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*A Discourse on Racial Purity and the Chinese
American in the Mississippi School System*

H Y U N G T A E K I M

*Intimate Spaces and Unwanted Bodies:
A Discourse on Racial Purity and the Chinese American
in the Mississippi School System*

Introduction:

Rosa Parks sat down. And black Americans rose up. Dr. Martin Luther King Jr. had a dream. And the Civil Rights Act of 1964 delivered that dream.

Though reductive, these four sentences capture what most remember of the Civil Rights Movement; the classical thesis if you will. This narrative paints a noble scene of revolution — one led by impassioned male leaders and fought in the battlegrounds of the court. However, scholars and pedestrians alike have questioned the veracity of this master narrative and interrogated its failings. Questions of *who*, *when*, and *how* have become central to this examination. *Who besides the male leadership of organizations such as the NAACP heralded change?* To this, autobiographers Jo Ann Robinson and Melba Beals point to a vast cohort of unsung heroes.¹ They draw our attention to the women and children who at once sustained the movement and have been forgotten by it. *When did the movement begin and where do we draw its temporal boundaries?* Though Rosa Parks's act of civil disobedience serves as a powerful symbolic genesis to the movement, scholars such as Jacquelyn Dowd Hall have pushed for a redrawing of these traditional perimeters. In her 2005 article, "The Long Civil Rights Movement and the Political Uses of the Past," Hall posits that the movement's origins can be traced all the way back to the New Deal Era and its inertia maintains into the present day.² *If not through legal campaigns, then how were Civil Rights leaders able to engender change?* In response, Charles

¹ Robinson, Jo Ann Gibson, and David J. Garrow. *The Montgomery Bus Boycott and the Women Who Started it: The Memoir of Jo Ann Gibson Robinson*. Knoxville: University of Tennessee Press, 1987. Beals, Melba. *Warriors Don't Cry: The Searing Memoir of the Battle to Integrate Little Rock's Central High*. Abridged ed. New York: Simon Pulse, 2007.

² Hall, Jacquelyn Dowd. 2005. "The Long Civil Rights Movement and the Political Uses of the Past." *The Journal of American History* 91 (4): 1233-1263.

M. Payne may direct us to the countless examples of community level coalition-building that incrementally challenged racial injustice in the local arena.³

These questions and their many answers show the Gordian knot that paradoxically interweaves the dialectical failings and the inherent promise of the Civil Rights narrative. Only because we are able to question its historicism are we able to recognize the memory of the Civil Rights Movement as a generative entity; one capable of accommodating more nuance and greater complexity. As such, this essay joins in the tradition of scholarship and literature that has ventured to problematized the overly monolithic canon of events that history has left us by introducing a previously uncelebrated body — the Asian American.

Through a case study of *Gong Lum v. Rice*, this paper follows the story of a Chinese American family and their fight to attend an all-white public school in the Mississippi Delta. Thus, to past research, I offer two contributions: one descriptive and one normative. Descriptively, I look to distill a robust procedural history of the case's evolution through the court system. This analysis will begin with a discussion on the unique cultural and historical epoch in which the case developed and further explore the legal, social, and economic status of the Mississippi Chinese. I focus on how these elements and the surrounding cultural milieu they inhabit informed the experiences of Gong Lum and his family. Then, I introduce the critical race and legal theory developed in Ian Haney López's *White by Law*. Using his analytical framework of white transparency and naturalization, I deconstruct the legal rationale used to argue and adjudicate the case. In doing so, I offer a discrete example of the ways in which non-white and non-black bodies navigated racialized America during the Long Civil Rights era and explore how judges used Chinese identity to reify legal whiteness.

Normatively, I look to expand on Lopez's theoretical framework by discussing issues insufficiently treated when working in this mode. Namely, I draw greater attention to the eugenic principles of racial purity that arise with a centrality and potency in *Gong Lum v. Rice* and trace parallels between this logic and exclusionary immigration policies that came into vogue during the early 20th century. To guide this teleological analysis, I introduce Reginald Oh's essay, "Interracial Marriage in the Shadows of Jim Crow: Racial Segregation as a System of Racial and

³ Payne, Charles M. 2007. *I've Got the Light of Freedom: The Organizing Tradition and the Mississippi Freedom Struggle*. Berkeley: University of California Press.

Gender Subordination” to place this case within a system of white supremacy and expand the ways in which the dispute has been conceptualized by Civil Rights scholars thus far. To that end, I suggest *Gong Lum v. Rice* is best studied not as a failed attempt at desegregation, but rather as a contest between larger discursive eugenic concerns and local individual interests.

The confluence of these descriptive and normative claims will serve as an opportunity to not only carefully locate the oft-forgotten Asian American within history of the Civil Rights Movement, but also demonstrate how the status of Asian Americans as *ornamental* entities within a black and white racial order can provide powerful clarity into the anatomy of racism and white supremacy at large.⁴

⁴ Before proceeding, I seek to clarify two aspects of my paper. First, a note on terminology: given that race is the central curiosity of this meditation, my work employs a vernacular often socially and historically suffused with a level of sensitivity and polemics. The resonances of these words, however, decay and inflect as cultural interpretations change. This process is further facilitated by some scholarly movements to replace the use of certain language with more ethical terms; “the enslaved” for “slave” being just one example. As such, when applicable, this paper attempts to subscribe to the pertinent conventions that seek to responsibly treat my historical subjects. In the absence of such guiding principles, however, I resort to the parlance of the early 20th century from which the legal artifacts and the historical narrative is drawn. While, indeed, this rhetorical choice reproduces a unique violence of its own and threatens the literal and affective embodiments of my subject (which perhaps defines the crisis of her - *Martha Lum's* - compromised ontology as a yellow woman and historicized being only made legible through the legal archive), I believe there is an important instructive labor performed by the linguistic animacies at play here as well. In particular, the discomfort mobilized by these titles by virtue of their “inherent” politics, creates the appropriate critical environment to responsibly engage with this perverse moment in Civil Rights memory. By accessing the index of destabilizing affectivities embedded within these words, I hope to push the reader to disrupt the emotional fixities that would allow them to otherwise read this narrative as anything but a portrait of an assaultive past from which flows our mutilated present.

Secondly, in revisiting the classical narrative of the Civil Rights Movement, I have suggested that scholars and activists have sought to problematize a history overly committed to the Hegelian dialectic and history’s perceived progressive march towards modernity. I have also suggested that this work has evaded any meaningful effort to situate the Asian American within this ever expanding constellation and field. However, I do not raise this point as a failure of the intellectual movement, but rather as an opportunity to align myself with it. At its best, my paper will serve as an extension of this effort to trouble the Civil Rights Movement and its legacy. It is with these principles in mind that I approach my research.

Part 1: *The Mississippi Chinese*

To begin, an examination of *Gong Lum v. Rice* makes necessary a discussion on the unique historical context from which it is drawn. In particular, it begs the question, *Who were the Mississippi Chinese and how did they get there?* To answer this question, I turn to as early as the end of the Civil War.

A voluminous history has developed around the failings of the Reconstruction Era and its ability to fundamentally emancipate blacks from not only enslavement, but also other pernicious modalities of oppression. Much of this literature illuminates how different exploitative institutions such as sharecropping, redlining, and “lynch-law” have collectively worked to impose the same operative effects of de jure slavery and make legible the unrealized promise of liberty. In turn, scholars have theorized on the causal origins to these vectors of despotism. Ideologists suggest that these exploitative systems are nothing but a part of the inimical technologies fashioned for the project of white supremacy. Economic historians have nuanced these claims by arguing that the labor crisis born out of emancipation served as a structural catalyst to the inception of this oppressive apparatus. It is within this latter explanation that a discussion on the Chinese diaspora in Mississippi most fruitfully begins.

During the antebellum era, the Mississippi agricultural economy was one built on and by the bodies of the enslaved. However, in the aftermath of the Civil War, the vast plantations of the Delta faced imminent collapse without the enslaved labor on which they once relied. Thus, in 1869, looking to somehow adapt, white planters began a campaign to attract a new proletariat into the region — the Chinese. Edward White quotes an editorial from the *Vicksburg Mississippi Times* where one of these owners claimed, “Emancipation has spoiled the negro and carried him away from fields of agriculture. Our prosperity depends entirely upon the recovery of lost ground, and we therefore say let the Coolies come, and we will take the chance of Christianizing them.”⁵ Though usually a catch-all term for unskilled workers from South and East Asia, “the Coolies” here specifically referred to a population of west coast male Chinese laborers with whom Southern agriculturalists sought to replace the formerly enslaved. Further packaged within

⁵ G. Edward White, "ARTICLE: THE LOST EPISODE OF GONG LUM V. RICE," *The Green Bag*, 18, 191 (Winter, 2015)

these perverted aspirations were assumptions of the Chinese as apolitical, docile, and assiduous; thereby making them ideal candidates for labor relief.⁶

For a brief moment, this prejudice did in fact serve as a powerful open door policy for Chinese immigrants to the American South but the terms of this influx were not as plantation owners had hoped. Instead of the reverent and programmable farmers they sought to subject, Southerners were met with actual humans that carried with them their own creed, aspirations, and perhaps most disappointingly, entitlements. White explains that “The Chinese who came to the United States after the Civil War were young male ‘sojourners,’ most of them from rural areas southwest of Canton, whose purpose was to find work, earn wages, save money, and remit some of their earnings to family members in China.” White goes on to say that most of the Chinese immigrants who settled in the Mississippi Delta in the post Civil War era had entered the United States with some existing financial resources and familial connections. In fact, “Many were the relatives of Chinese already residing in Mississippi [from as early as the Reconstruction Era], and many were given financial support to pay their passage and help establish them in businesses. And the business that the overwhelming number of Mississippi Delta Chinese entered was the grocery business” says White.

⁶ Though uncritical to this argument, I would like to take a moment to acknowledge the important ideological function served here by the Chinese male. Weighted upon them was not simply the task of materially resolving a local labor crisis, but also fictively sustaining a white supremacist imaginary. The very integrity of the regional social fabric necessitated that the white hegemon maintain the sedimented racialized order which was thought to be at risk. Thus to do this, yellow bodies and their potentialities were mobilized by these architects to fortify a discursive and capital economy that maintained a white monopoly on biopolitical power. Tragically, the legal archive fails to sufficiently illuminate the crushing gravity of this burden.

However, in reproducing and even articulating this racialized logic of the Southern agriculturalist, while also leaving silent the autonomy of the Chinaman, this narrative in fact reifies the very hierarchy perceived to be at stake. In doing so, a number of injuries emerge on these historicized bodies. First, rendered inaudible is the interiority of the Chinaman and the potential insights that might disclose *their* agency over the happenings discussed above. For the crash of intentionalists between yellow and white flesh in the Mississippi Delta was likely never as unidirectional as this footnote seems to suggest. Second, a dangerous slippage emerges between the discursive ellision of black and yellow bodies within this white social imaginary. A circular function of violent fungibility is formed whereby suggesting that the Chinese could replace the black erases the subjectivity of both victims simultaneously.

But for this author, redress for these injuries unfortunately remains outside the project of this paper. Though a very real desperation for atavistic rescue is stirred by the unfairness of these conditions, to do so by simply reading resistance or endurance into the Chinese men feels at once disingenuous and unearned. An impossible analytic troubles me in particular: on the one hand, an omission of resistance degrades the laborers as indeed docile and acquiescent thereby ratifying the original harm and on the other, a supposition of dissent makes illegible their capacity for and experience of pain, hesitance, and falter. Thus, both reduce the Chinaman as an autonom of sorts, where both lie on far extremes of the radical spectrum. As such, lacking the tools or the archival insights to responsibly attend to this choking dyad, I leave these issues to future writing for now.

A fascinating blend of niche economic and cultural factors made grocery stores particularly profitable for the Chinese who moved into the Mississippi Delta. For one, their status as other to a black-and-white racial order allowed them to serve patrons from both markets at a time in which white proprietors were unwilling to sell to black consumers. Furthermore, the black consumer market began to grow as the binding forces of plantation commissaries started to wane and black Americans accumulated (limited) independence and economic agency. Overtime, these Chinese owned grocery stores became not only a vehicle to financial stability, family reunification, and limited prosperity, but also an indelible feature of the Mississippi landscape.

By the 1920's, one of these grocery store proprietors was Gong Lum, an undocumented immigrant from the modern-day Guangdong province of China. Interestingly, his journey to Rosedale, Mississippi at once resembles yet deviates from the Chinese pursuit for normalcy traced by White above. Indeed, Lum settled in Mississippi thanks to the support of existing relatives within the region. However, leaving our reading at just that misses his perilous voyage to the Delta and the structural conditions that necessitated his path there. To shed light on this issue, we look to May 6, 1882, the day President Chester A. Arthur signed into law the Chinese Exclusion Act.

In doing so, President Arthur and the nation's legislatures conceived the first institutionally-recognized "illegal" race.⁷ In the words of the bill's authors, it was "the opinion of the Government of the United States [that] the coming of Chinese laborers to this country endanger[ed] the good order of certain localities within the territory thereof." Sang Hea Kil posits that a simple "fear of yellow" motivated the ratification of this act. Chinese laborers were not only a scapegoat onto which legislators could place blame for economic ills, but they were also pathologized as threats to white racial purity. Thus, Congress passed legislation to assuage such anxieties around the Chinese as perceived almost toxic hazards to the racial constitution of the proverbial white American polity.⁸

⁷ Lee, Erika. "Enforcing the Borders: Chinese Exclusion along the U.S. Borders with Canada and Mexico, 1882-1924." *The Journal of American History* 89, no. 1 (2002): 54-86. doi:10.2307/2700784.

⁸ I would be remiss not to situate the Chinese Exclusion Act of 1882 within a specific legal genealogy with its ancestral progenitor as the Page Act of 1875 authored by its namesake, California Congressman Horace Page. In his

To actualize these interests, the Chinese Exclusion Act became the first federal policy to regulate the entry of an entire ethnic working class by halting all but a tiny fraction of Chinese immigration and later, all cases of Chinese naturalization. In fact, only six categories of immigrants from China were allowed to even enter the country: teachers, students, tourists, properly certified returning laborers, merchants, and diplomats. Interestingly however, this draconian policy had the unintended effect of stimulating an “illegal” border crossing economy from Mexico and Canada. By repurposing existing smuggling networks for opium and other contraband, Chinese immigrants were able to find backdoor entries within America’s porous borders. In 1904, Lum took one of these illicit routes from Gam Saan, China through Canada and into Detroit by way of Lake Erie hidden as cargo. By the time Lum made this journey in 1904, the Chinese Exclusion Act had been renewed three times and would remain in effect for another 39 years.⁹

Upon arriving in Rosedale and following in the tradition of his other co-patriots in the Delta, Lum built a life for himself as a grocery store owner. Together with his wife, Katherine, they had three children: Martha, Breta, and Hamilton. In 1924, Martha reached the age of compulsory schooling and enrolled at Rosedale Consolidated High School, an all-white public institution. On her first day, the superintendent approached Martha and explained, by order of the school’s board of trustees, she was prohibited from attending the school because she was of Chinese descent, and thus “colored” and not “white.”¹⁰ Though one may be suspect of just how diplomatic the superintendent actually was, this account is as it was remembered in the lawsuit that Lum would eventually file against the school’s board in *Gong Lum v. Rice*.¹¹

own words, the purpose of the first restrictive federal immigration law was to “end the danger of cheap Chinese labor and immoral Chinese women.”

⁹ This conflation between personhood and deanimated objects or objectivity and animated bodies (between contraband and the chinese immigrant) provides a fascinating moment to explore the idiosyncratic racial formation of the yellow man. In particular, it invokes Anne A. Cheng’s argument of the ornamental ontology of American Asiatic femininity that interweaves conditions of objects with personhood rendering our subject position uniquely volatile as both a fleshy object and an inanimate embodiment. For future writing, I look to further explore how similar ellisions take shape between the Asian Man, and their service related proprietaries (grocery stores and restaurants in particular). Cheng, Anne Anlin. *Ornamentalism* New York, NY : Oxford University Press, [2019]

¹⁰ G. Edward White, "ARTICLE: THE LOST EPISODE OF GONG LUM V. RICE," *The Green Bag*, 18, 191 (Winter, 2015).

¹¹ In Adrienne Berard’s *Water Tossing Boulders: How a Family of Chinese Immigrants Led the First Fight to Desegregate Schools in the Jim Crow South*, she offers an unlikely story of heroism in Mississippi’s quotidian segregated education system that centers around Lum’s trail. But even as she reimages this space and history often only populated by white and black characters, there is an overly moralizing and aggrandizing register to the text. As

Part 2: *Critical Race Theory and Legal Whiteness*

Having discussed the historical context and condition of the Mississippi Chinese, I now turn to the case itself. Part 2 of this paper will lay the theoretical groundwork needed to offer a procedural history of *Gong Lum v. Rice* and its evolution through the court system. To guide this work, I introduce the relevant parts of Ian Haney López's *White by Law* and his theory.

López provides a thoughtful legal history into the common law invention of American whiteness. The author expertly distills a bilateral relationship between the social and institutional reification of white identity, where ideas of race were not only scaffolded into our legal regime, but also echoed in the cultural zeitgeist as well. Through an examination of early Supreme Court decisions that established “whiteness” as a prerequisite to the privileges of naturalization (or the “prerequisite cases”), López maps how different ethnic communities made claim to their alleged status as white. In doing so, he provides a framework to deconstruct how the legal apparatus was used to establish an artificial taxonomy of race and whiteness. At the core of his labor are two central claims. First, Lopez argues that the court’s justification for systematizing categories of race depended on either common knowledge rationales or scientific reasoning. In his own words, “*Common knowledge rationales* appealed to popular, widely held conceptions of race and racial divisions.” and scientific “reasoning [was] based on supposedly objective, technical, and specialized knowledge... [which] justified racial divisions by reference to naturalists studies of humankind.”

Second, López goes on to make a series of theoretical claims on how this idiosyncratic crystallization of legal whiteness manufactured two phenomena unique to white race consciousness: transparency and naturalization. Transparency refers to the inability of white individuals to see themselves through racialized terms. By becoming the normalized center of

the following analysis will show, the lionization of Gong Lum, his family, and their attorneys as bastions of racial equality belies the perverse racist ideology that reverberates throughout their legal strategy. Though I wish this were a topic I could treat with justice, it unfortunately lies beyond the scope of this paper. For future research on this subject, I suggest that greater attention be provided on not just what of the case we remember, but also how we remember it. Meaning, on a high-level, I argue that we must (with caution) reorient the ways in which immigrant narratives are often instrumentalized in counter-histories such as those concerned with *Gong Lum v. Rice*. For the oppressive and the oppressed are not mutually exclusive categories. While yes the East Asian diaspora has faced its own unique American plight, this does not preclude these same people from having been at least complicit with the systems of inequality that Civil Rights leaders sought to deconstruct. As such, I suggest that this case acts as a site to indiscriminately explore the many vectors of oppression at play: both those between the hegemonic and the immigrant, and also those between the immigrant and the black.

legal and social conventions, whites do not have to define who was white or even why *they* were white. Instead, they simply, but myopically just existed. López cites Barbara Flagg who writes, “There is a profound cognitive dimension to the material and social privilege that attaches to whiteness in this society, in that the white person has an everyday option not to think of herself in racial terms at all.” This inability to see oneself in racial terms posed a special problem to a court system and society that sought to allocate privilege and status based on race. For judges and lawmakers failed to produce a test or code that could categorically define who was white and thus entitle them to the privileges they hoped to protect and monopolize. Experience had shown courts that screenings based on skin tone or other somatic logics were not only unreliable, but also dangerous, for they risked advancing undeserved benefits to non-white citizens. Thus, the courts devised a more labor intensive, but effective system; on a case-by-case basis, it began to simply identify constituencies that were not white. Thus, López demonstrates how, rather than relying on phenotypic tests to determine who was included in the white category, the courts became gatekeepers who rejected entry to those who it deemed were not.

This phenomenon of white transparency worked in concert with what López called white naturalization. He argues that when courts use ostensibly scientific evidence to identify who is not white, it puts race determination within the province of positivism and thus imbues a sense of objectivity and naturalness. This status as normal, empirical, and factual deceptively elevates the court’s imagination of race and whiteness from a place of subjective exclusion to that of “fair” objectivity. By masquerading prejudice as reason, the court was able to enumerate more rights for whites, and further withhold them from “undesirable” populations with surgical precision.¹²

¹² López is careful in defining the scope of his analysis and the reach of his statements. He qualifies that the focus of his research is entirely limited to the cases that deal with whiteness as a prerequisite to citizenship. He goes even further to say that his work is not meant to be a comprehensive historicizing of these disputes. Instead, his center of interest lies in discretely writing on the legal construction of race in these and only these cases. Thus, anything outside of these sources would go beyond the purview of his work, and arguably outside of what his theoretical framework was designed to treat. I raise these caveats as a way to preface my own expansion to López’s analytic model. My epistemic approach adopts much of his theory and confirms that it is versatile enough to even function when dealing with subjects it was originally not designed to explore. However, where it lacks transferability is exactly where I offer my normative argument. The case of *Gong Lum v. Rice* is one of clear substantive difference to most of the prerequisite cases that occupy López. In particular, it involves a space thought to be inherently intimate, both physically and socially — the schools. Thus, I posit that the shift in relevant forum from the nebulous and exhausting National, to the hyper-specific and accessible pedagogical, forced judges to adopt reasoning not necessary in cases of naturalization; namely, eugenic principles of racial purity. Thus, a teleological analysis of *Gong Lum v. Rice* draws our attention to a dimension of the case that would otherwise be insufficiently addressed under López’s framework. However, I maintain that this need for expansion does not indicate a shortcoming of the

López's insight into the American legal regime as a racialized environment is critical when approaching *Gong Lum v. Rice*. As the following analysis will show, it allows us to not only see *how* the court is able to justify its exclusion of certain liberties to Chinese Americans - based on common knowledge and scientific evidence - but also *why* - because of White transparency and White naturalization.

Before proceeding with this analysis, a note on the case's previous procedural posture: Lum originally filed his petition at the First District Circuit Court of Bolivar County, where he successfully received a writ of mandamus that would force the Rosedale Consolidated High School to admit Martha as a student.¹³ However, the defendants which included the school trustees, the state superintendent, and the county superintendent, appealed this decision of the trial court. Thus, bringing us to the Supreme Court of Mississippi.

Part 3: A Lower-Court Procedural History of Gong Lum v. Rice

Litigated by Assistant Attorney-General E.C. Sharp, the appellant began their argument by confining the legal issue to one of statutory interpretation. In their eyes, the only germane question was whether it was legally permissible to include those of Chinese descent within the meaning of "white" established in section 207 of the Mississippi Constitution where it read "Separate schools shall be maintained for children of the white and colored races." To this, their answer was quite simple: no. In contrast, their rationale was both tenuous and disorganized. On a high-level, the appellant's evidentiary claims made two primary appeals: one to tradition and the other to science. In their appeal to tradition, Sharp cited the long history of both state and federal jurisprudence that had interpreted legal whiteness as an exclusionary category, a fact that López would certainly corroborate. They argued that in *Moreau et al. v. Grandich*, the court ruled only members of the Caucasian race as "free white people" were eligible to naturalize into citizens. Disregarding the issue of naturalization, Sharp focused on the link this ruling established between "the Caucasian race" and "the white person," thereby conflating the two as

original pursuit. Quite the contrary, for López accurately predicted and evaluated the limits to his work and consciously delineated these boundaries. As such, if anything my application of his analysis confirms his wherewithal and foresight on the matter.

¹³ *Rice v. Gong Lum*, 139 Miss. 760, 104 So. 105, 1925 Miss. LEXIS 146 (Supreme Court of Mississippi May 11, 1925, Decided). Retrieved from

interchangeable terms. With this precedent as a premise, the appellant then pointed to how subsequent rulings have both echoed and confirmed this position in *Re Ah Yup 1 F. Cas 223*, *Ozawa v. U.S.*, and *Yamashita v. Hinkle* where the courts have consistently upheld that “the definition of white” constituted exclusively of Caucasians. Similarly, in their appeal to science, Sharp cited Webster’s International Dictionary and its entry for “White Person” which was based on Blumenbach’s division of the human race. Here, the definition of whiteness again only includes “the Caucasian race” and “excludes black, yellow, and all other colors.” However, even if one were to accept that whiteness was in fact an exclusionary term reserved only for Caucasians, the cogency of Sharp’s argument ended here. In a seemingly unfounded act of historical invention, Sharp then purposed that the Mississippi legislatures placed those of “the Chinese or Mongolian race in the same category [as that of] the negro” because “[it] is well known, [that] the Constitutional Convention of 1890 included among its members many of the most able lawyers that the state of Mississippi has ever produced and they were no doubt familiar with the classification which had been put upon the races by the supreme court of the United States.” Given that Sharp established whiteness as a status only for Caucasians, it was then necessary that he showed “colored” as one inclusive of at least Chinese-Americans. Anything short of this analysis would fail to justify the board’s exclusion of Martha Lum from the white public school. Thus, to do this, he assumed that the legislatures of his state were cognizant of the very premises he established on whiteness for no other reason than that they were “most able.”¹⁴

While Sharpe made some dubious claims, Lum’s legal counsel, Earl Brewer, was unfortunately no more gifted as an attorney. After a brief and uninspired term as Governor of Mississippi, Brewer’s work and political career crumbled into dilapidation. His unsuccessful reelection campaign affected not only his social standing, but also his ability to find clients for his legal practice.¹⁵ In *Water Tossing Boulders*, Adrienne Berard speculates that Brewer saw Lum’s case as an opportunity to not only rebuild public face, but also debase the political adversaries who embarrassed him during his reelection efforts. With this in mind, if we were to say that the appellants were tasked with establishing white as an exclusive category and

¹⁴ Rice v. Gong Lum, 139 Miss. 760, 104 So. 105, 1925 Miss. LEXIS 146 (Supreme Court of Mississippi May 11, 1925, Decided). Retrieved from

¹⁵ Berard, Adrienne. *Water Tossing Boulders : How a Family of Chinese Immigrants Led the First Fight to Desegregate Schools In the Jim Crow South.*

“colored” as one inclusive of the Chinese, then Brewer was determined to do the opposite. Meaning, he sought to establish “colored” as an exclusive category, and “white” as one that included Chinese-Americans. While the need for this analysis is quite intuitive given the facts of the case, Brewer began by reinventing the wheel. He argued that it was necessary to interpret the meaning of “white” in section 207 of the Mississippi Constitution as inclusive of Chinese-Americans, because to do otherwise would result in a violation of Lum’s 14th Amendment right to due process. His reasoning being, at the time of the statute’s conception, the lawmakers only had two constituencies in mind: white and black students. Consequently, he argued that the law was designed to “meet a peculiar condition, [and] to solve a local problem;” namely, the potential racial mixing of white and black students. Thus, if the state were to execute this mandate under these terms, and thereby only serve white and black citizens, then those like Lum who were of neither category would then be denied their right to education delineated in section 201 of the Mississippi Constitution.

From this, Brewer argued, rather than adopting the appellant's exclusionary approach to the statute, the state should deploy one of “two general classifications” where “any educable child of the state is entitled to attend [the appropriate school], whether that child be white, black, brown, red or yellow.” Already, however, one can see the internal inconsistencies of the appellee’s argument. How can one argue for a statutory interpretation that rejects an exclusionary tone while also positing that Chinese-Americans were excluded from the category of “colored?” Unfortunately, this is not a question resolved by the Brewer. Instead, he proceeded to ignore the issue and argue that “colored” was in fact a discrete category, one that only included black Americans. Citing both history and past precedent, the appellees argued that the term “colored” and “people of color” has traditionally been reserved for those of the “negro” race. With this point, Brewer tenuously came to the conclusion that

“Schools for colored children are maintained really for the colored children while schools for whites are maintained not only for whites but for every other race except the colored race... It is merely suggested by opposing counsel that the Chinese children should attend the negro schools. But it is clearly shown by the authorities cited herein that the Chinaman is not a “colored person” within the meaning of our laws. He would therefore not go to the negro school as a negro. The court will take judicial notice of the fact that members of the Mongolian race

under our Jim Crow statute are treated as not belonging to the negro race. The Japanese are classified with the Chinese. These two races furnish some of the most intelligent and enterprising people. They certainly stand nearer to the white race than they do to the negro race. If the Caucasian is not ready to admit that the representative Mongolian is his equal he is willing to concede that the Mongolian is on the hither side of the half-way line between the Caucasian and African.”

This latter remark on the industrious “Mongolian” is the appellee’s only argument as to why Lum should be interpreted under the heading of “white.” Within Brewer’s defense, is the implicit assumption that whiteness was not simply a phenotypic expression of the body, but also a profile of moral traits that constituted an individual’s character. This draws on a hackneyed set of racial tropes familiar to most: one that paints the black man as savage and the white person as civilized. Within this conception of race, Brewer suggested that “the Chinaman” was placed on a spectrum where on one pole lies the venerable white citizenry and on the other was the reprehensible black population. Thus, given the unconvincing case put forth by Lum and Brewer, it is then no surprise that the appellate court reversed the trial court’s judgement and dismissed the petition for writ of mandamus.¹⁶

In reasoning this decision, Justice George H. Ethridge delivered the majority opinion of the court and wrote that it was not necessary for the territory embraced in a school district for colored students to be the same territory as that embraced by the school district for the white students as long as the curriculum and school year duration were comparable, thereby upholding the precedent set in *Plessy v. Ferguson*. Furthermore, he reasoned that the term “white” in section 207 of the Mississippi Constitution applied only to the Caucasian race. The court held that, when the public school system was created, it was the desire of the state to preserve the integrity and purity of the white race and it was the intent that the white race be separate from all other races, not just the “negro.” Furthermore, Ethridge reasoned that the term “colored” was not limited to “negros” or to persons having “negro” blood, but also those of Chinese descent. Thus, the court ruled that it must construe the state’s constitution to give effect to the intention of its makers in their interpretation of “white” and “colored” categories.¹⁷

¹⁶ Rice v. Gong Lum, 139 Miss. 760, 104 So. 105, 1925 Miss. LEXIS 146 (Supreme Court of Mississippi May 11, 1925, Decided). Retrieved from

¹⁷ Berard, Adrienne. Water Tossing Boulders : How a Family of Chinese Immigrants Led the First Fight to Desegregate Schools In the Jim Crow South.

All of the arguments made at the appellate court level confirm the theories put forth by López. Broadly speaking, we indeed see how the court adopts a strategy of denying Martha the title of “white” instead of developing a categorical axiom on who was white at large. Furthermore, we see how the three arguments rely on a combination of both common knowledge rationales and scientific evidence to further their position; a strategy also observed by López in the cases where the Court reasoned that whiteness was a prerequisite to citizenship. For example, the appellants appealed not only to “science” when they invoked Blumenbachian visions of race but also common knowledge when they said, “it is well known” that the writers of their state constitution were knowledgeable of the relevant scientific and judicial positions that interpreted “white” as an exclusive category. Similarly, Justice Ethridge deployed scientific evidence to substantiate his decision when he quoted Blumenbach’s pseudo-scientific ethnology to justify why “white” was not inclusive of the “Mongolian.” In the case of the appellee, even Brewer relied on a common knowledge explanation when contending that “colored” was a term reserved exclusively for black Americans.

Part 4: A Teleological Reading of Gong Lum v. Rice

A purely causal analysis of this case would most likely be satisfied with the discussion provided thus far; Lum filed suit because his daughter was denied entry into a white school. However, by expanding our scope of interest, *Gong Lum v. Rice* invites greater inquiry into the purpose that animates the dispute. *Why was the school board and the state so interested in regulating the entry of Chinese bodies into their public schools?* The answer, I argue, is clearly embedded within the different stakeholder arguments. Thus, a teleological analysis of this material refocuses our attention on an aspect of the case insufficiently treated thus far: namely, its preoccupation with racial purity.

Both Sharpe and Justice Ethridge devote a significant portion of their arguments to this principle. For instance, in articulating why those of Chinese descent did not fall within the category of white, Sharpe wrote,

“It has been at all times the policy of the lawmakers of Mississippi to preserve white schools for members of the Caucasian race alone. Following the separation of the races authorized by the Constitution, by section 4562, Code of 1906, it is

provided that county school boards may locate schools exclusively for Indians. Our lawmakers evidently had in mind the fact that Indians cannot be classed as of the Caucasian or white race and were desirous of prohibiting an intermingling of any race with the Caucasian or white children of our state.”

Looking past the flawed part-to-whole logic, here we see Sharpe articulating a state and societal interest in preserving the “purity” of the white polity. This perspective is instrumental in understanding the defendant’s adamant support of a segregated school system. Their action was not simply an exercise in social inertia where they blindly supported the preservation of the status quo. Instead, they were explicitly furthering an intentional social interest: to preserve the racial purity of the white population by isolating themselves from other races.

Justice Ethridge took this principle one step further and provided a potential explanation for why white racial purity was relevant in a discussion on education. Ethridge argued that according to section 263 and section 2859 of the Mississippi State Constitution, it was prohibited that any person of the “white race” marry a black or “Mongolian” spouse. Furthermore, he noted that neither of these provisions forbid marriage between those of the black and “Mongolian” races. From this, Ethridge then inferred that it was,

“To all persons acquainted with the social conditions of this state and of the Southern states generally it is well known that it is the earnest desire of the white race to preserve its racial integrity and purity, and to maintain the purity of the social relations as far as it can be done by law.”

Here, Justice Ethridge relied on an inter-statutory analysis to deduce the meaning of “white” and “colored” as categories. To do so, he introduced anti-miscegenation laws as a basis from which to conduct this comparison and thereby highlight their likeness. However, this similarity was not limited to just their use of “white” and “colored;” it also included a belief that there was a shared experience of association that was inherently intimate in both activities that the respective laws sought to regulate. Thus, schools were being construed as spaces of contact with intimate consequences, a reasonable assumption I might add. For schools are often the social epicenter of many children’s lives. As such, it would be unfair to argue that educational institutions exclusively serve a pedagogical purpose. They are an important forum from which to establish relationships and develop kin that go beyond blood ties — a site of social and physical intimacy

if you will. In *Gong Lum v. Rice*, this potential to form connections was perceived as a threat to the racial integrity of whites, especially if non-whites were allowed entry into their gated communities. For as Charles Herbert Stember writes in *Sexual Racism: The Emotional Barrier To an Integrated Society*, “the key to the schoolroom door is the key to the bedroom door.” Thus, by likening the issue of segregation to anti-miscegenation, one can deduce a likely line of thinking where schools are being constructed as spaces of contact that ominously promise a potential procreative future. This potentiality of the multiethnic kindred, thus threatened the future racial purity of white posterity. It also instantiated one articulation of the state’s intention behind litigating *Gong Lum v. Rice* — they sought to institutionally obstruct race amalgamation by enforcing segregation.

Part 5: An Upper-Court Procedural History of Gong Lum v. Rice

This preoccupation with racial purity became even more pronounced when the case was brought before the Supreme Court. In rendering these positions, the following account chooses to only highlight points of newfound departure while remaining silent on those matters that have been left unchanged.

To begin, the defendants offered a statement that was quite similar to their position in front of the Supreme Court of Mississippi. Again, they put forth an inter-textual analysis of state statutes that suggested the term “white” was different from “colored” just as past jurisprudence had found that the “Mongolian” was dissimilar to “white.” However, there was also a new lengthy focus on the legal tradition around miscegenation laws. This expansion to the defendant’s legal strategy provides a new valence to the issues of racial purity raised before. For instance, let us unpack their new citation of the court’s judgement from *Westchester, etc. Railroad v. Miles*, a case concerned with the use of authorial force by a train conductor against the defiant Mary E. Miles who refused to abide by the railroad company’s racialized seating policy. Here, the defendants quote the court who argued, “The danger to the peace engendered by the feeling of aversion between individuals of different races cannot be denied. It is the fact with which the company must deal. If a negro takes his seat beside a white man or his wife or daughter, the law cannot repress the anger or conquer the feeling of aversion which some will

feel.” The court went on to insist that, rather than reactively executing punishment for this “inevitable” violence, the law should adopt a strategy of proactive separation to prevent the objectionable behavior before it even happened. To further rationalize this approach, the court stated,

“The natural law which forbids [black and white] intermarriage, and that social amalgamation which leads to a corruption of the races, is as clearly divine as that which imparted to them different natures. The tendency of intimate social intermixture is to amalgamation, contrary to the law of races. The separation of the white and black races upon the surface of the globe is a fact equally apparent... The natural separation of the races is therefore an undeniable fact, and all social organizations which lead to their amalgamation are repugnant to the law of nature. From social amalgamation it is but a step to illicit intercourse and but other to intermarriages.”

With this as a premise, the defendants went on to declare that their legislatures construed the meaning of “white” and “colored” under these principles and did so “for the purpose of preserving the integrity of the [white] race and for the promotion of the peace and welfare of the community.”

Thus, we again observe what López would identify as the naturalization of whiteness where racialized reasoning, which is fundamentally subjective, has been elevated to the status of natural and objective, or in this case, divine. But more striking is the functional appeal made by this position. The separation of the races was not only important for preventing race amalgamation, but also in preserving societal peace. Thus, black and white bodies were being conceived as dormant reactants, which when mixed, triggered an inevitable response that was inherently violent or at least disruptive.

I also want to draw our attention to the gendering of this anxiety as well. Here, the black man is portrayed as an agent of this chaotic reaction. While it is not clear who is the bearer of the “feelings of aversion” either interpretation reveals a problematic as well. If we are to assume it is the black man, then this accesses an entire genre of tropes where black men are painted as savage and violent. In contrast, if we are to assume it is the white individuals, this then suggests that there is something inherently repugnant about their proximity to a black man that engenders repulsion — an equally unsavory conclusion.

Furthermore, we again see the conflation of social intimacy experienced at schools with the physical and emotional amour generally associated with heteropatriarchal marriage. The defendants take this conflation and then further develop it by invoking the statutory language around interracial marriage in Mississippi and citing Justice Ethridge's previous opinion from the appellate court. The confluence of these positions, culminate with the following closing statement,

“Were the school authorities within their rights in adopting the course which they did with reference her education and association? Under the laws of the state of Mississippi plaintiff in error could never lawfully marry a member of the white race. On the other hand there is no law in the state prohibiting intermarriage between members of the Chinese and negro races. Is it not better to confine her association, so far as it is possible, to those with whom she may associate on more intimate terms in the future years?”

The closing line offered by the defendant confirms that schools were indeed being imagined as inherently intimate spaces due to the nature of the social interactions that it hosted and the future procreation that it allegedly promised. By legally insulating the white community from this interaction, and extending this possibility to other races, the state provides another important layer of nuance to my observations. Within their framework, race amalgamation is not inherently problematic in absolute terms. It is only when white constituents are being considered within this social economy, that interracial encounters are problematized. Otherwise, the defendant's citation of the court's opinion in *Westchester, etc. Railroad v. Miles* begins to crumble. For if peace is truly threatened in the presence of race amalgamation, then the intermingling of Asian American and Black bodies should trigger this maelstrom as well. But given that the defendants are not only tolerant of this association, but also encouraging of it, one must assume that this arithmetic and causal scheme is different when there are no white bodies in the equation.¹⁸

¹⁸ *Gong Lum v. Rice*, 275 U.S. 78 (1927). Brief. 4 Mar. 1927. *U.S. Supreme Court Records and Briefs, 1832-1978*, <http://tinyurl.gale.com/tinyurl/BhuY57>. Accessed 17 Sept. 2019.

While one would expect that this line of thinking would be contained to the white defendants and judges, Gong Lum's attorney took a similar approach in their revised argument before the Supreme Court. This time argued by J.N Flowers, the plaintiffs asserted,

“If there is a danger in the association it is a danger from which one race is entitled to protection just the same as another. The White race may not legally expose the Yellow race to a danger that the dominant race recognizes and, by the same laws, guards itself against. The White race creates for itself a privilege that it denies to other races; exposes the children of other races to risks and dangers to which it would not expose its own children. This is discrimination.”

Though disturbingly perverse and a clear misunderstanding of 14th Amendment Equal Protection jurisprudence, Flowers' argument was a rare moment of pure logical lucidity to be found in the case's procedural history. For Flowers was right, how can the state implicitly enumerate a “liberty” that was to only be exercised by a single race and not all ostensibly equal U.S. citizens? In making this appeal, Flowers was also implicitly reaffirming the belief that there was in fact something undesirable about associations with black Americans. Unpacking Flower's interpretation of this belief provides interesting insights as well. For one, it presupposes that the dangers of racial amalgamation were entirely localized to the black race and not others. Within this paradigm, the Chinese were not at risk when associating with the white race. For if this were true, the logical legal remedy for Lum would not have been admittance into a white school, but rather the incorporation of an all “yellow” or Chinese school instead. The absence of such a proposition, thus suggests that the imagination of race furthered by the defendants was one in which Flowers would also subscribe, presumably because in their minds the “Mongolian” was in fact “white.” Thus, with this supposition, Flowers went on to say “Some reasonable basis must be found for laws that apply to certain people, or certain classes, and do not apply to others, or apply differently to others. We say that there is no basis in reason for a classification.”¹⁹

To this issue, Chief Justice Taft delivered the following opinion of the Court,

“The question here is whether a Chinese citizen of the United States is denied equal protection of the laws when he is classed among the colored races and

¹⁹ *Gong Lum v. Rice*, 275 U.S. 78 (1927). *Brief*. 26 Feb. 1927. *U.S. Supreme Court Records and Briefs, 1832-1978*, <http://tinyurl.gale.com/tinyurl/BhuY49>. Accessed 17 Sept. 2019.

furnished facilities for education equal to that offered to all, whether white, brown, yellow or black. Were this a new question, it would call for very full argument and consideration, but we think that it is the same question which has been many times decided to be within the constitutional power of the state legislature to settle without intervention of the federal courts under the Federal Constitution... The judgement of the Supreme Court of Mississippi is affirmed.”

Thus, the Supreme Court was essentially able to sidestep the issue posed by Flowers by suggesting it was one that had already been addressed by past decisions. But let us for argument's sake accept that the precedent set in *Plessy v. Ferguson* truly did resolve Flowers' contention; how would it do so? Is this to say that a state may indeed enumerate certain implicit privileges (such as insulation from black association) for one class and not another as long as a greater more explicit privilege is observed (such as a right to an equal public education)? One can see how this analysis requires questionable logic and derives even more questionable solutions.²⁰

Part 6: An Intervention into Civil Rights Grammar

Taken together, this concern for cross racial pollination, when situated within the political context of the 1920's, reveals an echo chamber of discursive eugenics invoked within the larger political arena. In the same way concerns of white racial purity laid at the centerfold of the Chinese Exclusion Act as demonstrated by Kil's theory of "fearing yellow," white eugenics become the core logic employed within *Gong Lum v. Rice* as well. As such, we observe herein the same grammar of eugenic thinking used to substantiate efforts to segregate schools as with the campaign to limit Chinese immigration. Furthermore, if we accept that eugenics is a technology of white supremacy, then by extension, segregation and *Gong Lum v. Rice* falls within this oppressive regime as well. Said another way, this teleological proof sheds light on the state and public anxiety that underpins an effort to preserve racial segregation. The exercise of implementing "separate but equal" was not just an attempt at guarding white privilege; it was an institutional safeguard against the perceived threat of "race amalgamation."

However, this idea of eugenics as a technology of white supremacy warrants greater discussion; as such, I now turn to Reginald Oh's essay, "Interracial Marriage in the Shadows of

²⁰ *Gong Lum v. Rice*, 275 U.S. 78, 48 S. Ct. 91, 72 L. Ed. 172, 1927 U.S. LEXIS 256 (Supreme Court of the United States November 21, 1927, Decided).

Jim Crow: Racial Segregation as a System of Racial and Gender Subordination.” Here, Oh argues that legal scholars have artificially imposed an analytical taxonomy when conceptualizing the reach and consequences of two landmark cases: *Loving v. Virginia* and *Brown v. Board of Education*. Indeed, a traditional understanding of these disputes credit *Loving* with the abolition of anti-miscegenation and *Brown* with segregation. However, Oh troubles this analysis by suggesting that these two cases are most fruitfully studied when in conversation with one another. To facilitate this dialogue, Oh argues that we should situate both anti-miscegenation and segregation under the umbrella of white supremacy. Furthermore, Oh posits that racial segregation should be thought of as a product of anti-miscegenation. Using *Gong Lum v. Rice* as an example, Oh maps the Court’s conflation of education with miscegenation as evidence for how these two pernicious forces were an extension of one another. In effect, Oh articulates a genealogy of power where at the apogee sits white supremacy, and beneath it, anti-miscegenation, and finally on the tertiary level, racial segregation.

However, where this essay seeks to intervene is in Oh’s one-dimensional characterization of *Gong Lum v. Rice* as one concerning anti-miscegenation, segregation, and in turn, white supremacy. On a high-level, when one only considers the interests and arguments of the white defendants and judges, the case is neatly packaged as an effort to maintain these eugenic tenants. However, if we disaggregate this analysis and consider the unique perspective offered by Lum as the plaintiff, we see a partial breakdown of Oh’s framework. While yes, the state was certainly an agent of white supremacy when it upheld segregation, I believe there is greater space for nuance in how we describe Gong Lum’s participation within this historical moment. I agree that, in arguing for admittance into white schools, Lum was explicitly furthering black inferiority and implicitly supporting white supremacy, but this does not categorically entail that they were complicit with the project of anti-miscegenation in absolute terms. If we assume that Lum also saw the school as a ground for developing relationships that were to bud into romantic and procreative nuptials, it would then be logically discordant to say he was an anti-miscegenationist for he would presumably be at least neutral to a marriage between his daughter and a white counterpart. Thus, if anything, Lum was only an anti-miscegenationist to the extent that he was opposed to an intermarriage between his daughter and a black counterpart. This is not to suggest

that this orientation is somehow redeeming; on the contrary, I raise this point in the interest of being clear to the extent of Lum's participation within this unique ideological ecosystem of prejudice. But even this argument assumes that Lum was at least equally preoccupied with preserving the racial integrity of the Chinese polity as was the White race with itself.

However, I anticipate that this is not entirely true. Perhaps, Lum was simply attuned to the social, cultural, and very material economic cache that institutionally privileged whiteness above all other ethnicities and sought membership for his kin into this space. Alternatively, we could also read this posture as a nod to the entrenched anti-blackness of Lum and American society. Unfortunately, to offer a single refined interpretation of this dynamic is beyond the scope of this paper. However, this insufficiency nonetheless demonstrates the theoretical potential for studying familiar issues such as white supremacy, segregation, and anti-miscegenation through the prism of the Asian American body. It highlights the untranslatability of these terms and invites greater meditation into developing a more truthful grammar to discuss these systems.

Conclusion:

An examination into the Civil Rights Movement is an incremental and gradual process. Any idea or source drawn from that history is both defined by its context and is a reflection of that context. However, the manner through which you choose to interpret these conditions can take many paths. Ultimately, it is the accumulation of those pathways that allows us to meaningfully return to a "singular" understanding of the movement, not as an expression of any one interpretation, but more rather as a mosaic of informational points bound together by different and sometimes competing narratives. Thus, a procedural history of *Gong Lum v. Rice* provides us with one more thread within this greater tapestry.

Guided by López's analytical framework, a legal analysis of the case's many arguments yields clarity into how and why the court developed and reinforced its conception of legal whiteness when dealing with the issue of education. Just as López observed in the prerequisite cases of naturalization, the court in *Gong Lum v. Rice* denied Martha and Chinese Americans the

title of “white” due to the court's own white transparency and inability to categorically define whiteness based on somatic logics. Furthermore, all the parties of the case indeed relied on a combination of scientific evidence and common knowledge rationales to substantiate their respective positions. However, a teleological analysis of this same dispute reveals an underappreciated dimension of the contest — namely, its focus on eugenic principles of racial purity. This approach illuminates how the state board and court’s exclusion of Martha from Rosedale High School was not a blind preservation of segregation, but instead an intentional and institutional safeguard against “race amalgamation” and “mongrelization.”

The case also provides a potential explanation as to why the issue of racial purity was relevant in a discourse on academic administration. By drawing an analogy between the types of interactions experienced in a school with that of marriage, the court suggested that there was an inherent intimacy to the pedagogical space that required regulation. But the terms of this regulation were not absolute nor consistent. While at some points the defendants and the courts asserted it was an effort to preserve societal peace, at others it maintained that it was an effort to execute the precedent of *Plessy v. Ferguson*. Ultimately, these competing and seemingly antithetical positions furthered by the various constituencies suggest that any one-dimensional rendering of the case fails to capture its full complexity. However, the presence of incoherency must be accepted as such. For it is perhaps most rational to acknowledge irrationality as a historical fact of that moment — not to be corrected for posterity, but rather simply observed for what it was.

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