The Undesirables: The causes of selective federal and state surveillance on Asian women and their reproductive decisions in the 19th and 21st century

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Abstract

In 1875, the U.S. federal government passed the Page Act to heavily scrutinize Asian women as a mechanism to prevent alleged Asian prostitutes from entering into the United States. Over one hundred years later, the State of Indiana charged an Indian American woman named Purvi Patel for obtaining a self-induced abortion, and she was ultimately found guilty and sentenced to over 40 years in prison before her verdict was overturned. Both cases are seemingly different, but I argue that by analyzing them through an interdisciplinary lens, the 1875 and 2013 cases are more similar than what the current scholarship reveals. After conducting a robust methodology analyzing Congressional records, court transcripts, newspapers, and existing scholarship in four different fields, it becomes clear that both cases center around the concern of how the government officials in the United States have wielded their power to police Asian women's bodily autonomy, especially with regard to immigration matters and abortion decisions. Although there are contextual differences, I argue that in both cases, the government created the problem of the wayward Asian woman by subscribing to intersecting stereotypes that their race, gender, and class render them as "undesirable" people in American society.

Introduction

"A Chinese Horror: Discovery of a Mongolian Society in San Francisco for an infamous purpose," announced the *Chicago Tribune*. On July 31, 1873, Americans read similar headlines in *The New York Times, The Baltimore Sun*, and among other reputable newspapers. Apparently, the police discovered evidence of a secret Chinese society known as the Hip Yee Tong Society that forced Chinese women into a prostitution ring, and if the prostitutes[1] did not make enough money, the leaders would whip and torture them.[2] A year and a half later, the national government responded. Representative Horace Page of California conducted a three-month investigation into this problem[3] and presented his solution in February 1875: A law that prevented Chinese female prostitutions from immigrating to the United States.[4] Within a month, President Ulysses S. Grant signed the Page Act of 1875 (herein referred to as the Page Act) into law. As a result, the United States government was required, by law, to scrutinize all Chinese women, ensuring that they were not entering for "lewd and immoral purposes… [or, in other words], for the purposes of prostitution."[5]

More than one hundred years later, headlines like "Patel charged in death of infant found in Dumpster" appeared in the *South Bend Tribune*, a local newspaper in northwest Indiana. On July 13, 2013, Purvi Patel, whose parents immigrated to the United States from India, rushed herself to the St. Joseph Regional Medical Center for medical help. During that visit, doctors

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[1] There are more power conscious terms such as sex workers that would be more appropriate to refer to this group today, but I chose to use prostitute to accurately reflect historical accuracy.
[2] "A Chinese Horror.: Discovery of a Mongolian Society in San Francisco for an infamous purpose," *Chicago Daily Tribune (1872-1922),* Jul 31, 1873, https://proxyiub.uits.iu.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fhistorical-newspapers%2Fchinese-horror%2Fdocview%2F171427794%2Fse-2%3Faccountid%3D11620; "Chinese Mysteries in California--the Girl Traffic in San Francisco--A Strange Story," *The Sun (1837-),* Jul 31, 1873, https://proxyiub.uits.iu.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fhistorical-newspapers%2Fchinese-mysteries-california-girl-traffic-san%2Fdocview%2F534141755%2Fse-2%3Faccountid%3D11620; "The Chinese in California: Alleged discovery of an immoral secret society—disclosures made by the police," *New York Times (1857-1922),* Jul 31, 1873, https://proxyiub.uits.iu.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fhistorical-newspapers%2Fchinese-california%2Fdocview%2F93338212%2Fse-2%3Faccountid%3D11620.
[3] Senator Page, 43rd Cong., 2nd sess., *Congressional Globe* 3 (December 8, 1874): S. 19.
[4] Senator Page, 43rd Cong., 2nd sess., *Appendix to the Congressional Globe* 3 (February 10, 1875): S 40-45.
[5] *An act supplementary to the acts in relation to immigration*, Public Law 18, U.S. Statutes at Large 477 (1875): 477.

found a problem. Based on Patel's condition, she should have given birth to an infant. After the doctors repeatedly questioned Patel, she revealed that she miscarried and then "placed the dead body in a bag and put it in the Dumpster." The hospital staff then called the police who discovered that Patel ordered and took "two different drugs from Hong Kong to try to abort the child."[6] The State of Indiana's solution to this problem was to charge Patel with neglect of a dependent and feticide. Eight months later, a jury returned a guilty verdict on both charges, and trial court judge Elizabeth Hurley proceeded to sentence Patel to 40 years in prison. In Indiana's 195-year history, Patel became the first woman found guilty of feticide.

Both stories are seemingly different in terms of the subject, time, geography, and issue. In fact, most Asian American studies researchers would look at these cases separately. Social historians would examine the causes and implications of the exclusion laws on Asian women in the United States; feminist scholars may analyze Patel's case through the lens of women's rights and/or abortion activism; and the legal academia would investigate the impact of these cases on a specific field of law (i.e., immigration and criminal law). To be sure, this article will draw on and synthesize these excellent Asian American, historical, feminist, and legal scholarship. But, by using an interdisciplinary lens to compare and contrast two significant moments when public policy focused on Asian women's bodies—late 19th century immigration exclusion laws and early 21st century selective abortion prosecutions)—I argue that we can arrive at new understandings about issues that have faced, and will continue to face, Asian American women. Namely, existing literature have failed to see how the cases are more similar than different. At their core, both examples center around the problem of how U.S. federal and state government officials chose to selectively police Asian women's bodily autonomy with regard to border-crossing and childbearing. This commonality between the two cases begs these guiding questions. First, why Asian women—that is, what factors make this particular group more susceptible to selective

[6] Buckley, "Patel charged in death of infant found in Dumpster."

state surveillance and punishment? Furthermore, why did these factors matter to the people in power in 1875 and 2013?

To answer these questions, I conducted a content analysis of the primary sources, which includes transcripts of Congressional proceedings from 1848 to 1876, court documents from the Patel trial and appellate causes from 2013 to 2016, and respective newspaper clippings during those time periods. Specifically, law professor Kimberly Crenshaw's intersectionality framework—which describes how power (or the lack thereof) interlocks and intersects in people's various identities—served as the foundation for my evaluation of the cases' causes[7]: I examined the language that Congressmen and Indiana prosecutors relied on when justifying the selective policing of Asian women. Then, criminology scholar Kitty Calavita's sociological understanding of human difference was the foundation to understanding the cases' consequences[8]: Because human differences (such as race, gender/sexuality, and class) are social constructions, justifying selective state policing based on Asian women's identities is volatile and arbitrary. As such, Asian women capitalized on the volatile and arbitrary justification to be successful agents of change—despite their intersecting, marginalized identities. Beyond relying on Crenshaw and Calavita's sociological perspectives, I also reviewed relevant literature in the fields of history, law, and gender studies.

In the next section, I will situate this thesis within the scholarly discussions of Asian American studies. In the subsequent two sections, I will address the Page Act and Patel's case, in turn. I will elaborate on the historiography and context unique to each case. Then, I will highlight how the federal government and the State of Indiana created the "problems" of Chinese prostitutes migrating to the U.S. and Asian women undergoing abortion, respectively. I will demonstrate how the government rooted those problems in the intersection of racial, gender, and class bias against Asian women, which resulted in increased state surveillance on

[7] Crenshaw, "Demarginalizing the Intersection of Race and Sex."
[8] Calavita, "Collisions at the Intersection of Gender, Race, and Class."

Asian women as an easy solution to the governments' problems. Finally, in each case, I will explain how Asian women mobilized against the government. Ultimately, a close and thick reading of the published and unpublished archival documents related to both cases reveal how the causes and consequences of selective state surveillance against Asian women remain similar over time. At the end of this paper, I consider limitations of this research, which will open the doors for other scholars to explore additional lines of inquiry related to this work.

Asian American Studies Historiography

Sucheng Chan offers an extensive Asian American historiography in her 1996 article, proposing that the study of Asian Americans be divided into four stages.[9] I label these periods as partisan, sociological, revisionist, and post-revisionist, respectively. The partisan period (1870-1920) consisted of various viewpoints about the "Asian immigration problem." The sociological era (1920-1960) generally focused on two different "Asian problems": The lack of assimilation in Asian American communities and Japanese American internment during World War II. The revisionist generation (1960-1980) revised the stories characterizing Asian Americans as problems and instead portrayed them as victims of U.S. structural oppression **or** as valuable citizens who contributed to American society. The post-revisionist period (1980-present) combines those two approaches: Dominated by professional historians, especially legal historians, scholars describe and analyze the systemic barriers placed against Asian Americans, but they also include ways in which Asian Americans possessed agency for change. Two years after Chan published her article, Huping Ling applied Chan's framework to the study of Asian American *women*.[10] In her 1998 book, she combines the partisan and sociological eras as one period in which Asian women were largely ignored or stereotyped. The revisionists were the first to include Asian women in the field, though they generally treated Asian women as objects of history—as people who were simply affected by systemic biases. It wasn't until the post-revisionist era that entire works emerged about Asian American women as active subjects and centrally pre-occupied with the construction of gender, sexuality, and other categories of analysis. Thus, this paper ultimately aims to build upon previous post-revisionist works about this group, telling a continuing story about how Asian women specifically have been marginalized against in the American legal system while being agents of change.

[9] Chan, "Asian American Historiography."
[10] Ling, *Surviving on the Gold Mountain*.

Relatedly, another characteristic that defines post-revisionist works is Ngai's concept of "de-centering." Since the revisionist era, Asian American studies have not only centered around California as a geographical matter but also surrounded itself with the same "thematics (Chinese exclusion and Japanese internment), problematics (ethnic-identity formation and the politics of oppression and resistance), and methodologies (social history)." [11] There has since been a shift away from west of the U.S. and these topics, which my paper does. Of course, my work still centers around the common thematic of Chinese exclusion and problematic of the politics of oppression and resistance in the context of immigration and abortion, but it is "de-centered" in three critical ways. First, by exploring the intersections of race, gender/sexuality, and class through an interdisciplinary lens, I offer a fresh perspective in analyzing the causes of the Page Act of 1875 and Patel's guilty verdict. Second, through this new framework, I connect key causes and consequences between the 1875 and 2013 cases in order to highlight the continuity of Asian women's experience with American laws and systems. Finally, by examining the Patel case in Indiana, my paper shifts from the center of California as a historical site of Asian American studies.

[11] Ngai, "Asian American History."

Exclusion Laws Against Chinese Women

Historiography

Studies of 19th century Chinese immigration in the partisan, sociological, revisionist, and post-revisionist periods contribute to our understanding of the Page Act's causes. The partisan-era works serve as primary sources: These documents reveal American attitudes toward Chinese exclusion, which contribute to why Congress passed the Page Act. Some authors highlight stereotypes of Asian women as a reason for such exclusion.[12] During the sociological-era, Elmer C. Sandmeyer and Milton R. Konvitz wrote the first major papers about early Chinese immigration history and contributed the causes of the immigration exclusion laws to economic factors—as threats to white labor, especially in the context of economic crises—as well as racism.[13] Later in the revisionist era, Stuart Creighton Miller and Alexander Saxton narrow the most important cause of exclusion laws to be racism—as a threat to white, Christian supremacy and moral purity.[14]

However, none of these studies analyzed the causes of the Page Act, but rather the general Chinese Exclusion Law of 1882. More broadly, the subject of their works does not center around Asian women.[15] It was not until the 1990s that entire works about Asian women emerged.[16] George Anthony Peffer's *If They Don't Bring Their Women Here* (1993) pioneered the study of Asian American women's history by centering the subject on the Page Act. With a rich body of primary and secondary sources, Peffer uncovered how the legislation resulted in the

[12] On one side, missionaries, diplomats, and community leaders defended Chinese immigration, recognizing the positive qualities of Chinese people who have become victims of violence and discriminatory laws in the United States. These include: Ira Condit, *The Chinaman as We See Him;* Mary Roberts Coolidge, *Chinese Immigration*; Otis Gibson, *The Chinese in America*; George F. Seward, *Chinese in Its Social and Economic Aspects;* William Speer, *The Oldest and Newest Empire*. On the other side, opponents viewed the Chinese as threats to U.S. legal culture and Euro-American supremacy. These include Pierton W. Dooner, *Last Days of the Republic;* M. B. Starr, The Coming Struggle; James Whitney, *The Chinese and the Chinese Question*; Robert Woltor, A Short and Truthful History of the Taking of Oregon and California by the Chinese in the Year A.D. 1899.
[13] During the post-revisionist era, some scholars still argue economic factors as the primary cause of the exclusion laws. See Cheng and Bonacich. *Labor Immigration under Capitalism*.
[14] Miller, *The Unwelcome Immigrant;* Saxton, *The Indispensable Enemy*.
[15] Sandmeyer, *The anti-Chinese movement in California*; Konvitz, *The Alien and the Asiatic in American Law*.
[16] Even historians such as Benson Tong and Judy Yung, who prioritized the elevation of Chinese females, did not focus on analyzing the Page Act of 1875. See Tong, *Unsubmissive Women*; Yung, *Unbound Feet*.

abnormally small Asian female population in 19th century America and documented the lives of Chinese women who fought for their place in the United States. Unfortunately, Peffer does not comprehensively evaluate existing narratives about the causes of the Page Act and thereby fails to consider the possibility that gender, class, and the intersection of various marginalized identities might have played a role in the exclusion laws.[17]

Since Peffer, many scholars have postulated the causes of the Page Act. Some like Ming Zhu reverted back to the simplistic revisionist explanation of the economy as the cause, also underestimating the existing racist, sexist, and classist attitudes of 19th century America. Others contribute new perspectives to the debate. Sucheng Chan (1991) and Lorelei Lee (2021) both argue that Congress passed the Page Act because it feared Chinese prostitutes would infect white boys and men with diseases like syphilis.[18] Elizabeth Sinn (2013) and Kerry Abrams (2005), on the other hand, emphasize how Congress' motive was to uphold the American moral institutions, and Chinese prostitutes—the epitome of the race's unorthodox practices—would destroy the country's sense of morality.[19] Nayan Shah (2001) combines both perspectives: He demonstrates that because Congress believed Chinese prostitutes to be physical *and* moral disease carriers that would make white society "sick," they passed the Page Act.[20] These writings, to some degree, recognize how the overlap between race and gender/sexuality as well as race and class specifically marginalized Asian women, but they do not fully explore the interactions among all three kinds of identities. In fact, the few scholars who fully considered these intersecting identities did so only in the context of 19th century Chinese labor, the Chinese Exclusion Act, and current immigration law reform in the United States and Europe. [21] As such, until this paper, none have examined the Page Act through the same lens.

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[17] Peffer, *If they don't bring their women here.*
[18] Chan, "The Exclusion of Chinese Women, 1870-1943,"; Lee, "The Roots of 'Modern Day Slavery'.
[19] Abrams, "Polygamy, Prostitution, and the Federalization of Immigration Law"; Sinn, *Pacific crossing*
[20] Shah, "Perversity, Contamination, and the Dangers of Queer Domesticity," In *Contagious Divides.*
[21] Armenta, "Who Polices Immigration?" In *Protect, Serve, and Deport*; Calavita, "Collisions"; Das, "Inclusive Immigrant Justice; Friday, *Organizing Asian American Labor*; Lee, "The Roots of 'Modern Day Slavery,"; Stybnarova, "Tokenizing and Articulating Protection of Women in Migration Law,"; Yu, *To Save China, to Save Ourselves;* Zhu, Ming M, "The Page Act of 1875: In the Name of Morality."

With that being said, Peffer's book is a great resource in understanding the consequences of the Page Act, telling the story of Chinese women who made it through the arduous immigration process.[22] He also built his research on works of legal historians who, too, have recognized the contributions of Asian Americans in law. Charles McClain and Lucy E. Salyer wrote classics that revealed Chinese Americans' sophisticated understanding of American laws and persistence against the exclusionary and discriminatory statutes, both of which shaped U.S. immigration law. Unfortunately, these works did not necessarily center the contributions of Asian women.[23] In fact, it took a decade for a legal scholar to connect the Page Act—and more broadly, Chinese women—as agents whose actions nonetheless unintendedly contributed to the development of American law.[24]

Context

Before the Page Act, there existed state laws that excluded the immigration of Chinese female prostitutes. The most infamous one was California Statute 330 passed in 1870, which required Asian women to prove their good character—that is, they are not prostitutes.[25] Despite the advocacy for a similar law on the national level,[26] however, Congressmen were not quite convinced about passing a similar law due to its discriminatory nature *unless* there is evidence to prove that Chinese women were coerced to immigrate to the United States for the purpose of prostitution.[27] Since police found "positive evidence" of this phenomenon in 1873, Congress started to seriously consider the Page Act proposal at the push of Senator Page.

In the meantime, by the power given to the California port authorities in the 1870 California statute, 22 Chinese women were detained for suspected prostitution. The trial court ruled in favor of the port authorities, but the federal district court overturned that decision the

[22] Peffer, *If They Don't Bring Their Women Here*
[23] McClain, *In search of equality*; Salyer, *Laws harsh as tigers*
[24] Abrams, "Polygamy."
[25] California Congress, *The Statues of California, passed at the Eighteenth Session of the Legislature, 1869-70.*
[26] Representative Johnson, 40th Cong., 2nd sess., *Congressional Globe* 39 (February 7, 1868): H 1045-1046.; Senator Williams, speaking on S. 279, 41st Cong., 2nd sess., Congressional Globe 42 (December 22, 1869): S. 300.
[27] Senator Howard, speaking on S. 279, 41st Cong., 2nd sess., Congressional Globe 42 (December 22, 1869): S. 300.

case *In re Ah Fong,* stating that immigration restrictions fell under the federal jurisdiction, not the state, which means that the 1870 statute is unconstitutional.[28] This decision further propelled Senator Page to pass the Page Act. He invited the Commissioner of Immigration R. Korwin Piotrowski to testify in front of the Senate, highlighting how he was "powerless" to prevent the landing of Chinese prostitutes. Page then effectively ended his speech with:

> "I have attempted to place before the House the incalculable evils of Chinese immigration; to show its alarming extent; its withering effects on the morals of society; its degrading and destructive influence on American labor; the decided and unequivocal views of the people of California condemning it; and the decisions of the courts, showing that the State is unable to protect itself, and that **in Congress alone lies the power to remedy it**".[29]

Thus, the "solid" evidence of Chinese female prostitution and the need for Congress to pass an immigration law instigated the passage of the Page Act, which Peffer and McClain agree with.[30] However, this approach only explains why the restriction on Chinese prostitutes happened at the time that it did and does not account for why there was a nearly unanimous vote to pass the law. As I will argue in the next section, the answer rests in Americans' deep-rooted racial, gendered, and classist stereotypes against Chinese women.

Causes

"[Are the Chinese] a desirable population in our country? … Do we prefer their system of religion and morals to our own? If not, we should not encourage their coming." *– Representative Johnson rhetorically questioning his colleagues to argue his support for Chinese exclusion*[31]

The Chinese have ***no virtuous women…*** *the United States is* ***better off peopled entirely with our own kind*** *than if mixed with an inferior and degraded race [like Asians] – Representative Higby and Johnson advocating for exclusion laws*

[28] In re Ah Fong, 1 F. Cas. 213, 1874; This decision would be upheld in *Chy Lung v. Freeman (1875).* See Chy Lung v. Freeman, 92 U.S. 275, 23 L. Ed. 550, 1875.
[29] Senator Page, 43rd Cong., 2nd sess., *Appendix to the Congressional Globe* 3 (February 10, 1875): S 40-45.
[30] McClain, *In Search For Equality*, Peffer, *If They Don't.*
[31] Representative Higby, 39th Cong., 1st sess., *Congressional Globe* Vol. 36 (February 27, 1866): H. 1056.; Representative Johnson, 41st Cong., 2nd sess., *Congressional Record* 42 (May 27, 1870): H. 3878.

Chinese female prostitutes are "filthy harpies… who defil[e] the very food we eat, rendering pestilential the air we breathe."[32] *- Representative Johnson explaining why Congress should pass exclusion laws*

The government in 1875 selectively policed Asian women at least partially because of racial bias. Specifically, they feared certain practices that they associated with Asia. Leading up to the passage of the Page Act, Congressmen consistently raised concerns about how Chinese immigration "would fill the country with a population of alien ideas and habits."[33] These alleged "alien" practices included but were not limited to polygamy, lack of female chastity, lying, religious idolatry, and slavery.[34] Slavery particularly worried Congressmen. That is because Congress created a problem based on the stereotype that all Chinese people are "coolies" or prostitutes and framed both issues as a new form of slavery.[35] For a country that fought a devastating civil war over slavery, there was anxiety over an incoming population that still supposedly subscribed to and would apparently corrupt American society with that "backwards" practice.[36] In fact, according to Senator Williams, allegedly as a result of Chinese prostitution, "unprincipled Americans are engaged" with this "nefarious" trade.[37] When combined with the assumption that all Chinese people "are alike incapable and unworthy of assimilation" to "better" American practices, Congress developed a natural solution to this problem: To prevent the Chinese from entering the United States to introduce their "inferior" ways of life. [38]

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[32] Representative Johnson, 40th Cong., 2nd sess., *Congressional Globe* 39 (February 7, 1868): H 1045-1046.; Representative Mungen, 41st Cong., 3rd sess., *Congressional Globe* 43 (January 7, 1871): H. 351-360.; "The Chinese Question--its Effect on the Future."; Senator Page, 43rd Cong., 2nd sess., *Appendix to the Congressional Globe* 3 (February 10, 1875): S 40-45.
[33] Representative Ela, 41st Cong., 2nd sess., *Congressional Globe* 42 (January 21, 1870): H. 654.
[34] Representative Fitch, in response to Representative Johnson on H.R. 1293, 41st Cong., 2nd sess., *Congressional Globe* 42 (May 27, 1870): H. 410-411. Similar ideas were also expressed in Representative Mungen, 41st Cong., 3rd sess., *Congressional Globe* 43 (January 7, 1871): H. 351-360.
[35] Representative Johnson, 41st Cong., 2nd sess., *Congressional Record* 42 (May 27, 1870): H. 3878. Senator Stewart, speaking on S. 279, 41st Cong., 2nd sess., *Congressional Globe* 42 (December 22, 1869): S. 301.
[36] Sandmeyer, *The anti-Chinese movement*; Jung, *Coolies and Cane*
[37] Senator Williams, speaking on S. 279, 41st Cong., 2nd sess., Congressional Globe 42 (December 22, 1869): S. 300.
[38] Ibid.

However, racial bias cannot be the only explanation for why the state selectively surveilled Asian women. Otherwise, the Page Act of 1875 would have prohibited *all* Chinese people from immigration, not just Chinese female prostitutes. Instead, I argue that when racial stereotypes intersect with overlapping gender and class identities, certain Asian women become vulnerable to selective targeting by authorities.

In this case, Congressmen relied on the stereotype that Asian women are unfit mothers precisely because they are all perceived to be prostitutes. In 1866, Representative Higby claimed that the Chinese "have no virtuous women,"[39] dehumanizing them as "cattle" who were bought and sold among men.[40] Even those who did not think that *all* Chinese women were prostitutes still assumed that out of ten Chinese women who immigrated to the United States, nine of them were prostitutes. In fact, this statistic consistently appeared since 1869,[41] and *multiple* "witnesses" supposedly confirmed this statistic.[42] Even those who supported Chinese immigration like Reverend Otis Gibson did not view Chinese women in a positive light and, during Congressional hearings, made suppositions as follows:

> "Twenty-five hundred of [the Chinese in San Francisco] are women or girls. A very large proportion of these females *are enslaved prostitutes*. **It is my belief, founded upon personal observation and examination into the matter**, that of all the Chinese females in San Francisco, there are not more than three hundred who are really claimed as wives by the Chinese themselves, and nearly all of these are only *secondary wives or concubines*, in accordance with the *custom of China*."[43]

Still, despite after hearing this testimony, Congress passed legislation that effectively prohibited Chinese women from immigration, demonstrating that this choice was, at least, partially based on the Chinese women's imagined sexuality—their alleged identities as prostitutes (which

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[39] Representative Higby, 39th Cong., 1st sess., *Congressional Globe* Vol. 36 (February 27, 1866): H. 1056.
[40] This metaphor showed up in the Congressional Globe published in 1866, reused in a speech published in 1869, reprinted in *The San Francisco Bulletin* and *The Cincinnati Daily Enquirer* in the same year, and restated in missionary Ira M. Condit's testimony in 1875.
[41] Senator Williams, speaking on S. 279, 41st Cong., 2nd sess., Congressional Globe 42 (December 22, 1869): S. 300.
[42] Senator Page, 43rd Cong., 2nd sess., *Appendix to the Congressional Globe* 3 (February 10, 1875): S 40-45. Other clergymen Condit and E.Z. Simmons who allegedly work closely with the Chinese community in California also confirm Gibson's observation.
[43] Ibid.

includes their supposed identity as a concubine)—which deviated from the standard norms of a good, fit mother in the 19th century.

Americans found Chinese female prostitutes to be particularly problematic because these women were "dirty" in the physical and moral sense. The Congressional records reflect the supposedly well-known image of Chinese prostitutes gathering in the "filthiest and narrowest street"[44] and do so "in such numbers as ta o spread disease to the young and inexperienced of our population,"[45] proving how Congress found the Chinese women's occupation as allegedly a prostitute to be a pollutant. To solve that problem, they claim that they must pass laws like the Page Act to "protect itself from this rapidly-increasing influx of vice, crime, and pollution," especially to protect the "young and inexperienced" white boys.[46] Because of how "dangerous" they are, it is not difficult to see why Congress would specifically target this group and limit their immigration to the United States.

To be sure, Congressmen made it clear that the Page Act was a protective measure to prevent Chinese women from "receiving the abuse of those who are her masters."[47] However, not only does this argument misses the proper context that this claim was an afterthought—a "smoke and mirror" justification to pass the law, but it also fails to recognize how Congress' claim is paternalistic, which reproduces the gender power dynamic in favor of these white men. Legal scholars Stybnarova, Lee, and Zhu argue, the law's true purpose was to implement discriminatory immigration policy that further upheld racist stereotypes in the service of white supremacy.[48] The evidence *partially* supports their explanation, as the racist stereotypes overlapped with gendered assumptions to further serve misogynistic values. As revealed by the Congressional record, it also upholds gendered stereotypes Representative Johnson of

[44] Senator Williams, speaking on S. 279, 41st Cong., 2nd sess., Congressional Globe 42 (December 22, 1869): S. 300.
[45] Senator Page, 43rd Cong., 2nd sess., *Appendix to the Congressional Globe* 3 (February 10, 1875): S 40-45.
[46] Ibid.
[47] Representative Johnson, 41st Cong., 2nd sess., *Congressional Globe* 42 (January 25, 1870): H. 752-756.
[48] Lee, "The Roots of 'Modern Day Slavery'"; Zhu, "The Page Act of 1875"; Stybnarova, "Tokenizing and Articulating Protection of Women in Migration Law".

California claimed that the United States is "better off peopled entirely with our own kind than if mixed with an inferior and degraded race [like the Chinese]."[49] Thus, the missing piece from the existing narrative is that Congressmen specifically aimed to eliminate the possibility that *these* women—alleged Chinese female prostitutes who are sexually active—would be mothers to Chinese-Caucasian children, accomplishing the white supremacist goal of "preserving the Caucasian blood in its purity,"[50] while simultaneously marginalizing Chinese women. After all, every part of their assumed identity—Asian (race), woman (gender), and prostitute (class)—are people whom Americans wished to keep out of their country. As such, to present the Congressional record as only a race argument or just a gender or class argument is to oversimplify the true story behind why they passed the Page Act.

[49] Representative Johnson, 41st Cong., 2nd sess., *Congressional Globe* 42 (January 25, 1870): H. 752-756.
[50] Ibid.

Abortion Prosecutions Against Asian Women

Context

To recognize the connections between Crenshaw's intersectionality framework and Patel's case (just as it applies to the Page Act), we must first situate the case in a larger context about two national debates about sex-selective abortions and the feticide statute, which manifested into Indiana politics before or around the time of Patel's case. As I argue, both developments thereby affected the perception of Asian women in Indiana exercising their reproductive rights.

Sex-selective abortions refers to the practice that if women knew that their fetus was female, they would undergo an abortion due to gender bias—a preference for a son over a daughter. The Congressional debate first appeared exactly one decade after the *Roe v. Wade* decision, which Senator Steven Symms of Idaho described as "extreme".[51] Thus, it may seem intuitive to assume the debate about sex-selective abortions to be about the issue of abortion, which is partially rooted in the power struggle of the patriarchy forcing women to conform to gender expectations as good mothers.[52] However, that is only a part of the story. A deeper look into Senator Symm's speech reveals that the sex-selective abortions is about the gender expectation of a good mother just as it is about racial assumptions in the geopolitical context of the Cold War:

> *Earlier I alluded to* ***Communist China's*** *permissive policy on abortion. The Chinese have developed a new test which can determine the sex of the fetus as early as the 7th week. This has* ***greatly facilitated sex-selective abortion*** *in that country… For a variety of reasons, in China the wrong sex is the female sex.* ***The same is unfortunately true in our own country.*** *According to studies at Princeton and Cleveland State Universities, such a preference for male children also exists in the United States.*[53]

With that said, the role of Cold War politics only served to strengthen Symm's argument, but the claim itself is primarily rooted in the problematic overlap of gender and race. We know

[51] Senator Symms, 98th Cong., 1st sess., *Congressional Globe,* (June 27, 1983): S 17360.
[52] See Dorothy Roberts, *Killing the Black Body*
[53] Senator Symms, 98th Cong., 1st sess., *Congressional Globe,* (June 27, 1983): S 17361.

this to be true because in 2005, this perception expanded beyond "communist" China into India where, according to Representative Christopher Smith of New Jersey, "the incidence of "sex-selection abortions" has reached staggering proportions."[54] By the time of Patel's case in 2013, there was a widespread assumption that, according to two "reputable" reports from leading research universities, there "*is* son preference and fetal sex selection among **Indian** immigrants in the United States."[55] In fact, North Carolina made national news as the first state that passed a law banning sex-selective abortions right around the time of Patel's indictment,[56] which was simultaneous with journalists like Ela Dutt raising the possibility that Patel underwent a sex-selective abortion. Although the court transcripts would later disprove that theory because the fetus in Patel's case was male, the public's speculation confirms how the sex-selective abortion debate is rooted in the problematic intersection of racial stereotypes and gender expectations and is partially related to Patel's case.

Another related issue to Patel's case is the development of the feticide statute, which recognizes a fetus in utero as a legal victim—and therefore a person—if they are injured or killed during the commission of certain violent crimes. After *Roe*, Indiana's legislators developed its first feticide statute in 1979 as a way to criminalize illegal abortions. In response to the high-profile cases of Laci Peterson in which her husband Scott Peterson killed her and their unborn son Connor (2004) as well as Katherin Shuffield in which Brian Kendrick killed her twin fetuses (2008), the Indiana legislature increased the minimum sentence for the feticide statute. During the legislative discussions about the federal and state feticide statutes, Congressmen made it clear that the law does not apply to women who obtain abortions but rather to third parties who harm a pregnant woman when committing a violent crime.

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[54] Representative Smith, 109th Cong., 1st sess., *Congressional Globe,* (October 7, 2005): E 2077
[55] Grace Atwater, "Asian-American and Pacific Islander Organizations in support of Appellant," Amicus Brief, in the possession of author, 2022, pp. 3.
[56] Hoban, "Sex-selection abortion ban heads to House of Representatives."

However, just three years later, the Indiana prosecutors used their discretion in an attempt to expand their definition of whom can be charged with feticide. Bei Bei Shuai, a female immigrant from China who worked in the restaurant industry, ingested rat poison after learning that her partner left her with all her savings. In her suicide letter written in Mandarin, she said, "I am taking my baby away with me to the afterlife." Notwithstanding the fact that the Indiana prosecutors used dubious translation services for this letter, they ultimately relied on those words as evidence that Shuai knowingly and intentionally killed her fetus, which is murder, and in committing this violent crime, she then also committed feticide. Although the State ultimately entered into a plea agreement with Shuai, the way that the prosecutors played with the language of these statutes raises the concern of, among all possible cases, specifically choosing to charge a Chinese female immigrant who works in the service industry with murder and feticide—the first in the state's history. It is even more suspect considering that just three weeks after they dropped the charges against Shuai, they charged another Asian woman who is a second-generation immigrant—Purvi Patel—with feticide.[57] Thus, the next section will highlight the state's racial, gender, and class biases against Patel, which will then highlight the causes behind why Asian women become vulnerable policing targets for the state.

Causes

*"The police repeatedly asked Patel, "Who is the father? **Is he Indian**?"*[58]

***"**The defendant Purvi Patel became a **mother** on July 13. She saw her baby. She wasn't expecting it but **she saw her baby. She chose to do nothing. Nothing other than move it into the garbage. From the garbage can to the dumpster."** –Prosecutor Mark Roule arguing for why Patel should receive a guilty verdict*[59]

***"**You, Miss Patel, are an **educated** woman of **considerable means.** If you wished to terminate your pregnancy safely and legally, you could have done so," Hurley said. "You*

[57] Angie Wang, *Bei Bei.*
[58] Grace Atwater, "Asian-American and Pacific Islander Organizations in support of Appellant," Amicus Brief, in the possession of author, 2022, pp. 1.
[59] Ela Dutt, "The Uncertain Guilt of Purvi Patel," *Times*, September 5, 2014.

planned a course of action and took matters into your own hands and chose not to go to a doctor." – Tom Coyne, Associated Press reporter writing on Patel's sentencing hearing[60]

When interrogating Patel, the lead investigator pressed her on the racial identity of the father of the child, raising theories about the state's racial bias. But this explanation is speculative at best. The state rarely mentioned the infant's father in the case, even though he had a marginalized racial identity as a Latino man. Sure, maybe the state could have harbored racial bias against Patel but were careful to not state it as to violate any laws. Perhaps, the state's racial bias was implicit and would therefore not appear in the record. Instead, the context of the selective-sex abortion debate is a more likely explanation of the role of racial bias in Patel's case, based on what I can infer from the available evidence.

As such, I turn to the trial transcript and found direct evidence of the state's racial bias, which looks similar to what happened when Congress passed the Page Act. In deputy prosecutor Mark Roule's closing argument, he repeatedly emphasized how Patel chose to self-induce an abortion, "not in a normal, lawful manner but from the black market over the internet from **China**."[61] That is a problem for the state "because if you don't regulate abortions… people can do what the defendant [Patel] did [and] really bad things can happen." Thus, the state created a "problem" of this Asian woman who found a "not normal" abortion method–one that is supposedly more common in China—and instilled fear in the jury that these "not normal" abortion methods from Asia will lead to catastrophes like Patel's. Thus, in principle, this "problem" in 2013 is no different than the "problem" in the 1870s: The government fears certain Asian practices—or at least what they purport Asian practices to be—and they use the tool of selective policing in response to this fear.[62]

[60] Tom Coyne, "Women sentenced to 20 years in prison for neglect of newborn," *Associated Press*, March 30, 2015.
[61] "Proceedings had on January 22, 26, 27 & 28, 2015," Trial Transcript, in the possession of author, 2022, pp. 453-454.
[62] "Proceedings had on January 29 – February 3, 2015," Trial transcript, in the possession of author, 2022, pp. 471.

Just as the exclusion laws directed at Asian women cannot be oversimplified to a racial argument, the same applies to Patel's case. In fact, much like how Congress depicted Chinese women in the 19th century as unfit mothers for their racial identity and assumed occupation as prostitutes, the State of Indiana portrayed Patel as an unfit mother not only because of her actions but also due to intersecting race and class stereotypes.

From the start of the trial, prosecutor Herring placed the "mother" label on Patel to demonstrate how Patel, unlike "normal" mothers after a miscarriage, was "not at all concerned about the child"[63] and instead had a "flat affect."[64] The state later called three witnesses whose primary purpose was to repeatedly explain what "flat affect" meant: How Patel showed up at the hospital disengaged, not crying, on her phone texting, and among other mannerisms that supposedly demonstrates her heartlessness. Though Patel's attorney Sanford pointed out that people react differently to miscarriage trauma,[65] it was too late: The image that Patel deviated from the normal reaction of a mother who miscarried took root in the jury's mind. The "need" for a more "normal" reaction is situated in the context of the long-running model minority myth—that because "Asian Americans are called upon to internalize the myth of meritocracy," they are expected to perform "'appropriate' or normative emotional dispositions" such as "diligence" and "self-sacrifice."[66] Thus, the intersection of Patel's racialized identity and gendered role caused her deviation from these expectations to appear even more jarring to the jury.

The government's "dumpster narrative" only further solidifies the state's assumption of Patel's character. Prosecutor Mark Roule grounded his closing argument in how:

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[63] "Proceedings had on January 22, 26, 27 & 28, 2015," Trial Transcript, in the possession of author, 2022, pp. 304.
[64] Ibid, pp. 318, 338, 340, 354, 375, 406, 407.
[65] "Proceedings had on January 29 – February 3, 2015," Trial transcript, in the possession of author, 2022, pp. 448, 450-451.
[66] Hyoejin K. Yoon, "Learning Asian American Affect," In *Representations*: *Doing Asian American Rhetoric*," https://www.jstor.org/stable/j.ctt4cgqmc.19.

"[Patel] placed that baby in her bathroom **garbage can** with the other **waste that no one wanted** and threw him at the bottom of a **cold**, metal **dumpster**… [because that] was the easiest and the most convenient**.**"[67]

The court transcript proves that this played a role in her punishment because Judge Hurley said, "I find aggravating your treatment of the child literally as a piece of **trash**."[68]

This instance is not the first time in which there was public outrage over how women, but more specifically *Asian* women who are supposed to show "acceptable" emotions and dispositions, treat their children as "garbage." Two years before Patel's case, Amy Chua faced backlash for her memoir *Battle Hymn of the Tiger Mother* because she mentioned calling her child "garbage" after her child disrespected her. In fact, a reviewer even described those examples as Chua's "moments of sheer madness" and depicted her practices as an "abusive regime."[69] Though not directly related to Patel, these rooted stereotypes of Asian women as "tiger mothers" demonstrate how racialized *and* gendered norms (or, in the case of the Page Act, the intersection of race *and* class expectations) uniquely place Asian women under a more critical lens than a man or a *white* woman.[70] This cultural context is useful for explaining the prosecutors' reasoning on the Patel case.

Similarly, in the 19th century and 21st century cases, Asian women are unfit mothers because their class identities are perceived to be dangerous to the American norms. The key ironic difference between those two examples, however, is that whereas a low-class occupation prevented Chinese women from immigrating to the United States, Patel's higher, middle-class identity is precisely why she received a harsher verdict. Patel received an education in the United States, had a stable source of income as a restaurant owner and, for 32 years, "led a law-abiding, productive life and exhibited good character," according to Patel's defense attorney and

[67] "Proceedings had on March 30, 2015," Sentencing Hearing transcript, in the possession of author, 2022, pp. 21.
[68] Representative Higby, 39th Cong., 1st sess., *Congressional Globe* Vol. 36 (February 27, 1866): H. 1056.
[69] Sun Shuyun, "Battle Hymn of the Tiger Mother by Amy Chua – review," *The Guardian*, January 29, 2011, https://www.theguardian.com/books/2011/jan/30/battle-hymn-tiger-mother-review.
[70] Sarah Sahagian, "Tiger Mothers and the Birth of a New Maternal Epithet."

Judge Hurley.[71] These seemingly mitigating qualities as a middle-class citizen ultimately worked against Patel. That is because, first, Patel's case highlights the 19th century racial fear that supposedly even assimilation cannot guarantee Asians will adhere to white, middle-class American norms.[72] Secondly, the transcript identifies another aspect of the model minority myth—that all Asians (race) are well-educated and enjoy a higher socioeconomic advantage (class)—which played an implicit role in Judge Hurley's decision-making. As she explained, "[Patel was] in a position to safely and legally terminate [her] pregnancy if that's what [she] wanted to do" because of her class background as "an *educated* woman of *considerable means*."[73] But, because Patel still "chose to take the matters into [her] own hands,"[74] she found Patel to be dangerous, which was an aggravating factor that justified lengthening Patel's sentence. Thus, the existence of overlapping marginalized race, gender, and class stereotypes subscribed onto Asian women creates a powerful and troubling rationale that results in their disproportionate discrimination in the U.S. criminal justice system.

[71] "Proceedings had on March 30, 2015," Sentencing Hearing transcript, in the possession of author, 2022, pp. 17.
[72] Researchers in the psychology field label this as the "perpetual foreigner" stereotype. See Sarah Parks and Hyung Yoo, "Does endorsement of the model minority myth relate to anti-Asian sentiments among White college students?"
[73] "Proceedings had on March 30, 2015," Sentencing Hearing transcript, in the possession of author, 2022, pp. 18.
[74] Ibid.

Conclusion

All in all, an analysis of the 19th century immigration cases and 21st century abortion cases proves to be more similar than different. In both cases, the government subscribed to intersecting racial, gender, and classist stereotypes about Asian women, ultimately characterizing them as "undesirable." These assumptions include a racial perception that Asians are "inferior," a gender expectation that Asians women are "unfit mothers," and a class identity—regardless if it is considered a low or high status—that renders Asian women to be "dangerous." These stereotypes build off one another and are interwoven in a way that makes Asian women "easy targets" of state policing. After all, the government treats surveillance as the solution to a self-created problem against an imagined deviance that happens when Asian American women exercise their reproductive rights. To be sure, not all of these factors contribute equally (nor should they) to every case because every person and case is situated in a unique context. The point is that how Asian women are gendered is inseparable from their race and class as well as the context, just as how they are racialized is inseparable from their class and gender/sexuality, and how their class identities is inseparable from their race and gender/sexuality. By recognizing that these factors work hand-in-hand, we get a more complete picture about the marginalization, discrimination, and violence that Asian women face in the United States.

With that, I acknowledge that this work still primarily focuses on the Eurocentric paradigm: That is, relying on primary sources such as Congressional records, court transcripts, and media articles—spaces dominated by white, middle-to-upper-class men—even though the subjects of study are Asian women.[75] From a logistical standpoint, these sources are more easily accessible for an undergraduate researcher who worked on this project for two years. From an analytical standpoint, I find it to be necessary for an undergraduate researcher who initially

[75] Ann Ducille, "'Othered' Matters."

knew nothing about the Page Act and Patel's case to understand the driving forces behind them, which lends itself to more Eurocentric primary and secondary sources; furthermore, despite relying on a Eurocentric paradigm, I establish a different perspective of how we understand the causes in an attempt to shift the narrative about how we view these cases by also relying on documents collected by and works written by those with marginalized identities. Although this critique does not apply as fully to the consequences section, I still hope to build off this work by incorporating even more Asian women's voices. For the Page Act, this may mean traveling to California to locate possible habeas corpus trial records of Asian women who testified in courts and advocated for their stay. For the Patel case, this may look like leveraging my existing connections to find others who are willing to let me archive the documents that they have, or complete an oral history project with the people who worked on Patel's case and even Patel herself.

As I completed this thesis, I am unfortunately reminded that another implication of this framework is that it can apply to circumstances under which the government is not the only oppressor. In the city of the university where I study, a 56-year-old white woman named Billie Davis chased after and stabbed an 18-year-old, first-year Asian female student from my hometown. Davis' motive? It would be "one less person to blow up our country."[76] In conjunction with the rise of anti-Asian hate crimes in which Asian women were victims, specifically the March 2021 shooting in which a white man fatally shot eight people, most of whom were Asian women who worked at Atlanta-area spas. Heightened suspicion and violence come from not only the government but also citizens who similarly rely on racial, gender/sexuality, and class stereotypes to make sense of their world. While this may be discouraging, I am hopeful, especially after observing how those at my university, in Indiana, and across the nation mobilized around the AAPI community. But the work does not stop there.

[76] Bill Hutchinson, "Indiana University student stabbed in alleged racially motivated attack on bus: Police."

And I hope my work can help break down those barriers, enhancing our understanding of Asian women and their experiences.

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