 2009, S. 729, 111th Cong. (2009).

¹³ Julia Preston, *Illegal Immigrant Students Protest at McCain Office*, N.Y. TIMES, May 17, 2010, <http://www.nytimes.com/2010/05/18/us/18dream.html> [<https://perma.cc/D2EE-K8PT>].

¹⁴ *Id.*

¹⁵ Elizabeth Keyes, *Defining American: The DREAM Act, Immigration Reform and Citizenship*, 14 NEV. L.J. 101, 112 (2013) (caps and gowns make DREAMers "commitment to education the central visual metaphor for their cause").

migrants as respectable and thus worthy of full membership in American society.

Scholars in the humanities and social sciences have thoroughly interrogated the politics of respectability as a strategy for responding to social, economic, and legal exclusion, but legal scholars have been slow to examine this as a strategy to respond to citizenship exclusions. Immigration scholars have written extensively about the reasons racial restrictions existed, how they were enforced, and how such restrictions shaped conceptions of race and belonging in the United States.¹⁶ Yet less attention has been given to the strategies utilized by excluded immigrants and their advocates to repeal the racial restrictions for naturalization.

This article addresses this gap in the literature by examining the use, success, and limitations of respectability narratives through a case study of the 1943 repeal of the Chinese Exclusion Act.¹⁷ Through this case study this article identifies the substantive components of respectability narratives, how respectability narratives are deployed, and the limitations of this strategy to actually change perceptions about excluded groups. The analysis offered in this article contributes to the legal literatures on social change, social movements, and discrimination. The continued reliance on respectability narratives by those opposed to the recent immigration-related Executive Orders, by DREAMers and by other advocates for a pathway to citizenship for unauthorized migrants, highlights the persistence of this strategy and the need for analyzing its effectiveness.

This article proceeds in four parts. Part I introduces the politics of respectability concept and argues that respectability narratives have been a persistent strategy for obtaining equal immigration and citizenship rights. Part II demonstrates the relationship between problem narratives and limited immigration and citizenship rights through the construction and treatment of Chinese immigrants in the late nineteenth and early twentieth

¹⁶ See, generally, ERIKA LEE, *AT AMERICA'S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA 1882–1943* (2003); IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996); EDIBERTO ROMÁN, *CITIZENSHIP AND ITS EXCLUSIONS* (2010); *IMPOSSIBLE SUBJECTS*, *supra* note 11, at 37; LUCY E. SALYER, *LAWS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW* (1995).

¹⁷ This article focuses on the legislative process rather than litigation as the vehicle for obtaining equal rights. There is a significant literature examining the use of “ideal” plaintiffs in civil rights litigation. See, e.g., Cynthia Godsoe, *Perfect Plaintiffs*, 125 *YALE L.J. F.* 136, 152–54 (2015) (discussing how selecting plaintiffs who fit into a “heteronormative marital model” in gay marriage cases may be an advantageous strategy in litigation, but also has an exclusionary effect to those members of the LGBTQ community who do not identify with that archetype).

centuries. Part III utilizes strategic framing theory to understand the historical and continued use of respectability narratives. This Part also presents a case study of the 1943 repeal of the Chinese Exclusion Act. Part IV identifies the failure to challenge conceptions of worthiness and cognitive dissonance as important limitations on the usefulness of the politics of respectability.

This article concludes that immigrants' access to immigration and citizenship rights has been shaped by legal decision makers' perceptions about the immigrant groups' adherence to mainstream American values, norms, and practices. The use of respectability narratives to fight against exclusion reinforces the idea that only certain immigrants are respectable and worthy of legal protection. This approach fails to interrogate structural explanations for minimal assimilation or the idea that access to citizenship should only be available to immigrants who successfully embody one vision of American values, norms, and practices. The use of respectability narratives in the quest for citizenship is a paradigmatic example of the challenges the United States faces as both a democracy and a pluralistic society.

I. THE POLITICS OF RESPECTABILITY

Immigrants faced with being constructed as a "problem" and granted limited immigration and citizenship rights have responded with the politics of respectability. Historian Evelyn Brooks Higginbotham introduced the term the *politics of respectability* to describe "a counter-discourse to the politics of prejudice" advanced by black Baptist women in the late nineteenth century.¹⁸ This counter-discourse "rejected white America's depiction of black women as immoral, childlike, and unworthy of respect or protection."¹⁹ Leaders of the Baptist

¹⁸ EVELYN BROOKS HIGGINBOTHAM, *RIGHTEOUS DISCONTENT: THE WOMEN'S MOVEMENT IN THE BLACK BAPTIST CHURCH 1880–1920*, at 186, 195 (1993). Legal scholar Randall Kennedy has described the politics of respectability as follows:

The principal tenet of the politics of respectability is that, freed of the crippling invidious racial discriminations, blacks are capable of meeting the established moral standards of white middle-class Americans. . . . One of its strategies is to distance as many blacks as far as possible from negative stereotypes used to justify racial discrimination against all Negroes.

RANDALL KENNEDY, *RACE, CRIME AND THE LAW* 17 (Vintage Books 1998) (1997).

¹⁹ HIGGINBOTHAM, *supra* note 18, at 186. "[T]he politics of respectability first emerged as a way to counter the images of black Americans as lazy, shiftless, stupid, and immoral in popular culture and the racist pseudosciences of the nineteenth century."

Women's Convention and other racial uplift advocates "sought to establish their respectability and through that act to lay claim to fair and equal treatment in public life."²⁰ The use of the politics of respectability to make claims for legal rights has been termed *the legalist strand* by legal historian Kenneth Mack.²¹ Arguments rooted in the legalist strand of the politics of respectability make claims for equal rights based on the similarity of the values, norms, and practices of those granted and those denied legal rights.²² For example, when future civil rights lawyers Charles Houston and Raymond Alexander were students at Harvard Law School in 1921, the president of the university at the time, "A. Lawrence Lowell, endorsed a decision to bar black students from residence in the freshman dormitories shortly after dormitory residence had been made compulsory for freshman students."²³ The decision received national media attention and Alexander presented the student arguments against the ban in "the Urban League's journal, *Opportunity*."²⁴

Alexander's argument addressed the formal logic of President Lowell's decision, but he also addressed the implicit justification for it—African Americans were not fit to live with white Harvard students because they did not share the same values, norms, and practices.²⁵ Alexander noted that the black students prevented from living in the dormitory were from "very representative Negro families," and that they exemplified "the most traditional of Harvard's values."²⁶ He explained that their fathers were lawyers and doctors who had graduated from Harvard College, Yale College, and Harvard Law School.²⁷ Alexander used evidence of respectability to undermine the rationale for exclusion based on race and to provide a justification for equal treatment.

Farah Jasmine Griffin, *Black Feminists and Du Bois: Respectability, Protection, and Beyond*, 568 ANNALS AM. ACAD. POL. & SOC. SCI. 28, 34 (2000).

²⁰ MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* 61 (2011); HIGGINBOTHAM, *supra* note 18, at 185–87. Harris-Perry also notes, "[r]espectability politics implied that women's ability to work on behalf of black communities and to demand fair, just treatment from the state rested on their sterling moral character." MELISSA V. HARRIS-PERRY, *supra*, at 62.

²¹ Kenneth W. Mack, *Rethinking Civil Rights Lawyering and Politics in the Era Before Brown*, 115 YALE L.J. 256, 280, 280 n.76 (2005).

²² *Id.* at 280.

²³ *Id.* at 292.

²⁴ *Id.* at 292–93.

²⁵ *Id.* at 293.

²⁶ *Id.* at 293–94 (quoting Raymond Pace Alexander, *Voices from Harvard's Own Negroes*, OPPORTUNITY, Mar. 1923, at 29–30).

²⁷ *Id.* at 293.

A. *Respectable Immigrants*

The politics of respectability has also been adapted to respond to exclusion in the immigration and citizenship context. Immigrant advocates have utilized respectability narratives to reshape perceptions about immigrant groups ineligible for citizenship. These narratives highlight the ineligible immigrants' similarity to American citizens in terms of values, norms, and practices.²⁸

The Supreme Court decision in *Plyler v. Doe* offers an instructive example of how the legalist strand of the politics of respectability has been applied to immigrants.²⁹ *Plyler* reached the Court after "the Board of Trustees of Tyler Independent School District in Texas refused to enroll unauthorized migrant children who did not pay a tuition fee of \$1,000 per year."³⁰ Section 21.031 of the Texas Education Code "authorized local school districts to deny enrollment . . . to children not 'legally admitted' to the" United States or to charge such children tuition.³¹ The Court held that "unauthorized migrants are entitled to equal protection of the laws and that unauthorized migrant schoolchildren cannot be denied a free K-12 public school education."³² The Court reached this decision in large part because it concluded that the children impacted by § 21.031 of the Texas Education Code were not culpable for their immigration status.³³ The schoolchildren's unauthorized immigration status neither reflected a disregard for the rule of law, nor did it suggest that they were not law-abiding residents.³⁴ More importantly, the Court concluded that denying unauthorized migrant schoolchildren a free public school education would undermine their ability to

²⁸ Unlike the politics of respectability analyzed by Higginbotham, this article does not address the ways stigmatized immigrant groups promote assimilative practices internally. Rather this article focuses on the legalist strand. See HIGGINBOTHAM, *supra* note 18, at 186–88.

²⁹ *Plyler v. Doe*, 457 U.S. 202 (1982).

³⁰ See Banks, *supra* note 12, at 70.

³¹ *Plyler*, 457 U.S. at 205, 206 n.2 (citing TEX. EDUC. CODE ANN. § 21.031 (Vernon Supp. 1981)).

³² Angela M. Banks, *Plyler v. Doe* (1982), in 3 ENCYCLOPEDIA OF DIVERSITY IN EDUCATION 1668 (James A. Banks, ed. 2012).

³³ *Plyler*, 457 U.S. at 220 ("but the children who are plaintiffs in these cases 'can affect neither their parents' conduct nor their own status'" (quoting *Trimble v. Gordon*, 430 U.S. 762, 770 (1977))).

³⁴ The Court explained that Section 21.031 "imposes its discriminatory burden on the basis of a legal characteristic over which children can have little control. It is thus difficult to conceive of a rational justification for penalizing these children for their presence within the United States. Yet that appears to be precisely the effect of § 21.031." *Id.*

become self-sufficient members of society who were familiar with “the values and skills upon which our social order rests.”³⁵

The *Plyler* Court constructed unauthorized migrant schoolchildren as innocent children who with the help of a free K-12 public school education would adopt mainstream American values, norms, and practices in addition to a commitment, if not loyalty to, the United States. This contrasts sharply with the construction of immigrants when they are denied legal rights and access to material benefits. When immigrants are denied legal rights and access to material benefits they are often constructed as criminals, immoral, and disloyal. Unauthorized migrant schoolchildren could have been constructed in this manner, but the Court’s alternative construction allowed it to conclude that they could not be denied a free K-12 public school education when such education is provided to other individuals.

B. *Critiquing the Politics of Respectability*

The politics of respectability has been viewed as a successful strategy for responding to legal and social exclusion, but it has also been subjected to significant critique. Within the social science and legal literatures, the politics of respectability concept has been subject to three main critiques. First, it accepts the premise that only individuals who have mainstream American values, norms, and practices are worthy of and entitled to equal legal rights and social, political, and economic opportunities.³⁶ Second, it presumes that the values, norms, and practices in existence within excluded communities do not conform to mainstream American values, norms, and practices.³⁷ Finally, it focuses on “reform[ing] the behavior of individuals”³⁸ to achieve formal equality, which “absolves the state of any overt responsibility to ameliorate racism.”³⁹ These

³⁵ *Id.* at 221 (quoting *Ambach v. Norwick*, 441 U.S. 68, 76 (1979)) (“In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all.”).

³⁶ *See, e.g.*, Griffin, *supra* note 19, at 34 (“[T]he politics of respectability also reflected an acceptance and internalization of these representations.”); Regina Austin, “*The Black Community, Its Lawbreakers, and a Politics of Identification*,” 65 S. CAL. L. REV. 1769, 1773 (1992) (“The persons who fare best under this approach are those who are the most exceptional (i.e., those most like successful white people). At the same time, concentrating on black exceptionalism does little to improve the material conditions of those who conform to the stereotypes.”).

³⁷ *See, e.g.*, Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 MICH. L. REV. 946, 1042 (2002).

³⁸ Griffin, *supra* note 19, at 34.

³⁹ Brittney Cooper, *The End of Respectability: Black Feminism & Ratchet Politics*, VIMEO (Mar. 10, 2015), <https://vimeo.com/121847236> [<https://perma.cc/V4S5-HQPL>] (quote begins at 9:35). Griffin also speaks to the second point, noting that focusing

critiques identify deeply problematic aspects of the politics of respectability. This Section identifies two additional critiques: the politics of respectability neither contends with the role of interests in allocating legal rights, nor does it address cognitive dissonance. Both of these issues significantly limit the ability of the politics of respectability to be effective.

Interests can play an important role in shaping what information individuals view as valuable. The politics of respectability presumes that once individuals are presented with new information about individuals or groups their opinions will change. Yet it can be difficult to displace negative narratives that support and reinforce important legal, political, or economic interests. For example, if unauthorized migrants are not immoral criminals who pose a flight risk then the idea that they should be subject to mandatory detention upon detection may not be justified.⁴⁰ Private companies operate detention facilities and perform on-site monitoring and annual evaluations.⁴¹ In fiscal year 2009, the Department of Homeland Security spent \$31 million on the monitoring and assessments of detention facilities.⁴² Displacing the negative narrative about unauthorized migrants could impact the financial interests of individuals who own, run, or are employed by private companies involved in immigrant detention. Unless the interests that are supported by existing negative narratives are identified and strategies are developed to respond to those concerns, the politics of respectability will have limited success.

Finally, the politics of respectability does not account for cognitive dissonance. Accepting a respectability narrative requires political decision makers to acknowledge that the justifications for limited legal and political rights and economic opportunities are invalid. Psychologists have found that individuals have a very difficult time accepting new information that is inconsistent with their prior beliefs. Leon Festinger's cognitive dissonance theory states that individuals seek consistency amongst their beliefs, that inconsistency in beliefs—dissonance—causes individuals discomfort, and individuals will undertake a variety of actions to eliminate the discomfort.⁴³ One

on individuals' behavior "takes the emphasis away from structural forms of oppression such as racism, sexism, and poverty." Griffin, *supra* note 19, at 34.

⁴⁰ See 8 U.S.C. § 1226(c) (2012) (requiring mandatory detention of certain categories of unauthorized migrants).

⁴¹ DORA SCHIRO, IMMIGRATION DETENTION OVERVIEW AND RECOMMENDATIONS 1, 10, 14 (2009), <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf> [<https://perma.cc/VGN9-782U>] (Department of Homeland Security report authored by the Director of the Office of Detention Policy and Planning).

⁴² *Id.* at 14.

⁴³ LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE 3 (1957).

way to avoid the discomfort associated with the dissonance is to reject new information that would create inconsistent beliefs.⁴⁴ Consequently, respectability narratives offered by those seeking reform may be accurate and logical, but because they cause cognitive dissonance the new information may be rejected by political decision makers. Part IV will offer additional discussion of this challenge and the broader challenge of basing legal rights, political participation, and economic opportunities on worthiness, which is defined according to a specific set of values, norms, and practices.

II. IMMIGRANTS AS A PROBLEM

The politics of respectability is an important concept to analyze in the immigration and citizenship context because politicians, civil society leaders, business leaders, and the media have constructed immigrants as either honorable individuals seeking a better life for themselves and their families or threats to American social, political, and economic life. The construction of immigrants as threatening or a problem has had several consistent themes. Whether talking about Chinese immigrants in the late eighteenth century, Southern and Eastern European immigrants in the 1920s, or Mexican immigrants in the 2000s, politicians, civil society leaders, and the media have described these immigrants as criminal, unwilling or unable to assimilate, disloyal, and immoral.⁴⁵ This particular construction of immigrants is not coincidental. It reflects a specific understanding of mainstream American values, norms, and practices. Constructing immigrants in this manner allows immigrants to be viewed as outside of mainstream American culture and therefore undeserving of full membership in the American polity. As long as immigrants are viewed as nonmembers who do not deserve full membership, it is easier for lawmakers to justify denying them the benefits of membership such as legal rights, political participation, and access to social benefits.

Immigrants are often constructed as a problem, if not *the* problem, in American society and politics. In 1903 sociologist W.E.B. DuBois published *The Souls of Black Folk*, which offered an examination of “the strange meaning of being black [in the

⁴⁴ *Id.* at 2–3 (noting that individuals downplay or reject information that is inconsistent with their beliefs).

⁴⁵ See generally LEO CHAVEZ, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENS, AND THE NATION* (2013); SAMUEL P. HUNTINGTON, *WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY* (2004); IMPOSSIBLE SUBJECTS, *supra* note 11.

United States] in the dawning of the Twentieth Century.”⁴⁶ In his first essay, “Of Our Spiritual Striving,” he states that “[b]etween me and the other world there is ever an unasked question” that is rarely asked directly, but is often suggested— “[h]ow does it feel to be a problem?”⁴⁷

The construction of immigrants as a problem follows a specific template. Immigrants are one or more of the following: criminals, unwilling or unable to assimilate, disloyal, and immoral. Once this construction of immigrants has crystalized within American society it becomes relatively easy to extend immigrants fewer legal rights and opportunities for political participation, and less access to social benefits.

Through an examination of the congressional debates surrounding the 1870 Naturalization Act, the justifications for the Chinese Exclusion laws, and the Supreme Court’s decision in *Chae Chan Ping v. United States*,⁴⁸ this Section demonstrates that Chinese immigrants were constructed as unassimilable, disloyal, and immoral and that this perception of Chinese immigrants was used to justify limited immigration and citizenship rights.

A. 1870 Naturalization Act

In 1870, amidst Reconstruction, Congress considered removing the racial requirements of the nation’s naturalization law. Almost a century before in 1790, the naturalization law adopted stated that “any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof” upon proof of being a “person of good character, and taking the oath or affirmation prescribed by law, to support the constitution of the United States.”⁴⁹ In 1870 Senator Charles Sumner of Massachusetts proposed, “[t]hat all acts of Congress relating to naturalization be . . . amended by striking out the word ‘white’ wherever it occurs, so that in naturalization there shall be no distinction of race or color.”⁵⁰

⁴⁶ W.E.B. DUBOIS, *THE SOULS OF BLACK FOLK* (1903) (The Forethought).

⁴⁷ *Id.* (Chapter I: Of Our Spiritual Strivings).

⁴⁸ *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

⁴⁹ Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103. In 1795 the residence requirement was increased to five years. Naturalization Act of 1795, ch. 20, § 1, 1 Stat. 414. Additional revisions to the naturalization laws were made in 1798 and 1802 that addressed when declarations of intentions had to be filed. Naturalization Act of 1798, ch. 54 § 1, 1 Stat. 566; Naturalization Law of 1802, ch. 28, § 1, 2 Stat. 153.

⁵⁰ CONG. GLOBE, 41st Cong., 2d Sess. 5121 (1870). This amendment initially passed on July 2, 1870, but was it was reconsidered on July 4, 1870, and was rejected.

This prompted robust discussion about Chinese immigrants' and black immigrants' fitness for American citizenship.

1. Chinese Immigrants

Numerous senators argued that Chinese immigrants threatened American society because of their different values, norms, and practices.⁵¹ While some senators believed that, with time in the United States, Chinese immigrants would be able to adopt American culture, others concluded that Chinese immigrants were unassimilable.⁵² Senators in both categories viewed Chinese immigrants as pagan imperialists who maintained a low standard of living that allowed them to work for lower wages than American citizens, and as a group that was not loyal to the United States.⁵³ Senator George H. Williams of Oregon was a strong proponent of this perspective. After Senator Sumner proposed the amendment to remove the word “white” from the naturalization laws, Senator Williams proposed an amendment to prohibit Chinese immigrants from naturalizing.⁵⁴ In support of his

Id. at 5124, 5176. The Naturalization Act adopted in 1870 omitted the “white person” requirement, but also stated that “[t]hat naturalization laws are hereby extended to aliens of African nativity and to persons of African descent.” Naturalization Act of 1870, ch. 254, § 7, 16 Stat. 254, 256. The “white person” requirement was reinserted in 1875. Act of Feb. 18, 1875, ch. 80, 18 Stat. 318. See IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 3* (2006); see also *In re Ah Yup*, 1 F. Cas. 223 (C.C.D. Cal. 1878) (“Upon the revision of the statutes, the revisors, probably inadvertently, as Congress did not contemplate a change of the laws in force, omitted the words ‘white persons[]’ . . .”).

⁵¹ CONG. GLOBE, 41st Cong., 2d Sess. 5154–5161 (1870).

⁵² See, e.g., *id.* at 5155 (Senator Sumner stating that Chinese immigrants shared American values, norms, and practices); *id.* at 5156 (Senator Williams expressing the opinion that Chinese immigrants were unassimilable).

⁵³ See generally Angela M. Banks, *Citizenship, Culture, & Race in the United States*, in *GLOBAL MIGRATION, STRUCTURAL INCLUSION AND CITIZENSHIP EDUCATION ACROSS NATIONS* (James A. Banks, ed. 2017).

⁵⁴ CONG. GLOBE, 41st Cong., 2d Sess. 5121 (1870). He proposed revising Senator Sumner’s amendment so that it would read,

That all acts of Congress relating to naturalization be, and the same are hereby, amended by striking out the word ‘white’ wherever it occurs, so that in naturalization there shall be no distinction of race or color. . . . But this act shall not be construed to authorize the naturalization of persons born in the Chinese empire.

Id. Senator Williams withdrew this amendment “with the understanding that it will be voted down. If it is not voted down, I shall renew my amendment and intend to stand here as long as I can and fight for it. I shall not submit to have these Chinese brought here . . .” *Id.* at 5123. After Senator Sumner’s amendment was subsequently passed, Senator Williams offered another amendment to prohibit Chinese immigrant naturalization. *Id.* at 5124–25. This amendment read, “That nothing in this act shall be construed to authorize the naturalization of persons born in the Chinese empire.” *Id.* at 5125. This amendment became unnecessary because the Senate reconsidered Senator Sumner’s proposed amendment after it passed and rejected it on July 4, 1870. *Id.* at 5176. Thus the 1870 Naturalization Act retained the “white person” requirement.

proposed amendment Senator Williams delivered long and impassioned speeches on the perils of Chinese immigration. For example, he noted that Chinese immigrants' "traditions and teachings handed down by [their] ancestors for thousands of years have made [them] . . . imperialist[s] and . . . pagan[s]." ⁵⁵ He went on to explain that

Mongolians, no matter how long they may stay in the United States, will never lose their identity as a peculiar and separate people. They will never amalgamate with persons of European descent; and so, as their numbers multiply, as thousands are added to thousands, until they may be counted by millions, we shall have in the United States a separate and distinct people, an empire of China within the North American Republic. ⁵⁶

Due to this perspective, granting citizenship to Chinese immigrants was viewed as a threat to democratic governance in the United States. ⁵⁷ Senator Williams concluded that allowing Chinese immigrants to become U. S. citizens would undermine the "safety and happiness of" the United States. ⁵⁸

Senator Williams was supported by his fellow Oregonian, Senator Henry W. Corbett, who was primarily concerned about Chinese immigrants' fitness for self-government. He believed that because Chinese immigrants "will sell themselves to come here and labor, they will sell themselves in flocks to vote, and the only question will be which party will pay the most for their votes." ⁵⁹ He predicted "frauds upon the ballot-box will increase and become greater than they are now" if Chinese immigrants were eligible to naturalize. ⁶⁰

⁵⁵ *Id.* at 5157.

⁵⁶ *Id.* at 5156.

⁵⁷ *Id.* at 5158 ("Think of putting the political power and control of that beautiful section of the country into the hands of eighty thousand Chinamen; men who know nothing of our Constitution, laws, customs, language, or religion, and whose idolatrous temples are crowding aside the churches of the Christian faith.").

⁵⁸ *Id.* at 5157. Senator Williams explained,

I hope for the best; I do not predict any evil or any harm; but this is a fact which all history teaches, that where two different races are brought together there is danger of discord and collision. I use these illustrations to show that whenever the Mongolians or Chinese become numerous and powerful in this country we may look for tumult, convulsion, and conflict, instead of harmony, concord, and peace.

Id. at 5157.

⁵⁹ *Id.* at 5163.

⁶⁰ *Id.* He went on to explain that in his own city,

there are two houses engaged in the importation of Chinese, and all that will be necessary will be for one party to go to one house and purchase the votes of the adherents of that house, and for the other party to go to the other house and purchase the votes of its adherents.

Senator Corbett was not alone in voicing this perspective. Senator William M. Stewart of Nevada also expressed concern that Chinese immigrants' unassimilability was dangerous for American democracy. He was concerned that they would "vote as their masters prescribe."⁶¹ Senator Stewart viewed Chinese immigrants as "men who have no interest in the Government, who are slaves, who can be driven up and naturalized, and their votes disposed of as their labor is disposed of."⁶²

Senators Williams, Corbett, and Stewart believed that Chinese immigrants' values, norms, and practices were incompatible with American democracy and mainstream American culture. They used these perceived differences as justification for denying Chinese immigrants access to U.S. citizenship. These senators and their supporters did not believe that Chinese immigrants were willing or capable of adopting mainstream American values, norms, or practices after residence in the United States. As such, they did not deserve to become American citizens and obtain the rights and responsibilities that attach to U.S. citizenship. Other senators had a more favorable view of Chinese immigrants' culture, or believed that some of these immigrants could adopt American culture.⁶³ These senators were supportive of Senator Sumner's proposed amendment, but they were not prepared to prolong debate in order to have it included in the naturalization act.⁶⁴

Despite minimal support for Chinese immigrant naturalization there was overwhelming support for black immigrants to have access to naturalization. The 1870 Naturalization Act permitted persons of "African descent" or "African nativity" to naturalize as well as "white persons."⁶⁵ This reflects a very different construction of black immigrants for members of Congress in 1870.

Id.

⁶¹ *Id.* at 5125

⁶² *Id.*

⁶³ *See, e.g., id.* at 5155 (statement of Sen. Sumner); 5159 (statement of Sen. Schurz); 5161 (statement of Sen. Carpenter).

⁶⁴ Senator Sumner's proposed amendment was initially agreed to with a vote of 27 to 22. *Id.* at 5124. After the passage of his amendment Senator Williams proposed his amendment to prohibit Chinese immigrant naturalization. *Id.* at 5125. The Senate expressed an interest in completing its business on the naturalization bill by the end of the day on July 4, 1870. *Id.* at 5149. Yet a significant amount of debate was taking place on Senator Williams' proposed amendment. *Id.* at 5149–5150. In an attempt to move the debate along Senator Reuben Fenton of New York proposed reconsideration of Senator Sumner's amendment. *Id.* at 5163. The Senate agreed and upon reconsideration of Senator Sumner's amendment it was rejected with a vote of 14 to 30. *Id.* at 5176.

⁶⁵ Naturalization Act of 1870, ch. 254, § 7, 16 Stat. 254, 256 (1870) This Act extended the pool of people eligible to naturalize from previous laws which only allowed "white person[s]." *See* Naturalization Law of 1802, ch. 28, § 1, 2 Stat. 153.

2. Black Immigrants

During the congressional debates on the 1870 Naturalization Act, black immigrants were discussed as a population that shared mainstream American values, norms, and practices. Senator Williams, who opposed granting Chinese immigrants access to naturalization, supported access for black immigrants. He explained,

Sir, to amend the naturalization laws so as to allow Africans to be naturalized is not objectionable as a practical question, because there are very few who are so circumstanced as to avail themselves of the change; and in view of the fact that there are so many Africans in this country *wholly Americanized* it might not be objectionable upon any ground. But the practical difficulty with the naturalization of the Chinese is that when you open the door to one you open the door to four hundred millions, who are now looking with longing eyes to the shores of this beautiful, attractive country.⁶⁶

Immigrants from Africa and the West Indies were viewed as potentially beneficial for the Republican Party.⁶⁷ Individuals in Florida, Virginia, and California sent letters to Senator Sumner asking that the naturalization laws be revised such that Africans and West Indians would be allowed to naturalize.⁶⁸ A Florida state senator informed Senator Sumner that such a revision would “make the party stronger by adding at least two thousand to the number.”⁶⁹ This was possible because the majority of African and West Indian immigrants in Key West were Republicans who had resided in the United States for long periods of time.⁷⁰ Members of Congress concluded that African and West Indian immigrants’ values, norms, and practices were similar to those of American citizens and did not pose political, economic, or social threats.⁷¹ Consequently, they were granted access to citizenship.⁷²

Finally, African and West Indian immigrants were small in number. Note the first reason Senator Williams offered as to why naturalizing immigrants of African descent was not objectionable—“because there are very few who are so

⁶⁶ CONG. GLOBE, 41st Cong., 2d Sess. 5157 (1870) (emphasis added).

⁶⁷ *Id.*

⁶⁸ Two of the three letters were from individuals affiliated with the Republican Party. Both letters explained the harm—lack of voting rights for potential Republican supporters—resulting from African and West Indian ineligibility for naturalization. *Id.* at 5155.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *See, e.g., id.* at 5157.

⁷² *Id.* at 5177.

circumstanced as to avail themselves of the change.”⁷³ Unlike the large number of Chinese immigrants in the United States, the naturalization of African and West Indian immigrants was not viewed as dramatically changing the makeup of the American citizenry.⁷⁴ “In 1850 there were [only] 4,067 foreign-born voluntary black immigrants in the [United States].”⁷⁵ That number increased to 9,494 in 1870.⁷⁶ Had the African and West Indian immigrant population been as large as the Chinese immigrant population it is unclear whether Congress would have concluded that their values, norms, and practices were similar enough to those of mainstream Americans to warrant access to citizenship.⁷⁷

⁷³ *Id.* at 5157.

⁷⁴ The fact that very few individuals were expected to naturalize pursuant to this expansion was also a significant factor in reducing the racial restrictions in 1940. The 1940 Naturalization Act made “descendants of races indigenous to the Western Hemisphere” eligible for naturalization. Nationality Act of 1940, Pub. L. No. 76–853, § 303, 54 Stat. 1137, 1140. Representatives from Immigration and Naturalization and the State Department explained that this expansion furthered foreign policy objectives and would have little impact on naturalization rates. Henry B. Hazard, the director of research, information, and education at Immigration and Naturalization explained that the expansion was “a matter of principle in connection with our relations with the Latin American countries, as indicating a continuance of our friendly relationship to them.” *To Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code, Hearings on H.R. 6127 and H.R. 9980 Before the H. Comm. On Immigration and Naturalization*, 76th Cong. 67 (1940) [hereinafter 1940 House Naturalization Hearings], <https://babel.hathitrust.org/cgi/pt?id=mdp.39015019148942;view=1up;seq=75> [<https://perma.cc/4DWH-B79J>] (statement of Henry B. Hazard, Director of Research, Information, and Education, Immigration and Naturalization). R. W. Flournoy, Assistant to the Legal Adviser at the State Department, agreed stating, “that the State Department favors this for the reasons given by Mr. Hazard, that it will improve our relations with the South American countries.” *Id.* at 68 (response of R.W. Flournoy, Assistant to the Legal Adviser, Department of State). Mr. Hazard repeatedly emphasized the minimal impact this change would have on naturalization in the United States. For example, he told the committee that “it would probably result in the naturalization of very few in this country.” *Id.* at 67 (statement of Henry B. Hazard, Director of Research, Information, and Education, Immigration and Naturalization). He also stated that “[t]he number who might be naturalized was felt to be very small, and it was felt that the good to be accomplished by such a provision far outweighed the possibility that a few persons who would otherwise not be racially eligible might become naturalized.” *Id.* at 66.

⁷⁵ Eleanor Marie Lawrence Brown, *How the U.S. Selected for a Black British Bourgeoisie*, 27 GEO. IMMIGR. L.J. 311, 332 (2013).

⁷⁶ *Id.*

⁷⁷ The fact that few immigrants of African descent and ancestry were thought to immigrate to the United States in 1870 cannot be underestimated. By 1914 members of Congress were seeking to limit West Indian migration because they were “uncomfortable with what they perceived as rampant West Indian migration.” *Id.* at 331. Southern senators were “concerned about the incompatibility between the West Indian ‘way of life’ and the Southern ‘way of life.’” *Id.* at 333 (quoting 52 CONG. REC. 805 (1914) (statement of Sen. Williams)). In particular, the fact that the “West Indian Negro, as a rule, is a man who is accustomed to political and social equality.” *Id.* (quoting 52 CONG. REC. 805 (statement of Sen. Williams)). Southern senators were concerned that increased West Indian migration would exacerbate racial tensions in the South. These efforts failed and the campaign against limiting black immigration utilized the politics of respectability discussed in this Part. West Indian immigrants were described as

3. Context & Perceptions of Threats

The historical context also helps to explain why Chinese immigrants would have been viewed as threatening American political, economic, and social interests in ways that African and West Indian immigrants were not. As explained in this Section, Reconstruction softened concerns about African and West Indian immigrants. Second, mid-nineteenth century belief in immutable racial differences hardened concerns about Chinese immigrants being unassimilable.

In 1870 the United States was in the midst of Reconstruction, which accepted African Americans as U.S. citizens.⁷⁸ Slavery, an institution built on the perceived inequality of African Americans, had been eliminated and the citizenship of African Americans had just recently been recognized with the adoption of the Fourteenth Amendment.⁷⁹ With the acceptance of African Americans as U.S. citizens, allowing a small number of African and West Indian immigrants into the citizenry would not have had a significant impact.

The situation for Chinese immigrants was different. The Chinese population in the United States grew dramatically between 1850 and 1870, from 758 to 63,042.⁸⁰ Within this twenty-year timespan the United States saw the Chinese foreign-born population increase over 8,000 percent.⁸¹ Chinese immigrants, however, only represented a small percentage of the total U.S. population in 1870, 0.16 percent, and a similarly small percentage of the U.S. foreign-born population, 1.13 percent.⁸²

“respectable,” highly literate, and “of the highest order of intelligence.” Brown, *supra* note 75, at 334–35 (quoting CHICAGO DEFENDER, Jan. 16, 1915).

⁷⁸ See Kevin R. Johnson, *Race, The Immigration Laws, and Domestic Race Relations: A “Magic Mirror” Into the Heart of Darkness*, 73 IND. L.J. 1111 (1998) for a thoughtful discussion on the connection between Chinese exclusion and Reconstruction. For example, Johnson notes that “Congress enacted the national exclusion laws with the support of southerners interested in rejuvenating a racial caste system as well as self-interested Anglos from California.” *Id.* at 1123.

⁷⁹ U.S. CONST. amend. XIV. It is interesting to note that a significant concern raised about Chinese immigrants was their “slave-like” mentality. See *infra* text accompanying notes 89–91; see generally Kerry Abrams, *Polygamy, Prostitution, & the Federalization of Immigration Law*, 105 COLUM. L. REV. 641 (2005).

⁸⁰ U.S. CENSUS BUREAU, HISTORICAL CENSUS STATISTICS ON THE FOREIGN-BORN POPULATION OF THE UNITED STATES: 1850–1990 Table 4 (1999), <https://www.census.gov/history/pdf/1910foreignbornpop.pdf> [<https://perma.cc/F4AX-A5L5>] (listing total foreign-born Chinese population as 758 in 1850, and 63,042 in 1870).

⁸¹ See *id.*

⁸² *Id.* (listing total foreign-born population in United States as 5,567,229); U.S. CENSUS BUREAU, HISTORICAL CENSUS STATISTICS ON POPULATION TOTALS BY RACE, 1790 TO 1990, AND BY HISPANIC ORIGIN, 1970 TO 1990, FOR THE UNITED STATES, REGIONS, DIVISIONS, AND STATES Table 1 (Sept. 2002), <https://www.census.gov/content/dam/Census/library/working-papers/2002/demo/POP-twps0056.pdf> [<https://perma.cc/WEF4-9VK7>] (listing total United States population in 1870 as 38,558,371).

Yet the rapid growth of the Chinese immigrant population was causing significant unrest, particularly in California.

Conclusions about Chinese immigrants were drawn within a context of widespread belief in meaningful and immutable racial differences. Many members of Congress “treated behavior as a function of race, and race as a matter of fundamental physical difference and inherent inequality, thereby naturalizing cultural identity as a question of innate biotic difference along a spectrum of superiority to inferiority.”⁸³ Within that spectrum, “Whites were at the top and Blacks at the bottom, with Asians and other racial others in between, naturally.”⁸⁴ For many members of Congress, Chinese immigrants could not share the desired values, norms, and practices simply because they were not white.⁸⁵ Belief in racial difference and hierarchy did not prevent Congress from making black immigrants eligible for naturalization.⁸⁶ The starkly different treatment of black immigrants reveals the complicated ways in which values, norms, and practices were attributed to different racial and ethnic groups. It also reveals that the size of the future citizen population and its impact on the demographics of the existing citizen population mattered.

B. *Chinese Exclusion*

The perception of Chinese immigrants as individuals who did not adhere to mainstream American values, norms, and practices was used to justify limits on Chinese immigration. In 1875 Congress enacted the first restrictive federal immigration statute—the Page Law—that prohibited the immigration of women who entered into contracts for “lewd and immoral purposes,” and made it a felony to import women “for the purposes of prostitution.”⁸⁷ The enforcement of this act focused on Chinese women because “one of [the] animating purposes [of the Page Act]

⁸³ IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 114 (10th ed. 2006). The prerequisite cases were cases in which noncitizens sued to prove that they were white, and therefore eligible to naturalize. Between 1878 and 1952 fifty-two cases were reported in which courts determined whether or not the noncitizen was white. *Id.* at 3.

⁸⁴ *Id.* at 114.

⁸⁵ See generally Jennifer M. Chacón, *Loving Across Borders: Immigration Law and the Limits of Loving*, 2007 WIS. L. REV. 345 (2007) (discussing the impact of a belief in racial hierarchy on U.S. immigration and citizenship law); Johnson, *supra* note 78 (same); Kevin R. Johnson, *Racial Restrictions on Naturalization: The Recurring Intersection of Race and Gender in Immigration and Citizenship Law*, 11 BERKELEY WOMEN'S L.J. 142 (1996) (same).

⁸⁶ See *supra* notes 70–71 and accompanying text.

⁸⁷ Page Act of 1875, ch. 141, §§ 2–3, 18 Stat. 477.

was to prevent the Chinese practices of polygamy and prostitution from gaining a foothold in the United States.”⁸⁸ The law targeted Chinese women in an effort to prevent the spread of practices that were viewed as immoral. As legal scholar Kerry Abrams has noted,

Animus toward unorthodox Chinese practices of polygamy and prostitution was an important factor animating the federalization of immigration law. Congress not only feared the Chinese practices of polygamy and prostitution, but also believed that these customs rendered the Chinese unfit for self-governance. Congress viewed these institutions as reflective of an underlying “slave-like” mentality, fundamentally at odds with citizenship in a participatory democracy.⁸⁹

Chinese women were targeted out of concern about a growth in the number of Chinese American citizens. Most of the Chinese female immigrants during this time period were “second wives in polygamous marriages” or prostitutes.⁹⁰ Due to the Fourteenth Amendment’s grant of birthright citizenship to all individuals born in the United States, limiting Chinese female immigration would limit the number of “children of these ‘slave-like’ Chinese immigrants [who] would become American citizens.”⁹¹ Members of Congress were concerned that polygamy and prostitution “would thus become part of the fabric of American society.”⁹² Abrams explains that in order “[t]o prevent this from happening, it was necessary to prevent Chinese women—especially prostitutes and second wives—from entering the country.”⁹³

The Page Law was the first of many federal laws limiting Chinese migration to the United States. In 1882 Congress enacted the first Chinese Exclusion Act, which provided a framework for barring Chinese laborers from entering the United States. The 1882 Chinese Exclusion Act prohibited the entry of Chinese laborers for ten years.⁹⁴ The law was reformed several times between 1882 and 1892 to address administrative concerns. In 1892 Congress extended the ten-year ban on the admission of Chinese laborers another ten years.⁹⁵

The other important feature of the Chinese Exclusion Act was that it prohibited Chinese immigrants from naturalizing.

⁸⁸ Abrams, *supra* note 79, at 643.

⁸⁹ *Id.* at 642–43.

⁹⁰ *Id.* at 643.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Chinese Exclusion Act of 1882, ch. 126, § 1, 22 Stat. 58, 59.

⁹⁵ Geary Act, ch. 60, 27 Stat. 25 (1892).

The 1882 Chinese Exclusion Act stated, “hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.”⁹⁶ This explicit prohibition against Chinese immigrants naturalizing was somewhat unnecessary in light of the racial prerequisites present in the naturalization laws. As of 1870 only immigrants who were “free white persons” or persons of “African descent” or “African nativity” were permitted to naturalize.⁹⁷ In 1878 the Circuit Court for the District of California held that Chinese immigrants were not white, and were thus ineligible to naturalize.⁹⁸ Thus in 1882 Chinese immigrants were already ineligible for citizenship, but the Chinese Exclusion Act erased any doubt as to congressional intent on this matter.

The Chinese Exclusion Acts, like the 1875 Page Law, were enacted because a significant number of members of Congress concluded that Chinese immigrants were unable to assimilate, immoral, and disloyal.⁹⁹ Based on this conclusion Chinese immigrants were denied immigration and citizenship rights.

C. Chae Chan Ping v. United States

The Supreme Court similarly concluded that Chinese immigrants were unable to assimilate and that they had problematic values, norms, and practices that threatened American culture. In *Chae Chan Ping v. United States*, which challenged the constitutionality of the Chinese Exclusion Act, Justice Stephen J. Field provided a description of Chinese immigrants.¹⁰⁰ According to Justice Field, Chinese immigrant laborers “remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own

⁹⁶ Chinese Exclusion Act § 14.

⁹⁷ *In re Hong Yen Chang*, 24 P. 156, 157 (Cal. 1890), *abrogated by* 344 P.3d 288 (Cal. 2015). By 1924 these racial prerequisites for naturalization also prohibited the admission of Asian immigrants. The 1924 Immigration Act stated that “[n]o alien ineligible to citizenship shall be admitted to the United States.” Immigration Act of 1924, Pub. L. No. 68–139, § 13(c), 43 Stat. 153, 162. By 1943 the repeal of Chinese Exclusion Act alone would have been ineffective in permitting Chinese immigration. By specifically permitting Chinese immigrants to naturalize, Congress made Chinese citizens eligible for immigrant status in the United States. *See, e.g., Hearing on S. 1404 Before S. Comm. On Immigration*, 78th Cong. 6 (1943) [hereinafter 1943 Senate Hearings] (statement of Edward J. Shaughnessy, Deputy Commissioner of Immigration and Naturalization Service, Department of Justice).

⁹⁸ *In re Ah Yup*, 1 F. Cas. 223, 24 (C.C.D. Cal. 1878) (No. 104). In 1890 the Supreme Court of California reached the same conclusion, as did the federal district court for the Northern District of California in 1895. *In re Gee Hop*, 71 F. 274 (N.D. Cal. 1895); *In Re Hong Yen Chang*, 24 P. at 157. At no point did Chinese immigrants argue that they were of African nativity or descent so that avenue for naturalization was not available.

⁹⁹ *See supra* text accompanying notes 86–95.

¹⁰⁰ *Chae Chan Ping v. United States*, 130 U.S. 581, 595 (1889).

country. It seemed impossible for them to assimilate with our people or to make any change in their habits or modes of living.” Justice Field concluded that there was “*great danger that at no distant day that portion of our country would be overrun by them unless prompt action was taken to restrict their immigration.*”¹⁰¹ Justice Field went on to quote a memorial from the California constitutional convention to the U.S. Congress. He explained,

[T]he presence of Chinese laborers had a baneful effect upon the material interests of the State, and upon public morals; that their immigration was in *numbers approaching the character of an Oriental invasion, and was a menace to our civilization*; that the discontent from this cause was not confined to any political party, or to any class or nationality, but was well-nigh universal; *that they retained the habits and customs of their own country*, and in fact constituted a Chinese settlement within the state, without any interest in our country or its institutions¹⁰²

The conclusion that Chinese immigrants, particularly laborers, had values, norms, and practices that conflicted with mainstream American culture supported the Court’s conclusion that Congress had the constitutional authority to enact the Chinese Exclusion laws. By constructing Chinese immigrants as invading or overrunning American society and failing to assimilate, Congress’s decision to prohibit Chinese immigration became a reasonable, if not necessary, exercise of the federal government’s plenary power to regulate immigration.¹⁰³ Thus perceptions about values, norms, and practices influenced the allocation of immigration rights.

III. RESPECTABILITY NARRATIVES

Once a group has been constructed as a problem that will disrupt American social, political, and economic life it becomes very difficult for individuals in that group to secure legal rights, obtain opportunities for political participation, or access to social benefits. Immigrant groups that have been constructed as a problem have deployed respectability narratives to counter the problem narratives used to justify their limited participation within American society. Immigration scholars have explored immigrant responses to problem narratives and have found that

¹⁰¹ *Id.* 595 (emphasis added).

¹⁰² *Id.* at 595–96 (emphasis added).

¹⁰³ *Id.* at 609 (establishing the federal government’s plenary power to regulate immigration); 606–07 (supporting the idea that the federal government has the authority to exclude “foreigners of a different race in this country, who will not assimilate with us” if the government concludes it would be “dangerous to its peace and security”).

one common response is the use of respectability narratives.¹⁰⁴ For example, studies on DREAMers highlight deliberate decisions made by activists to frame young, unauthorized migrants in sympathetic ways to counter the problem narratives offered about unauthorized migrants.¹⁰⁵ The DREAMer concept did not exist in 2000, yet by 2010 undocumented youth were a cognizable subgroup of the unauthorized migrant population.¹⁰⁶ Immigrant rights advocates worked to craft a compelling representation of undocumented youth in order to distinguish them from the broader unauthorized migrant population. The respectability narrative emphasizes the young people's innocence in the decision to enter the United States without authorization, their academic achievement, drive, and civic engagement.¹⁰⁷ This narrative also emphasizes the idea that

¹⁰⁴ See generally WALTER NICHOLLS, *THE DREAMERS: HOW THE UNDOCUMENTED YOUTH MOVEMENT TRANSFORMED THE IMMIGRANT RIGHTS DEBATE* (2013); Keyes, *supra* note 15; Jennifer J. Lee, *Outsiders Looking In: Advancing the Immigrant Worker Movement Through Strategic Mainstreaming*, 2014 UTAH L. REV. 1063 (2014); Lucy E. Salyer, *Baptism By Fire: Race, Military Service, and U.S. Citizenship Policy, 1918–1935*, 91 J. AM. HISTORY 847 (2004); see also Elizabeth Keyes, *Race and Immigration, Then and Now: How the Shift to ‘Worthiness’ Undermines the 1965 Immigration Law’s Civil Rights Goals*, 57 HOWARD L.J. 899 (2014) [hereinafter *Race and Immigration, Then and Now*].

¹⁰⁵ See, e.g., NICHOLLS, *supra* note 104; Keyes, *supra* note 15.

¹⁰⁶ NICHOLLS, *supra* note 104, at 2, 4, 45.

The term DREAMer comes from the name of proposed federal legislation that would provide a pathway to citizenship for certain undocumented youth. The Development, Relief, and Education for Alien Minors Act (“DREAM Act”) would create a pathway to lawful immigration status and ultimately citizenship for individuals who entered the United States under the age of sixteen, have been physically present in the United States for at least five years, have earned a high school diploma or a GED, have good moral character, and are not inadmissible or deportable due to criminal activity or national security concerns. See, e.g., DREAM Act of 2010, S. 3992, 111th Cong. § 4(a)(1) (2010). Qualifying individuals would receive conditional lawful permanent residence status that would be valid for ten years. Within that ten-year period if a recipient completed two years of college or military service and maintained good moral character, then they could apply for regular lawful permanent resident status. After obtaining lawful permanent residence status they would satisfy a significant requirement for naturalization. See Banks, *supra* note 12, at 78.

¹⁰⁷ See, e.g., NICHOLLS, *supra* note 104, at 52–55; WILLIAM PÉREZ, *AMERICANS BY HEART: UNDOCUMENTED LATINO STUDENTS AND THE PROMISE OF HIGHER EDUCATION* 1–2, 15 (2012) [hereinafter *AMERICANS BY HEART*]. In recent years DREAM advocates have moved away from the “innocent” aspect of the DREAMer narrative because of the impact it had on the construction of their parents. DREAM activists have become sensitive to this dilemma as DREAMers themselves have taken more of a leadership role in the movement. One strategy has been to extend the goodwill given to DREAMers to their parents. An example is the deployment of the phrase “parents are the first Dreamers.” See, e.g., *Celebrating Parents, the Original Dreamers*, DEFINE AMERICAN (Mar. 14, 2013), <http://www.defineamerican.com/blog/post/celebrating-parents-the-original-dreamers> [https://perma.cc/VX6W-ARZA]. This strategy seeks to recast adult decisions to enter or remain in the United States without lawful status as a noble sacrifice in response to “structural or political forces and not a matter of choice.” NICHOLLS, *supra* note 104, at 127. Another example is a poster with the image of a traditional nuclear family with one son and one daughter. The text reads, “My parents are courageous and responsible.

DREAMers come from traditional families that have strong work ethics and that the United States is the only country that they know of as home.¹⁰⁸ This DREAMer narrative is reflected in education scholar William Pérez' statement that undocumented youth have "been educated in our schools, they speak English (often with more ease than they do Spanish), envision their futures here, and have internalized U.S. values and expectations of merit; yet they have no available paths for formal legal integration."¹⁰⁹

In the immigrant worker context, legal scholar Jennifer Lee offers two respectability narratives that have led to successfully litigating workplace violations, petitioning for immigration status, and obtaining public policy reforms.¹¹⁰ The first is framing unauthorized immigrant workers as "workers who contribute to society through the dignity of their own work."¹¹¹ This framing strategy emphasizes the similarities between those seeking legal reform and the broader public.¹¹² The worker frame also has the potential to be successful because it "resonates with mainstream tradition because of the almost mythic status of the United States as a place where hard work will accomplish the American Dream."¹¹³ The second useful frame constructs immigrant workers as the "victims of criminal employers" who refuse to abide by the rule of law.¹¹⁴ Lee argues

That's why I'm here!" *Id.* at 129 (displaying image entitled Courageous and Responsible Parents by Julio Salgado). This is an attempt to reconstruct adult decisions that contravene U.S. immigration law as responsible and courageous decisions to "provide a better life for their children." *Id.* at 128. One DREAM activist explained, "Our parents are still being blamed and criticized for our situation. Next time you hear someone blame the parents, tell them: MY PARENTS ARE COURAGEOUS AND RESPONSIBLE. THAT'S WHY I AM HERE!" *Id.* (quoting DREAM activist Facebook posting announcing the new messaging campaign). A DREAMer profiled in Humans of New York amplifies this perspective. She explained, "Whenever I hear 'I stand with Dreamers,' I always think about my mom. I'm not willing to throw her under the bus. I'm not willing to be a bargaining chip to make her seem like a criminal. Everything people admire about Dreamers is because of our parents." Humans of New York, <http://www.humansofnewyork.com/post/165566066856/we-were-pretty-poor-back-in-mexico-my-parents> [<https://perma.cc/7AXE-E9KJ>].

¹⁰⁸ See, e.g., NICHOLLS, *supra* note 104, at 52–55; AMERICANS BY HEART, *supra* note 107, at 15.

¹⁰⁹ WILLIAM PÉREZ, WE ARE AMERICANS: UNDOCUMENTED STUDENTS PURSUING THE AMERICAN DREAM xxx (2009).

¹¹⁰ Lee, *supra* note 104, at 1064. Lee provides examples of successful suits for unpaid wages, access to immigration status based on victimization, and local policy reforms to address wage theft and the misclassification of employees as independent contractors. *Id.* at 1071–83.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 1070.

¹¹⁴ *Id.*

that this frame “resonates with mainstream cultural narratives that seek to criminalize ‘new or pressing social challenges.’”¹¹⁵

The social science literature on social movements explains the frequent turn to respectability narratives. Strategic framing is a strategy to change social meanings within a community.¹¹⁶ Shifts in social meaning are an important part of legal reform efforts for groups or causes that have been constructed as a problem within a community. As shown in Part I, when immigrant groups are constructed as a problem it becomes easier to limit their legal rights. Yet when immigrants are framed in ways that allow mainstream Americans to conclude that they are “just like us,” it is more likely that immigrants’ legal rights will be closer to those of citizens.¹¹⁷

A. *In Theory*

Respectability narratives respond to problem narratives. The goal of respectability narratives is to change the social meaning of the immigrant group that has been constructed as a problem and denied legal rights. Problem narratives construct immigrant groups as harmful in very specific and predictable ways. Problem narratives draw upon particular aspects of dominant American culture and emphasize the ways in which the target immigrant group not only lacks the desired values,

¹¹⁵ *Id.* (quoting James Foreman, Jr., *Exporting Harshness: How the War on Crime Helped Make the War on Terror Possible*, 33 N.Y.U. REV. L. & SOC. CHANGE 331, 346–47 (2009)).

¹¹⁶ See David A. Snow et al., *Frame Alignment Processes, Micromobilization, and Movement Participation*, 51 AM. SOC. REV. 464, 467–68 (1986). Frames are “schemata of interpretation” that enable one “to locate, perceive, identify, and label a seemingly infinite number of concrete occurrences.” ERVING GOFFMAN, *FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE* 21 (1974). Within the sociological literature on social movements strategic framing refers to

an interpretive schemata that simplifies and condenses the “world out there” by selectively punctuating and encoding objects, situations, events, experiences, and sequences of actions within one’s present or past environment . . . Collective action frames not only perform this focusing and punctuating role; they also function simultaneously as modes of attribution and articulation.

David A. Snow & Robert D. Benford, *Master Frames and Cycles of Protest*, in *FRONTIERS IN SOCIAL MOVEMENT THEORY* 133, 137 (Aldon D. Morris & Carol McClurg Mueller eds., 1992).

¹¹⁷ This is due in large part to the “well-known relationship between law and culture where law is ‘neither objective nor fixed but rather dependent on the relationship law shares with the dominant cultural and social patterns of society.’” Lee, *supra* note 104, at 1068 (quoting GARY MINDA, *POSTMODERN LEGAL MOVEMENTS: LAW JURISPRUDENCE AT CENTURY’S END* 114 (1995)). Lee explains that for immigrant workers “[l]aw depends on dominant cultural norms, which have constrained the rights of immigrant workers. As a result, immigrant workers, community advocates, and public interest attorneys have been forced to embrace, construct, and perpetuate mainstreaming narratives of immigrant workers in legal cases, public policy campaigns, and grassroots actions.” *Id.* at 1064.

norms, and practices, but also how their actual values, norms, and practices endanger American social, political, or economic life.

Within the immigration and citizenship context, legal decision makers have emphasized six aspects of American culture as being imperative for future citizens to possess.¹¹⁸ They are a commitment to democracy, adherence to the rule of law, Christian beliefs and morals, English-language skills, self-sufficiency, and a belief in individualism.¹¹⁹ An analysis of congressional hearings and debates, administrative records, and judicial opinions between 1870 and 1943 reveals that citizenship decision makers believed that future citizens had to be “fit for self-government.” The values, norms, and practices necessary for fitness for self-government were the six aspects of American culture deemed imperative for future citizens to possess.¹²⁰ Legislative, administrative, and judicial officials have regulated access to citizenship based on their understanding of an immigrant groups’ conformity with these values, norms, and practices.¹²¹

Of these six aspects of American culture, lawmakers have emphasized different features at different times in American history. For example, Chinese laborers were constructed as problematic in the late nineteenth century based on a perceived lack of experience with democracy, non-Christian religious practice, and speaking Chinese.¹²² Ironically legal decision makers did not view Chinese immigrants’ self-sufficiency positively in the late nineteenth and early twentieth century.¹²³ Rather than being viewed as evidence of embodying a vital aspect of American culture, legal decision makers saw Chinese immigrants’ ability to be self-sufficient with low wages as a threat to American workers’ wages.¹²⁴ In the late nineteenth and early twentieth century, legal decision makers viewed American Indians as lacking self-sufficiency, English-language skills, and a belief in individualism.¹²⁵ This construction shaped federal law governing American Indian access to U.S. citizenship.¹²⁶ Today

¹¹⁸ Banks, *supra* note 53, at 69–81.

¹¹⁹ *Id.* at 69. Loyalty is another norm that legal decision makers have deemed important for future citizens, but this norm is generally only highlighted during times of war. Legal decision makers have placed less emphasis on this norm during peace time.

¹²⁰ *Id.* I focus on the years 1870 to 1943 because this is when the most robust conversations about naturalization requirements took place.

¹²¹ *Id.*

¹²² *See supra* Section II.A.1.

¹²³ *See supra* Section II.A.1.

¹²⁴ *See* Banks, *supra* note 53.

¹²⁵ *Id.*

¹²⁶ *See id.* For example, treaties required American Indians to demonstrate that they were “sufficiently intelligent and prudent to control their affairs and interests.” *See, e.g.,* Treaty with the Potawatomi, 1861, *reprinted in* II INDIAN AFFAIRS: LAWS AND

politicians have constructed Latino immigrants as individuals who do not respect the rule of law because they enter or remain in the United States without authorization, and as a group that refuses to learn and speak English.¹²⁷ Violating these two core aspects of American culture enable Latino immigrants, regardless of immigration status, to be viewed as criminals who are unwilling to adopt mainstream American values, norms, and practices. This construction of Latino immigrants justifies the limited rights that unauthorized migrants have in the United States because of the conflation of unauthorized migrants and Latino immigrants.¹²⁸

Respectability narratives respond to the problem narratives by offering an alternative image of the group seeking legal rights. The focus has been on the same aspects of American culture that have been emphasized by legal decision makers in the immigration and citizenship context—a commitment to democracy, adherence to the rule of law, Christian beliefs and morals, English-language skills, self-sufficiency, and a belief in individualism. In the same way that problem narratives do not necessarily address all of these aspects of mainstream American culture, respectability narratives may focus on one or more of these values, norms, or practices. Individuals and groups seeking reform will identify the most compelling aspects of the groups seeking legal rights and emphasize the corresponding values, norms, and practices.

The development of an effective respectability narrative also requires an understanding of the broader societal context to determine whether a particular narrative will resonate with

TREATIES 825 (Charles J. Kappler, ed. 1904) [hereinafter 1861 Potawatomi Treaty]; Treaty with the Kickapoo, 1862, *reprinted in* II INDIAN AFFAIRS: LAWS AND TREATIES 835 (Charles J. Kappler, ed. 1904) [hereinafter 1862 Kickapoo Treaty]; Treaty with the Delawares, 1866, *reprinted in* II INDIAN AFFAIRS: LAWS AND TREATIES 937 (Charles J. Kappler, ed. 1904) [hereinafter 1866 Delawares Treaty]. Other treaties required American Indians seeking U.S. citizenship to satisfy a court that they had “adopted the habits of civilized life, and have been able to support, for at least five years, themselves and families.” 1862 Kickapoo Treaty, *supra*, at 836; *see also* Act of Mar. 3, 1865, ch. 127, § 4, 13 Stat. 541, 562; 1866 Delawares Treaty, *supra*.

¹²⁷ *See generally* LEO CHAVEZ, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENS, AND THE NATION* (2013); SAMUEL P. HUNTINGTON, *WHO ARE WE? THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY* (2004); NICHOLLS, *supra* note 104; *Illegal Aliens Taking U.S. Jobs*, FED. FOR AM. IMMIGR. REFORM (Mar. 2013), <http://www.fairus.org/issue/illegal-alien-taking-u-s-jobs> [<https://perma.cc/KCJ2-VYSF>]; *Illegal Immigration is a Crime*, FED. FOR AM. IMMIGR. REFORM (Mar. 2013), <http://www.fairus.org/issue/illegal-immigration-is-a-crime> [<https://perma.cc/TE56-TK38>].

¹²⁸ *See* Kevin R. Johnson, “*Aliens*” and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons, 28 U. MIAMI INTER-AM. L. REV. 263, 268 (1997); Angela M. Banks, *The Curious Relationship Between “Self-Deportation” Policies and Naturalization Rates*, 16 LEWIS & CLARK L. REV. 1149, 1154–55 (2012).

legal decision makers and the general public.¹²⁹ For example, a key aspect of the DREAMer narrative is academic success. Doing well in school is not a value, norm, or practice that legal decision makers have identified as important for citizenship. Yet academic success is an effective way for young people to signal self-sufficiency. Demonstrating that young undocumented migrants are committed to academic excellence, and are achieving it, suggests that these individuals have a strong work ethic, are success oriented, and will not be a financial burden on society. Beyond demonstrating self-sufficiency, the image of DREAMers as model students resonates with mainstream American society because it epitomizes the American Dream. The idea that anyone can make it in the United States if they work hard enough is part of our national narrative. Connecting the DREAMer narrative to a traditional national narrative increases the likelihood that the respectability narrative will resonate with decision makers and the general public. Respectability narratives that fail to resonate will not gain traction and will be unsuccessful. Therefore, the successful deployment of a respectability narrative requires connecting the narrative to the critical aspects of mainstream American culture, and it must resonate with decision makers and the public. Context plays an important role in determining whether a particular narrative will resonate with these audiences. The case study of the 1943 repeal of the Chinese Exclusion Act demonstrates the importance of context in shaping legal decision makers' openness to a new narrative.

B. In Practice: The Repeal of the Chinese Exclusion Act

In 1943 Congress reconsidered Chinese immigrants' access to U.S. citizenship via naturalization and decided to repeal the Chinese Exclusion Act.¹³⁰ This time the United States was in the midst of a world war and China was an ally. President Franklin D. Roosevelt viewed repealing the Chinese Exclusion Act and granting Chinese immigrants access to U.S. citizenship as a necessary war measure.¹³¹ President Roosevelt was supported by the House Committee on Immigration and Naturalization (House Committee) and numerous members of

¹²⁹ See, e.g., MYRA MARX FERREE ET AL., SHAPING ABORTION DISCOURSE: DEMOCRACY AND THE PUBLIC SPHERE IN GERMANY AND THE UNITED STATES 70 (2002) (discussing the importance of resonance in changing perceptions about social issues).

¹³⁰ See Repealing the Chinese Exclusion Laws, H. Rep. No. 732, at 1 (1943).

¹³¹ See 89 CONG. REC. 8576 (1943) (statement of Rep. Kennedy).

Congress, but there was a vocal opposition.¹³² The opposition argued that while the repeal may be an important war measure, the domestic cost would be significant social and economic unrest. Chinese workers would lower wages, take jobs away from “American boys,” and that Chinese values, norms, and practices would endanger American social beliefs and practices.¹³³ Supporters of the repeal did not spend much time countering the claim that Chinese workers lowered wages. They did however spend a significant amount of time responding to the claim that Chinese immigrants did not share mainstream American values, norms, and practices, and that their values, norms, and practices would threaten American social, political, and economic life.¹³⁴

1. Repeal as a Necessary War Measure

Japanese propaganda motivated many members of Congress to consider repealing the Chinese Exclusion Act. In 1943 China and the United States were part of the Allied Powers fighting the Axis Powers, which included Japan.¹³⁵ The House Committee heard testimony that Japan was using the United States’ prohibition on Chinese naturalization as a basis for encouraging Chinese citizens to support Japan. Congressman Samuel Dickstein, chairman of the House Committee, explained, “There are certain forces in China trying to turn the people against their government and against us by using our Exclusion Act as the basis for their propaganda.”¹³⁶ The Japanese government reminded the Chinese in China and throughout the world that Chinese laborers were prohibited from migrating to the United States and that all Chinese immigrants were prohibited from naturalizing to become U. S. citizens.¹³⁷

¹³² See, e.g., *id.* at 8574 (statement of Rep. Fish); see also *Repeal of the Chinese Exclusion Acts: Hearing on H.R. 1882 and H.R. 2309 Before H. Comm. on Immigration and Naturalization*, 78th Cong. 1, 54, 100–07 (1943) [hereinafter 1943 House Hearings] (statement of Congressman Samuel Dickstein, NY, Chairman).

¹³³ See, e.g., 1943 House Hearings, *supra* note 132, at 100–107.

¹³⁴ See, e.g., 89 CONG. REC. 8572–73 (statement of Rep. Sabath).

¹³⁵ See Eric Ting-Lun Huang, *The Modern Concept of Sovereignty, Statehood and Recognition: A Case Study of Taiwan*, 16 N.Y. INT’L L. REV. 99, 141 (2003).

¹³⁶ 1943 House Hearings, *supra* note 132, at 52.

¹³⁷ *Id.* at 14–15. (statement of William C. Johnstone, Dean of the Junior College, Professor of Political Science, George Washington University, Washington, D.C.) Professor William C. Johnston explained, “At the present time Japanese propaganda is predicated on saying, ‘Well, the United States says they are friendly to China but there is this Chinese exclusion law which is still on the books and consequently you need not believe what the United States says; just forget that.’” *Id.* (statement of William C. Johnston, Dean of the Junior College, Professor of Political Science, George Washington University, Washington, D.C.); see also *id.* at 52 (statement of Congressman Samuel Dickstein, NY, Chairman)

One effective way to neutralize the impact of the Japanese propaganda was to repeal the Chinese Exclusion Act. Dr. Taraknath Das, a professor at the College of the City of New York explained that, “[s]uch a legislation will be a great antidote against anti-American propaganda in the Orient.”¹³⁸ The need to combat Japanese propaganda was deemed important by the House Committee, but the war measure arguments were accompanied by arguments that repealing the Chinese Exclusion Act would not bring about social or economic unrest in the United States. Supporters of the repeal utilized respectability narratives to counter the idea that granting Chinese immigrants access to U.S. citizenship would endanger American social, political, and economic life.

2. Respectability Narratives in Congress

Respectability narratives were used in the hearings and floor debates to construct Chinese immigrants as individuals who shared American values, norms, and practices. The respectability narratives described Chinese immigrants as sharing a belief in and experience with democracy, having a strong work ethic, having high moral standards, Christian or believing in a higher power, a commitment to the rule of law, self-sufficiency, and individualism. These specific values, norms, and practices were important features of the respectability narratives because they were fundamental aspects of American culture for citizenship

(“There are certain forces in China trying to turn the people against their government and against us by using our Exclusion Act as the basis for their propaganda.”).

¹³⁸ 1943 House Hearings, *supra* note 132, at 33, 38 (statement of Dr. Taraknath Das, Dept. of History, The School of Education, The College of the City of New York, New York City). Ms. Buck made a similar statement explaining,

I could speak with some feeling, I can assure you, on the way the Chinese feel, as our allies in this war, when they are not allowed to enter our country on a quota, as is allowed to the peoples of Europe and Africa. The Japanese have not failed to taunt them with the friendliness of our words and the unfriendliness of our deeds. The Chinese have heard this propaganda and while they have not heeded it much, it has nevertheless been true. As a war measure, it would simply be the wisest thing we could do to make it impossible for Japan to use this sort of propaganda any more, by making it untrue.

Id. at 68 (statement of Miss Pearl Buck). Even the American Legion, a persistent opponent of the repeal, eventually came to support the repeal as a war measure. Yet accompanying this reversal in position the American Legion stated that it opposed “all immigration for permanent residence in the United States until such time as unemployment has dropped to less than 1,000,000.” 89 CONG. REC. 9992 (1943) (statement of Senator Andrews) (quoting telegram from Frank Sullivan of the American Legion to Senator Russell, Chairman Senate Committee on Immigration) (“By executive committee action, the American Legion favors the repeal of Chinese exclusion in our immigration laws.”).

purposes.¹³⁹ Between 1790 and 1952 significant changes were made to naturalization law in the United States. During this time period Congress debated naturalization requirements, administrative agencies adopted policies and procedures for implementing the naturalization statutes, and courts reviewed the naturalization decisions made by agency officials.¹⁴⁰ In each of these contexts legislative, executive, and judicial officials offered opinions about what values, norms, and practices were necessary for future American citizens.¹⁴¹ Individuals supporting the repeal of the Chinese Exclusion Act developed narratives about Chinese immigrants that drew on these fundamental aspects of American culture to demonstrate that the naturalization of Chinese immigrants did not threaten American culture. The existence of respectability narratives provided members of Congress with a basis for concluding that a measure designed to counter Japanese propaganda and assist the war effort would not have the negative consequences on American society predicted by opponents to the repeal.

a. General High Regard

One aspect of the respectability narrative used in the early 1940s regarding Chinese immigrants was that they were held in high regard by important segments of American society.¹⁴² While this does not clearly map on to the fundamental aspects of American culture for citizenship purposes identified above, it speaks to fitness for self-government more broadly. Representative Frances P. Bolton of Ohio testified that she had “a good many Chinese in my home. A good many of them go to my church. They are as constructive and as fine citizens as you could want.”¹⁴³ Frank T. Cartwright, wrote that based on his experience as a missionary in China he knew the “sterling character of the people of that land.”¹⁴⁴ Other witnesses went further to reassure the House Committee that providing for Chinese immigrant admissions would not be detrimental to American society. For example, Reverend John G. Magee of St. John’s Episcopal Church in Washington, D.C., explained that

¹³⁹ Banks, *supra* note 53, at 69–81.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² See *infra* text accompanying notes 157–171 (discussing congressional testimony from influential members of American society).

¹⁴³ 1943 House Hearings, *supra* note 132, at 59, 64 (statement of Frances P. Bolton, Member of Congress from the State of Ohio).

¹⁴⁴ *Id.* at 11 (letter from Frank T. Cartwright, China Secretary, Board of Missions and Church Extension of the Methodist Church).

“having lived in China with the people as intimately as I have, and believing in the high quality of the [O]rientalists that I know, I do not think it would create any great problem so far as the Chinese are concerned.”¹⁴⁵ He went on to note that repealing the Chinese Exclusion Act would

be a good thing for the country, because I have such belief in the people and their great cultural background. I think it would be an education for us to have some Chinese of the best cultural background in our midst, for the United States will occupy a new position in the future of the world.¹⁴⁶

S. Stanwood Mencken of New York City offered a similar opinion when he mentioned the Chinese students he studied with at Cornell University.¹⁴⁷ Mr. Mencken explained that, “When we had them at Cornell—and I know others feel the same way—we felt we had much to learn from those Chinese; it stimulated our intellectuality.”¹⁴⁸ He also noted that, “We can learn much from the Chinese, and they can make a tremendous contribution to our national culture.”¹⁴⁹ Dr. Arthur Hummel, the Chief of the Asiatic Division of the Library of Congress, similarly testified that Chinese immigrants did not present a threat to American society.¹⁵⁰ He stated that,

The Chinese is perhaps the most individualistic man in the world. I maintain that a people with that outlook on life can do us very little harm. Their ideals are very much like our own, in fact, more like our own than the ideals of some European nations that we know. There is nothing in their system of government that is antagonistic to ours, so far as I know.¹⁵¹

Within the House of Representatives several members expressed their general admiration for Chinese culture. For example, Representative Magnuson remarked, “In some respects, I will say that they are much more intelligent than some of us. I would like to model my own life after many Chinese precepts.”¹⁵² Representative Mansfield made similar remarks highlighting tolerance as a valued aspect of Chinese culture. He told the

¹⁴⁵ *Id.* at 15, 20 (statement of Rev. John G. Magee, St. John’s Episcopal Church, Washington, D.C.).

¹⁴⁶ *Id.* at 20. He then implied that any negative conceptions about Chinese culture were due to the class of Chinese immigrants in the United States. *Id.* (“The Chinese in this country are mostly the descendants of coolies.”).

¹⁴⁷ *Id.* at 55, 58 (statement of S. Stanwood Mencken, 44 Wall Street, New York City).

¹⁴⁸ *Id.* at 58.

¹⁴⁹ *Id.* at 56.

¹⁵⁰ *Id.* at 24–25 (statement of Dr. Arthur Hummel, Chief of the Asiatic Division of the Library of Congress).

¹⁵¹ *Id.* at 25.

¹⁵² 89 CONG. REC. 8586 (1943) (statement of Rep. Magnuson).

House, “[w]e ought to wake up and realize that of all people the Chinese are the most tolerant. Every religion—Catholic, Jewish and Protestant—has been welcomed in China. Every people has been welcomed in China. It is the occidental who is intolerant, not the Chinese.”¹⁵³

Supporters of the repeal crafted a respectability narrative that demonstrated that Chinese citizens and immigrants in the United States were generally held in high regard. Witnesses and members of Congress used this idea to counter the idea that Chinese immigrants were economically and socially dangerous.

b. Democracy

Another aspect of the respectability narrative used by those seeking to repeal the Chinese Exclusion Act was illustrating Chinese immigrants’ commitment to and experience with democracy. In the 1790s suspicion of immigrants focused on concerns that they lacked the values, norms, and practices necessary for democratic governance.¹⁵⁴ This has been a consistent feature of the problem narratives used to limit immigrants’ access to citizenship.¹⁵⁵ Supporters of the repeal countered this perception directly by explaining that Chinese citizens had democratic values and experience with democratic governance.

A range of individuals testified about China’s experience with democracy. For example, Representative Bolton explained that the Chinese Constitution mirrored the principles of the U.S. Constitution.¹⁵⁶ Reverend Bishop Yu Pin described how the founder of the Chinese Republic, Sun Yat-Sen, had been inspired by the U.S. Constitution, and how the children of China were learning that “equality of race, religion, and class, and liberty for all is the law of the land in China today.”¹⁵⁷ The Chief of the Asiatic Division of the Library of Congress, Dr. Hummel, similarly stated that the Chinese people are a “socially democratic people They have a fundamentally democratic approach to life.”¹⁵⁸ Pulitzer Prize winning author Pearl Buck provided a similar assessment when she explained that

¹⁵³ *Id.* at 8604–05 (statement of Rep. Mansfield).

¹⁵⁴ Banks, *supra* note 53, at 69–81.

¹⁵⁵ *See, e.g., supra* text accompanying notes 118–128.

¹⁵⁶ 1943 House Hearings, *supra* note 132, at 59, 61 (statement of Frances P. Bolton, Member of Congress from the State of Ohio).

¹⁵⁷ *Id.* at 13 (statement of Rev. Bishop Yu Pin).

¹⁵⁸ *Id.* at 24–25 (statement of Dr. Arthur Hummel, Chief of the Asiatic Division of the Library of Congress, Washington); *see also id.* at 30–31 (statement of Rev. John J.

[t]he Chinese people are democratic throughout their history, and I cannot agree with that gentlemen today who said China is in a state of chaos. I have lived in the most interesting period of Chinese life, when she has been changing from the Old Empire into the modern form. The people are democratic people from the Old Empire. The center of rule was in the people of the villages. They are trained and ready because they have had for centuries the democratic idea.¹⁵⁹

Members of Congress provided similar assessments during the floor debates in the House. Representative McCormack explained that “[o]ur Constitution has been her governmental inspiration. Her children quote with pride our constitutional guaranties of liberty and equality. . . . The principles of the Government of China of today flow from their understanding of the principles of American Government. China is essentially a democratic people.”¹⁶⁰ Representative Vorys described the “democratic spirit” of the Chinese, and Representative Ford highlighted the Chinese peoples’ love of liberty.¹⁶¹ He noted that this love was “so intense that they are willing to sacrifice blood and treasure immeasurably to sustain that principle.”¹⁶² These statements were intended to reassure Congress and the public that allowing Chinese citizens into the American political community as citizens would not threaten American democracy.

c. Christian & Hard Working

Two other aspects of the respectability narrative used to support the repeal were Chinese immigrants’ Christianity and strong work ethic. While the United States was founded on the idea of separation of church and state, Christian values and norms have been viewed as an important part of America’s moral foundation.¹⁶³

Numerous hearing witnesses and members of Congress noted that a—significant number of Chinese people were Christian, or at least did not deny the existence of God. For example, Representative Frances P. Bolton made a point to note that throughout China’s long history her people never “denied

O’Farrell, Associate Editor of Jesuit Missions, New York City) (describing Chinese citizens as “[b]eing democratic in spirit”).

¹⁵⁹ *Id.* at 74 (statement of Miss Pearl Buck). Pearl Buck was raised in China by missionary parents.

¹⁶⁰ 89 CONG. REC. 8580 (1943) (statement of Rep. McCormack). He also described China’s leaders, Madam and Generalissimo Chiang Kai-shek as “great, democratic, Christian leaders of a new and awakened China.” *Id.* at 8582.

¹⁶¹ *Id.* at 8627–28 (statement of Reps. Ford & Vorys).

¹⁶² *Id.*

¹⁶³ See JAMES H. KETTNER, *THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1608–1870*, 215 (1978) (discussing state naturalization religious requirements).

the existence of Deity.”¹⁶⁴ She noted that “[t]he fact that she does not define Deity as some others do does not matter at all.”¹⁶⁵ She went on to quote the Bible verse, “In my Father’s house are many mansions.”¹⁶⁶ Ms. Pearl Buck was more direct on the issue of Christianity in response to a question from a member of the House Committee.¹⁶⁷ She answered that while she did not know how many individuals in China were Christian, she thought that Chinese citizens “appreciate very much the value of Christianity, and of course, Madam and Generalissimo Chiang Kai-shek [the political leader of China] are Christians. That is very important.”¹⁶⁸ During the floor debates in both the House and the Senate, members of Congress also mentioned the Christianity of Madam and Generalissimo Chiang Kai-shek. For example, Representative Rankin described Madame Chiang Kai-shek as “the greatest Christian leader that China has seen in 1,900 years.”¹⁶⁹ Senator Andrews also described the leaders as Christians.¹⁷⁰ Representative Kennedy went further to discuss the religion of Chinese citizens. During the House floor debates he read a letter stating that “[s]everal millions of [Chinese citizens]” were Christian.¹⁷¹ Discussing Chinese citizens as Christian was an explicit effort to refute the perception that they were pagans. In 1870 concerns about paganism played a significant role in members of Congress viewing Chinese immigrants as a social threat to American society.

A key argument against Chinese immigrant eligibility for naturalization was that they posed an economic threat because they were willing to work for low wages and had a strong work ethic.¹⁷² The combination of these two factors made it hard for native-born Americans to compete. Supporters of the repeal used Chinese immigrants’ attitudes toward work to support the respectability narrative. This attitude was used as evidence of compliance with the Protestant work ethic—a fundamental American belief and practice. This narrative served to cast

¹⁶⁴ 1943 House Hearings, *supra* note 132, at 59 (statement of Rep. Frances P. Bolton).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 68, 77 (statement of Miss Pearl Buck).

¹⁶⁸ *Id.* at 77.

¹⁶⁹ 89 CONG. REC. 8631 (1943) (statement of Rep. Rankin); *see also id.* at 8577 (statement of Rep. Kennedy) (noting that Generalissimo Chiang Kai-shek was a Christian); *id.* at 8631 (statement of Rep. Gossett) (“Madame and Generalissimo Chiang Kai-shek are great, democratic, Christian leaders of a new and awakened China.”).

¹⁷⁰ *Id.* at 9992 (statement of Sen. Andrews) (“By the way, . . . Mme. Chiang is a Christian, as is her husband also.”).

¹⁷¹ *Id.* at 8577 (statement of Rep. Kennedy).

¹⁷² *See, e.g.*, 1943 House Hearings, *supra* note 132, at 50 (statement of Roscoe Walker, Junior Order of United American Mechanics).

Chinese immigrants' diligence in a new light. Rather than viewing it as a threat to American workers, supporters of the repeal recast it as evidence of compliance with a quintessential American norm—the Protestant work ethic—and as a resource that improved American society. Chinese immigrants' commitment to work was presented as evidence of assimilation rather than a threat to American society.

Supporters of the repeal also explained how this work ethic had facilitated the growth and development of the United States. Dr. Taraknath Das commented on the role of Chinese immigrants in the development of agriculture. He explained that despite facing significant discrimination Asian immigrants “did far more to develop the Pacific coast, at least agriculturally, than European immigrants, placed under similar handicaps.”¹⁷³ Oswald Garrison Villard from the National Peace Conference & Affiliated Organizations reminded the House Committee of the role that Chinese laborers played in the construction of the transcontinental railroad. He said,

I want to remind you of the great things that Chinese labor did for us in the opening up of the western portion of this country. I am a son of the man who drove the first transcontinental railway across the American Northwest, the first rail link from Minnesota to Oregon and the waters of Puget Sound.¹⁷⁴

Not only was their labor necessary for the completion of this project, but the work ethic displayed by the Chinese laborers was heroic. Mr. Villard explained that his father “never forgot and never failed until the end of his life to praise the Chinese among them, of whom nearly 10,000 stormed the forest fastness, endured cold and heat and the risk of death at the hands of hostile Indians to aid in opening up our great northwestern empire.”¹⁷⁵ He read a dispatch from the chief engineer of the Northwestern Pacific that detailed how “the Chinese laborers went out into [eight] feet of snow with the temperature far below zero to carry on the work when no Americans dared face the conditions.”¹⁷⁶

¹⁷³ *Id.* at 33, 35 (statement of Dr. Taraknath Das, Department of History, The School of Education, the College of the City of New York, New York City).

¹⁷⁴ *Id.* at 92–94 (statement of Oswald Garrison Villard, National Peace Conference & Affiliated Organizations). Chinese laborers were also instrumental in building the Panama Canal. *Id.* at 94.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

d. Morals, Rule of Law, & Self-Sufficiency

The final aspect of the respectability narratives used by supporters of the repeal was to frame Chinese immigrants as sharing American morals, belief in the rule of law, self-sufficiency, and individualism. The overwhelming number of comments regarding Chinese citizens' and Chinese immigrants' morals were positive and highlighted high moral standards. For example, during the House Committee hearings on the repeal Ms. Buck spoke of the Chinese citizens' high moral standards, noting that they "have high standards of ethics, of business ethics; we know that in our country."¹⁷⁷ She went on to note that she found "that their ethics are very high, the giving of a man's word—I think those of you who have dealt in business with the Chinese people know how outstanding that is, not repudiating debts, not liking to be on charity, honor to parents."¹⁷⁸ During the House floor debates Representative Ford described the Chinese people as "a reliable people; they possess traits of character that are entirely consonant with our own ideals; they are honest; they have on innumerable occasions demonstrated that they are loyal."¹⁷⁹ Representative Dewey noted that the "Chinese are a race known throughout the world for their willingness and desire to fairly settle their financial obligations."¹⁸⁰ Finally, Representative Gearhart explained that based on his "intimate association" with the Chinese people he knew them to "have wonderful qualities, I know them to be fine neighbors, I know them to be honest, upstanding, trustworthy. I regard them as highly desirable residents."¹⁸¹ A counter-narrative that depicted Chinese immigrants as purveyors and users of opium was offered once in the House of Representatives and once in the Senate.¹⁸² Despite this challenge to the respectability narrative, an overwhelming number of statements supported the respectability narrative with regard to Chinese immigrants' morals.

Problem narratives supporting Chinese exclusion and ineligibility for naturalization depicted Chinese immigrants as immoral and criminal. Therefore, another important aspect of the respectability narrative was portraying Chinese immigrants as individuals who were committed to the rule of law. Within the

¹⁷⁷ *Id.* at 68 (statement of Miss Pearl Buck).

¹⁷⁸ *Id.* at 75.

¹⁷⁹ 89 CONG. REC. 8628 (1943) (statement of Rep. Ford).

¹⁸⁰ *Id.* at 8627 (statement of Rep. Dewey).

¹⁸¹ *Id.* at 8629 (statement of Rep. Gearhart).

¹⁸² Representative White and Senator Reynolds expressed concern about Chinese immigrants' role in the importation of opium to the United States and their use of the product. Banks, *supra* note 53, at 20–21.

congressional hearings and during the floor debates, supporters of the repeal constructed respectability narratives that demonstrated respect for the rule of law. For example, Rev. John J. O'Farrell testified that Chinese immigrants "have consistently shown themselves to be an industrious and law-abiding group of people."¹⁸³ Ms. Buck also described Chinese immigrants as having a very low crime record.¹⁸⁴ Similar comments were made on the House floor. Representative Kennedy described Chinese immigrants as "industrious, hard-working, and law-abiding people."¹⁸⁵ Representative Sabath shared this sentiment when he stated that the Chinese people "cannot be charged with not being law abiding."¹⁸⁶ He went on to note that "Chinese people everywhere are law abiding and patriotic."¹⁸⁷ This aspect of the respectability narrative countered the idea that Chinese immigrants were a threat to public safety.

The final component of the respectability narrative utilized by supporters of the repeal was the idea that Chinese immigrants were self-sufficient. This aspect of the respectability narrative was constructed when witnesses and members of Congress described Chinese immigrants as able to take care of themselves without government assistance. For example, Representative Curtis noted "that of our Chinese settlement in Washington, all through our years of unemployment and so forth, there were no Chinese on relief."¹⁸⁸

Representatives Dondero and Gossett also raised this theme during the House floor debates. Representative Dondero explained that the "Chinese people are not only a peace-loving people but a people who have always sustained themselves."¹⁸⁹ He then asked Representative Gossett if he could "give the House any figures as to whether or not any Chinese in this country ever asked for maintenance or sustenance from the United States Government?"¹⁹⁰ Representative Gossett replied that he did "not have any figures as to that," but he had "never seen any of their pictures in the rogues' galleries."¹⁹¹ Representative Magnuson was able to provide some additional

¹⁸³ 1943 House Hearings, *supra* note 132, at 30–31 (statement of Rev. John J. O'Farrell, Associate Editor of Jesuit Missions, New York City).

¹⁸⁴ *Id.* at 68–70 (statement of Miss Pearl Buck).

¹⁸⁵ 89 CONG. REC. 8576 (1943) (statement of Rep. Kennedy).

¹⁸⁶ *Id.* at 8573 (statement of Rep. Sabath).

¹⁸⁷ *Id.*

¹⁸⁸ 1943 House Hearings, *supra* note 132, at 64–65 (statement of Representative Carl T. Curtis, Nebraska). Ms. Buck explained that Chinese immigrants did not "go on relief." *Id.* (statement of Ms. Pearl Buck).

¹⁸⁹ 89 CONG. REC. 8583 (statement of Rep. Dondero).

¹⁹⁰ *Id.*

¹⁹¹ *Id.* (statement of Rep. Gossett).

information. He stated:

I have a large number of Chinese in my home city of Seattle. It so happens that during the trying days of the depression as a matter of curiosity one time I did check the W.P.A. roll. We had some 40,000 people on the W.P.A. roll in King County, in the State of Washington, and there was 1 lone Chinaman on that roll.¹⁹²

This was out of a Chinese immigrant population of approximately “15,000 to 18,000.”¹⁹³

Depicting Chinese immigrants as self-sufficient countered the idea that they would be a drain on American governmental and economic resources. This aspect of the respectability narrative suggested that Chinese immigrants would contribute to American society rather than take away from it.

During the congressional hearings and debates regarding the repeal of the Chinese Exclusion Acts in 1943 supporters of the repeal utilized respectability narratives to describe Chinese immigrants as individuals who shared American values, norms, and beliefs. Supporters of the repeal hoped to counter existing perceptions of Chinese immigrants as unassimilable and a threat to American domestic interests. Congress’s willingness to seriously consider a repeal bill was due in large part to President Roosevelt’s plea that the repeal was a necessary war measure.¹⁹⁴ Opponents of the repeal acknowledged its desirability as a war measure, but concluded that the domestic costs were too high. They argued that Chinese immigrants’ unassimilability would threaten American social, economic, and political interests. Consequently, the respectability narratives became an important tool in countering this perception of Chinese immigrants.¹⁹⁵

3. Problem Narratives in Congress

Numerous individuals testified before the House and Senate committees opposing the repeal of the Chinese Exclusion Act. These individuals utilized the same problem narratives that appeared in the Congressional debates in 1870 regarding American economic and social interests. These witnesses accepted the desirability of the repeal as a wartime measure, but

¹⁹² *Id.* (statement of Rep. Magnuson).

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 8576 (statement of Rep. Kennedy).

¹⁹⁵ *See infra* Section II.B.3.

responded that such a measure was not worth the significant domestic cost of economic and social unrest.¹⁹⁶

Concerns about social unrest were most often expressed as concerns about the inability of Chinese immigrants to assimilate.¹⁹⁷ These arguments reflect what historian Mae Ngai terms the “rule of racial unassimilability.”¹⁹⁸ This rule dictates that certain racial groups are incapable of assimilating and becoming American.¹⁹⁹ “During the Progressive era,” there was a belief in and commitment to “Americanizing immigrants.”²⁰⁰ This was done “through teaching the English language, the work ethic, the Constitution, and other democratic values.”²⁰¹ Legal prohibitions on Asian naturalization enacted during that period suggested that “Europeans could become Americans through education,” but Asian immigrants could not.²⁰²

Years later when Congress was considering the repeal of the Chinese Exclusion Acts, opponents of the repeal expressed similar ideas about Chinese immigrants. For example, Senator Holman explained:

I do not contend that the Chinese are an inferior race, but they, in large numbers, are incompatible in that their civilization and their

¹⁹⁶ These witnesses also attempted to downplay the importance of China as a wartime ally by noting that China fought valiantly to protect herself from Japanese domination. *See, e.g.*, 1943 House Hearings, *supra* note 132, at 103 (statement of James L. Wilmeth, National Council, Junior Order, United American Mechanics).

¹⁹⁷ At times witnesses opposing the repeal framed their opposition as based on a general desire for greater immigration restriction. Such witnesses also expressed their respect for Chinese people and culture. Yet these witnesses’ anti-Chinese sentiments were revealed in the written statements they submitted to Congress. For example, Mr. Walker, of the United American Mechanics, explained “we are not opposed to the Chinese people. We are opposed to the further increase of immigration because we do not believe it advisable, certainly at this particular time.” *Id.* at 48 (written statement of Roscoe C. Walker, State Council Secretary, Junior Order of the United American Mechanics of New Jersey, Trenton, NJ). Yet he also stated that Chinese immigrants “cannot be assimilated with the people of the United States.” *Id.* Additionally, Mr. Trevor explained that he had “Chinese friends,” and that he “admire[d] greatly their art; in fact I, for many years, have collected Chinese art. It is a hobby of mine.” *Id.* at 108 (statement of John B. Trevor, The American Coalition, Washington, D.C.). Yet he went on to describe the Chinese as “the most debased people on the face of the earth.” *Id.* at 109 (quoting Sen. Sargent).

¹⁹⁸ IMPOSSIBLE SUBJECTS, *supra* note 11, at 37. Ngai describes the Chinese Exclusion Act as “the first—and only—U.S. immigration law ever to name a specific group for exclusion on grounds of its alleged racial unassimilability.” MAE NGAI, *THE LUCKY ONES: ONE FAMILY AND THE EXTRAORDINARY INVENTION OF CHINESE AMERICA* 39 (Princeton Univ. Press 2012).

¹⁹⁹ IMPOSSIBLE SUBJECTS, *supra* note 11, at 37–50. Ngai identifies this as a rule governing “twentieth-century American racial ideology.” *Id.* at 37.

²⁰⁰ *Id.* at 42.

²⁰¹ *Id.*

²⁰² *Id.* Ngai also notes, “[f]or Europeans, assimilation was a matter of socialization and citizenship its ultimate reward. Asians, no matter how committed to American ideals or practiced in American customs, remained racially un-assimilable and, therefore, forever ineligible to citizenship.” *Id.* at 46.

racial characteristics are entirely divergent from our own. I base my thoughts on the subject not on the ground of inferiority of any race or group but on the ground of incompatibility when in large unassimilable groups they settle permanently among us.²⁰³

Opponents like Senator Holman argued that their opposition was based on a belief in racial differences between Chinese immigrants and American citizens, but not a belief in racial inequality or racial hierarchy.

This approach to racial and ethnic difference echoed claims made in the 1920s by organizations such as the California Joint Immigration Committee (CJIC) that Asian immigrants' unassimilability was "based on racial difference, not inequality."²⁰⁴ The CJIC was the successor to the Asiatic Exclusion League, which was formed around 1905 to bar "new Asian immigration."²⁰⁵ The CJIC was allied with "the American Legion, the California State Federation of Labor, the Grange, and the Native Sons of the Golden West."²⁰⁶ In 1924 V.S. McClatchy, leader of the CJIC, advocated a bar on Japanese immigration based on the differences between Americans and Japanese citizens.²⁰⁷ For example, he declared that the "yellow and brown races of Asia are the least assimilable. They are those races which are most difficult to amalgamate into American citizenship."²⁰⁸ He stated that the "yellow and brown races do not intermarry with the white race, and their heredity, standards of living, ideas, psychology, all combine to make them unassimilable with the white race."²⁰⁹ Mr. McClatchy explained that he made such statements

in no offensive sense. I have a very high regard for the character and ability of the Japanese nation and the Japanese people, and I realize that it is in effect their strong racial characteristics which make them so dangerous a factor if admitted to this country as permanent residents.²¹⁰

Mr. McClatchy was insistent that his objection to Asian immigration was based on racial differences, not racial inequality.

²⁰³ 89 CONG. REC. 9989 (1943) (statement of Senator Holman).

²⁰⁴ IMPOSSIBLE SUBJECTS, *supra* note 11, at 47.

²⁰⁵ *Id.*; LUCY E. SALYER, *supra* note 16, at 127.

²⁰⁶ IMPOSSIBLE SUBJECTS, *supra* note 11, at 47.

²⁰⁷ *Id.* at 47 ("The exclusion rhetoric of the [California Joint Immigration Committee] and others carefully promoted unassimilability based on racial difference, not inequality, although their racial animus was evident."); see also *Japanese Immigration Legislation, Hearings on S. 2576 before the Sen. Comm. on Immigration*, 68th Cong., 21–31 (1924).

²⁰⁸ *Id.* at 4.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 5.

Statements made before the Congressional committees and during the floor debates took a similar approach. Senator Reynolds explained,

[T]he provisions of the act of 1924, excluding persons ineligible to citizenship in the United States was written into that act on economic grounds. Congress never took the position that the white race was superior to the Mongolian or other Asiatic races. Congress was, in fact, concerned over the indisputable fact that the white race was unable to compete with Asiatics in any industrial or agricultural enterprise in which labor costs determine success or failure.²¹¹

He concluded that “[i]f Congress can be said to have taken a position which by implication raises the question of racial superiority or inferiority, it must be admitted to have conceded the superiority of Asiatics as compared with whites.”²¹² Senator Reynolds bolstered his position by reading various letters to newspapers. One letter he submitted stated the following, “There is no assertion that the Japanese, Hindus, Malays, or Chinese are inferior. There is merely an assertion that the introduction of yellow and brown common laborers would eventually lead to grievous race trouble in this country.”²¹³ Senator Thomas of Utah offered similar statements about racial difference. While Senator Thomas supported the repeal as a war measure, it was important to him that the repeal did not “lessen the restrictions against the great mass of Chinese who might wish to come to this country.”²¹⁴ His opinion that Chinese immigrants were different from American citizens may have motivated this perspective. Senator Thomas explained that

[t]here are no superior and inferior races, Mr. President. There are races with different habits of life, with different outlooks on life, with racial differences which make them incompatible, as the Senator from Oregon has stated, and there will probably always be an incompatibility between the white and the yellow races so long as they live apart from each other and so long as they follow the habits of their ancestors.²¹⁵

²¹¹ 89 CONG. REC. 10013 (1943) (statement of Senator Reynolds); *see also Hearing on S. 1404 and H.R. 3070 Before the S. Subcomm. Of the Comm. On Immigration*, 78th Cong. 87–90 (1943) [hereinafter 1943 Senate and House hearings] (statement of Sen. Radcliffe) (reading a letter from W. C. Hushing, Chairman, National Legislative Committee, American Federation of Labor to Charles O. Andrews, Chairman, Subcommittee of U.S. Senate Immigration Committee (Nov. 3, 1943)); *id.* at 92–100 (statement of Sen. Radcliffe) (reading a letter from James L. Wilmeth, National Secretary, National Council, Junior Order United American Mechanics to the Honorable Chas. O. Andrews, Chairman, Sub-Committee, Senate Immigration Committee (Nov. 2, 1943)).

²¹² 89 CONG. REC. 10013 (statement of Senator Reynolds).

²¹³ *Id.* at 10014 (1943) (letter from Edward R. Lewis to the Washington News).

²¹⁴ *Id.* at 9993 (statement of Senator Thomas).

²¹⁵ *Id.* (statement of Senator Thomas). The essence of Senator Thomas’ statement may have been undermined when he went on to state that President Wilson

Senator Thomas went on to describe the U.S. immigration system as one based on the “principle that a certain racial and ethnical compatability [*sic*] exists in the American Nation, and we want to keep it that way. Therefore, one nationality does not have an equal chance with another nationality in coming into the United States.”²¹⁶

Lack of assimilability was also the justification offered by opponents to the repeal before the House Committee. Three witnesses from the Junior Order of the United American Mechanics articulated this position. The written statements of Roscoe C. Walker, State Council Secretary, James L. Wilmeth, National Council, and Chas H. Hall, State Secretary of the State Council of Pennsylvania argued that Chinese immigrants could not assimilate with Americans, and the lack of assimilation would lower Americans’ standard of living.²¹⁷ For example, Mr. Walker explained that

[t]hese people cannot be assimilated with the people of the United States of America, intermarriage is not desirable, and their living habits and customs are such that were they to exist in great number and in many of our towns and cities, would tend to reduce our average living standard.²¹⁸

Mr. Hall echoed this perspective in noting, “We are opposed to this legislation because the yellow race does not mingle or amalgamate with the white race. Their lower standards of living can only be a detriment to the United States and our American way of life.”²¹⁹ Mr. Wilmeth explained, “It was soon found that the Asiatics, or yellow race, were so different in racial qualities, habits, and customs that it was practically impossible to make American citizens out of them.”²²⁰ John B. Trevor of the

was correct in opposing a provision declaring racial equality in the Covenant for the League of Nations because “there is no such thing as racial equality.” *Id.* Senator Thomas stated that it “does not exist.” *Id.*

²¹⁶ *Id.* at 9994 (statement of Senator Thomas).

²¹⁷ 1943 House Hearings, *supra* note 132, at 50 (statement of Roscoe C. Walker, State Council Secretary, Junior Order of the United American Mechanics of New Jersey, Trenton, NJ); *see also id.* at 53 (written statement of Chas. H. Hall, State Secretary of the State Council of Pennsylvania, Junior Order United American Mechanics); *id.* at 104 (written statement of James L. Wilmeth, National Council, Junior Order, United American Mechanics).

²¹⁸ *Id.* at 50 (written statement of Roscoe C. Walker, State Council Secretary, Junior Order of the United American Mechanics of New Jersey, Trenton, NJ).

²¹⁹ *Id.* at 53 (written statement of Chas. H. Hall, State Secretary of the State Council of Pennsylvania, Junior Order United American Mechanics).

²²⁰ *Id.* at 104 (written statement of James L. Wilmeth, National Council, Junior Order, United American Mechanics).

American Coalition also expressed this sentiment.²²¹ He declared, “It is my deliberate opinion that the Chinese are, morally, the most debased people on the face of the earth. Forms of vice which in other countries are barely named are in China so common that they excite no comment among the natives.”²²²

Witnesses like Mr. Walker and Mr. Trevor feared the failure of Chinese immigrants to assimilate for two distinct but related reasons. First, if Chinese immigrants did not assimilate they would retain their “much lower standards of living” and willingness “to work long hours for small pay.”²²³ This was viewed as unfair competition that would lower the wages and living conditions for American laborers. Several of the statements noted above speak to this concern. Second, Chinese immigrants’ failure to assimilate would exacerbate existing racial problems.²²⁴ On numerous occasions witnesses would mention the “Negro problem” existing in the United States, and contend that repeal of the Chinese Exclusion Act would lead to an equally significant “yellow race problem.”²²⁵ A main component of the “yellow race problem” was the competition Chinese immigrants would pose for American workers. It is not surprising that some of the most vocal opposition to the repeal of the Chinese Exclusion Act was from representatives of American laborers. The repeated claims by Mr. Walker, Mr. Hall, and Mr. Wilmeth that increased Chinese immigration would lower American standards of living were based on the idea that wages would drop in response to competition from Chinese laborers. Mr. Trevor expressed this concern when he testified that

these oriental people had been brought up in a civilization with much lower standards of living than we were accustomed to here in America, willing to work long hours for small pay. Their method of living, and the cheap foods which they consumed, put them in a position so that they could afford to work for prices at which the average American citizen would starve.²²⁶

²²¹ The American Coalition was located in Washington, D.C., and it was described as “an association of delegates representing about 100 patriotic societies.” *Id.* at 108 (statement of John B. Trevor, The American Coalition, Washington, D.C.).

²²² *Id.* at 109 (statement of John B. Trevor, The American Coalition, Washington, D.C.).

²²³ *Id.* at 104 (statement of James L. Wilmeth, National Council, Junior Order, United American Mechanics).

²²⁴ See, e.g., *id.* at 20 (statement of Representative A. Leonard Allen, Louisiana).

²²⁵ See, e.g., *id.* at 104, 107 (statement of James L. Wilmeth, National Council, Junior Order, United American Mechanics); *id.* at 66 (exchange between Representative William P. Elmer of Missouri and Representative Frances P. Bolton, of Ohio); 1943 Senate Hearings, *supra* note 97, at 56–57.

²²⁶ 1943 House Hearings, *supra* note 132, at 104 (statement of James L. Wilmeth, National Council, Junior Order, United American Mechanics).

Job competition that led to lower wages for laborers was deemed an unacceptable cost of repealing the Chinese Exclusion Act as a war measure.

While opponents of the repeal acknowledged the value of China as an ally in the war, they contended that there was a high domestic cost for such a measure—social and economic unrest within the United States. Such unrest would result from Chinese immigrants' failure to assimilate. The failure to adopt American beliefs and practices was viewed as exacerbating racial tensions within the country and lowering the wages and standard of living of American laborers. Those opposed to the repeal utilized problem narratives that framed Chinese immigrants as a threat to American economic and social interests.

In 1943 Congress was presented with competing narratives about Chinese laborers in the United States. Supporters of the repeal deployed respectability narratives to demonstrate that these immigrants shared essential American values, norms, and practices. The respectability narratives portrayed Chinese laborers as individuals who shared a belief in and experience with democracy, had a strong work ethic, high moral standards, were Christian or believed in a higher power, had a commitment to the rule of law, were self-sufficient, and believed in individualism. This narrative was meant to respond to the claims of the problem narrative that granting Chinese laborers access to U.S. citizenship would endanger American social and economic life. This problem narrative was presented to Congress and was offered to justify the continuation of the Chinese Exclusion Act. Proponents of the Act maintained that the domestic cost of repeal was simply too high despite the value of repealing this act as a war measure.

IV. THE LIMITS OF RESPECTABILITY NARRATIVES

Congress ultimately repealed the Chinese Exclusion Act in 1943, granted Chinese laborers greater access to the United States, and made these new immigrants eligible for citizenship. Yet the rules adopted for Chinese migration suggest that many members of Congress concluded that there was some merit to the problem narrative offered by supporters of the Chinese Exclusion Act.²²⁷ This Part analyzes the limited success of the repeal and concludes that the successful deployment of respectability narratives faces two significant hurdles. First, respectability narratives implicitly agree that legal rights

²²⁷ See *infra* note 244.

should only be available to individuals deemed worthy based on mainstream values, norms, and practices. Respectability narratives do not provide another basis for granting legal rights. Therefore, partial agreement with the respectability narrative will lead to limited rights. Second, decision makers may experience cognitive dissonance, which may prevent them from accepting the new information offered by a respectability narrative. If the respectability narrative is not accepted as valid or accurate the justifications for the status quo remain and new legal rights will not be provided.

The first Section of this Part examines the details of the repeal of the Chinese Exclusion Act and argues that they demonstrate that the respectability narratives were only moderately successful. The second Section elaborates on the problems of worthiness and cognitive dissonance as broader challenges to the successful deployment of respectability narratives.

A. *Limited Success in 1943*

The repeal of the Chinese Exclusion Act only allowed a limited number of Chinese immigrants to become citizens. The limited impact of the repeal was due to the application of the quota system to China and the limited number of Chinese immigrants already present in the United States who would be eligible to naturalize. One of the requirements for naturalization was lawful entry for permanent residence, which required admission via the quota system.

China was allotted a quota of 105 people, but the quota for China operated differently than the quotas for other countries.²²⁸ Pursuant to the 1924 Immigration Act the nationality of a person was determined by the individual's country of birth.²²⁹ For example, a person born in Germany would be considered German for purposes of determining which quota they fell within. Yet members of Congress expressed significant concern that individuals of Chinese descent born outside of China would have a non-Chinese nationality and thus fall within another country's quota. A common example raised was how individuals of Chinese descent born in Hong Kong would fall within the quota for Great Britain and Northern

²²⁸ Immigration Act of 1924, Pub. L. No. 68-139, §§ 4-5, 43 Stat. 153, 155; IMPOSSIBLE SUBJECTS, *supra* note 11, at 203. Ministers, students, and the wives and unmarried children under 18 of U.S. citizens could be admitted outside of this quota. Immigration Act of 1924 §§ 4-5.

²²⁹ Immigration Act of 1924 § 12(a).

Ireland because Hong Kong was a British colony.²³⁰ In 1943 only a fraction of the quota for Great Britain and Northern Ireland was being used annually—only 2.8 percent of the 65,721 slots were used.²³¹ If the statutory definition of nationality was applied to individuals of Chinese descent in Hong Kong, then Chinese-descended individuals could use the unused balance of the Great Britain and Northern Ireland quota, which was 63,856 in 1943.²³² This was thought to be undesirable.

The quota for individuals of Chinese descent was thus not assigned based on nationality, but by race. Section two of the repeal states, “[A]ll Chinese persons entering the United States annually as immigrants shall be allocated to the quota for the Chinese computed under the provisions of section 11 of the said Act.”²³³ Despite China’s large population and the significant number of individuals of Chinese descent outside of China, only 105 could be lawfully admitted for permanent residence each year.²³⁴ Consequently, a small number of individuals of Chinese descent would be eligible for naturalization each year.

After the repeal any Chinese-descended immigrant residing in the United States who otherwise satisfied the naturalization requirements would be eligible to naturalize.²³⁵ Members of Congress repeatedly noted that this population was small.²³⁶ For example, Attorney General Francis Biddle told Senator Richard B. Russell, Chairman of the Senate Committee on Immigration that “only approximately 45,000 Chinese residents who are in the United States would benefit directly” from making Chinese residents in the United States eligible for naturalization.²³⁷ Senator Holman provided similar figures. He stated that it was his “understanding that under the terms of the pending bill approximately 42,000 Chinese would be

²³⁰ See, e.g., 89 CONG. REC. 8582 (1943) (statement of Rep. Busbey); *id.* at 8588 (statement of Rep. Judd).

²³¹ *Id.* at 8632 (statement of Rep. Ramspeck).

²³² *Id.*

²³³ Chinese Exclusion Repeal Act of 1943, Pub. L. No. 78–199, § 2, 57 Stat. 600, 601. In a nod to nationality, “[a] preference up to 75 per centum of the quota shall be given to Chinese born and resident in China.” *Id.*

²³⁴ The actual number of admissions could be slightly higher because wives and minor children of U.S. citizens could be admitted outside of the quota, but this was not perceived as a significant source of future immigration.

²³⁵ Chinese Exclusion Repeal Act of 1943, Pub. L. No. 78–199, § 3, 57 Stat. 600, 601.

²³⁶ See e.g., 89 CONG. REC. 9994 (exchange between Senator White and Senator Andrews); *id.* at 8575 (statement of Rep. Dirksen); *id.* at 8581 (statement of Rep. Gossett) (“At this time there are 40,000 Chinese aliens in the continental United States and about 5,000 in Hawaii. Only a select few of these could become American citizens under our naturalization laws.”).

²³⁷ *Id.* at 9991 (statement of Senator Andrews) (quoting letter from Attorney General Biddle to Senator Russell).

permitted to become citizens. Five thousand of these are in the Hawaiian Islands.”²³⁸ Edward J. Shaughnessy, Deputy Commissioner of Immigration and Naturalization Service, similarly stated that the Chinese foreign-born population in the United States was approximately 37,000 individuals.²³⁹ In response to a request for an estimate as to how many of these individuals would be eligible for naturalization, Mr. Shaughnessy explained that very few had been admitted as permanent residents as many were present on a conditional basis or unlawfully.²⁴⁰ Senator Maybank stated that based on the figures provided by Mr. Shaughnessy only 17,000 Chinese residents would be eligible to naturalize.²⁴¹ Mr. Shaughnessy concurred, noting that 17,000 was high.²⁴²

Based on the figures mentioned during the congressional hearings and debates it was presumed that at most 40,000 Chinese residents might be eligible to naturalize.²⁴³ This combined with the admission of only 105 immigrants per year who would be eligible meant that the repeal of the Chinese Exclusion Act only allowed a limited number of Chinese immigrants to become citizens via naturalization.

While Chinese immigrants were not viewed as being as different and as dangerous as they were in 1870, they were not viewed in the same light as English or French immigrants. Despite the deployment of respectability narratives, Congress did not provide Chinese immigrants equal access to naturalization.

²³⁸ *Id.* at 9995 (statement of Senator Holman). Senator Holman went on to explain, “Some 20,000, or nearly that many, already are citizens, being native-born; and under the terms of the pending bill the balance, or approximately 17,000, would be permitted to apply for citizenship.” *Id.* The majority of the figures reported during the hearings and floor debates suggest that the Chinese foreign-born population in 1940 was approximately 40,000. *See, e.g., id.* at 9995; 1943 Senate and House Hearings, *supra* note 211, at 85, 104–05 (statement of E.J. Shaughnessy, Immigration Service, Department of Justice). The 20,000 native-born citizens that Senator Holman mentions should not have been subtracted from the 42,000 figure he provided. Thus, it appears that the total number of Chinese immigrants residing in the United States who may be eligible to naturalize, depending on their admission category, was around 40,000, not 17,000. 89 CONG. REC 8583 (1943) (statement of Rep. Hinshaw); *id.* at 8581 (statement of Rep. Gossett).

²³⁹ 1943 Senate Hearings, *supra* note 97, at 23–24 (statement of Edward J. Shaughnessy, Deputy Commissioner of Immigration and Naturalization Service). Deputy Commissioner Shaughnessy however explained that it was unclear how many of these foreign-born citizens may have been U.S. citizens at birth due to the citizenship of their father. *Id.* at 24.

²⁴⁰ *Id.* at 25–26 (statement of Edward J. Shaughnessy, Deputy Commissioner of Immigration and Naturalization Service).

²⁴¹ *Id.* at 25 (statement of Senator Maybank).

²⁴² *Id.* at 26 (statement of Edward J. Shaughnessy, Deputy Commissioner of Immigration and Naturalization Service).

²⁴³ 89 CONG. REC. 9994 (1943); 1943 Senate and House Hearings, *supra* note 211, at 104–05 (statement of Edward J. Shaughnessy, Deputy Commissioner of Immigration and Naturalization Service).

Instead, Congress created a new way of determining nationality to ensure that Chinese-descended individuals throughout the world would be limited to the small quota of 105 individuals. This approach to Chinese naturalization suggests that Congress remained concerned that Chinese immigrants were not “just like us,” and their presence in the United States in large numbers did endanger American social and economic life. The perceived differences between Chinese immigrants and mainstream Americans made some members of Congress cautious about expanding Chinese immigrants’ access to naturalization. In the end these concerns won out.²⁴⁴

B. Failing to Challenge Worthiness

The limited access that Chinese immigrants obtained to U.S. citizenship after the repeal of the Chinese Exclusion Act reveals an important limitation of the politics of respectability as a strategy for legal reform. This reform strategy accepts that worthiness, as defined by a particular conception of American culture, is a legitimate basis for allocating rights. Problematic conceptions of worthiness do not get challenged and some individuals and groups will be denied legal rights that they should have access to based on legitimate criteria. Consequently, the politics of respectability is not a strategy for addressing structural or institutional inequality.

Respectability narratives seek to convince decision makers that prevailing perceptions of the excluded group are inaccurate, and that the group is in fact worthy of citizenship. Respectability narratives do not suggest that the conception of worthiness and eligibility criteria are inappropriate or illegitimate. For example, advocates for the repeal of the Chinese Exclusion Act did not argue that Christianity was an illegitimate requirement for citizenship; they argued that Chinese immigrants were Christian. If there had been no plausible argument that Chinese immigrants were Christian the politics of respectability would not have been a useful strategy for repealing the Chinese Exclusion Act. Additionally, the failure to challenge Christianity as an implicit citizenship requirement

²⁴⁴ Whether these concerns won out because they were held by a majority of congressional members is difficult to know. The concerns of a powerful minority may have led to a compromise in which the Chinese Exclusion Acts would be repealed, but with a small quota for China and therefore limited actual access to citizenship. Alternatively, there may have been a majority who concluded that the repeal was a necessary war measure, but who were still concerned about large-scale Chinese access to U.S. citizenship.

perpetuated the idea that it was a legitimate criterion for citizenship despite Constitutional protection for freedom of religion and the separation of church and state.²⁴⁵ By accepting the status quo criteria for allocating rights, the politics of respectability does not challenge problematic criteria that reinforce structural or institutional inequality.

Even if one accepts that worthiness based on culture is a legitimate basis for allocating citizenship, identifying the values, norms, and practices that accurately characterize the state's culture will be a contested exercise. Different aspects of society are likely to emphasize different values, norms, and practice, and there may be few aspects of culture that unify the state. Absent agreement, allocating citizenship based on culture will privilege certain perspectives and interests within society and disadvantage other perspectives and interests.

Respectability narratives further entrench the perspectives and interests that are privileged in this process. This occurs because respectability narratives are rooted in the values, norms, and practices that legal decision makers admire and respect. While legal decision makers are not a homogeneous group, they are a group of individuals who have benefitted professionally from the power elite's understanding of American culture.²⁴⁶ As such the values, norms, and practices that they accept reflect a particular understanding of American society and who is worthy of citizenship.

By relying on the power elite's understanding of American society and culture, respectability narratives reinforce one image of the ideal citizen and the idea that only noncitizens who embody that image are worthy of citizenship. The image of the ideal citizen is narrowing and "reflecting an increasing intolerance of imperfection."²⁴⁷ Naturalization requirements that reflect less tolerance for imperfection ignore the structural failures that have created a noncitizen population within the United States that does not fit the image of an ideal U.S. citizen. Respectability narratives are therefore only available to individuals and groups who can be plausibly constructed as ideal future citizens.

Recent changes in the construction of DREAMers is based on this limitation of respectability narratives. As

²⁴⁵ U.S. CONST. amend. I.

²⁴⁶ Sociologist C. Wright Mills used the term "power elite" to refer to individuals "whose positions enable them to transcend the ordinary environments of ordinary men and women; they are in positions to make decisions having major consequences." C. WRIGHT MILLS, *THE POWER ELITE* 3–4 (reprint, 2000).

²⁴⁷ Keyes, *supra* note 15, at 102–03.

discussed in Part III, DREAMer advocates have moved away from emphasizing DREAMers' innocence because it reinforces their parents' lack of innocence.²⁴⁸ By arguing that DREAMers were not responsible for their unlawful presence in the United States, DREAMer advocates implicitly accepted the narrative that unauthorized migrants responsible for their immigration status did not respect the rule of law. As such they pose a threat to law and order in American society and are not worthy of a pathway to citizenship. The newer approach adopted by DREAMer advocates seeks to explain parents' migration decisions as responsible responses to "structural or political forces," not a cavalier disregard for law and order.²⁴⁹ This approach can be more challenging because stories about structural failures may not resonate as easily with legal decision makers and the general public. DREAMer advocates have addressed this concern by connecting structural failures to a universal parental concern—providing a better life for one's children.²⁵⁰ While there is growing public support for a pathway to citizenship for unauthorized migrants the DREAMer narrative has been successful in large part because it is a respectability narrative. Yet the success of the DREAMer narrative has made a pathway to citizenship for non-DREAMer unauthorized migrants more challenging to obtain because it failed to challenge mainstream conceptions of worthiness.

C. *Cognitive Dissonance*

Another challenge to the successful use of respectability narratives is cognitive dissonance. As rational, thinking human beings we like to think that once people have better information they will make better decisions. Respectability narratives are rooted in this belief. The idea is that an immigrant group has limited legal rights within the United States because of widespread acceptance of a problem narrative that presents a false or distorted image of the immigrant group. If that image can be corrected, then the justification for limited legal rights will vanish and legal rights will expand. Yet the introduction of new accurate information is not always accepted. As discussed in Section I.C psychologists have demonstrated that individuals have a very difficult time accepting new information that is

²⁴⁸ See *supra* note 107 and accompanying text.

²⁴⁹ NICHOLLS, *supra* note 104, at 127.

²⁵⁰ *Id.*, at 127–128. This narrative argues that parents migrated without authorization to escape unrelenting violence and extreme poverty that resulted from structural failures in order to provide a better life for their children.

inconsistent with their prior beliefs. Cognitive dissonance theory makes three main claims: (1) individuals seek consistency amongst their beliefs, (2) inconsistency in beliefs—dissonance—causes individuals discomfort, and (3) individuals will undertake a variety of actions to eliminate the discomfort.²⁵¹ One way that individuals avoid the discomfort associated with dissonance is to reject new information that is inconsistent. To the extent respectability narratives create dissonance they are likely to be rejected as inaccurate.

Cognitive dissonance presents a challenge for the successful use of respectability narratives. The purpose of respectability narratives is to challenge problem narratives that have justified limited legal rights for specific immigrant groups. Getting legal decision makers to change their perceptions of excluded groups requires these individuals to abandon existing beliefs. Research on cognitive dissonance indicates that decision makers are likely to dismiss or discount the information in the respectability narrative in order to maintain consistency in their beliefs. This could explain the limited access to naturalization granted to Chinese immigrants in 1943. As discussed in Section IV.A, while the prohibition against Chinese immigrant naturalization was lifted in 1943, the quota given to individuals of Chinese descent was only 105 people. Continued concerns about Chinese immigrants' values, norms, and practices may have caused members of Congress to create a new application of the national origin quotas to limit the number of Chinese immigrants eligible for citizenship.²⁵² The foreign affairs arguments in favor of the repeal and the deployment of respectability narratives to demonstrate that the repeal would not have negative domestic ramifications did not successfully convince a significant number of members of Congress. These individuals continued to believe that Chinese immigrants posed a threat due to their values, norms, and practices.²⁵³

By seeking to change the perception of excluded individuals and groups, respectability narratives face two significant challenges. The first is that these narratives accept the status quo conception of who is worthy of citizenship. The second is that the narratives may not be accepted due to cognitive dissonance. By accepting the status quo conception of

²⁵¹ FESTINGER, *supra* note 43, at 2–3.

²⁵² Immigrants were generally within the quota of the country in which they were born. Chinese immigrants, regardless of their country of birth or nationality, were placed within the China quota. Chinese Exclusion Repeal Act of 1943, Pub. L. No. 78–199, § 2, 57 Stat. 600, 601.

²⁵³ See *supra* note 244 and accompanying text.

who is worthy of citizenship respectability narratives reinforce a limited conception of the ideal citizen. This limits access to citizenship to immigrants who are able to credibly demonstrate to decision makers that they have the values, norms, and practices of an ideal citizen. Cognitive dissonance limits the ability of decision makers to receive the information provided by respectability narratives as valid and accurate. This makes it very difficult for the problem narratives to be displaced.

CONCLUSION

Historically and today certain individuals are excluded from citizenship because they are ineligible for naturalization. This article has examined one strategy for responding to citizenship exclusions—the politics of respectability. The use of respectability narratives is based on the premise that certain categories of people are excluded from citizenship because legal decision makers believe that they have values, norms, and practices that are incompatible with mainstream American society. Respectability narratives seek to change such beliefs by demonstrating that the excluded immigrants are committed to, and have adopted, mainstream American values, norms, and practices.

The case study of the 1943 repeal of the Chinese Exclusion Act demonstrates that respectability narratives reference aspects of American culture deemed important in the citizenship context. A commitment to democracy and the rule of law, belief in individualism and self-sufficiency, Christian beliefs and morals, and English-language skills are the values, norms, and practices that future citizens must demonstrate. These aspects of American culture allow excluded immigrant groups to demonstrate that they are culturally indistinguishable from mainstream American citizens. Respectability narratives tend to be directed toward legal decision makers and context shapes whether the narrative will be successful. For example, President Roosevelt's plea to repeal the Chinese Exclusion Act as an important war measure created a context in which members of Congress were more likely to be receptive to viewing Chinese immigrants as culturally American. Despite President Roosevelt's plea, there was strong opposition to the calls for repeal. The opposition was quite formidable, and the 1943 repeal only made a small number of Chinese immigrants eligible for naturalization.

The politics of respectability is limited in its potential effectiveness. This strategic response to exclusion fails to interrogate structural explanations for minimal adoption of American values, norms, and practices or the idea that access to

citizenship should only be available to immigrants who successfully embody one vision of American culture. Consequently, only immigrants who are viewed as respectable can utilize this strategy. Additionally, cognitive dissonance teaches us that the provision of new accurate information about immigrants may not displace problem narratives used to justify exclusion.

Despite these limitations the politics of respectability remains a strategy for obtaining legal rights because it provides a clear approach for responding to negative and inaccurate stereotypes. The politics of respectability only seeks to project the respectability of those seeking rights because they have been constructed as utterly unrespectable. Sometimes this is the result of framing different values, norms, and practices as threatening, and sometimes it is just inaccurate. For example, emphasizing Chinese immigrants' different religious tradition was framed as a threat even though there is nothing per se threatening about non-Christian populations in a country founded on the principle of religious freedom and the separation of church and state. When an individual or group is denied legal rights based on unfavorable and inaccurate narratives it is critically important that those narratives are challenged. This article has demonstrated that decisions regarding how to challenge such narratives can be as important as the decision to challenge.

Challenging inaccurate problem narratives in ways that demonstrate the humanity and variation within the community would be ideal. It is more challenging, however, to have such narratives resonate with the target audience. Nuance and complexity is not easy to convey in slogans, taglines, or logos. These challenges can be seen in the trajectory of the DREAMer narrative. Images of DREAMers in graduation caps and gowns and stories about DREAMer valedictorians who are unable to attend college because of prohibitive out-of-state tuition costs have become commonplace. Yet this narrative has evolved to challenge mainstream conceptions of worthiness in order for DREAMers to advocate on behalf of themselves and their parents. DREAMers realized that status for themselves while leaving their parents vulnerable to deportation was not a satisfying solution. A broader narrative reframing their parents' immigration violations has been less successful. While few Americans support mass deportation for the unauthorized migrant population, significant disagreement exists regarding a pathway to citizenship. Some of this disagreement stems from the idea that unauthorized migrants have violated a fundamental aspect of American culture—commitment to the

rule of law—and are undeserving of U.S. citizenship. Despite the limited success for DREAMers' parents, the narrative for DREAMers has been widely accepted and led to state and local laws and policies formalizing DREAMers' status as full members of the communities they live in. Remaining mindful that these successes may have come at the expense of their parents exemplifies the complicated consequences of using the politics of respectability to respond to legal exclusion.