

RACE AND TAX POLICY: THE CASE OF THE CHINESE POLL TAX

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Abstract

The Chinese poll tax was introduced in English-speaking countries, including Australia, Canada, New Zealand, and the United States, during the nineteenth century. Though this tax was justified on social and economic grounds, it is largely a race-based tax as it was targeted at Chinese immigrants. This article provides a historical analysis of the New Zealand and Californian (American) poll tax. It also evaluates the relationship between the poll tax and immigration. Given the widespread Chinese poll tax in these countries, this evaluation has international significance, and demonstrates the central role of taxes in the formation and maintenance of civic identity. It also has contemporary implications given the extensive number of racially diverse immigrants, including the Chinese, who have migrated and are migrating to Western developed nations.

I. INTRODUCTION

Poll taxes on Chinese immigrants were common in Australia, Canada, New Zealand, and California (America) in the nineteenth and early twentieth centuries. The Chinese were drawn to these countries in large numbers due to the gold rush and the construction of railway lines for Canada and America. Their significant presence in the English-speaking countries aroused hostility in the European population; this hostility eventually translated into discriminatory legislation, an example of which was the poll tax. The poll tax was imposed concurrently with other anti-Chinese legislation to stem Chinese immigration.¹ The tax was

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¹ See, for example, the *Canadian Chinese Immigration Act (1885)*, the *US Chinese Exclusion Act (1882)*, and the *Chinese Immigration Act 1881 (NZ)*.

levied on Chinese as they were considered unassimilable with Western culture,² and to protect the economic interests of white workers.³

Since Chinese immigration could not be prohibited due to international treaties with China, the poll tax was designed to deter the Chinese from arriving in the first place and proved to be effective at least in the short term. Despite the tax, the Chinese continued to arrive at these English-speaking countries due to pull and push factors. Firstly, they were attracted to these countries because of the potential wealth from gold-mining and railway construction. Secondly, they were forced to work elsewhere due to the severe economic recession in China at that time.⁴

Some studies have discussed the experiences of Chinese immigrants in New Zealand and America, highlighting the prejudice they experienced.⁵ As a means of restricting entry, and a significant economic cost to the payer, the poll tax provides an epitome of this prejudice. The poll tax provides a salient example of taxation policy establishing and reinforcing social norms. The race-based poll tax generated public finance for the government; it is claimed that an estimated £308,000 was collected between 1882 and 1930 from the New Zealand poll tax, with the highest amount of £83,500 collected in 1920.⁶

Since ‘tax is very much a social and institutional practice,’⁷ it is necessary to investigate what actually happens in the real world when tax rules and regulations are put into play, indicating the need for engagement with underlying moral and philosophical issues related to tax which are often assumed rather than justified.⁸ Although this article predominantly focuses on New Zealand, with some reference made to California, the poll tax was not unique to New Zealand. Poll tax was introduced in some British colonies and America during the nineteenth century.

The issues raised in this paper are important because they provide insights into the essential institutions of immigration and tax policy. New Zealand—like Australia, Canada, and America—is notable for the vast majority of its citizens being immigrants or descendants of

² G Scholefield and T Hall, ‘Asiatic Immigration in New Zealand: Its history and legislation’ in Norman MacKenzie (ed), *The Legal Status of Aliens in Pacific countries: An International Survey of Law and Practice concerning Immigration, Naturalization and Deportation of Aliens and Their Legal Status and Disabilities* (Oxford University Press, 1937) 262.

³ Emily Ryo, ‘Through the Back Door: Applying Theories of Legal Compliance to Illegal Immigration During the Chinese Exclusion Era’ (2006) 31 *Law and Social Inquiry* 109.

⁴ *Ibid.*

⁵ See, for example, Manying Ip, *Unfolding History, Evolving Identity: The Chinese in New Zealand* (Auckland University Press, 2003) and Isabella Black, ‘American Labour and Chinese Immigration’ (1963) 25 *Past & Present* 59.

⁶ Nigel Murphy, *The Poll-Tax in New Zealand: A Research Paper* (New Zealand Chinese Association (Inc), 1996) 65.

⁷ Lynne Oats, ‘Tax as a Social and Institutional Practice’ in Lynne Oats (ed) *Taxation: A Fieldwork Research Handbook* (Routledge, 2012) 5.

⁸ Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford University Press, 2002).

immigrants.⁹ Through a careful examination of the immigration or exclusion process, one can see how the Chinese are treated in New Zealand and America. These findings then can be used for further historical and theoretical analysis of how tax policies can influence immigration.

This article focuses on the New Zealand and Californian poll taxes. The New Zealand and Californian poll taxes were introduced in 1881 and 1852 respectively.¹⁰ The New Zealand poll tax was very similar to that of Australia and Canada as it required royal assent from Britain given that they were British colonies. This, however, does not apply to California as it was not part of the British Empire. California also imposed other taxes on Chinese and therefore is considered worthy of some discussion. However, this article does not compare the poll taxes of New Zealand and America; rather, the aim is to discuss the objectives of the poll tax and its relation to Chinese immigration.

The article proceeds as follows: The next section discusses the context of and background to the poll tax. Section three considers the New Zealand poll tax, followed by the Californian poll tax in section four. Section five discusses the justification for taxing the Chinese. This is followed by the discussion and analysis in section six. The article then concludes in the final section.

II. CONTEXT AND BACKGROUND

Somerfield et al. defined taxation as ‘any non-penal yet compulsory transfer of resources from the private to the public sector, levied without receipt of a specific benefit of equal value and on the basis of predetermined criteria, in order to accomplish some of a nation’s economic and social objectives’.¹¹ Hence, taxation is a sacrifice made by individuals for a collective benefit. Besides raising revenue for the government, taxation is used as a tool to achieve economic and social objectives. Some taxes are not intended to raise revenue but to modify behaviour and address social ills, such as the imposition of environmental taxes to address environmental concerns and taxes on alcohol and tobacco to address health issues.¹² Such taxes reflect the shifting norms of the society in which they are enacted (or repealed).

The poll tax is a per person capitation or head tax, usually levied at a fixed rate per person. Poll taxes are generally considered unfair; even Adam Smith lamented that ‘[c]apitation

⁹ Statistics New Zealand, *Ethnic Group (Total Responses) by Age Group and Sex, for the Census Usually Resident Population Count, 2001, 2006, and 2013 Censuses (RC, TA)* (31 January 2018) <<http://nzdotstat.stats.govt.nz/wbos/Index.aspx?DataSetCode=TABLECODE8021#>>.

¹⁰ Jerome Hart, *The Chinese American Experience: 1857-1892* (16 April 2018) <<http://immigrants.harperweek.com/ChineseAmericans/2KeyIssues/CaliforniaAnti.htm>>.

¹¹ Ray Sommerfeld, Silvia Madeo and Valerie Milliron, *An Introduction to Taxation 1991* (Harcourt Brace Jovanovich, 1991) 4.

¹² Peter Lorenzi, ‘Sin Taxes’ (2004) 41 *Social Science and Public Policy* 59.

taxes, if it is attempted to proportion them to the fortune or revenue of each contributor, become altogether arbitrary and uncertain, and if it is attempted to render them certain and not arbitrary, become altogether unequal.¹³ Poll taxes are frequently considered a sign of oppression, levied by an overlord on a subject people. Since they are unrelated to a taxpayer's ability to pay, poll taxes are usually unpopular, and have often led to civil disobedience.¹⁴

Poll tax has been used as a means of social and racial discrimination. From the time of Emperor Vespasian (r. 69–79 AD), taxes levied on the Jews (Judengeld) in various societies discriminated against that race.¹⁵ Similarly, the Qur'an refers to the Jizyah,¹⁶ levied by Moslem rulers on those who had not converted to Islam, as a sign of their subjection and an incentive to convert.¹⁷ The discriminatory intention of a poll tax may even be disguised by levying a whole population while targeting a particular group. In certain states in the United States (US), the payment of a poll tax was a prerequisite for voting. Since few African Americans could pay, the tax was an effective means of disenfranchisement.¹⁸

III. NEW ZEALAND IMMIGRATION AND THE CHINESE POLL TAX

New Zealand, being part of the British Empire, deliberately encouraged immigration from Britain, Germany, and Northern Europe during the nineteenth century when there was a demand for labour. Due to British colonialism, it was common for British migrants to settle in Australia, Canada, and New Zealand. On the other hand, the New Zealand government considered the nineteenth century Chinese gold miners as 'sojourners' as they intended to return to China once they had amassed enough wealth to return home. Most Chinese at that time came to New Zealand through America and Australia and they moved across different national boundaries to pursue economic opportunities. They viewed New Zealand as one node within their transnational employment network. The Chinese never considered settling in New Zealand due to their strong attachment to their home villages through strong kinship ties. Their strong ties were evidenced by their regular remittances of their New Zealand earnings to their homeland.¹⁹

¹³ Adam Smith, *The Wealth of Nations* in Skinner, Andrew (ed) (Penguin Books, 1999 (first published 1776)) II: 462.

¹⁴ Jane Frecknall-Hughes, *The Theory, Principles and Management of Taxation: An Introduction* (Routledge, 2014).

¹⁵ Gotthard Deutsch, and M Seligsohn, 'Poll-tax' in Isodore Singer (ed) *Jewish Encyclopedia* (Funk and Wagnalls, 1906) <<http://www.jewishencyclopedia.com/articles/12244-poll-tax>>.

¹⁶ "Fight those who do not have faith in Allah nor [believe] in the Last Day, nor forbid what Allah and His Apostle have forbidden, nor practise the true religion, from among those who were given the Book, until they pay the tribute out of hand, degraded", *Qur'an: Online Translation and Commentary* (2015), <<http://al-quran.info/#home>> 9.29.

¹⁷ John Esposito, *Islam: The Straight Path* (Oxford University Press, 1991) suggests that the Islamic poll tax was a type of protection money—a contractual-type arrangement.

¹⁸ Rupert Broady, 'Poll Tax: Symbol of Oppression' (1941) 48 *The Crisis* 192.

¹⁹ Raymond Chui, 'Transnationalism and Migration: Chinese Migrants in New Zealand' (Occasional Paper No. 4, Hong Kong Shue Yan University, 2008) 4.

The Chinese migrants came to New Zealand to work in the gold mines. As their numbers grew, the European workers felt the competition from the Chinese; this festered resentment towards the Chinese, which was supported by white labour unions. They demanded tough measures be adopted to contain the Chinese immigration. Anti-Chinese societies, such as the Anti-Asiatic League and the White Race League,²⁰ pressured the government to increase restrictions on the Chinese. These pressure groups were supported by politicians, including Premier Robert Stout (1884–87) and Liberal Prime Minister Richard Seddon (1893–1906).²¹ Consequently, the New Zealand government was forced to introduce various anti-Chinese pieces of legislation.

As part of New Zealand’s anti-immigration legislation, the government introduced a poll tax and tonnage restrictions on Chinese migrants. The poll tax was first enacted in the *Chinese Immigrants Act 1881*, which imposed a £10 poll tax on each Chinese person entering the country (s. 5) with only one Chinese allowed for every 10 tons of cargo.²² Hence, the Chinese were only allowed to enter New Zealand based on their ability to pay the poll tax as well as satisfying the tonnage requirements. To further quell the number of Chinese entering New Zealand, the poll tax was later increased to £100 in the *Chinese Immigrants Act Amendment 1896* with only one Chinese allowed for every 200 tons of cargo.²³ These drastic changes were aimed at paralyzing and eliminating Chinese immigration.

The *Asiatic Restriction Act 1896* was later passed by parliament to specifically prevent the influx into New Zealand of persons of alien race who were likely to be hurtful to public welfare.²⁴ The act stated: ‘it is expedient to safeguard the race-purity of the people of New Zealand by preventing the influx into the colony of persons of alien race including Asiatic’.²⁵ The act defined Asiatic to mean ‘any native of any part of Asia, or of the islands adjacent to Asia or in Asiatic seas, and the descendants of any such natives; but it does not include persons of European or Jewish extraction, nor British subjects, being natives of that portion of Her Majesty’s Dominions known as the Indian Empire’.²⁶ In other words, the act is applicable predominantly to the Chinese, as aliens from the Indian Empire were excluded. Under section 18 of the *Asiatic Restriction Act 1896*, it also prohibited the naturalisation of

²⁰ Paul Spoonley, ‘Ethnic and Religious Intolerance - Intolerance towards Asians’ *Te Ara - The Encyclopedia of New Zealand* (13 July 2012) <<http://www.TeAra.govt.nz/en/ethnic-and-religious-intolerance/page-3>>.

²¹ Two quotes indicate the nature of these attitudes. Seddon noted in Parliament, that “Europeans were so far a superior race to the Chinese—although belonging to the same species, yet of a superior class. There was about the same distinction between a European and a Chinaman as that between a Chinaman and a monkey” (36 New Zealand, *Parliamentary Debates*, 8 July 1880, 97 (Richard Seddon). Forty years later, Prime Minister William Massey claimed the Immigration Restriction Amendment Act of 1920 was “the result of a deep-seated sentiment on the part of a huge majority of the people of this country that this Dominion shall be what is often called a ‘white’ New Zealand” (187 New Zealand, *Parliamentary Debates*, 14 September 1920, 905 (William Massey)).

²² *Chinese Immigrants Act 1881* (NZ) (45 VICT 1881 No 47), ss 5 and 9.

²³ *Chinese Immigrants Act Amendment 1896* (NZ) 60 Victoriae 1896 No 19, ss 2, 3 and 4; Gary Hawke, ‘Industrial Development in New Zealand 1870-1914’ (Working Papers in Economic History No 80/1, Victoria University of Wellington, 1991).

²⁴ *Asiatic Restriction Act 1896* (NZ) 60 Victoriae 1896 No 64.

²⁵ *Asiatic Restriction Act 1896* (NZ) 60 Victoriae 1896 No 64 s 1.

²⁶ *Asiatic Restriction Act 1896* (NZ) 60 Victoriae 1896 No 64 s 2.

Chinese, which denied them all the benefits associated with citizenship such as welfare assistance, voting rights, and pensions. Furthermore, any returning Chinese were only allowed entry if they could produce a poll tax certificate.

In 1920, New Zealand introduced the Immigration Restriction Amendment Act which entitled people of British or Irish origins to free entry into New Zealand but denied Chinese the right of residency.²⁷ The minister of Customs was given sole discretion over the entry of Chinese, who were only given temporary resident permits. Those Chinese men who had already gained residency were unable to apply to have their wives and children join them.²⁸ The poll tax was only abolished in the *Finance Act (No. 3) 1944*.²⁹

The poll tax and other restrictive measures were effective in limiting the Chinese population in New Zealand. The 1881 census reported 5,004 Chinese in New Zealand when the poll tax was introduced, but by 1916 this had fallen to 2,147.³⁰ Unable to ban Chinese immigration outright, the poll tax and its associated restrictive mechanism provided an effective means to achieve the same end. Table 1 shows the anti-Chinese legislation and the dramatic decrease in the number of Chinese arrivals to New Zealand subsequent to the passing of the poll tax and other anti-Chinese legislation.

²⁷ *Immigration Restriction Amendment Act 1920* (NZ) 11 GEO V 1920 No 23.

²⁸ Barbara Brookes, 'Gender, Work and Fears of a 'Hybrid Race' in 1920s New Zealand' (2007) 19 *Gender & History* 501, 502.

²⁹ *New Zealand Finance (No. 3) [1944, No. 31]* (NZ) Part II s 10.

³⁰ New Zealand Government, *The New Zealand Official Year-Book 1921-22* (Government Printer, 1922).

Table 1: Arrivals of Chinese in New Zealand, and the Poll Tax and Anti-Chinese Legislation³¹

Year	Number	Departures or Legislation Passed
1876	112	
1877	162	
1878	1025	Anti-Chinese legislation appeared to be imminent.
1879	829	
1880	298	
1881	1029	Chinese Immigrants Act 1881 and the Poll Tax were introduced. The poll tax of £10 was imposed on Chinese migrants. Only one Chinese was allowed for every 10 tons of cargo.
1882	23	
1883	44	
1886	239	
1887	354	
1888	308	Further restriction of passengers and increased tonnage for every Chinese entering a New Zealand port.
1889	16	
1890	18	
1892	58	
1894	273	
1895	214	
1896	173	Poll tax increased from £10 to £100 for Chinese migrants. Only one Chinese was allowed for every 200 tons of cargo entering a New Zealand port.
1897	13	
1898	20	
1901	75	Introduced the Opium Prohibition Act 1901, which prohibited the smoking of opium and the import of the drug in a form suitable for smoking. Police were given powers to search Chinese premises without a warrant.
1904	235	
1906	260	
1907	255	
1908	538	Reading test was imposed on the Chinese arrivals. All Chinese were denied naturalisation (residency) in New Zealand.
1909	171	
1910	209	
1920	1477	Permit to enter New Zealand was required for all Chinese.
1921	255	Departures: 368
1922	345	Departures: 362
1926	613	Departures: 542

As shown in Table 1 above, the anti-Chinese legislation—which included the Chinese poll tax, police capacity under the *Opium Prohibition Act 1901* (repealed in 1965)³² to enter

³¹ T. Hall, 'New Zealand and Asiatic Immigration' (1927) 3 *Economic Record* 228, 231; Te Ara, *Restricting Drugs, 1866 to 1965* (11 August 2018) <<https://teara.govt.nz/en/drugs/page-2>>.

Chinese homes without a warrant, a ban on citizenship rights for New Zealand-born Chinese (removed in 1952), and stringent language tests for all non-English speakers—have kept their numbers very small.³³ In the early twentieth century, the government also excluded Chinese from pensions, unemployment benefits, free medical treatment, and family allowances.³⁴ By 1986, the anti-Chinese regime saw Chinese constituting just 0.6 per cent of a total population of just under three million people.³⁵ It can be concluded that the poll tax and other associated anti-Chinese legislation were effective in curtailing Chinese immigration for nearly a century.

When discriminatory policies against non-European immigration were removed in 1986 to permit wealthy migrants to come from the burgeoning economies of East and Southeast Asia, race was no longer the key criteria for admission into New Zealand. In the first years of the new policy, over half of residence permits granted were to people from Asia, the highest numbers being migrants from Taiwan, South Korea, China, Hong Kong, and Malaysia. By 2001 they were 6.6 per cent of the population and that number is projected to rise to 13 per cent by 2021.³⁶ In modern-day immigration policy, economic factors—regardless of race—remain the key criteria for entering New Zealand. Unlike the poll tax, the cost of entry has been labelled as visa costs to avoid the singling out of specific races for immigration.

The Chinese poll tax specifically singled out *Chinese* immigrants to New Zealand. It was enacted to hinder Chinese immigration by raising the cost of entry into New Zealand and it was levied only on Chinese. The poll tax was therefore considered to be a mark of bondage as evident from the protest of the Chinese consul to New Zealand's prime minister in 1920: 'The poll tax imposed on our Chinese tantamount to suggesting that they are not human beings but only animals and goods'.³⁷ The Chinese were treated as less than human, unassimilable to the New Zealand culture and therefore singled out to be penalised. For most Chinese, the high £100 poll tax represented their lifetime savings. They were then forced to suppress their need to return home and continued to live in a country that unashamedly made them feel undesirable with an overwhelming sense of non-belonging.³⁸ Prejudice was a tool used to distance the Chinese from the locals simply because they were different. The poll tax, however, was a 'second-best,' as the preferred option would have been to ban Chinese immigration altogether; the New Zealand government was aware that the Colonial Office would not assent to such prohibition since international treaties between Britain and China (1854–1860) gave the subjects of China and Britain reciprocal rights to travel to, enter, and

³² *Opium Prohibition Act 1901* (NZ) 1 EDW VII 1901 No 26.

³³ Catherine West-Newman, 'Feeling for Justice? Rights, Laws, and Cultural Contexts' (2005) 30 *Law and Social Inquiry* 305, 308.

³⁴ Chui, above n 19, 10.

³⁵ West-Newman, above n 33, 308.

³⁶ *Ibid.*

³⁷ Francis Ponton, *Immigration Restriction in New Zealand: A Study of Policy from 1908 to 1939* (Masters thesis, Victoria University of Wellington, 1946) 55.

³⁸ Liu Shueng, Wong, *The Moulding of the Silent Immigrants: New Zealand Born Chinese (NZBC)- 2002* (9 September 2018) <http://www.stevenyoung.co.nz/index.php?option=com_content&task=view&id=102&Itemid=74>.

settle in each other's countries freely.³⁹ The poll tax, along with a range of related restrictive measures,⁴⁰ largely circumvented this permission.

IV. CALIFORNIA (AMERICA) IMMIGRATION AND TAXES ON CHINESE

Between 1820 and 1880, north-western European migrant groups were welcomed in America. As most American citizens at that time claimed a similar ethnic heritage as the European migrants, opposition to these immigrants was relatively minimal. However, as the racial composition of immigrants changed, there was an increasing awareness of racial separatism and antagonism, especially towards non-Europeans and particularly towards the Chinese as they remained strangers in the land—residing apart by themselves, adhering to oriental traditions and therefore considered unassimilable with the locals.⁴¹ As their numbers grew, the locals saw them as a threat and therefore protective legislation was needed to curtail Chinese immigration.⁴²

The first Chinese to arrive in California to work in the gold mines in 1849 were greeted with a sense of enthusiasm and inquisitiveness. With their few numbers, they were not a threat to the European gold miners but it all changed when their numbers grew. European miners were angered that the Chinese were gaining mining permits and finding gold that they felt belonged to them. In 1852, agitation commenced in some mining regions to limit the influx of Chinese, which resulted in a report by the California Assembly committee.⁴³ The report identified that the Chinese labourers (or 'coolies', which translates more accurately as a slave or bond labourer) had no desire to become American citizens and that their presence demeaned American labourers and discouraged white immigration.

The agitation towards the Chinese led to the introduction of the Foreign Miners' Licence Tax.⁴⁴ This legislation required all miners who were not American citizens including Mexicans and Chinese to pay three dollars per month in taxes. Because Chinese workers were ineligible for US citizenship, more of them had to pay this tax than members of any

³⁹ Murphy, above n 6.

⁴⁰ Other discriminatory measures included a language test imposed on the Chinese in 1907 (*Chinese Immigrants Amendment Act 1907* (NZ)). From 1908, Chinese leaving New Zealand were required to leave their thumbprints with the Collector of Customs if they wished to return to New Zealand (*Immigration Restriction Amendment Act 1908* (NZ)). Chinese were also denied the benefits of the *Old Age Pensions Act 1898* (NZ) and the *Family Allowances Act 1926* (NZ), were hindered from obtaining citizenship, and, as aliens, were not eligible to vote.

⁴¹ Roseanne Currarino, "'Meat vs. Rice': The Ideal of Manly Labour and Anti-Chinese Hysteria in Nineteenth-Century America' (2007) 9 *Men and Masculinities* 476.

⁴² *Chae Chan Ping v. United States*, supra, 130 U.S. 581 9 S. Ct. 623; 32 L. Ed. 1068; 1889 U.S. LEXIS 1778.

⁴³ Assembly Comm. On Mines and Mining Interests, Report, California Assembly, 3d Session, Appendix to the Journals 829 (1852); See also, Charles McClain Jr, 'The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850-1870' (1984) 72 *California Law Review* 529, 536-7.

⁴⁴ In 1850, the California legislature enacted a law aimed at foreigners and not just the Chinese to pay a fee of \$20 per month for working in the mines. Due to the difficulty in enforcing the act, it was soon repealed.

other immigrant group.⁴⁵ Over the next two decades, this tax was steadily increased until it was ruled unconstitutional in 1870. By 1870, the State of California had collected over \$5 million through this tax, a sum representing over 25 per cent of all state revenue.⁴⁶ This tax provided state and counties revenue which caused mixed incentives to exclude the Chinese.⁴⁷ Chinese miners contributed significantly to these taxes, while demanding relatively little from public services such as schools and hospitals as they were mostly adult males without their families in America. Hence, Chinese immigration was a lucrative investment as they contributed more to the country's economy than was spent on them.

In 1852, a capitation (poll) tax of \$50 was imposed on every Chinese immigrant to California. The purpose of the tax was to protect white labourers against competition from Chinese labourers, and to discourage the immigration of Chinese into the state of California.⁴⁸ In 1852, there were 25,000 Chinese immigrants, which was approximately 10 per cent of the total non-Indian population and over 35 per cent of the total foreign-born population. By 1860, the Chinese were the single largest foreign-born ethnic group in California and comprised from 12 to 23 per cent of the population of the mining counties.⁴⁹

The high number of Chinese then motivated Governor John Bigler, California's third chief executive, to propose extreme measures to stem Chinese immigration. However, Bigler's views on the Chinese were challenged by certain groups.⁵⁰ These groups provided alternative views of the Chinese as being industrious, moral, and orderly, and assessed them as a net benefit to the state due to the taxes collected from them. Despite that, in 1862 a further Chinese Police Tax of \$2.50 was imposed on all Chinese residing in California, except those operating in business, those who had licences to work in the mines, and those who were engaged in the production of sugar, rice, coffee, or tea.⁵¹

By 1882, the American Legion, the American Federation of Labour, the National Grange, trade unions, and other powerful lobby groups in America favoured restricting immigration in general and Asian immigration in particular.⁵² This led to the US Congress passing the *Chinese Exclusion Act 1882* (CEA) which placed severe limits on Chinese immigration and

⁴⁵ David Buck, *Anti-Chinese Movement* (16 April, 2018) <<http://immigrationtounitedstates.org/345-anti-chinese-movement.html>>.

⁴⁶ Gregory Miller, *Chinese Exclusion Act - United States 1882* (16 April, 2018) <<https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/chinese-exclusion-act-0>>.

⁴⁷ Mark Kanazawa, 'Immigration, Exclusion, and Taxation: Anti-Chinese Legislation in Gold Rush California' (2005) 65 *The Journal of Economic History* 779, 781.

⁴⁸ Howard Bromberg, *Capitation Tax* (16 April, 2018) <<http://www.immigrationtounitedstates.org/404-capitation-taxes.html>>.

⁴⁹ Kanazawa, above n 47, 781.

⁵⁰ For example, Norman Asing (a San Francisco Chinese merchant and naturalised citizen), Lai Chun-Chuen (a prominent San Francisco merchant), and Reverend William Speer (a Presbyterian missionary) strongly repelled the racism of the anti-Chinese movement.

⁵¹ *Act of Apr. 26, 1862, ch 339, 1862 California Statute 462*. For more information, see McClain, above n 43, 555-6.

⁵² Leroy Dorsey and Rachel Harlow, "'We want Americans Pure and Simple': Theodore Roosevelt and the Myth of Americanism' (2003) 6 *Rhetoric & Public Affairs* 55.

limited legal immigration to 100 Chinese immigrants per year. The act prohibited Chinese immigrants bringing their wives to America,⁵³ and later versions of the law removed their right to act as a witness at a trial.⁵⁴ The Chinese were the first ethnic group to be barred from America by law.⁵⁵ The CEA suspended Chinese immigration for 10 years. Race then became one of the hotly debated issues for the regulation of immigration in the late 1800s and early 1900s.

There were two justifications for restricting the Chinese immigrants. The primary reason for excluding Chinese immigrants was economic, but cultural differences added to the resentment. The white workers resented the Chinese who were favoured by their employers due to their work ethic and their willingness to work for lower pay. These Chinese worked at two-thirds the cost of white labour, so employers considered them indispensable. The Chinese were inexpensive and highly productive, and their presence increased company profits and reduced the bargaining power of white workers. Chinese labourers did not realise that they were being used as a tool to fight against organised labour⁵⁶ when they assisted their employers to break strikes. This caused enmity with their fellow white workers. The Chinese were also resented by the white workers due to their hard work, frugality, and perceived racial inferiority.⁵⁷ The Chinese were defined as being inferior and it was therefore believed that they should not be granted citizenship. The exclusion of the Chinese was characterised by a racial hierarchy, with the Europeans at the top and Chinese at the bottom.

The anti-Chinese sentiments abated in early 1865 with the demand for Chinese workers to work on the Central Pacific Railway.⁵⁸ Chinese workers were favoured as they were willing to work hard under harsh conditions.⁵⁹ In July 1868, the Burlingame Treaty was signed between China and the United States which recognised “the mutual advantage of the free migration and emigration” of peoples of the two nations “for purposes of curiosity, of trade, or as permanent residents.”⁶⁰ Despite that, anti-Chinese legislation continued which ultimately led to the enactment of the CEA in 1882. The passage of the CEA was the culmination of four decades of European resentment towards the Chinese. The law was renewed twice, in 1892 and 1902; it imposed restrictions on immigration from China, including penalties of fines and possible imprisonment for the captains of ships caught transporting Chinese to America.⁶¹ The CEA was finally repealed in 1943 when China and America were allied during World War II. Table 2 shows the timeline of the poll tax and other anti-Chinese legislation, from 1852 to 1888 in California.

⁵³ Han-Sheng Lin, 'Chinese immigrants in the United States: Achievements and Problems' (1975) 2 & 3 *Peace & Change* 52, 54.

⁵⁴ *Ibid* 52.

⁵⁵ *Ibid* 54.

⁵⁶ *Ibid*.

⁵⁷ McClain, above n 43, 535.

⁵⁸ Sang Kil, 'Fearing Yellow, Imagining White: Media Analysis of the Chinese Exclusion Act of 1882' (2012) 18 *Social Identities* 663, 664.

⁵⁹ McClain, above n 43, 559-560.

⁶⁰ *The Burlingame Treaty*, United States-China, signed 28 July 1868, 16 Statute 739 (1869-71).

⁶¹ Kanazawa, above n 47, 709.

Table 2: Selected California Anti-Chinese Legislation and Cases (1852–1888), including the Poll Tax⁶²

Year	Legislation and the Effects of the Legislation
1. 1852	Foreign Miners' License Tax Act of 1852: This Act placed a \$3 monthly licence fee on miners ineligible for citizenship (i.e. Chinese and Mexicans). It was initially intended to keep Latino miners out of the mines, later it was used to push out Chinese miners.
2. 1852	The Bond Act 1852: Commutation (Poll) Tax required shipmasters to prepare a list of foreign passengers, and ship-owners to post a \$500 bond for each, which could be commuted by paying a tax of \$5 to \$50 per passenger. The law was an attempt to stifle Chinese immigration.
3. 1854	The People of the State of California v George W. Hall (or People v Hall), 4 Cal. 399: The California Supreme Court established that Chinese had no rights to testify against white citizens.
4. 1855	Foreign Miners' License Tax increased to \$6 per month (with \$2 increase every year). Repealed by the state legislature in 1856, establishing the tax at \$4 per month.
5. 1860	California School Law: Banned “Mongolians” (Chinese) and Negroes from public school (in 1871 African Americans were allowed if whites did not object).
6. 1862	Chinese Police Tax Law (April 26, 1862): The California law imposed a monthly tax only on adults of the “Mongolian race” (Chinese) who worked in the mines or were hired to work in most businesses. This act was to protect free white labour from competition with Chinese coolie labour, and to discourage the immigration of the Chinese into the state of California. ⁶³ The law levied a \$2.50 fee on all Chinese living in the state, with a few exceptions. (The term “police” referred to the legislative authority to regulate for the health, safety, welfare, and morals of the state.)
7. 1870	San Francisco Cubic Air Ordinance: Living areas were required to have at least 500 cubic feet of air for each resident. (Chinese housing was the primary target of the law.)
8. 1870	Naturalisation Act of 1870: Any person born in the US was granted the full rights of citizenship. This right did not extend to the Chinese on the grounds that they could not be assimilated into American society. Unable to become citizens, Chinese immigrants were prohibited from voting and serving on juries.
9. 1873	San Francisco Anti-Laundry Ordinances: Imposing a maximum hour rule (i.e. there was a limit on the hours they can operate), zoning rules to push laundries from white neighbourhoods to the outskirts of town, and prohibiting drying racks on roof.
10. 1882	The Chinese Exclusion Act 1882: Strong anti-Chinese feelings in the West led to the federal Chinese Exclusion Act 1882, which banned immigration of Chinese labourers for ten years. It was renewed two more times, in 1892 and 1902; finally repealed in 1943.
11. 1888	Scott Act 1888: Rendered 20,000 Chinese re-entry certificates null and void.

⁶² Hart, above n 10.⁶³ Ancestors in the Americas, *Chinese Police Tax Law (April 26, 1862)* (10 September 2018) <http://cetel.org/1862_tax.html>.

V. JUSTIFICATION FOR TAXING THE CHINESE

Racial anxiety over the Chinese labourers in New Zealand and America arose because local Europeans viewed the Chinese as too successful as they were competitive workers. The Chinese were the first to be blamed for taking local jobs.⁶⁴ They were seen to take jobs away from European workers because they were willing to work for less pay. Furthermore, the Chinese also represented a threat to the purity of the homogenous European culture.⁶⁵ The media and propagandists also portrayed the Chinese as a dangerous threat in both literal and symbolic ways. First, they highlighted the Chinese as a danger by suggesting their numbers were overwhelming, even though statistics showed otherwise (see Table 3 for the New Zealand context).

Table 3: Percentage of Chinese in Total Population (New Zealand)⁶⁶

Year	Percentage
1867	0.55
1871	1.03
1874	1.60
1878	1.07
1881	1.02
1886	0.78
1891	0.71
1896	0.52
1901	0.37

Second, politicians, media, and organised white unions emphasised the social ills of the Chinese to justify their exclusion. They painted a picture of an immoral Chinese race with bad opium habits and a keenness for gambling and prostitution. The Chinese were painted as evil heathens as they did not worship a Christian god; they were sojourners, and they regularly remitted monies back to China.⁶⁷ They were also perceived as inferior due to fear of miscegenation, difference in religion, and moral and political differences.⁶⁸ In addition, they were not considered to be settlers since they came unaccompanied by females and planned to

⁶⁴ Bill Hing, *Making and Remaking Asian American Through Immigration Policy, 1850-1990* (Stanford University Press, 1993) 76.

⁶⁵ John Condliffe, *New Zealand in the Making: A Survey of Economic and Social Development* (Allen and Unwin, 1930) 433; see also the *Asiatic Restriction Act 1896* (NZ) 60 Victoriae 1896 No 64).

⁶⁶ Hall, above n 31, 234.

⁶⁷ Kanazawa, above n 47, 781.

⁶⁸ Condliffe, above n 65; William Reeves, *State Experiments in Australia and New Zealand* (Allen and Unwin, 1902).

return to China.⁶⁹ Socially, since they were ‘[w]ithout family responsibilities, without social interests, without political knowledge, [the Chinese immigrant] comes to a colony/region to extract what he can from it, and to take his savings back to China’.⁷⁰ Hence, the rhetorical dynamics of the discourse assisted in shaping a public consciousness of the Chinese as being unworthy to be part of the New Zealand and American populations.

The motivations for the poll tax were to satisfy New Zealand and California’s economic and social objectives during the nineteenth century. Restrictions on the Chinese were justified on economic grounds, and owed their origin “mainly to labour agitation in defence of the accepted standard of living”.⁷¹ An influx of Chinese was considered to be harmful to the standard of living of European workers, and their immigration was strongly opposed by the labour movement and by the politicians, particularly in times of economic difficulty. Trade unions were concerned about the effect of immigrants on wages and conditions of employment. Economic depression motivated further hostility towards the Chinese.⁷² The poll tax was intended to protect local workers and keep out competition, as contemporary commentators noted:⁷³

That the depressing effect of immigration upon wages is no mere theoretical abstraction, is clearly seen in the attitude of the workers of New Zealand and Australia toward Chinese and other Asiatics. Like the people of California, the people of Australasia believe in the “yellow peril,” realize that the colonial standards of living and of wages could be destroyed by an invasion of coolies from Asia and are determined at all hazards to preserve a white Australia and a white New Zealand.

Regardless of the veracity of such claims, they *were* offered as justification for restrictive policy. Most of the justifications had race as a salient point of debate, as Scholefield and Hall aptly summarised:⁷⁴

There is recognition by the bulk of our leading men in political circles of the real nature of the problem, the necessity of maintaining racial purity and standards of living. Sweeping condemnations of the Chinese race on moral and other grounds, the attribution of inferiority, low civilization, and the denial of culture receive no support from competent judges and thinkers. Nevertheless, in the formation of public opinion and in securing the driving power for new and more stringent legislation, the commonest method has been that of abuse and the playing upon the fears and self-interest of sections of the community.

Besides economic and social justifications, the poll tax was considered a means with which to force the Chinese to make a fair contribution to society in return for the benefits they received, or to compensate for the costs they were said to cause. Since they were not settlers

⁶⁹ New Zealand, *Parliamentary Debates*, Vol. 36, 8 July 1880, 91.

⁷⁰ Reeves, above n 68, 355.

⁷¹ Condliffe, above n 65, 214.

⁷² Phillip Ferguson, *The Making of the White New Zealand Policy: Nationalism, Citizenship and the Exclusion of the Chinese, 1880-1920* (Doctoral Thesis, University of Canterbury, 2003).

⁷³ James Rossignol and William Stewart, *State Socialism in New Zealand* (Harrap, 1910) 281.

⁷⁴ Scholefield and Hall, above n 2, 277.

but left the country after accumulating some wealth, ‘it was only fair that they should contribute to the State proportionately to their expense to the State,’⁷⁵ by way of a tax. The benefit the Chinese received would then be the right to enter New Zealand or California to live and work, as immigration to these countries was entirely voluntary. Furthermore, as in the case of Chinese in New Zealand, they were not consuming dutiable goods like the Europeans as they lived upon rice and fish which were non-dutiable.⁷⁶ A targeted poll tax on the Chinese was a mechanism to ensure that they paid their fair share. An estimated £308,000 was collected in New Zealand from the poll tax between 1882 and 1930.⁷⁷ Hence, the poll tax achieved two objectives, namely to raise tax revenues and to stifle Chinese immigration.

Normative assessments of taxes are often made by comparing a particular tax against Adam Smith’s tax maxims which are equity, certainty, convenience, and economy,⁷⁸ and these maxims have been much discussed and modified since his day. Subsequent authors have proposed updated criteria, which have sought to balance economic efficiency and equity concerns.⁷⁹ That there is a need to update or modify criteria to suit changing contexts indicates that such maxims can, at best, provide limited aid in making a normative assessment of a tax. Nevertheless, Smith’s first maxim stated:⁸⁰

The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.

One of the justifications offered for the poll tax was that the Chinese should pay their fair share of taxes. Because of their thrift it was believed that they paid less than others, and the poll tax was a means to equalise contributions. Moreover, since they only stayed for a short period and then withdrew wealth from New Zealand or California on their return to China, the poll tax ensured that they contributed to the New Zealand or Californian economy. Hence, the poll tax was a way to ensure that they contributed towards the support of the government in proportion to their abilities.

Moreover, the social undesirability of the Chinese, due to the perceived cost they would incur on society, meant that—in words echoing Smith’s equity maxim—“it was only fair that they should contribute to the State proportionately to their expense to the State.”⁸¹ The prejudicial treatment of the Chinese reflected the contemporary assessment of relative tax burdens at the level of race, rather than at the level of the individual.⁸² Though the Chinese were not regarded as part of settler society, but were considered a group to be taxed.

⁷⁵ New Zealand, *Parliamentary Debates*, Vol. 28, 22 August 1878, 419.

⁷⁶ New Zealand, *Parliamentary Debates*, Vol. 36, 8 July 1880, 98.

⁷⁷ Murphy, above n 6, 65.

⁷⁸ Smith, above n 13, II:416ff.

⁷⁹ See, for example, Clinton Alley and Duncan Bentley, ‘A Remodelling of Adam Smith’s Tax Design Principles’ (2005) 20 *Australian Tax Forum* 579; Frecknall-Hughes, above n 14.

⁸⁰ Smith, above n 13, II:416.

⁸¹ New Zealand, *Parliamentary Debates*, 22 August 1878, 419.

⁸² See Martin Daunton, *Trusting Leviathan: The Politics of Taxation in Britain, 1799-1914* (Cambridge University Press Cambridge, 2001).

The poll tax was also consistent with Smith's other maxims. The poll tax was '*certain*,' and not arbitrary as the time of payment, manner, and amount of payment were clear and plain to the contributor and to every other Chinese, being set down in legislation, fixed in amount, and payable prior to entry to New Zealand and California. The poll tax was also '*convenient*' for the payer as it was easy to collect and therefore '*economical*,' given its collection at the point of entry. Hence, at the outset, when benchmarked against Smith's maxims of taxation, the poll tax appears to have some merits. Despite these merits, the prejudicial motivation of the tax cannot be side-lined as it was only imposed on the Chinese.

VI. DISCUSSION AND ANALYSIS

The inevitability and ubiquity of taxation may desensitise a population to its effects intended or otherwise. Far from being merely the required and necessary price we pay for civilised society, taxation plays a formative role in the creation of society and provides a mirror in which to view that society. The enactment of a prejudicial poll tax was possible because of strong anti-Chinese sentiments in English-speaking countries in the nineteenth century. Reflecting social and economic concerns, it limited Chinese immigration and contributed to the European racial purity which its proponents desired.⁸³

Given that taxation is inherently social, it cannot be understood independently of the society in which it is levied. Taxation measures provide a fertile context for sociological and historical study, providing opportunities to better understand both the past and the present. However, despite its significance, taxation is often overlooked, partly due to its perceived complexity and technical nature.⁸⁴ This article suggests that tax is not only technical but can be used as a tool to single out a group of taxpayers. This is not uncommon as tax can be used as a tool to modify behaviours. In the case of the poll tax, its intention was to restrict and curtail Chinese immigration.

The poll tax also highlights some significant constitutional issues. In particular, it indicated who was entitled to the privileges of citizenship, and discrimination against non-citizens of a particular race (Chinese) was justified. The New Zealand poll tax lasted 63 years due to insufficient concerted effort to challenge its legitimacy constitutionally.⁸⁵ In contrast, the Californian poll tax was struck off when the Chinese challenged its legitimacy through the legal system. The Chinese banded together to contest the legality of the Californian poll tax at court with the support of powerful local lobby groups.⁸⁶ The Californian poll taxes were subsequently declared unconstitutional by the Supreme Court as interfering with foreign

⁸³ See *Asiatic Restriction Act 1896* (NZ) 60 Victoriae 1896 No 64 ss 1 and 2.

⁸⁴ Oats, above n 7.

⁸⁵ Charles Chan, 'New Zealand last to repeal Chinese poll tax but first to apologise' (2011) 23 *New Zealand Legacy* 18.

⁸⁶ Hart, above n 10.

commerce.⁸⁷ This suggests that taxes can be amended, struck off, and added to when there is sufficient pressure from affected taxpayer groups.

In modern Western societies, race-based tax would be abhorred and unacceptable.⁸⁸ Instead of using poll taxes or discriminatory policies to curb immigration, modern Western societies resort to skilled-based, business, or humanitarian immigration criteria to selectively allow migrants into their countries. In recent years, business visas have attracted wealthy Chinese migrants to Canada, Australia, New Zealand, and the United States. Hence, it can be surmised that economic factors remain important in the decision to attract or curtail migration to the Western nations regardless of race.

While parliament or Congress makes law, the judiciary interprets and applies the law. As for the New Zealand poll tax, it was administered by the Ministry of Customs which was given sole discretion over the entry of Chinese into New Zealand. As for the Californian taxes on Chinese, they were collected by the sheriffs and their deputies in affected counties on Chinese who were already in California.⁸⁹ The poll tax was used to disenfranchise the Chinese from entering New Zealand and America. It achieved the desired effects of disenfranchising Chinese, especially those who could not afford to pay the tax. It is a form of direct tax as it is levied directly by the government on the Chinese taxpayers.

As we trace New Zealand and America immigration in the nineteenth century, we find a progression of the two countries from a nation that welcomed immigrants to work and settle in their land to that of a 'gatekeeping' nation. Both countries used social, economic, and national security excuses to practice exclusion, but the underlying racial prejudice was evident against the Chinese. The notions of inclusion and exclusion from these two countries were based on conceptions of racial superiority and inferiority derived from perceived socio-political, economic, cultural, and other needs in a given historical period. Discourses about race created a racial hierarchy that rendered British/Europeans as superior and that they therefore should be included, while downgrading non-British/non-Europeans as inferior thus excluding them altogether from the social, political, and cultural life of a nation.⁹⁰

VII. CONCLUSION

In the late nineteenth and early twentieth centuries, race-based tax policy was used to restrict the early Chinese immigrants to New Zealand and California. The issue of the Chinese race was debated by the courts, politicians, organised labour unions, and news media—that an

⁸⁷ These events eventually led Congress to enact s 16 of the *Civil Rights Act of 1870* (USC). See also Bromberg, above n 47.

⁸⁸ Helen Ralston, 'Race, class, gender and multiculturalism in Canada and Australia' (1998) 5 *Race, Gender & Class* 14.

⁸⁹ *Joint Select Committee Relative to the Chinese Population of the State of California, Report*, 13th session, Appendix to the Journals 7 (1862). See also McClain, above n 43, 539.

⁹⁰ Etienne Balibar and Immanuel Wallerstein, *Race, Nation, Class: Ambiguous Identities* (Verso, 1991) 38.

immigrant group deemed culturally and politically undesirable should be restricted from the two countries. Consequently, the meaning of race became highly institutionalised and profoundly ideological; it was institutionalised and ideological because European values were used as a standard for immigration and citizenship rights.

Most Western nations classify migrants into different categories for the purpose of border control. They have favoured some groups of migrants over others. This is particularly true for New Zealand and California, which have maintained close connections with Britain and Europe and therefore have preferred European migrants since the nineteenth century. However, with the increasing cultural diversity of populations internationally, New Zealand—like many other Western nations—had to open their borders to non-British migrants. Asians (Chinese) are one such migrant group.

This study is about the poll (capitation) tax on the Chinese in the nineteenth century. Every person was treated equally for tax purposes, but New Zealand and California (America) enacted a tax system that subjected Chinese to different requirements. These two countries at that time viewed Chinese as undesirable citizens, and this study posits that, within the relevant political constraints, these countries used taxes and other anti-Chinese legislation to dissuade Chinese immigration and limit the opportunities for migration. This discussion on poll tax is salient for two reasons. First, the study sheds light on tax, law, and events that the literature has largely overlooked. It directly contradicts the commonly held belief that Chinese enjoyed the same set of rights and privileges as their European counterparts during the nineteenth century. Second, by comparing the prevailing views with historical tax laws, this study stresses the inherent relationship between tax policy and social policy. Taxes have never been just about bolstering public finance. Although this study will hopefully never have direct applicability to contemporary events, it can provide insight into current and future tax policies and the extent to which history, prejudice, and economic concerns inform policymakers' decisions.

This article discussed the poll tax specifically as a *taxation* measure; the poll tax was not impartial and was prejudicial against a specific race, the Chinese. Second, this tax raised significant public finance despite its discriminatory intent. The tax was 'convenient' as it was collected at the port of entry and the amount charged was 'certain' since it was legislated. However, it violated the equity maxim as only the Chinese were required to pay the tax. Even though the poll tax had many merits, its intention was primarily to punish and discourage the Chinese. The Chinese poll tax also provides a salient warning about the dangers of singling out any group in society for prejudicial treatment. It provides an illustration of the symptomatic significance of historical events, and that 'the public finances are one of the best starting points for an investigation of society, especially, though not exclusively of its political life.'⁹¹ It is therefore shown here that race does matter in tax policy discourse.

⁹¹ Joseph Schumpeter, 'The Crisis of the Tax State' in Richard Swedberg (ed) *The Economics and Sociology of Capitalism* (Princeton University Press, 1991 (first published 1918)) 99, 101.