Yick Wo Re-Revisited: Nonblack Nonwhites and Fourteenth Amendment History
Thomas Wuil Joo
UC Davis School of Law

ABSTRACT

The 1886 Supreme Court case Yick Wo v. Hopkins is often viewed as a precursor of the racial civil rights era represented by Brown v. Board of Education. In fact, the case was primarily about economic rights. In Unexplainable on Grounds of Race: Doubts About Yick Wo (Illinois Law Review, vol. 2008, pp. 1359-1391) Professor Gabriel Chin argues that Yick Wo “is not a race case at all.” I argue that it is a “race case” because the Court’s use of the Fourteenth Amendment to vindicate economic rights necessarily entangled economic rights with race - in an ultimately pernicious way. While issues of “race” in American law tend to focus on nonwhiteness, the “race” of the Chinese plaintiffs in Yick Wo was legally significant in its nonblackness. The Reconstruction Court had previously refused to apply the Amendment to whites or to economic rights in The Slaughter-House Cases. But Yick Wo both revived the literal meaning of the Amendment’s phrase “all persons” and applied it to economic rights. It thus ushered in a two-pronged civil rights counter-revolution symbolized by Lochner v. New York’s protection of economic “substantive due process” for white persons and corporations and Plessy v. Ferguson’s denial of civil rights protection to blacks. The counter-revolution also turned against the nonblack nonwhites who had helped create it, allowing the exclusion of Asians from immigration and naturalization, state laws prohibiting Asians from owning land, and the internment of Japanese Americans during World War II.