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Asian American Struggles for Civil, Political, Economic, and Social Rights

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In the last century and a half, Asian immigrants and Asian Americans who have fought for various rights in the United States have sometimes succeeded and at other times failed in their efforts. The history of their struggles can be divided into four periods: (1) the 1860s to the 1880s, (2) the 1890s to the 1920s, (3) the 1940s to the 1970s, and (4) the late 1970s to the present. In the first period, Chinese immigrants acquired important civil rights. In the second period, aspiring Asian immigrants lost the legal battles they waged against laws that barred them from immigrating to the United States, while those who had managed to enter before exclusion went into effect failed to gain the right to become naturalized citizens and to own, or even lease, agricultural land. In the third period, they gained political rights in the 1940s and 1950s, and economic rights in the 1960s and 1970s. In the present, fourth period, the results of their attempts to win social rights have been mixed. To understand why there has been a vacillation between advances and retrenchments, we must examine the larger historical contexts in which those successes and failures have occurred. We must also recognize the differences among civil, political, economic, and social rights.

The 1860s to the 1880s

During the first period, Reconstruction dominated American national life.[1] Between 1865, when the Civil War ended, and 1877, when Reconstruction was formally terminated, the federal government tried to ensure that the recently

freed Black people would be accorded certain basic rights. However, these efforts ended when a political deal was struck. In the Compromise of 1877, Northern Republicans agreed to withdraw the federal troops that had been sent to occupy the South if Southern Democrats would let Rutherford B. Hayes, the Republican presidential candidate in the closely contested elections of 1876, take office. Troops had been used to enforce the changes that the North tried to impose on the South because the South, though defeated, resisted efforts to give African Americans the freedom they had been promised during the Civil War.

Despite the fact it was short-lived, Reconstruction did leave an enduring legacy in the form of the Thirteenth, Fourteenth, and Fifteenth Amendments and several laws that provided the doctrinal basis on which African Americans, Asian immigrants, and other minorities have legally challenged the discrimination against them. The Thirteenth Amendment abolished slavery and other forms of involuntary servitude, thereby codifying the Emancipation Proclamation within the amendments to the U.S. Constitution. The Fourteenth Amendment declared that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." This endowed persons of African ancestry born on American soil with birthright citizenship,[2] thereby nullifying the majority opinion of the U.S. Supreme Court in the 1857 Dred Scott case, which had stated that Black people, whether enslaved or free, "had no rights which the white man was bound to respect" and were not and could not become U.S. citizens.[3] The 1870 Naturalization Act extended the right of naturalization to persons of African nativity or descent.[4] Up to that point, only "free, white persons" could become naturalized citizens. During the debates over the bill, Senator Charles Sumner of Massachusetts, a great advocate of equal rights for all human beings regardless of their skin color, had argued vigorously that the word "white" should be deleted from the text. However, he failed in his efforts. Had he succeeded, Chinese immigrants would have gained the right of naturalized citizenship at the same time that African Americans did. The Fifteenth Amendment declared that "the rights of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude," but female citizens did not gain the right to vote in national elections until 1920. A series of civil rights acts passed in 1866, 1870, 1871, and 1875 further elaborated the rights of the recently freed people.[5] Although the effectiveness of these laws would depend on how judges and Supreme Court justices interpreted them, and on how politicians dealt with them, their enactment nevertheless provided a legal starting point from which those who had been discriminated against could challenge their subordination.

Although the Reconstruction legislation was not meant to benefit Asian immigrants, the Chinese living in the United States at that time successfully used selected doctrines enunciated in these laws to win some significant civil rights for themselves. A seldom recognized fact is that Chinese immigrants began fighting for civil rights long before they acquired any political rights. Political rights refer to the rights to which the *citizens* of a country are entitled. In the United States, the most important political rights are the right to vote, the right to run for

office, and the right to serve on juries. Immigrant Chinese did not gain the right to become naturalized citizens, and hence the right to vote, until 1943. That means they had no political rights for almost a century after they set foot on American soil. Yet they somehow learned that in this country there are rights that are even more fundamental than political rights. Those rights are called civil rights—the rights that *individuals*, regardless of their national origins or citizenship status, can expect to enjoy in a democratic society.[6]

The main civil rights that Americans possess are listed in the first ten amendments to the Constitution—the so-called Bill of Rights—adopted in 1791, and in the Fourteenth Amendment, adopted in 1868.[7] Civil rights are a fundamental part of democracy because they protect individuals against their own government by limiting the ability of that government to act tyrannically. People living in the United States are supposed to have freedom of religion, freedom of speech, freedom of the press, and freedom of assembly. They can also petition the government for a redress of grievances. They have the right to be secure from unreasonable searches and seizures, to not be held for a capital crime without an indictment, to decline to testify against themselves, to have a speedy and public trial, and, in many cases, to be tried by a jury of their peers. Moreover, excessive bail or fines and cruel and unusual punishment are not supposed to be imposed. No one is supposed to be deprived of life, liberty, or property without due process.

The Bill of Rights, at the time it was adopted, aimed to safeguard individuals, as well as the constituent states of the United States, against the power of the *federal* government to oppress them. But a significant shift occurred after the adoption of the Fourteenth Amendment. Henceforth, individuals would be protected not only against the potential encroachments of the federal government but also against the possible oppressive actions of *state* governments and of the dominant majority population.[8] For the newly freed Black people, as well as for Chinese immigrants, this shift was of monumental importance, because in the United States, state governments have a great deal of power, and it is individual states that have played a leading role in depriving people of color of their civil and political rights. Specifically, after President Abraham Lincoln issued the Emancipation Proclamation to abolish slavery at the beginning of 1863, the Southern states, one after another, enacted "Black Codes" to prevent the freed African Americans from gaining any true freedom. During the same period, the State of California and some of its municipalities made one attempt after another to oppress Chinese immigrants in many ways. Had the Fourteenth Amendment not been adopted, federal courts would not have been able to overturn such discriminatory state and municipal statutes by declaring them unconstitutional.

Even though Asian immigrants were not the population that the Reconstruction legislation was designed to protect and empower, Chinese were able to take advantage of certain clauses in the Fourteenth Amendment because these clauses addressed the civil rights not only of U.S. citizens but also of "persons"—a much broader category than "citizens." While the amendment's "privileges and immunities" clause guaranteed the rights of citizens, its "due process" and "equal protection" clauses safeguarded the rights of persons.[9] And Chinese, though

aliens, were definitely persons. Other legislation enacted during Reconstruction likewise proved useful to the Chinese—most notably Section 16 of the 1870 Civil Rights Act, which stated that all persons within U.S. jurisdiction shall have "full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."[10] Attorneys for the Chinese also relied on a treaty signed during these years: the 1868 Burlingame Treaty between China and the United States, which proclaimed that Chinese were to "enjoy the same privileges, immunities, and exemptions in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation."[11]

The Chinese filed thousands of cases in municipal, state, and the lower federal courts using the above doctrines to fight against discrimination. More than 150 of their cases reached the U.S. Supreme Court.[12] Although most Chinese who came to earn a living in the United States in the nineteenth century were peasants who knew nothing about the fine points of constitutional law, they did understand the concept of justice. When they felt they had been unjustly treated, they did not hesitate to challenge the wrongs done them. The most important avenue of which they availed themselves was the American judicial system. It is not known how they learned about lawyers and courts, but within a few short years of their arrival, they began going to court not only to sue non-Chinese, and in some instances their fellow Chinese, but also to contest the discriminatory laws themselves. They hired some of the best trial lawyers of the day, who argued that the laws passed to empower African Americans were also applicable to the Chinese.

Two of these decisions were absolutely critical. *Ho Ah Kow v. Nunan* involved a Chinese attempt to strike down two obnoxious statutes—one, a San Francisco municipal ordinance that made it a crime to sleep in a room with less than 500 cubic feet of air space per person, and the other, a California state law based on an earlier San Francisco municipal ordinance that allowed jail wardens to cut off the hair of prisoners to within an inch of the scalp. Chinatown was indeed overcrowded, but so were other residential quarters in the poorer neighborhoods. What made the "cubic air ordinance" discriminatory was that it was enforced only against Chinese. As for the "queue ordinance," authorities knew that Qing-dynasty Chinese men were required to keep their hair long and wear it in a braid. Thus, cutting off their hair was a way to harass and punish them. *Ho Ah Kow v. Nunan*, decided in 1879 in the Circuit Court for the District of California, declared both statutes unconstitutional. Its historical significance lies in the fact that it was the first federal case to state clearly that the "equal protection" clause of the Fourteenth Amendment and Section 16 of the 1870 Civil Rights Act were applicable to Chinese as *persons*. This decision was crucial because just a year earlier Chinese had been denied the right to acquire naturalized citizenship in the *In re Ah Yup* case—a denial that would be reiterated in the 1882 Chinese Exclusion Law.[13]

The civil rights of Chinese were further expanded by the landmark 1886 U.S. Supreme Court decision in *Yick Wo v. Hopkins*. That ruling affirmed the right of Chinese laundrymen—and, by extension, other workers—to pursue a profession or trade without being subjected to the arbitrary power of governments. In

the 1870s and 1880s, the license applications of hundreds of Chinese laundrymen in San Francisco had been systematically turned down on the pretext that their laundries were housed in wooden buildings and that they dried clothes on the roofs of these buildings, thereby creating public health and fire hazards. But the justices ruled in favor of the Chinese. They concluded that the rights protected by the Fourteenth Amendment applied to aliens also, and that a law that may be "fair on its face" can be discriminatory if it is administered in an unequal way.[14] Chinese immigrants would not have won such victories had there been no efforts to accord African Americans certain basic rights.

THE 1890S TO THE 1920S

The fates of Asian immigrants and African Americans were again intertwined during the second period, which lasted from the 1890s to the 1920s. During those years, people of color suffered severe repression as the advances gained in the preceding period were repudiated and reversed. Three developments that shaped American national life during these decades are pertinent to our analysis: (a) the establishment of a racist system called Jim Crow, (b) the Progressive movement, and (c) the U.S. acquisition of an overseas empire. Jim Crow, a name borrowed from a minstrel song that depicted Black people as inferior and childlike, grew out of the Reconstruction-era "Black Codes" and lasted well into the mid–1950s. It not only legalized segregation in all public facilities—with this segregation upheld by the U.S. Supreme Court in the 1896 *Plessy v. Ferguson* decision—but also sanctioned acts of extreme violence, including lynching and arson, against African Americans.[15]

Moreover, to reduce the political power that African Americans had gained during Reconstruction, poll taxes, literacy tests, discriminatory voter-registration requirements, erratic hours at polling places manned by hostile elections officials in areas with a large Black population, outright intimidation, and other methods were used to prevent the freed Black people from voting. Even in cities where African Americans were not kept away from polling places, various tactics were used to dilute their vote. For example, to minimize the number of seats that African American political candidates might win in areas where they comprised a significant percentage of the voters, racial gerrymandering was used to redraw election district boundaries to reduce the Black demographic concentration. In some instances, citywide at-large elections replaced an electoral structure with single-candidate districts to ensure that no African American candidates (or European American candidates sympathetic to Blacks) could be elected.[16] In addition to political disenfranchisement, African Americans suffered severe economic deprivation. A vast majority of the former slaves continued to be kept on Southern plantations as tenants or sharecroppers, eking out a living under conditions no less exploitative than those under slavery. In these myriad ways, racial subordination remained an intrinsic part of American society even after a civil war had been fought to end slavery.[17]

The Progressive movement emerged around the same time that the Jim Crow system was consolidated.[18] This movement was called "progressive" because it

brought about many reforms to improve people's lives. But if we look beneath the surface, we discover that it, too, had a racist thrust. The main Progressive reformers were well-educated middle-class professionals and businessmen who were concerned about the nation's problems—particularly problems related to the maturation of industrial capitalism, urbanization, and a rise in the number of new immigrants. Progressives had great faith in science. They believed that scientific methods could be used to impose order on a society that seemed increasingly chaotic. They thought progress would be possible only if human beings intervened to control the forces of nature as well as of society. They carried out municipal projects to improve public health and education. They introduced the initiative, the referendum, and the recall in order to place control of the government back in the hands of the common people. But their view of who comprised "the people" was extremely restricted: the moniker included mainly White Anglo-Saxon Protestant men. Progressives apparently saw no contradiction between their efforts to enlarge the arena of liberty for European American men and their support of Southern efforts to segregate, disenfranchise, and exploit African Americans. They also supported the anti-Japanese movement in the West. As historian Roger Daniels has put it, "The middle-class progressive liked to think of himself as enlightened and free of prejudice; yet at the same time he insisted that separate races could not mix."[19]

Progressive reformers desired a homogeneously White, Anglo-Saxon, Protestant society because they thought it would be more manageable. To them, race relations, like other aspects of society, should definitely be managed. In the words of Chester Rowell, a leading Progressive intellectual, "The only time to solve a race problem is before it begins."[20] Thus, even though Progressives did not initiate the anti-Japanese movement in California, once it began they did not hesitate to support it. Reducing the number of Japanese immigrants in the state suited their purpose of creating a manageable society. Furthermore, Progressive politicians were concerned about having to compete with anti-Asian Democrats for votes in California's 1910 and 1912 state elections.[21] Adopting an anti-Japanese stance was a way to reduce the advantage that their opponents enjoyed in an age rife with anti-Japanese antipathy.

Although the campaign to exclude selected groups of aspiring immigrants began long before the Progressives appeared on the scene, it thrived in the decades when they were trying most actively to reshape society. The Chinese had been the first group targeted for immigration restriction. A series of increasingly stringent laws was enacted between 1882 and 1904 to keep out Chinese laborers,[22] but Chinese of all socioeconomic backgrounds, including those "exempted" from exclusion, found it increasingly difficult to enter the United States. Initially, judges granted most of the writs of *habeas corpus* that Chinese filed whenever they were forbidden to land, but the courts eventually deferred to the executive branch of the federal government—specifically, its immigration officials—when control of the nation's borders was concerned.

Four U.S. Supreme Court cases explicitly linked the concept of national sovereignty to the issue of who could enter the United States as immigrants. In *Chae Chan Ping v. United States*, decided in 1889, the justices upheld the constitutionality

of the Act of October 1, 1888 (the so-called Scott Act), which unilaterally abrogated the right of Chinese laborers to reenter the United States when they returned from visits to China. Six years earlier, the right to reenter had been granted to Chinese laborers who had resided in the United States before the 1882 Chinese Exclusion Law was passed: they could return without impediment if they obtained a certificate before their departure and could produce this document upon their return. Chae Chan Ping had such a certificate with him when he arrived but was nevertheless forbidden to land because the Scott Act, which went into effect the day it was passed, had been enacted while he was at sea, en route to the United States. He challenged this denial. His case was eventually heard in the U.S. Supreme Court, but he failed in his efforts. The court declared that when treaty obligations or earlier laws conflicted with later congressional legislation, the latter took precedence over the former, and, moreover, that the right to choose which aliens to admit was one of the nation's sovereign powers.[23]

The second case involved Ekiu Nishimura, a Japanese woman who was denied entry when she came to join her husband who was living in the United States. Because he did not come to pick her up when she arrived, she was deemed a person "likely to become a public charge"—one of the categories of excludable immigrants listed in the 1891 Immigration Act. Nishimura's case was the very first one filed by a Japanese to reach the U.S. Supreme Court. In *Ekiu Nishimura v. United States*, decided in 1892, the court ruled that "every sovereign nation has the power . . . to forbid the entrance of foreigners," and that executive officers were the "sole and final" decision-makers in immigration cases. Moreover, it ruled, the decisions of immigration officials, in and of themselves, satisfied the "due process" requirement of the Fourteenth Amendment.[24]

In the third case, *Fong Yue Ting v. United States*, decided in 1893, the high court upheld the power of the federal government not only to exclude but also to deport aliens. A year earlier, Congress had extended the 1882 Chinese Exclusion Act by passing the so-called Geary Act, which required all alien Chinese then residing in the United States to register. Thereafter, any Chinese caught without such a registration form on his or her person could be arrested and deported. The most important organization in the Chinese immigrant community—the Chinese Consolidated Benevolent Association (CCBA), commonly called the Chinese Six Companies—advised Chinese to participate in a massive act of civil disobedience by refusing to register. The Chinese took their case all the way to the Supreme Court, but they lost when the justices decided that "the right of a nation to expel or deport foreigners . . . is as absolute as the right to prohibit and prevent their entrance into the country."[25]

Then, in *United States v. Ju Toy*, decided in 1905, the U.S. Supreme Court gave up its right to judicial review over immigration matters altogether.[26] As civil rights lawyer Angelo N. Ancheta has pointed out, in these Asian immigration cases, the Supreme Court had enlarged the plenary powers of Congress to such an extent that the latter gained more power than the Constitution had intended.[27] The only victory won by the Chinese during the exclusion era was the decision made by the U.S. Supreme Court in 1898 in *Wong Kim Ark v. United States*, which determined that the birthright citizenship of individuals born in the United

States, including those whose parents were not eligible for naturalized citizenship, could not be stripped from them.[28]

Anti-immigrant forces also tried to limit the entry of groups other than the Chinese. The 1917 Immigration Act introduced a literacy test to keep out less educated and non-English-speaking immigrants, and delineated a "barred zone" (encompassing most of Asia) from which people could not come. Immigrants from India were the main victims of this clause.[29] In 1921, Congress passed another immigration act that limited the number of immigrants from any particular country to 3 percent of the number of persons of that national origin residing in the United States in 1910. Three years later, the 1924 Immigration Act reduced the quotas even further, limiting the number of immigrants from each country to only 2 percent of the number of persons of that national origin residing in the United States in 1890.[30] The date was moved back because the main targets of the 1924 law were aspiring immigrants from Eastern, Central, and Southern Europe, and there were far fewer people from those areas of Europe residing in the United States in 1890 than in 1910. Though Poles, Hungarians, Italians, Greeks, various Slavic peoples, and Russian Jews were Europeans, they were neither Anglo-Saxon nor Protestant, and thus were deemed less desirable than people from Northwestern Europe.

The main group of Asian immigrants affected negatively by the 1924 law was the Japanese, even though they were not explicitly named in the act. Rather, no quota at all was allotted to aliens who were "ineligible to (*sic*) citizenship." This phrase was a code for Asians. Chinese had already been barred from naturalized citizenship in 1878 and 1882; now it was the turn of the Japanese and Asian Indians. In its 1922 decision in *Takao Ozawa v. United States*, the U.S. Supreme Court decided that Japanese could not be naturalized because racially they were neither white nor of African ancestry—these being the only two eligible groups explicitly named in the 1870 Naturalization Act.[31] In 1923, the U.S. Supreme Court, in *United States v. Bhagat Singh Thind*, came up with yet another basis for denying naturalized citizenship to Asian immigrants. Thind claimed that, as a native of India, he was an Aryan, and hence a Caucasian, and so was eligible to become a naturalized citizen. The justices disagreed. They said that even though he might be an Aryan ethnographically, he was not "white" in the understanding of the common man.[32]

Additional disabilities were imposed in 1923 on those Asian immigrants who managed to remain on American soil. Four U.S. Supreme Court decisions handed down that year upheld laws that prohibited aliens "ineligible to citizenship" from owning or even leasing farmland in California and in the State of Washington (and, later, in a dozen other states). The high court upheld the constitutionality of the 1920 California Alien Land Law in *Porterfield v. Webb*, and that of the 1921 Washington Alien Land Law in *Terrace v. Thompson*. The court ruled in *Webb v. O'Brien* that even sharecropping contracts with aliens "ineligible to citizenship" were illegal, while *Frick v. Webb* forbade such aliens from owning stocks in any corporation formed for the purpose of farming.[33] These laws deprived Japanese and other Asian immigrants of an important source of livelihood. The

right of non-citizens to pursue a trade or profession without harassment, as stated in the 1886 *Yick Wo* decision, was not extended to the right to farm.

The anti-Asian sentiments that undergirded the above decisions and other anti-Asian actions were part of a larger ideological framework that both condoned violence and legally sanctioned racial discrimination against people of color. However, in justifying anti-Asian measures, an additional theme emerged—namely, that the national sovereignty of the United States must be forcefully asserted and defended. This concern over sovereignty reflects the fact that the United States had become an imperialist power during the last decade of the nineteenth century. In 1898, in one fell swoop, the United States acquired Hawai'i, Guam, the Philippines, and Puerto Rico as "insular possessions"—a euphemism for island colonies—beyond its continental borders. Furthermore, from that year onward, the United States repeatedly intervened in Cuba and in various Central American countries, landing Marines on their shores and taking over the governance of those countries for years at a time.[34] The crusade against leftists during the "Red Scare" that occurred after the Bolsheviks came to power in Russia was yet another manifestation of the wariness and fear with which many Americans regarded foreigners and their cultural practices and political ideologies.

There was an interregnum between the second and third periods because the Great Depression preoccupied Americans during the 1930s more than race relations or immigration did. The only significant law passed in the 1930s that affected Asian immigrants negatively was the 1934 Tydings-McDuffie Act. Its main purpose was to spell out the steps that had to be followed before independence could be granted to the Philippines, but it also contained a clause that reduced the number of Filipino immigrants to the U.S. to fifty persons a year.

THE 1940S TO THE 1970S

The third period in the history of the Asian American struggle for civil rights was by far the most complex of the four periods I have identified. It began in the summer of 1941 and ended with the 1978 U.S. Supreme Court decision, *Regents of the University of California v. Bakke*. The period can be subdivided into two segments. During the first segment, which stretched from 1941 to 1952, Asian immigrants and Asian Americans won *political* rights for the first time. These rights were granted by the federal government through executive orders, legislative action, and judicial decisions. World War II was the crucial factor that brought about the changes. During the second segment, which lasted from the early 1950s to the late 1970s, the Cold War (and one of its offshoots, the war in Vietnam), the Civil Rights movement, and the Black Power movement provided the crucial backdrops. Sit-ins, mass demonstrations, and "direct action" were the tactics of choice while the Civil Rights movement was unified, but when it splintered in 1966, one component of the movement retained racial integration as its goal and nonviolence as its main tactic, while other components—Black Power and various cultural nationalist currents—adopted more militant and separatist outlooks and actions.

Relatively few Asian Americans were involved in the civil rights protests of the early 1960s, although they nevertheless benefited from the legislation passed in response to the political and moral pressures exerted by the Civil Rights movement. What turned some Asian American high-school and college students into political activists was the antiwar movement against American involvement in Vietnam. Then, in 1969, Asian American college students joined their African American, Mexican American, and Native American peers in two massive student strikes at San Francisco State College (now University) and at the University of California, Berkeley, to demand a more relevant education and the establishment of Ethnic Studies programs. Asian American professionals also set up social service agencies to improve service delivery to Asian American communities in the name of "community control."[35] In terms of timing, therefore, these components of the multifaceted Asian American movement took shape after ethnic separatism became the defining characteristic of minority protest. Ethnic Studies programs and community service agencies have not only endured to this day—through many ups and downs—but have grown substantially in some localities, having survived longer than any of the other reforms instituted during this tumultuous period.

Long before protest movements in America captured the world's attention, tentative steps had been taken to change the state of race relations in the United States. In July 1941, several months before the United States declared war against the Axis powers—Japan, Germany, and Italy—President Franklin D. Roosevelt issued Executive Order 8802 to prohibit employment discrimination both by defense industries holding federal contracts and within the federal government itself. He did so to dissuade African American civil-rights pioneer A. Philip Randolph, president of the Sleeping Car Porters Union, from organizing a mass demonstration in Washington, D.C., to protest racial discrimination. Roosevelt also realized that, should the United States enter the war, the nation would need to maximize wartime production by calling forth the utmost effort from every American—men and women, whites and non-whites. Apparently he hoped that by ending employment discrimination, at least in certain public sectors, the loyalty and dedication of non-white Americans would be ensured during wartime. But he did not go very far in his efforts: during World War II, the contradiction between American ideals and American practices was starkly revealed by the fact that African American and Japanese American inductees called upon to defend democracy and liberty against fascism had to serve in segregated military units. Yet Roosevelt made no attempt to desegregate the armed forces. Instead, in 1943, he signed Executive Order 9346 to extend the earlier anti-discrimination order to all business and manufacturing enterprises holding federal contracts.[36]

The main group of Asian Americans who benefited from these executive orders were Chinese American college graduates, several thousand of whom found jobs commensurate with their education for the first time. The men worked mainly as scientists, engineers, and technicians, while most of the women worked at secretarial jobs, though a small number found jobs in the shipyards building "Liberty Ships," alongside significant numbers of European American and African American women.[37]

A large number of college-educated Japanese Americans was also available for employment, but the wartime labor market did not open its doors to them. Instead, simply because they looked like the enemy, some 120,000 persons of Japanese ancestry, two-thirds of them U.S.-born American citizens, were incarcerated in camps enclosed by barbed wire and guarded by armed troops. Four Japanese Americans—Gordon Hirabayashi, Min Yasui, Fred Korematsu, and Mitsuye Endo—challenged the constitutionality of their detention, but in each of these test cases, the U.S. Supreme Court rested its decision on the narrowest legal grounds and avoided making any pronouncements about whether or not the evacuation itself was constitutional. These decisions were finally vacated in the 1980s, through the brilliant litigation of young Asian American attorneys who helped the plaintiffs petition to have their cases reopened.[38]

The exigencies of World War II prompted the nation's leaders to offer Asian immigrants a modicum of political rights. To ensure that China, an ally of the United States during World War II, would fight strenuously against Japan, Congress repealed all the Chinese exclusion laws in late 1943.[39] Chinese were given a token annual immigration quota of 105 persons, plus the right to become naturalized citizens. Filipinos and Asian Indians gained the same rights in 1946, as a reward for also having been America's allies during the war. Japanese and Koreans did not acquire these rights until 1952—the same year the United States ended its seven-year military occupation of Japan, whose unconditional surrender in 1945 had brought an end to World War II. Acquiring the franchise meant that Asian immigrants were no longer barred from membership in the American polity.

Even Japanese Americans, more than twenty thousand of whom proved their loyalty in blood during World War II, gained something in the immediate postwar years: the courts overturned a number of prewar and wartime discriminatory statutes affecting them. In 1948, in *Oyama v. California*, the U.S. Supreme Court decided that California's Alien Land Law was unconstitutional. In the same year, in *Takahashi v. Fish and Game Commission*, the high court also struck down a 1943 California law that prohibited aliens "ineligible to citizenship" from fishing in the waters off the California coast. The state supreme courts of Oregon and California declared their states' alien land laws unconstitutional in 1949 and 1952, while the Washington legislature threw out that state's alien land law in 1967.[40] In this same period, discriminatory housing ordinances and anti-miscegenation laws also fell by the wayside.[41]

The Cold War[42] and the Civil Rights movement,[43] both of which began in the late 1940s, dominated the 1950s and 1960s. Scholars who have studied the two have generally treated them as unrelated phenomena, but as law professor Mary L. Dudziak has chronicled, a close relationship in fact existed between them.[44] Most accounts of the Civil Rights movement date it from the mid–1950s, but it actually began earlier, albeit quietly, without the kind of media exposure that protest activities in the 1960s received. In 1948, in response to another threat by A. Philip Randolph to organize a mass campaign of civil disobedience, President Harry S. Truman issued Executive Order 9981 to end segregation in the armed forces. Truman also created a Fair Employment Board within the federal civil

service and a Government Contract Compliance Committee. His successors, Presidents Dwight D. Eisenhower and John F. Kennedy, likewise issued executive orders to promote racial equality,[45] not so much because they were good liberals as because they were pragmatic leaders who did not want domestic conditions to hamper their conduct of foreign relations during the Cold War.

The landmark civil-rights decision came in 1954, when *Brown v. Board of Education* mandated school desegregation by declaring the "separate but equal" doctrine laid down in the 1896 *Plessy* case unconstitutional.[46] In an *amicus curiae* brief filed by the U.S. Justice Department in connection with this case, the government's lawyers—quoting the U.S. State Department, which had received communications from many countries criticizing the inhumane way African Americans were being treated—told the court that America's troubled race relations were having a harmful effect on the country's standing in the international arena. The brief stated that "racial discrimination furnishes grist for the Communist propaganda mills, and it raises doubts even among friendly nations as to the intensity of our devotion to the democratic faith."[47] Since both the United States and the Soviet Union were trying strenuously to win the allegiance of countries in Asia, Africa, and Latin America during the Cold War, America's discrimination against African Americans was a black mark against it in the eyes of non-white peoples in the Third World.

When Southern leaders tried to defy the orders to desegregate education, the federal government sent troops into Little Rock, Arkansas, in 1957 to safeguard the courageous Black students who attempted to enroll in that city's high school. In the early 1960s, federal troops had to be sent once again to the South to protect Black Americans, as well as their white supporters, from brutal assaults. Pictures of police dogs attacking demonstrators and of policemen shooting jets of water out of fire hoses so powerful that they knocked their targets off their feet were seen around the world and had a truly deleterious impact. Condemnations appeared in the world press, and these were clipped and sent to the State Department by foreign service officers in American embassies and consulates.[48] Such adverse publicity convinced federal officials that they had no choice but to support the Civil Rights movement. As the United States Information Agency put it in one of its reports, "a successful outcome of this revolution in American society" would be "basic to its leadership in world affairs."[49]

President Lyndon B. Johnson, who knew Congress intimately, having served for years as Senate majority leader before he became vice president in the Kennedy administration, succeeded in persuading Congress to pass the most sweeping civil-rights legislation in U.S. history, partly as a tribute to President Kennedy, his assassinated predecessor. The 1964 Civil Rights Act, passed only after a compromise was reached following more than eighty days of filibuster by Southern senators, guaranteed people of all racial origins equal access to public accommodations, strengthened existing mechanisms for preventing employment discrimination, authorized the federal government to file school desegregation lawsuits, and allowed funds to be cut off from federal contractors who were found to discriminate.[50] Foreigner observers hailed it as "an historic

advance" and "a vindication of the U.S. democratic system."[51] The act's Title VII established the Equal Employment Opportunity Commission, which can hear complaints, investigate allegations of violations, attempt to get the parties to reconcile, and, should no conciliation be possible, file lawsuits against the offending party. In a case decided in 1971, *Griggs v. Duke Power Company*—a decision reminiscent of the 1886 *Yick Wo* decision—the U.S. Supreme Court ruled that Title VII not only prohibits outright discrimination but also forbids employment policies and practices that have a "disparate impact" on minorities.[52]

The 1965 Voting Rights Act suspended the use of literacy tests and other devices to prevent people of color from voting, authorized the appointment of federal examiners to register people to vote, empowered the federal courts to enforce the Fifteenth Amendment, and provided criminal penalties against people who intimidate others in order to deny them the franchise.[53] The ability of minorities to exercise real political power was further increased after the U.S. Supreme Court, in the 1973 *White v. Regester* decision, ruled that at-large elections violate the "equal protection" clause of the Fourteenth Amendment because such an electoral format or structure reduces, or even completely eliminates, the chances of non-white candidates winning elections, thereby denying minorities equal participation in the political process.[54] As a result of this decision, the enfranchisement of non-white citizens now entails more than the right to vote; it also includes the ability to "elect legislators of their choice."

Even though Asian Americans were not meant to be the chief beneficiaries of these two laws, they successfully used Title VI of the 1964 Civil Rights Act to argue, in the *Lau v. Nichols* case, decided by the U.S. Supreme Court in 1974, that a school system that does not take the needs of limited-English-speaking students into account is denying equal educational opportunity to such students.[55] The high court did not suggest any specific remedies, but its decision "implicitly mandated bilingual education," according to L. Ling-chi Wang, one of the key strategists in the campaign to secure educational equity for language minority students.[56] Following the *Lau* decision, Congress passed the Equal Educational Opportunity Act in 1974 to enable federal agencies to monitor how schools were complying with the *Lau* decision.[57]

Asian immigrants with limited proficiency in English also benefited from the 1965 Voting Rights Act when its coverage was extended in 1975 to include language minorities.[58] A statutory basis was thereby created for multilingual ballots and election information brochures. Just as importantly, in *United Jewish Organizations v. Carey*, decided in 1977, the U.S. Supreme Court declined to overturn redistricting boundaries drawn to increase the likelihood of minority candidates winning elections.[59] As a result of this decision, some politically active Asian Americans in localities with sizable numbers of Asian American voters have participated in the redistricting efforts that occurred after the results of the 1980 and 1990 censuses became known.[60]

Historic as the 1964 Civil Rights Act and the 1965 Voting Rights Act have been, their impact on Asian Americans pales in comparison with a third piece of legislation passed in the same period—the 1965 Immigration Act, which abolished the discriminatory "national origins" quota system and replaced it

with a system that puts immigrants from all countries of the world on an equal footing. Since 1965, two basic principles have guided the selection of immigrants: family reunification, and preferences given to individuals with skills needed by the U.S. economy.[61] Aspiring Asian immigrants have been able to make use of both selection criteria. As a result, the Asian-ancestry population in the United States has burgeoned in the last thirty-five years, transforming Asian communities in America.

Asian immigrants who have entered the United States since 1965 fall broadly into two groups. One consists of well-educated, highly trained professionals who have adapted relatively easily to life in the United States. Many of them find jobs in high-technology industries and in the various professions. Some bring sufficient capital to open their own businesses. A second, larger group consists of people entering through the family-reunification provisions of the 1965 and 1990 immigration laws. Many of them are less well-educated and lack both relevant job skills and fluency in English. In addition to immigrants, over a million people from Vietnam, Laos, and Cambodia have entered as refugees since 1975. Though the refugee population also falls into these two groups, the overwhelming majority belongs to the poorer segment of the Asian-ancestry population. Many of them hold low-paying jobs with few, if any, fringe benefits and no long-term job security, while others rely on welfare payments to survive.

The two kinds of Asian newcomers fill two different needs in the contemporary American labor market. Some scholars have called the present economy an "hourglass economy," first, because the two sectors that have grown fastest in the last few decades have been high-tech industries and personal services, and second, because it is now extremely difficult to climb up the occupational ladder from the lower tier to the upper one.[62] (In contrast, heavy industries manufacturing durable goods have declined in importance—a process that some observers have called "de-industrialization." In the past, the blue-collar jobs in these industries paid relatively high wages and served as a channel of upward mobility—a phenomenon that validated the existence of "the American Dream.") Today, the well-educated Asian immigrants meet the economy's need for technicians, engineers, and scientists in the top part of the hourglass, while the less-educated ones fill the bottom part's job openings. They become janitors, house cleaners, cooks, dishwashers, and nannies—such "woman's work" being increasingly done by hired help as more and more middle-class women of all ethnic backgrounds join the labor force.

Since the 1960s, Asian Americans have also benefited from affirmative action regulations and programs. Those programs that address employment discrimination have provided them with a statutory basis on which to demand *economic* rights. The term "affirmative action" was first used by President John Kennedy in 1961 in Executive Order 10925, which required companies with federal contracts to take positive action to prevent any employment discrimination based on race, color, creed, or national origin. The term appeared again in Title VII of the 1964 Civil Rights Act. In 1967, President Lyndon Johnson, in Executive Order 11375, extended the coverage to women by prohibiting discrimination on account of sex. Two years later, the Nixon administration established the

"Philadelphia Plan" to require the construction industry in Philadelphia and several other cities to come up with goals and timetables for hiring a specified number of minority workers. In subsequent years, federal guidelines indicated that tests could be used by employers only if they can be shown to be valid predictors of job performance.[63] One affirmative-action program that has benefited a significant number of Asian Americans economically is administered by the Small Business Administration, which has interpreted Section 8(a) of the 1953 act that established the agency in such a way as to allow set-asides for minority businesses. The Nixon administration created the Office of Minority Business Enterprises in 1969 to coordinate state and local resources for, and technical assistance to, minority businesses.[64]

It is important to understand how affirmative action differs from civil rights. Affirmative action programs aim not only to remedy past discrimination but also to prevent present or future discrimination. Whereas civil rights focus on equality of *opportunity*, affirmative action attempts to bring about equality of *results*. While civil rights are couched in terms of *individuals*, affirmative action programs are meant to affect *groups*. The importance of these differences, and the problems that have arisen because of them, will become clear as we examine the fourth period in the history of Asian American struggles for various kinds of rights.

THE LATE 1970S TO THE PRESENT

This fourth period is characterized by globalization and a conservative backlash. Economic globalization began with a phenomenon called "capitalist restructuring," which emerged in the 1970s with the rise of the "four little tigers," or "mini-dragons"—South Korea, Taiwan, Hong Kong, and Singapore.[65] These countries, following the example of Japan, adopted an export-led path of economic development. They succeeded so well that their exports began to compete with products from the United States, Western European countries, and Japan, where industrial production had been concentrated before the 1970s. (Countries in the Communist bloc had also become industrialized, but their products were seldom sold outside of their own bloc.) Today, transnational companies increasingly locate their manufacturing plants in Asian and Latin American countries with cheap labor and few environmental protection laws. Global capitalism recognizes no national borders: technology, raw materials, workers, and managers all roam the world in search of profits. However, control over research and development, as well as overall planning, has remained in corporate headquarters still located mainly in the United States, Western Europe, Japan, and the more developed of the newly industrializing countries.

During the contemporary period, Asian American rights-activists have focused on gaining *social* rights—namely, rights regarding education, the lack of English proficiency, anti-Asian violence, and racial profiling. The efforts to gain social rights, to ensure that Asian Americans continue to make headway in achieving economic rights, and to beat back attempts to diminish Asian American political rights are far more challenging than the earlier struggles for civil rights, for several reasons. First, when the Cold War ended in 1990, with the demise of Communism in

Eastern European countries and the political disintegration of the former Soviet Union itself, the powerful impetus that the Cold War had given the Civil Rights movement disappeared as well. Today, discrimination no longer "costs" the United States in the same way that it did from the late 1940s through the 1980s.

Second, because the U.S. Constitution and its pertinent amendments do not specify economic and social rights as such, there are no clear constitutional doctrines that Asian American activists can employ to make the social rights claims they are trying to make. Unfortunately, the distinction between civil and political rights, on the one hand, and economic and social rights, on the other, is widely accepted. The former set of rights carries far greater moral authority than does the latter. Even the United Nations has had to recognize the difference. In the first years of its existence, the UN's Human Rights Commission set about crafting a Universal Declaration of Human Rights. Mrs. Eleanor Roosevelt, who represented the United States in this effort and who chaired the commission, argued vigorously that the different kinds of rights should be treated as a unity. But as Mary Ann Glendon has revealed in a recent book, the U.S. State Department and other American officials strongly opposed her views: they thought that advocating for economic and social rights was Communistic and un-American.[66] Within the commission itself, members compromised by creating two separate enabling covenants for the Universal Declaration of Human Rights adopted in 1948. The first addresses civil and political rights, while the second deals with economic and social rights. Even with the two sets of rights now separated, the United States treated the Declaration only as "a non-binding statement of principles" until 1977, when President Jimmy Carter finally signed and forwarded it to Congress. However, Congress did not ratify the Declaration until 1992. Meanwhile, the economic and social rights covenant has languished and provides very little moral imperative, whether in the United States or anywhere else.

Third, conservatives opposed to the enlargement of rights for minorities have used extremely sophisticated tactics to erode the gains made during the Civil Rights era. They have argued that the programs established in those years not only have not solved any problems but have actually been the causes of the nation's current multiple ills. Three U.S. Supreme Court decisions have narrowed the reach of affirmative action. The first case involved Allan Bakke, a white student who had been denied admission to the medical school at the Davis campus of the University of California, which reserved sixteen out of one hundred slots in each year's incoming class for minority applicants. He sued the UC Regents for discriminating against him. In *Regents of the University of California v. Bakke*, the U.S. Supreme Court ruled in 1978 that such set-aside quotas violated the 1964 Civil Rights Act. However, the court left a crack open by allowing race-conscious criteria to continue to be used in a very limited way.[67] Two subsequent decisions have further severely limited the potential impact of affirmative action programs. In 1989, in *City of Richmond v. Croson*, the high court struck down the business affirmative-action plan of Richmond, Virginia, because its affirmative action net had been cast too widely and included too many groups. As Justice Sandra Day O'Connor wrote, "There is absolutely no

evidence of past discrimination against Spanish-speaking, Oriental, Indian, Eskimo, or Aleut persons in any aspect of the Richmond construction industry."[68] (This list refers to the fact that in the 1960s, African Americans, "Spanish Americans," "Orientals," and "American Indians" were deemed eligible for affirmative action programs, but the categories were later expanded, so that the "African American" category now also includes Black people from the Caribbeans and Africa; the "Spanish American" category now refers to persons from Latin America, the Spanish-speaking Caribbeans, and Spain itself; the "Oriental" rubric now covers persons from East, Southeast, and South Asia—but not Afghanistan, countries in the Middle East, or the Asian part of the Soviet Union; and the "American Indian" category now takes in Eskimos and Aleuts.)[69] Then, in the 1995 *Adarand Constructors, Inc. v. Pena* decision, the Supreme Court ruled that affirmative action programs—whether they deal with education, employment, or federal contracts—must meet a judicial review standard of "strict scrutiny," which means that they can continue to exist only if the remedy is "narrowly tailored" to meet a "compelling" government interest.[70]

In light of these decisions, at present a remedy can be used only if there is concrete evidence that the allegedly guilty party (and not just society in general) specifically discriminated against a particular class of persons in the past or is still doing so at present. Today, an educational institution or an employer wishing to establish an affirmative action program must first carry out a "disparity study" to document the history of discrimination against a specific group. Proposed remedies must be of limited duration, benefit only the group(s) that had been discriminated against, and not impose undue burdens on white Americans.[71]

In recent years, anti-affirmative-action efforts have merged with anti-immigrant campaigns.[72] One consequence is that the fate of Asian immigrants has become more closely tied to that of Latino immigrants than to the situation of African Americans. Immigrants, both legal and illegal, have been the main targets of California's Proposition 187, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (the "Welfare Reform Act"), and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. In contrast, the main victims of the 1995 decision by the Regents of the University of California to stop using race-conscious methods to increase the number of underrepresented students—a policy in effect for six years until it was rescinded in May 2001—and of Proposition 209, passed in California in 1996, have been people of color, both immigrants and American-born.[73]

As journalism professor Lydia Chavez has documented, voters supported Proposition 209 for complex reasons. The most important reason was that many voters were unaware of the proposition's true intention—to end affirmative action—because its text made no reference at all to "affirmative action," claiming instead that its purpose was to end discrimination of any kind and against any person. Just as important, the groups opposing it were badly splintered and lacked financial support. In contrast, California Governor Pete Wilson and the Republican Party poured large sums of money into the pro-209 campaign. To avoid being sucked into a racial "wedge issue," the Democratic Party played only

a lukewarm role in opposing it. Polls have shown that Americans in general are against discrimination; at the same time, they strongly oppose "preferential treatments" or "quotas" intended to benefit only certain specified groups.[74]

Efforts have also been made to undermine the growing political power of non-white Americans. In its 1993 decision in *Shaw v. Reno*, the U.S. Supreme Court affirmed that white Americans have the right to sue if race is the "predominant factor" in drawing electoral district boundaries.[75] In the 1994 *Holder v. Hall* decision, the court declared that neither the Fourteenth and Fifteenth Amendments nor the 1965 Voting Rights Act can be used to challenge the phenomenon of "vote dilution"—that is, the use of various mechanisms to minimize the impact of minority voters.[76] In a third case, *Miller v. Johnson*, decided in 1995, the court threw out the newly drawn boundaries of certain electoral districts, the aim of which was to enhance the clout of minority voters.[77] In light of these decisions, attempts to redraw electoral district boundaries after the results of the 2000 census become available will doubtless engender many conflicts.

The 1990s witnessed the unfolding of a great historical irony. Just as a successful African American businessman, Ward Connerly, led the effort to eliminate affirmative action at the University of California and played a key role in the Proposition 209 campaign, so another prominent African American, Supreme Court Justice Clarence Thomas, led the judicial attack against minority voting rights in the above three decisions. Connerly and Thomas represent a new phenomenon—the emergence of conservative individuals among African, Latino, and Asian Americans who are playing a leadership role in dismantling the gains of the Civil Rights era.

Yet individuals alone, no matter how firmly committed to retrenching various rights, could not succeed in their efforts were it not for the sea change brought about by the "Reagan Revolution" in the country's political and social climate—a change that the New Democrats during the Clinton administration attempted to domesticate and coopt in their own contest for political power. In the last two decades, the anti-affirmative-action and anti-immigrant campaigns succeeded because they tapped into the growing resentment that many European Americans have felt since the late 1960s. Not only has the average American worker experienced a decline in his or her real wages in the last thirty-some years, but he or she has also found that channels for upward socioeconomic mobility in today's globalized "hourglass economy" have become severely constricted. The gap between the richest and the poorest segments of the American population has grown alarmingly. Instead of attributing their downward slide to the phenomenal profits that giant corporations now make or expect to make, many working-class Americans blame their fall from grace on post–1965 immigrants from Asia and Latin America who compete with them for jobs, and on poorly paid (also non-white) workers overseas. They also blame affirmative action for favoring members of domestic minority groups, and the nation's liberal immigration laws for letting in so many non-white people. In other words, class antagonism is being deflected and is, instead, perceived in racial terms. However, since overt racism is no longer socially acceptable in the United States, at least not in public, theorists of the conservative cause have cynically but cleverly used the rhetoric of "preferences," "set-asides,"

"quotas," and "reverse discrimination" to get their message across to a receptive audience.[78]

Fourth, the most formidable hurdle that Asian American rights-activists now face comes, ironically, from within their own ranks. Affirmative action has been a highly controversial issue within Asian American communities because the Asian-ancestry population is now so heterogeneous. It is divided by national origin, language, religion, nativity, citizenship status, years of residence in the United States, class, sex, and, most important of all, political ideology. There are now numerous answers to such questions as: Who among the Asian-ancestry population should qualify for affirmative action? Should well-to-do Asian immigrants, including those who are not U.S. citizens, enjoy the benefits originally intended for historically oppressed racial minorities, particularly African Americans? Should high-achieving Asian American students be allowed to enroll in unlimited numbers at elite schools such as San Francisco's Lowell High School or the Berkeley and Los Angeles campuses of the University of California? Can it be argued that all Asian Americans are still "minorities"? Do Asian Americans want to be "minorities"? Are Asian American employers themselves practicing discrimination when they use word-of-mouth to recruit co-ethnic workers, thereby shutting out potential applicants from other groups? Debates over these questions have been heated, and Asian American rights-activists today are truly caught in a bind.

Politicians and others opposed to affirmative action have taken advantage of the ideological cleavages among Asian Americans by telling them that they are victimized when places are set aside for African, Latino, and Native Americans. Conservatives argue that affirmative action programs are a form of "reverse discrimination" against European Americans, particularly white men. They point out that the group basis of affirmative action violates the most deeply rooted American value: individualism. In American society, they say, people are supposed to be rewarded according to their individual merit. Moreover, the U.S. Constitution was designed to limit the ability of the government to regulate private behavior. Therefore, when federal or state agencies monitor businesses or schools to see whether or not they are complying with affirmative action guidelines, the government is intruding into the private realm in an unconstitutional manner. The struggle against conservative ideology and actions is so difficult because, in their efforts to demolish affirmative action, conservatives are using the very same rhetoric—and, more importantly, the same judicial doctrines—that oppressed groups have used in the past to fight for greater equality.

Some Asian Americans have bought such conservative arguments, partly because some of them agree with the principles voiced by European American and African American conservatives, partly because some hold negative views of African Americans and Latino Americans, and partly because many individuals are concerned mainly with their own advancement. Yet Asian Americans adopt such a stance at their own peril, for their status in American society, though greatly improved in recent years, remains a precarious one, subject to the changing winds of politics. The much-touted Asian American "success" did not prevent Asian-named donors from being singled out for investigation when the campaign finance scandal broke out during the 1996 elections. Neither did it

prevent Dr. Wen Ho Lee from being incarcerated and held in solitary confinement when no real proof existed of his alleged guilt.

In my opinion, we Asian Americans really cannot afford to set ourselves apart from or above other groups who are also struggling for civil, political, economic, and social rights. We must not forget or minimize the fact that, historically, whatever rights we have gained have depended largely on the rights African Americans have won. In these days when critics of affirmative action are using a "divide and conquer" tactic to roll back the advances made during the Civil Rights era, we cannot afford to be racists ourselves. Although many Asians now residing in the United States tend to think of themselves not as minority Americans but as transnational members of various Asian diasporas who maintain ties with, and loyalty to, co-ethnics around the world, we must never forget that whatever rights we have acquired in the last century and a half have been contingent on our ability to claim membership in *American society*—claims we began making long before Asian immigrants were allowed to become naturalized citizens.

NOTES

This essay is revised from a keynote address given by the author on June 8, 2001 in San Francisco, at a dinner commemorating the thirty-second anniversary of the civil rights organization Chinese for Affirmative Action.

1. The literature on Reconstruction is voluminous. Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York: Harper & Row, 1988) provides an excellent overview. William Gillette, *Retreat from Reconstruction, 1869–1879* (Baton Rouge: Louisiana State University Press, 1979) discusses why the radical Republicans failed to complete the task they had set themselves. On the role of the army, see James Sefton, *The United States Army and Reconstruction, 1865–1877* (Baton Rouge: Louisiana State University Press, 1967). Two works by prominent African American historians are of critical importance: W.E.B. Du Bois, *Black Reconstruction in America, 1860–1880: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America* (New York: Russell & Russell, 1935; Atheneum, 1972) remains a classic, while John Hope Franklin, *Reconstruction After the Civil War* (Chicago: University of Chicago Press, 1961; 2nd ed., 1994) assesses the accomplishments and failures of Reconstruction.
2. On birthright citizenship and people of color, see James H. Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill: University of North Carolina Press, 1978), 287–333.
3. *Dred Scott v. Sanford*, 60 U.S. 393 (1857).
4. Act of July 14, 1870, 16 Stat. 254.
5. Civil Rights Act of 1866, 14 Stat. 27; Civil Rights Act of 1870, 16 Stat. 140; Civil Rights Act of 1871, 17 Stat. 13; and Civil Rights Act of 1875, 18 Stat. 335. These acts are discussed in Rogers M. Smith, *Civil Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, Conn.: Yale University Press, 1997), 305–08, 317, and 325–27, while Charles J. McClain, *In Search of Equality: The Chinese Struggle against Discrimination in Nineteenth-Century America* (Berkeley and Los Angeles: University of California Press, 1994), 32–42, shows how they affected Chinese immigrants.
6. Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* (New Haven, Conn.: Yale University Press, 1998), 48.
7. Amar, *Bill of Rights*, provides a systematic exposition of each amendment in the Bill of Rights and of the Fourteenth Amendment.
8. Amar, *Bill of Rights*, 181–86.

9. McClain, *In Search of Equality*, 31–36; Amar, *Bill of Rights*, 163–74; and Smith, *Civil Ideals*, 308–12.
10. McClain, *In Search of Equality*, 38–40.
11. The Burlingame Treaty, July 28, 1868, 16 Stat. 739. For the story of how Anson Burlingame, an American diplomat, came to lead a mission to the United States on behalf of the Chinese government, see Frederick Wells Williams, *Anson Burlingame and the First Chinese Mission to Foreign Powers* (New York: Russell & Russell, 1912; repr. 1972).
12. McClain, *In Search of Equality*, contains the most analytical discussion of the key cases. (McClain's many journal articles are not listed here because they became chapters in his book.) A very lengthy unpublished dissertation, Hudson N. Janisch, "The Chinese, the Courts, and the Constitution: A Study of the Legal Issues Raised by Chinese Immigration, 1850–1902" (J.S.D. dissertation, University of Chicago Law School, 1971), is a veritable treasure-trove of information about not only the landmark federal cases but also a large array of cases heard in local and state courts. Lucy E. Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995), offers an excellent analysis of the interplay among Chinese immigrants, the law, and politics in the making of U.S. immigration law. Four chapters in Sucheng Chan, ed., *Entry Denied: Exclusion and the Chinese Community in America, 1882–1943* (Philadelphia: Temple University Press, 1991), are also pertinent: Charles J. McClain and Laurene Wu McClain, "The Chinese Contribution to the Development of American Law," 3–24; Christian G. Fritz, "Due Process, Treaty Rights, and Chinese Exclusion, 1882–1891," 25–46 (which is a revised version of "A Nineteenth-Century '*Habeas Corpus* Mill': The Chinese Before the Federal Courts in California," *Journal of American Legal History* 32 [1988]:347–72); Lucy E. Salyer, "'Laws Harsh as Tigers': Enforcement of the Chinese Exclusion Laws, 1891–1924," 57–93 (an earlier version of which appeared as "Captives of Law: Judicial Enforcement of the Chinese Exclusion Laws, 1891–1905," *Journal of American History* 76 [Sept. 1989]: 91–117); and Sucheng Chan, "The Exclusion of Chinese Women, 1870–1943," 94–146. See also Ralph James Mooney, "Matthew Deady and the Federal Judicial Response to Racism in the Early West," *Oregon Law Review* 63 (1984): 561–637; Louis Henkin, "The Constitution and United States Sovereignty: A Century of Chinese Exclusion and Its Progeny," *Harvard Law Review* 100 (1987): 853–86; Linda C. A. Przybyszewski, "Judge Lorenzo Sawyer and the Chinese: Civil Rights Decisions in the Ninth Circuit," *Western Legal History* 1 (1988): 23–56; David Beeseley, "More than *People v. Hall*: Chinese Immigrants and American Law in a Sierra Nevada County, 1850–1920," *Locus* 3 (1991): 123–39; Malik Simba, "Gong Lum v. Rice: The Convergence of Law, Race, and Ethnicity," *Explorations in Ethnic Studies* 15 (July 1992): 1–17; David C. Frederick, *Rugged Justice: The Ninth Circuit Court of Appeals and the American West, 1891–1941* (Berkeley and Los Angeles: University of California Press, 1994), chap. 3: "Testing Tolerance: Chinese Exclusion and the Ninth Circuit," 52–77; Ellen D. Katz, "The Six Companies and the Geary Act: A Case Study in Nineteenth-Century Civil Disobedience and Civil Rights Litigation," *Western Legal History* 8 (Summer/Fall 1995): 227–71; and the following articles by John R. Wunder: "Law and the Chinese in Frontier Montana," *Montana* 30 (July 1980): 18–31; "The Courts and the Chinese in Frontier Idaho," *Idaho Yesterday* 25 (Spring 1981): 23–32; "The Chinese and the Courts in the Pacific Northwest: Justice Denied?" *Pacific Historical Review* 52 (May 1983): 191–211; "Chinese in Trouble: Criminal Law and Race on the Trans-Mississippi West Frontier," *Western Historical Quarterly* 17 (January 1986): 25–41; "Law and the Chinese on the Southwest Frontier, 1850s–1902," *Western Legal History* 2 (Summer/Fall 1989): 139–58; and "*Territory of New Mexico v. Yee Shun*: A Turning Point in Chinese Legal Relationships in the Trans-Mississippi West," *New Mexico Historical Review* 65 (1990): 305–18.
13. *Ho Ah Kow v. Nunan*, 12 F.Cas. 252 (1879); *In re Ah Yup*, 1 F.Cas. 223 (1878).
14. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).
15. *Plessy v. Ferguson*, 163 U.S. 537 (1896). For the impact of Jim Crow on African Americans, see C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press,

1955; 2nd rev. ed., 1966), and Leon Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: A. K. Knopf, 1998; New York: Vintage Books, 1999).

16. J. Morgan Krousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (Chapel Hill: University of North Carolina Press, 1999), 1–68.
17. Jay Mandle, *Not Slave, Not Free: The African American Economic Experience Since the Civil War* (Durham, N.C.: Duke University Press, 1992).
18. Writings on the Progressive movement are substantial. Richard Hofstadter, *The Age of Reform: From Bryan to FDR* (New York: Vintage Books, 1955); Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900–1916* (Chicago: Quadrangle Books, 1963); Christopher Lasch, *The New Radicalism in America* (New York: A. K. Knopf, 1965; New York: W. W. Norton, 1986); Robert Wiebe, *The Search for Order, 1877–1920* (New York: Hill and Wang, 1967; Westport: Greenwood Press, 1980); John W. Chambers II, *The Tyranny of Change: America in the Progressive Era, 1900–1917* (New York: St. Martin's Press, 1980); and Robert Crunden, *Ministers of Reform* (New York: Basic Books, 1982; Urbana: University of Illinois Press, 1984), offer different interpretations of the movement. John D. Buenker, John C. Burnham, and Robert M. Crunden, *Progressivism* (Cambridge, Mass: Schenkman Pub. Co., 1967, 1977), and Arthur S. Link and Richard L. McCormick, *Progressivism* (Arlington Heights, Ill.: Harlan Davidson, 1983), emphasize its internal diversity. Steven J. Diner, *A Very Different Age: Americans of the Progressive Era* (New York: Hill and Wang, 1998), focuses on the lives of common people during the Progressive era. Jack Temple Kirby, *Darkness at the Dawning: Race and Reform in the Progressive South* (Philadelphia: Lippincott, 1972); Dewey W. Grantham, *Southern Progressivism: The Reconciliation of Progress and Tradition* (Knoxville: University of Tennessee Press, 1983); and William Link, *The Paradox of Southern Progressivism, 1880–1930* (Chapel Hill: University of North Carolina Press, 1992), examine the contradiction between racism and reform in the South. William Deverell and Tom Sitton, eds., *California Progressivism Revisited* (Berkeley and Los Angeles: University of California Press, 1994), contains revisionist essays on the phenomenon in California.
19. Roger Daniels, *The Politics of Prejudice: The Anti-Japanese Movement in California and the Struggle for Japanese Exclusion* (Berkeley and Los Angeles: University of California Press, 1962), 49.
20. Quoted in Daniels, *Politics of Prejudice*, 49. For an assessment of Chester Rowell, see Frank W. Van Nuys, "A Progressive Confronts the Race Question: Chester Rowell, the California Alien Land Act of 1913, and the Contradictions of Early Twentieth-Century Racial Thought," *California History* 73 (Spring 1994): 2–13 and 84–85.
21. Daniels, *Politics of Prejudice*, 49–50.
22. The following comprise the Chinese exclusion acts: Act of May 6, 1882, 22 Stat. 60; Act of July 5, 1884, 23 Stat. 116; Act of September 13, 1888, 25 Stat. 476; Act of October 1, 1888, 25 Stat. 504; Act of May 5, 1892, 27 Stat. 25; Amendatory Act of November 3, 1893, 28 Stat. 7; Act of April 9, 1902, 32 Stat. 176; and Act of April 27, 1904, 33 Stat. 394.
23. *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).
24. *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892).
25. *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).
26. *United States v. Ju Toy*, 198 U.S. 253 (1905). Salyer, *Laws Harsh as Tigers*, 94–216, meticulously traces the process by which immigration officials, step by step, eclipsed the judicial system.
27. Angelo N. Ancheta, *Race, Rights, and the Asian American Experience* (New Brunswick, N.J.: Rutgers University Press, 1998), 88–92.
28. *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).
29. 1917 Immigration Act, 39 Stat. 874.
30. 1924 Immigration Act, 43 Stat. 153.
31. *Takao Ozawa v. United States*, 260 U.S. 178 (1922).
32. *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923).
33. *Porterfield v. Webb*, 263 U.S. 225 (1923); *Terrace v. Thompson*, 263 U.S. 197 (1923); *Webb v. O'Brien*, 263 U.S. 313 (1923); and *Frick v. Webb*, 263 U.S. 326.
34. The writings on the growth of the American empire in the latter part of the nineteenth century are voluminous. Robert L. Beisner, *From the Old Diplomacy to the New, 1865–1900*

(Arlington Heights, Ill.; Harlan Davidson, 1975; 2nd ed. 1986), and Thomas Paterson, J. Garry Clifford, and Kenneth J. Hagen, *American Foreign Relations: A History* (Lexington, Mass.: D. C. Heath, 1977; 1983; 1988; 1991; 1995), offer useful introductions. Classics in the field include: two books by William Appleman Williams, *The Tragedy of American Diplomacy* (Cleveland: World Pub. Co., 1959; New York: Dell Pub. Co., rev. ed., 1962; rev. and enl. ed. 1972; New York: W. W. Norton, new ed., 1988), and *The Roots of the Modern American Empire: A Study of the Growth and Shaping of Social Consciousness in a Marketplace Society* (New York: Random House, 1969); two books by Walter LaFeber, *The New Empire: An Interpretation of American Expansion, 1860–1898* (Ithaca, N.Y.: Cornell University Press, 1963; 1983; 100th anniversary ed., 1998), and *The American Age: United States Foreign Policy at Home and Abroad Since 1750* (New York: W. W. Norton, 1989; 1994); two books by Ernest R. May, *Imperial Democracy: The Emergence of America as a Great Power* (New York: Harcourt Brace Jovanovich, 1961; New York: Harper & Row, 1973), and *American Imperialism: A Speculative Essay* (New York: Atheneum, 1968); and David Healy, *United States Expansionism: The Imperialist Urge in the 1890s* (Madison: University of Wisconsin Press, 1968; 1970). Newer works that examine the nonpolitical aspects of American imperialism include two books by Emily Rosenberg, *Spreading the American Dream: American Economic and Cultural Expansion, 1890–1945* (New York: Hill and Wang, 1982), and *Financial Missionaries to the World: The Politics and Culture of Dollar Diplomacy, 1900–1930* (Cambridge, Mass.: Harvard University Press, 1999). Michael Hunt, *Ideology and U.S. Foreign Policy* (New Haven, Conn.: Yale University Press, 1987), and Alexander DeConde, *Ethnicity, Race, and American Foreign Policy: A History* (Boston: Northeastern University Press, 1992), are especially pertinent to my discussion here because they examine the role of racial ideology in American foreign policies and practices.

35. See the essays in the 20th anniversary (of the Third World student strikes) commemorative issue of *Amerasia Journal*, vol. 15, no. 1 (1989); Yen Le Espiritu, *Asian American Panethnicity: Bridging Institutions and Identities* (Philadelphia: Temple University Press, 1992); and William Wei, *The Asian American Movement* (Philadelphia: Temple University Press, 1993).
36. Ward Thomas and Mark Garrett, "U.S. and California Affirmative Action Policies, Laws, and Programs," in *Impacts of Affirmative Action: Policies and Consequences in California*, ed. Paul Ong (Walnut Creek, Calif.: Alta Mira Press, 1999), 25–58.
37. Xiaojian Zhao, "Chinese American Women Defense Workers in World War II," *California History* 75 (Summer 1996): 138–53 and 182–84.
38. Dozens of books have been published about the forcible removal and incarceration of Japanese Americans during World War II. Roger Daniels, *Prisoners Without Trial: Japanese Americans in World War II* (New York: Hill and Wang, 1993), provides the most succinct introduction. For more details, see Jacobus tenBroek, Edward Barnhart, and Floyd W. Matson, *Prejudice, War and the Constitution: Causes and Consequences of the Evacuation of the Japanese Americans in World War II* (Berkeley and Los Angeles: University of California Press, 1954); and Commission on Wartime Relocation and Internment of Civilians, *Personal Justice Denied* (Washington, D.C.: U.S. Government Printing Office, 1982). For how the cases were reopened, see Peter Irons, *Justice at War: The Story of the Japanese American Internment Cases* (New York: Oxford University Press, 1983). Peter Irons, ed., *Justice Delayed: The Record of the Japanese American Internment Cases* (Middletown, Conn.: Wesleyan University Press, 1989), contains the texts of the Supreme Court decisions.
39. Fred W. Riggs, *Pressure on Congress: A Study of the Repeal of Chinese Exclusion* (New York: King's Crown Press, 1950).
40. *Oyama v. California*, 332 U.S. 633 (1948); *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948); *Kenji Namba v. McCourt*, 185 Ore. 579 (1949); *Sei Fujii v. State of California*, 38 Cal. 2d 718 (1952); *Haruye Masaoka v. State of California*, 39 Cal. 2d 883 (1952); and 1967 Washington Laws, ch. 163, sec. 7. For a discussion of these cases, see Frank F. Chuman, *The Bamboo People: The Law and Japanese-Americans* (Del Mar, Calif.: Publisher's Inc., 1976), 198–223.
41. *Perez v. Sharp*, 32 Cal. 2d 711 (1948); and *Shelley v. Kramer*, 334 U.S. 1 (1948).

42. Thousands of books have been published about the many conflicts related to the Cold War. The following books offer useful introductions to the topic: Herbert Feis, *From Trust to Terror: The Onset of the Cold War, 1945–1950* (New York: W. W. Norton, 1970); John Lewis Gaddis, *The United States and the Origins of the Cold War, 1941–1947* (New York: Columbia University Press, 1972; new ed., 2000); Norman A. Graebner, ed., *The Cold War: A Conflict of Ideology and Power* (Lexington, Mass.: D. C. Heath, 1976); Thomas G. Paterson, *On Every Front: The Making of the Cold War* (New York: W. W. Norton, 1979); Jeff McMahan, *Reagan and the World: Imperial Policy in the New Cold War* (New York: Monthly Review Press, 1985); and John Lewis Gaddis, *We Now Know: Rethinking Cold War History* (New York: Oxford University Press, 1997).
43. A great deal has been written about each of the many facets of the Civil Rights movement, but there are few overviews of the movement as a whole. A good starting point consists of two books produced in conjunction with a six-part television series on the topic: Juan Williams, *Eyes on the Prize: America's Civil Rights Years, 1954–1965* (New York: Viking Penguin, 1987), and Clayborn Carson, et al., *Eyes on the Prize Civil Rights Reader: Documents, Speeches, and Firsthand Accounts from the Black Freedom Struggle, 1954–1990* (New York: Viking Penguin, 1987; 1991). Additional documents can be found in Leon Friedman, ed., *The Civil Rights Reader: Basic Documents of the Civil Rights Movement* (New York: Walker and Co., 1967; rev. ed., 1968). Key events are chronicled in William H. Chafe, *Civilities and Civil Rights: Greensboro, North Carolina, and the Black Struggle for Freedom* (New York: Oxford University Press, 1980); Elizabeth Huckaby, *Crisis at Central High, Little Rock, 1957–1958* (Baton Rouge: Louisiana State University Press, 1980); David J. Garrow, ed., *The Montgomery Bus Boycott and the Women Who Started It: The Memoir of Jo Ann Gibson Robinson* (Knoxville: University of Tennessee Press, 1987); idem, ed., *Birmingham, Alabama, 1956–1963: The Black Struggle for Civil Rights* (Brooklyn, N.Y.: Carlson Press, 1989); and idem, *Protest at Selma: Martin Luther King, Jr., and the Voting Rights Act of 1965* (New Haven, Conn.: Yale University Press, 1978). The different strands within the African American struggle for freedom in the 1950s and 1960s are discussed in David J. Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (New York: William Morrow, 1986; New York: Vintage Books, 1988; 1993; New York: Quill Books, 1999); Taylor Branch, *Parting the Waters: America in the King Years, 1954–1963* (New York: Simon and Schuster, 1988); idem, *Pillars of Fire: America in the King Years, 1963–1965* (New York: Simon and Schuster, 1998); Clayborne Carson, *In Struggle: SNCC and the Black Awakening of the 1960s* (Cambridge, Mass.: Harvard University Press, 1981; 1995); Stokely Carmichael and Charles V. Hamilton, *Black Power: The Politics of Liberation in America* (New York: Vintage Books, 1967; 1992); William L. Van DeBurg, *New Day in Babylon: The Black Power Movement and American Culture, 1965–1975* (Chicago: University of Chicago Press, 1992); Malcolm X and Alex Haley, *The Autobiography of Malcolm X* (New York: Grove Press, 1965; New York: Ballantine Books, 1973; 1988; 1992); Gerald Horne, *Fire This Time: The Watts Uprising and the 1960s* (Charlottesville: University Press of Virginia, 1995); James W. Button, *Black Violence: The Political Impact of the 1960s Riots* (Princeton, N.J.: Princeton University Press, 1978); and Belinda Rohnett, *How Long? How Long? African-American Women in the Struggle for Civil Rights* (New York: Oxford University Press, 1997).
44. Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton, N.J.: Princeton University Press, 2000).
45. Thomas and Garrett, "U.S. and California Affirmative Action," 27–28; Robert F. Burk, *The Eisenhower Administration and Black Civil Rights* (Knoxville: University of Tennessee Press, 1984); Mark Stern, *Calculating Visions: Kennedy, Johnson, and Civil Rights* (New Brunswick, N.J.: Rutgers University Press, 1992); James W. Riddlesperger, Jr., and Donald W. Jackson, *Presidential Leadership and Civil Rights Policy* (Westport, Conn.: Greenwood Press, 1995); and Hugh Davis Graham, *Civil Rights and the Presidency: Race and Gender in American Politics, 1960–1972* (New York: Oxford University Press, 1992), which is an abridgement of his *The Civil Rights Era: Origins and Development of National Policy, 1960–1972* (New York: Oxford University Press, 1990).

46. *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Brown v. Board of Education* 349 U.S. 483 (1954). For details, see Richard Kruger, *Simple Justice: The History of* Brown v. Board of Education *and Black America's Struggle for Equality* (New York: A. K. Knopf, 1975).
47. Dudziak, *Cold War Civil Rights*, 100.
48. Dudziak, *Cold War Civil Rights*, 115–202.
49. Dudziak, *Cold War Civil Rights*, 207.
50. Civil Rights Act of 1964, 78 Stat. 241. For discussions of the Congressional debates over the bills that became the 1964 Civil Rights Act, see Charles Whalen and Barbara Whalen, *The Longest Debate: The Legislative History of the 1964 Civil Rights Act* (Cabin John, Md.: Seven Locks Press, 1985); Robert D. Loevy, ed., *The Civil Rights Act of 1964: The Passage of the Law that Ended Racial Segregation* (Albany: State University of New York Press, 1997); and Bernard Grofman, ed., *Legacies of the 1964 Civil Rights Act* (Charlottesville: University Press of Virginia, 2000).
51. Dudziak, *Cold War Civil Rights*, 211.
52. *Griggs v. Duke Power Company*, 401 U.S. 424 (1971).
53. Voting Rights Act of 1965, 79 Stat. 437. The essays in Bernard Grofman and Chandler Davidson, eds., *Controversies in Minority Voting: The Voting Rights Act in Perspective* (Washington, D.C.: The Brookings Institution, 1992), examine various aspects of the act and its impact.
54. *White v. Regester*, 412 U.S. 755 (1973).
55. *Lau v. Nichols*, 414 U.S. 563 (1974).
56. Ling-chi Wang, "*Lau v. Nichols*: The Right of Limited English-Speaking Students," *Amerasia Journal* 2 (Fall 1974): 16–45. Additional details are found in L. Ling-chi Wang, "*Lau v. Nichols*: History of a Struggle for Equal and Quality Education," in Emma Gee et al., ed., *Counterpoint: Perspectives on Asian America* (Los Angeles: Asian American Studies Center, University of California, Los Angeles, 1976), 240–63.
57. Ancheta, *Race, Rights, and the Asian American Experience*, 104–05.
58. The 1975 amendments to the 1965 Voting Rights Act are found in 89 Stat. 400.
59. *United Jewish Organizations of Williamsburg v. Carey*, 430 U.S. 144 (1977).
60. Carole Jean Uhlaner, "Political Activity and Preferences of African Americans, Latinos, and Asian Americans," in Gerald D. Jaynes, ed., *Immigration and Race: New Challenges for American Democracy* (New Haven, Conn.: Yale University Press, 2000), 217–54.
61. 1965 Immigration Act, 79 Stat. 111.
62. Alejandro Portes and Min Zhou, "The New Second Generation: Segmented Assimilation and Its Variants," *The Annals of the American Academy of Political and Social Sciences* 530 (November 1993): 74–96.
63. Paul Ong, "An Overview of Affirmative Action," in Ong, ed., *Impacts of Affirmative Action*, 12–13; and Thomas and Garrett, "U.S. and California Affirmative Action," 31–32.
64. Thomas and Garrett, "U.S. and California Affirmative Action," 34. For a more detailed discussion, see Thomas J. Sugrue, "Breaking Through: The Troubled Origins of Affirmative Action in the Workplace," in John David Skrentny, ed., *Color Lines: Affirmative Action, Immigration, and Civil Rights Options for America* (Chicago: University of Chicago Press, 2001), 31–52.
65. Paul Ong, Edna Bonacich, and Lucie Cheng, "The Political Economy of Capitalist Restructuring and the New Asian Immigration," in Ong, Bonacich, and Cheng, eds., *The New Asian Immigration in Los Angeles and Global Restructuring* (Philadelphia: Temple University Press, 1994), 3–44.
66. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001).
67. *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).
68. *City of Richmond v. Croson*, 488 U.S. 469 (1989).
69. John David Skrentny, "Introduction," in Skrentny, ed., *Color Lines*, 8.
70. *Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097 (1995).
71. Deborah C. Malamud, "Affirmative Action and Ethnic Niches: A Legal Afterword," in Skrentny, ed., *Color Lines*, 313–45.

72. Hugh Davis Graham, "Affirmative Action for Immigrants? The Unintended Consequences of Reform," in Skrentny, ed., *Color Lines*, 53–70.
73. Debra L. DeLaet, *U.S. Immigration Policy in an Age of Rights* (Westport, Conn.: Praeger, 2000), chap. 5: "U.S. Immigration Policy in the 1990s: A New Era of Restrictions?" 103–18; Thomas J. Espenshade, Jessica L. Baraka, and Gregory A. Huber, "Restructuring Incentives for U.S. Immigration," in Kavita Pandit and Suzanne Davies Withers, eds., *Migration and Restructuring in the United States: A Geographic Perspective* (Lanham, Md.: Rowman & Littlefield, 1999), 113–36; and Paul Ong, "Proposition 209 and Its Implications," in Ong, ed., *Impacts of Affirmative Action*, 197–209.
74. Lydia Chavez, *The Color Bind: California's Battle to End Affirmative Action* (Berkeley and Los Angeles: University of California Press, 1998).
75. *Shaw v. Reno*, 509 U.S. 630 (1993).
76. *Holder v. Hall*, 114 S. Ct. 2581 (1994).
77. *Miller v. Johnson*, 115 S. Ct. 2475 (1995). All three cases are discussed in detail in Krousser, *Colorblind Injustice*.
78. Terry Eastland and William J. Bennett, *Counting by Race: Equality from the Founding Fathers to Bakke and Weber* (New York: Basic Books, 1979), was one of the earliest attempts by conservative intellectuals to theorize their position. A more sophisticated effort is found in Andrew Kull, *The Color-Blind Constitution* (Cambridge, Mass.: Harvard University Press, 1992). Neil Gotanda, "A Critique of 'Our Constitution Is Color-Blind,'" *Stanford Law Review* 44 (November 1991): 1–68, analyzes the hypocrisy of the color-blind doctrine. The different strands within conservative ideology are clarified in Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* (New York: Routledge, 1994, 2nd ed.). For current public attitudes toward affirmative action and immigration, see Lawrence D. Bobo, "Race, Interests, and Beliefs about Affirmative Action: Unanswered Questions and New Directions," and Carol M. Swain, Kyra R. Greene, and Christine Min Wotipka, "Understanding Racial Polarization on Affirmative Action: The View from Focus Groups," both in Skrentny, ed., *Color Lines*, 191–213 and 214–238; and Grace A. Rosales, Mona D. Navarro, and Desdemona Cardosa, "Variation in Attitudes toward Immigrants Measured among Latino, African American, Asian, and European American Students," in Marta Lopez-Garza and David R. Diaz, eds., *Asian and Latino Immigrants in a Restructuring Economy: The Metamorphosis of Southern California* (Stanford, Calif.: Stanford University Press, 2001), 353–67.