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For my Althea



4. "THAT CHINESE GIRL"

FLORENCE EVELETH, the teenage daughter of Mary Tape's friend and neighbor Sarah Eveleth, took on the Tape children as a kind of project. She had the idea to teach them reading and arithmetic, and Mary welcomed the attention Florence gave to Mamie and Frank.

In 1884, when Mamie was eight and Frank was six, the Tapes discussed enrolling them in school. They undoubtedly understood that their children needed to be educated if they were to move about in Euro-American circles. But social custom and local school board policy excluded Chinese children from the public schools. There were the mission schools in Chinatown, but that was some distance from the Tapes' home. Mary wanted to send them to the public school in the neighborhood, and Florence encouraged her. After all, both women reasoned, the Tapes were just like white people.

Congress had passed the Chinese Exclusion Act just two years before. In the meantime, anti-Chinese agitation had not abated but actually increased, as legal exclusion gave whites license to harass, lynch, and drive Chinese out of small towns throughout California. Joseph, well aware of the racial hostility against Chinese, may still have hoped that the Tapes' acculturation would protect them from

the exclusionists' ire. And so on a warm autumn day in September 1884, Mary Tape dressed her daughter in a checkered pinafore, tied a ribbon in her braid, and took her to the Spring Valley Primary School on Union Street, a one-story wooden building with five classrooms. When they arrived, the principal, Miss Jennie Hurley, refused to admit Mamie to the school.

Florence Eveleth later recalled that it was she who urged Joseph to sue the San Francisco Board of Education over Mamie's exclusion. This might have been the case, although he did not need a white person to explain the concept of "rights" to him. Neither was he ignorant of the American legal system. Chinese had learned how to use the American courts not only in their business affairs but also to protest municipal ordinances designed to discriminate against them. Especially after the U.S. Supreme Court ruled in 1875 that immigration was a matter of federal, not state, regulation, and frustrated that they could not use state law to prevent Chinese from immigrating to California, San Franciscans had zealously passed a spate of local laws aimed at discouraging immigration by making life for them costly and miserable. These included steep licensing fees required of Chinese-owned laundries; an ordinance prohibiting anyone from transporting on city sidewalks baskets attached to poles carried across the shoulders; a minimum "cubic air" requirement for residences, which targeted the lodgings of laborers (and focused blame on the Chinese, rather than on their white landlords, for the health hazards associated with crowded living quarters); and the "pigtail" ordinance, which called for the county jail to shear the hair of Chinese prisoners to within one inch of the scalp. This last, aimed at humiliating Chinese men—for whom the queue was a required manifestation of respect for the Manchu dynasty—was so obnoxious that the mayor vetoed it.

Chinese laundrymen, vendors, and others—backed by the Chinese consulate or the Chinese Six Companies, the council of the local huiguan, challenged these laws in the courts. The most important ruling to come from these cases was *Yick Wo v. Hopkins* (1886),

which declared that a municipal ordinance that imposed burdensome fees on Chinese laundry owners was unconstitutional. In *Yick Wo*, the U.S. Supreme Court ruled that the Fourteenth Amendment to the Constitution protects the rights of all persons, not just citizens, to equal treatment and due process of law. Principal Hurley could not have known that her refusal of Mamie Tape would lead to a watershed case that would extend the Chinese community's claims for equality to the realm of education.

In the nineteenth century, California's laws on common-branch schooling (public education) initially excluded "Negroes, Indians, and Mongolians" from public schools but later allowed for segregated schools. Chinese in San Francisco, however, found that even a separate school was hard to come by. From 1859 to 1871, they had only sporadic access to public education, despite ongoing appeals to the school board by both Chinese merchant leaders and white Protestant missionaries, who argued that the Chinese paid taxes and that their exclusion from tax-supported schools was a form of taxation without representation.

The first school for Chinese in San Francisco, started in 1853, was not a public school but one funded by Chinese merchant leaders and white Christian missionaries. English classes for some twenty Chinese boys and men were held in a small room on Sacramento Street. Contemporaries understood the link between language acquisition and assimilation. An observer wrote that the students, fifteen to forty years of age, reportedly made "rapid progress" and showed "eagerness to become acquainted with our language, manners and customs. We venture to assert that if the Chinese can be induced to settle permanently among us, that in time our country will be greatly benefited by their accession."

For the missionaries, though, English-language instruction was, as we've seen, not so much aimed at assimilation as at conversion and sprang from the hope of recruiting native Christians for missionary work in China. The Presbyterian minister William Speer, who had spent four years in China before opening his Chinese mission in San

Francisco in 1853, wrote, "I have considered it an important branch of my missionary work to impart a knowledge of the English language, literature and science . . . and such things as would best illustrate our later advancement and tend to disabuse their minds of idolatrous fears and superstitions."

Indeed, in the late nineteenth century, teaching English was the central missionary strategy in dealing with Chinese in America. According to Reverend Ira Condit, Chinese were "extremely suspicious" of Christians and "had no desire to learn the religion of those who had treated them so unjustly and cruelly . . . [But] as the Chinese were anxious to learn English, the plan of Chinese Sunday Schools was adopted." Guy Maine, who directed the Episcopal Church's "Chinese guild" in New York, similarly described English-language instruction as a "practical method" of uplift "by first making intelligent men then Christians." The Congregationalists bluntly advocated "baiting the Gospel hook with the English alphabet."

Nearly all the Protestant mission-sponsored schools and classes were for adults and were held during the evening and on Sunday. Only in San Francisco, where there was a relatively larger and more settled community, did the missionaries operate day schools for children. Speer, who was dedicated both to religious conversion and to opposing race discrimination against the Chinese community, directly appealed to the school board to provide instruction for Chinese, arguing that, "as taxpayers, they have a civil right to school privileges."

With Speer's prodding, the school board in 1857 unanimously agreed that "Asiatics, and particularly the Chinese youths, should have every opportunity to acquire a knowledge of the English language." School board member E. B. Goddard said that the board's aim should be to "Americanize the Chinamen," who paid more taxes and were better behaved than the "low class of American citizens." The board voted not to admit Chinese to the evening school, however, on the grounds that their presence would excite white students. Instead, the board provided limited resources for a separate Chi-

nese school. Beginning in 1859, it paid for a teacher for a single class for Chinese pupils, which was held in the "gloomy basement" of Speer's Presbyterian mission in Chinatown. Bible reading was the principal form of instruction. The superintendent of schools, James Denman, was pessimistic about the project. "The prejudices of caste and religious idolatry are so indelibly stamped upon their character and existence," he said, that teaching them was "almost hopeless."

Yet the teacher, Benjamin Lanctot, soon proudly reported that the "little Celestials were very apt at learning. The younger ones knew nothing whatever of the English language on entering, but they picked it up with marvelous facility. Writing they learned with even greater ease than Yankees." Denman's successor as superintendent of schools, George Tait, acknowledged in 1864 the school's "good results," which he considered all the more remarkable in light of the fact that "missionaries [in China] after a life-long devotion to the spiritual regeneration of this unprogressive and unimpressible race, show little fruit of their exhaustive labor."

The reason for the school's success was no mystery. As the missionaries understood, Chinese in America were motivated to learn English so that they could get along in the new society. The Chinese pupils included some children but consisted mostly of teenagers and young adults—sons of merchants who were sent to acquire the knowledge they needed to "transact business with [white Americans] and . . . to act as clerks and interpreters for their countrymen." Observers noted that these older students attended school only long enough to acquire a working knowledge of English—as Speer conceded, "only a few necessary words and sentences, to assist in mining, traveling, bartering, marketing, and procuring various kinds of employment." Some school board members believed the Chinese pupils' motives were opportunistic, even though the city sponsored an evening school for adult European immigrants to meet a similar demand.

Other critics opposed the "long prayers and reading the Bible" in the Chinatown school and argued that "so long as the school was sup-

ported by the public moneys, it was wrong to allow it to be construed as a religious school." Nevertheless, the arrangement was the least expensive for the school board—that is, next to having no school at all. Over the years, the board frequently closed the school, citing low attendance or lack of funds, only to reopen weeks or months later under pressure from the community. At times, the board authorized only evening classes, which catered to adult learners.

The sporadic nature of public schooling during the 1860s and 1870s reflected the indeterminate status of Chinese in San Francisco at the time. As racial animus against them spread, so did opposition to their admission to public schools. Racist thinking blamed the Chinese for being unassimilable, but that same thinking opposed education precisely because it threatened to assimilate and hence permanently establish the Chinese population. The exclusionists believed that keeping out new immigrants would be for naught if a permanent settlement were allowed to become established and accrete by natural population growth. After all, the exclusionists' slogan was "The Chinese must go!" Exclusion and expulsion were their aims, not segregation, the policy for blacks and American Indians. San Francisco's *Daily Morning Call* summed up the danger of public schooling: "The [Chinese] race is striving to take root in the soil. They desire or profess to desire, to mingle their youth with ours, with a view, doubtless, to more thorough assimilation in the body politic."

The San Francisco Board of Supervisors echoed that view. "Guard well the doors of our public schools, that [the Chinese] do not enter," it resolved. "For however hard and stern such a doctrine may sound, it is but the enforcement of the law of self-preservation . . . by which we hope presently to prove that we can justly and practically defend ourselves from this invasion of Mongolian barbarism."

Public education was thus one of the first casualties of the anti-Chinese movement. In 1871, the San Francisco school board terminated support for the Chinatown school, upon the recommendation of James Denman, who had by then resumed the position of school superintendent. Denman found sanction in California's 1870 school

law, which required districts to operate separate schools for "African and Indian children" but omitted any mention of Chinese or "Mongolians." Denman concluded that San Francisco no longer had an "obligation to continue support" of the schooling of Chinese.

The closing seems particularly ill-timed, for just then there was a growing population of school-age Chinese children in California. Throughout the 1870s and early 1880s, three thousand Chinese children lived in the state, two-thirds of them in San Francisco. By 1885, there were an estimated one thousand school-age Chinese children in San Francisco, most of them born in the United States. Education was no longer the concern only of young adults in mercantile and other businesses. Yet only a few hundred Chinese children attended the missionary schools each year.

Throughout the 1870s, the San Francisco school board ignored or dismissed individual petitions by Chinese for admission to public schools. In 1878, the state legislature similarly disregarded a petition from thirteen hundred Chinese residents of San Francisco, Sacramento, and other towns on behalf of the three thousand Chinese children residing in California. "Chinese merchants and laborers," the petitioners averred, "being under the protection of your Constitution and laws, are entitled to the same rights and privileges accorded to foreigners generally." They spoke out against excluding Chinese from the benefit of public education while Chinese paid more than \$40,000 a year in taxes to the state, saying, "This we hold to be unjust."

In 1880, California passed a new school law that entitled all children in the state to public education. But San Francisco's school board continued to ignore Chinese requests for schooling—until Joseph Tape took his daughter's case to court.

Who was Jennie Hurley, this woman who rebuffed Mamie Tape at the schoolhouse door? She, too, was an immigrant, having been born in New Brunswick, Canada, in 1844 and come to San Francisco in the 1850s with her parents, Irish immigrants. Theirs was also a double

migration, like that of the Scots dairy farmer Matthew Sterling, who had come to New York before settling in California. Jennie's father, Patrick, prospered in San Francisco as a carpenter. Jennie became a teacher, as did her younger sister, Mary. Like most other career schoolteachers, the Hurley sisters never married, and lived at home with their parents and, after their parents died, with each other. Jennie Hurley rose quickly in the school system, having been elected to the position of principal of the Spring Valley Primary School in 1867 at the age of twenty-seven. Her professional attainment no doubt required political as well as administrative skills. That meant she got along with the school superintendent, Andrew Jackson Moulder.

Moulder was a die-hard racist who had long vowed "to resist, to defeat, and to prohibit" the admission of "Africans, Chinese, and Diggers [Miwok Indians] into our white schools." He, too, was a migrant—he had come to California from the slave South. A wealthy lawyer, he was active in state politics and made education his specialty. In his former position as state superintendent of schools in the 1850s and 1860s, and then as San Francisco's superintendent, Moulder successfully lobbied for laws that not only segregated the public schools but also imposed sanctions against local school districts and officials who violated the laws.

Joseph Tape appealed to the Chinese consulate in San Francisco to help open the schoolhouse door for his daughter. The consulate had been established in 1878, the same year the Chinese government established an embassy in Washington, D.C. The stationing of Chinese government representatives in California indicated the imperial Qing government's recognition that despite its official ban on emigration, there was a community of Chinese in America and that they suffered in a hostile environment. The emigrants themselves had long called for their government to protect them. Tape was known at the consulate because he occasionally did interpreting work for it. He knew that the consul backed, even initiated, lawsuits against discriminatory laws and practices. He asked the consul for help.

The consular official who intervened in the Tape school affair was

the vice consul, Frederick A. Bee, a white attorney. Bee had represented Chinese miners in El Dorado County as early as 1855 and the Chinese Six Companies in the 1870s. He was part of a sizable cohort of white lawyers, many of them prominent legal figures in San Francisco, who represented Chinese individuals and organizations in immigration and civil rights matters. After Joseph's visit, Bee immediately lodged a protest with the school board, claiming the exclusion was "inconsistent with the treaties, Constitution and laws of the United States, especially so in this case as the child is native-born."

A majority of the board opposed admitting Chinese to the schools and believed the board's action, which had been endorsed by the state superintendent of education, was lawful. The board resolved not only to uphold the exclusion but also to "absolutely prohibit . . . each and every principal of each and every public school" from admitting any "Mongolian" child, under pain of dismissal. The resolution passed by a vote of eight to three. Board member Isidor Danielwitz was ready for whatever legal battle might ensue, declaring that he would rather go to jail than admit Chinese to the schools. Board member Charles Cleveland "objected to the whole thing," saying it was "wrong all through in principle." He favored the schooling of all American-born children, "whether from Africa, Portugal, Great Britain, Ireland, or China." But Cleveland, a physician known for "eccentricities of intelligence," was outvoted, and the battle lines were drawn.

Joseph Tape retained a lawyer, William Gibson, to sue on Mannie's behalf. Gibson was the son of the Methodist missionary and Chinese advocate Otis Gibson. He had been born in China and was a graduate of Harvard Law School. He was counsel for the Chinese missions in San Francisco, attending to the disposition of their properties and to their investments, as well as providing legal assistance for the rescue of "slave girls." *Tape v. Hurley* was the biggest case of his career.

The case had a high profile in the local press. By late 1884, the *San Francisco Evening Bulletin* reported updates to the Tape story under the simple headline "That Chinese Girl." Chinese and white

San Franciscans alike understood what was at stake: would American-born Chinese be accorded the status of citizens and all of citizenship's privileges and benefits? Despite widespread hostility toward Chinese immigration, some Euro-Americans, such as Charles Cleveland, believed that all children born in the United States were, like it or not, entitled to the rights of citizenship. As Cleveland said, "If Chinese may sometime be allowed to vote, they certainly ought to be educated."

Attorney Gibson argued that excluding Mamie Tape violated both California's 1880 school law and the Fourteenth Amendment to the U.S. Constitution, which guaranteed the rights of equal protection and due process to all persons. Joseph Tape's own statement to the court differed somewhat in emphasis by stressing his and his family's assimilated character—that is, their *lack* of Chinese-ness. Arguing in this manner, the Tapes appeared to be a kind of exception that proved the rule. Joseph's affidavit (which was most likely written by Gibson) stated, "Fifteen years ago I discarded my queue, and have never since worn one. My wife and I are now, and for fifteen years past, have been clothed in the American costume. The said Mamie Tape is now and always has been dressed in the American costume, in the manner common and usual for a child of her years." In addition, Tape said, "the said Mamie Tape is not a child of filthy or vicious habits, or suffering from any contagious or infectious disease," a reference to the only grounds in state law for excluding a child from public school, which exclusionists routinely cited to justify barring Chinese. A studio photograph of the family taken during the time of the lawsuit underscored the Tapes' status as a bourgeois American family. We don't know if the photograph was submitted into evidence, but it reads as a brief in which the Tapes declare themselves, by their demeanor and attire, to be respectable and assimilated. Mamie stands at the center of the portrait: her face has a steely look, and she holds her brother's hand, showing the family's unity (and perhaps also steadying her nerves).

The Tapes' two-pronged legal strategy, which made a straightforward civil rights claim on the one hand, and a claim based on mistaken racial identity on the other, was not uncommon. When a train conductor ejected Homer Plessy from a white passenger car in Louisiana in 1892, Plessy argued both that the law requiring separate cars for whites and blacks violated the Fourteenth Amendment and that he personally should not have been ejected because he looked like a white person, having only one-eighth African blood. The Supreme Court disagreed and sanctified the "separate but equal" doctrine in *Plessy v. Ferguson*. The dual approach was again evident in the 1910s when two Asians, Takao Ozawa and Bhagat Singh Thind, sued for their right to naturalized citizenship, which the law reserved for "white persons" and "persons of African nativity or descent." Ozawa stressed his assimilated character; Thind argued that South Asians were Aryans and therefore Caucasian. They both lost. As late as the mid-twentieth century, civil rights organizations such as the National Association for the Advancement of Colored People (NAACP) and the Japanese American Citizens League (JACL) chose the most assimilated blacks and Japanese Americans to bring civil rights test cases. It was thought that one made the strongest case to the courts by emphasizing one's respectability. But the strategy was not without cost, for it conceded that the unassimilated, laboring classes of non-whites were, in fact, the undesirable racial inferiors of Euro-Americans. Assimilated middle-class African Americans and Chinese Americans themselves often wrestled with the conflicting feelings of racial pride and shame. These dynamics led them, in turns, to advocate for their people, to seek to uplift them, and to distance themselves from them. The Tapes fit well this model of middle-class ambivalence.

In January 1885, Mamie Tape won her case at trial. Superior Court judge James Maguire's ruling was comprehensive, citing the equal protection clause of the Fourteenth Amendment, state law, and the fact that Chinese paid school taxes. The decision also held that the

provision for excluding children of "filthy and vicious habits" was meant to apply to individual cases, not racial groups. One school board member immediately resigned in protest, and the board vowed to resist the court's decision. But on March 3, the California Supreme Court upheld the lower court's ruling.

Anticipating this eventuality, the school board had rushed through the California legislature an act authorizing separate schools for "children of Chinese and Mongolian descent." If the courts were going to force the City of San Francisco to educate Chinese children, it would comply, but in segregated schools. In effect, the school board had been forced to elevate Chinese to the same status as African Americans and American Indians. This may seem a dubious promotion, given the standing of those two groups at the time, but it was an important acknowledgment that Chinese had, despite the exclusion laws, settled in the United States.

In late March 1885, the board announced that it would open the Chinese Primary School on the edge of Chinatown, at the corner of Jackson and Stone streets, near Powell Street. Central Chinatown was a crowded and still mostly male-dominated place that the board may have considered too unwholesome. The school occupied the second and third floors above a grocery store, a space that had formerly been occupied by the Morrow Guard, a citizens militia. Miss Rose Thayer was hired to be the teacher.

But the Tapes did not want to send their children to a school in Chinatown. They were already living a life apart from Chinese people; they wanted their children to be raised and educated as Americans, not as Chinese. On April 7, before the Chinese Primary School opened its doors, the Tapes sent Mamie back to Spring Valley. The eight-year-old arrived at the school with her parents and two lawyers. Miss Hurley, however, was prepared. Rather than flout the law directly, she threw bureaucratic obstacles in the girl's path, claiming first that the child did not have the proper vaccination papers, and second that the class, with more than sixty pupils, was overenrolled. She offered to put Mamie on a waiting list. At a meeting of the school

"That Chinese Girl"

board that evening, Superintendent Moulder repeated his intention to keep Mamie out of Spring Valley and urged the board to expedite the opening of the Chinese school.

Incensed, Mary Tape wrote a long letter to the *Daily Alta*. "Dear sirs," she wrote. "Will you please to tell me! Is it a disgrace to be Born a Chinese? Didn't God make us all!!! . . . Do you call that a Christian act to compel my little children to go so far to a school that is made in purpose for them." She assailed those adults who "persecuted" an eight-year-old child just because "she is of Chinese descent."

At the same time, Mary echoed the argument made by her husband's court affidavit, which read "Chinese" as culture, not ancestry. By this standard, the Tapes were not really Chinese:

My children don't dress like the other Chinese. They look just as phunny amongst them as the Chinese dress in Chinese look amongst you Caucasians . . . Her playmates is all Caucasians ever since she could toddle around. If she is good enough to play with them! Then is she not good enough to be in the same room and studie with them? You had better come and see for yourselves. See if the Tape's is not same as other Caucasians, except in features. It seems no matter how a Chinese may live and dress so long as you know they Chinese. Then they are hated as one. There is not any right or justice for them.

Mary's identification with white people was not simply a matter of legal strategy. As a girl, she had run away from Chinatown, found refuge among white people, and created for herself a new persona, the "same as other Caucasians, except in features." Mary's white identity was not an elitist or ambitious rejection of the Chinese community; it was imposed on her by the circumstances of her own experience. Her knowledge of what it meant to be "Chinese"—the most personal of that knowledge buried deep below what she knew intellectually of racial discrimination—accounts for the angry tone of her letter. Ironically, it was not discrimination by white peo-

ple against Chinese, but the cruel treatment by Chinese against their own people, that underwrote her estrangement from them.

At the end of her letter, Mary swore: "Mamie Tape will never attend any of the Chinese schools of your making! Never!! I will let the world see Sir What justice there is When it is govern by the Race prejudice men! just because she is of the Chinese decond . . . I guess she is more of a American then a good many of you that is going to prevent her being Educated."

In fact, Mamie and Frank were the first students to arrive at the Chinese Primary School when it opened on April 13, five days after Mary wrote her letter. A reporter from the *Evening Bulletin* was there for the occasion. Like most white Americans, he was obsessed with the peculiarity of Chinese hairstyles and dress. He described the Tape children's appearance in detail, saying that both "are dressed neatly in clothes like those worn of American children . . . Frank has no queue, his black hair being allowed to grow as it was meant to do, and neatly trimmed. Mamie has the traditional braid of American children hanging down her back and tied with a ribbon."

The reporter described four other children who arrived at the school as "bright Chinese lads, two twelve years of age and two ten, [who] politely doffed their hats when Miss Thayer appeared." The reporter noted that these boys, though in "queues and distinctive style of [Chinese] clothing," had all been to mission schools. Their parents—Lee Tong Hay, Tam Hing, Jee Gam, and Tong Gin—wanted them to exercise their newly acquired right to attend public school, which they understood was part of their rights as citizens.

The boys from the mission school could read and write English, were proficient in arithmetic, and complied with Miss Thayer's method of instruction. According to the reporter, they "conducted themselves as well as any other children would do." The Tape children, on the other hand, having never been to school, were "somewhat restless" in the classroom, despite their evident brightness and fluency in English. When it came time for recess, the four Chinatown boys "had no trouble 'marching out' in a line . . . Only Frank and Ma-

mie could not see the use of going as far as the door in line, and came trooping back to have a frolic." Still, a reporter from the *Daily Alta* conceded that Mamie was perhaps the "most intelligent member of the class."

For several years, the Tape children commuted to Chinatown, riding to school each morning in one of their father's horse-drawn wagons. Florence Eveleth continued to be a presence in the Tapes' home, tutoring Mamie and Frank and playing with little Emily, who was two years younger than Frank. In October 1890, a fourth child was born, Gertrude Ella.

But things on Green Street were changing. The Tapes' side of the block had become built up, and the family's house now looked like an odd insertion in the middle of a row of new two-story homes with high front stoops and bay windows—vernacular Victorian housing that was not grand but certainly grander than the Tapes' little house. The more white families there were in the neighborhood and the tenser the racial climate in the city became, the more conspicuous were the Tapes.

In 1890, Florence married and moved away. Frank was now twelve years old and fought with the Irish boys in the neighborhood. Emily was going to school, so there were now three children to shuttle back and forth every day, plus the baby at home. Mary and Joseph also began to worry that their children's marriage prospects would be dim unless they met other Chinese, for both Chinese and whites frowned on mixed marriages. With all these things in mind, they decided it was time to go.