



# TAKING REFUGEE IN LAW

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They lived two doors apart on Calzada America in Nogales, Mexico—the private attorney and former federal judge Arsenio Espinosa and the current judge Joaquin Silva, before whom Espinosa had to plead Carlos Wong Sun’s case. Wong Sun had turned to Espinosa to challenge enforcement of Law 31, Sonora’s 1923 anti-miscegenation law that prohibited marriage and other intimate relationships between Chinese men and Mexican women. If Wong Sun’s case had come before him as a petitioner in 1924, then-Judge Espinosa would have granted *amparo*—federal judicial relief—on constitutional grounds, which he did for many other Chinese petitioners and their Mexican companions. But in 1929 Joaquin Silva judged in Sonora, and Wong Sun, represented by Espinosa, lost.

In June 1925 the federal attorney general had suddenly (and without public explanation) ordered Judge Espinosa from Nogales, Sonora, to Tijuana, Baja California.<sup>1</sup> Espinosa’s abrupt transfer to Tijuana came as he consistently and controversially relied on the new 1917 Constitution to grant *amparo* to Chinese men and Mexican women who challenged discriminatory actions under Sonoran state and municipal laws. If the purpose of the transfer was to remove Espinosa from the bench and change the legal dynamic for Chinese petitioners in Sonora, it succeeded. No federal judge who came after him defended constitutional principles and the legal rights of minorities the way Espinosa had. Judge Silva was the first judge to issue a ruling that explicitly rejected Espinosa’s

deployment of the 1917 Constitution to relieve the suffering of the persecuted Chinese minority.

## THE MEANING OF LAW

For a country ravaged by the horrific violence of the 1910 Revolution and the preceding decades of Porfirio Diaz’s dictatorship, Mexico’s 1917 Constitution expressed hope in the rule of law. What the Constitution, and more broadly law itself, would mean in post-revolutionary Mexico depended on complex interactions among federal, state, and municipal governments in all three branches—always with the background threat, and sometimes the actuality, of renewed violence and militarism.

At the same time, law was profoundly personal, as Quong Fat and fellow business



*Photo of United States Army soldiers and Mexican soldiers guarding the international border (International Street) at Nogales, Arizona, and Nogales, Sonora, during the Mexican Revolution (1910–20). The metal obelisk at the center is a border marker and still stands today.*

owners could attest when municipal authorities ordered the closure of their businesses and as Carlos Wong Sun and Juana Ramirez discovered when the civil registrar refused to recognize their marriage. The Chinese experience in Sonora in the early 20th century reveals the complexities inherent in aspiring to the rule of law in a country in legal transition. With formal institutional structures of government in place, the informal but powerful court of public opinion also molded conceptions of law.

#### **SONORA IN MEXICO, CHINESE IN SONORA**

A number of historical elements make the Chinese experience in Sonora particularly instructive regarding the post-revolutionary development of law and constitutional interpretation in Mexico. First, in both revolution

and reconstruction, Sonora played a key political and legal role. Second, Sonora hosted the largest Chinese population of any Mexican state through the 1920s, even while discrimination against Chinese there was acute. Moreover, the Chinese experience in Sonora became one of law in ways it did not in other parts of Mexico.

During the 1910 Revolution, Sonora served as a key staging ground for military forces.<sup>2</sup> Venustiano Carranza—president of Mexico from 1917 until his assassination in 1920—used Sonora’s capital as his military headquarters.<sup>3</sup> Álvaro Obregón gathered revolutionary forces in Sonora that then swept violently across western Mexico in 1914.<sup>4</sup> Sonora’s strategic importance and revolutionary leadership translated into significant influence in the creation of the

1917 Constitution and near-hegemony in national leadership through the 1920s. All three Mexican presidents from 1920 to 1928 hailed from Sonora.<sup>5</sup> As one historian stated, in 1920 “the Sonorans took control of the nation” to reform and remake it as they had their own state.<sup>6</sup> That remaking included concentrated discrimination against Chinese, both de facto and de jure.

Furthermore, Sonora acted as a fulcrum between the competing values of national integration and regional power. Even during the Sonoran dynasty, Sonora continued to assert itself against the federal government through its treatment of Chinese. Chinese immigration to Mexico had skyrocketed to more than 24,000 by 1926.<sup>7</sup> In the 1930 census, Chinese were the largest group of foreigners in Sonora at 3,571.<sup>8</sup> By

1940, however, the Chinese population had shrunk to only 92 in Sonora and to under 5,000 in all of Mexico,<sup>9</sup> a sad testament to the effects of anti-Chinese discrimination throughout the country.

In Sonora, government entities enacted rampant anti-Chinese prejudice into law. State legislation and municipal ordinances sought to govern everything from where Chinese people could establish their businesses and whom they could marry to whether they could effectively avail themselves of the constitutional right to naturalize and become citizens. At the same time, Chinese men and their Mexican partners deployed law to defend themselves through amparo petitions. By relying explicitly on the 1917 Constitution, Chinese asserted the legitimacy of federal law and its power to protect them from state and local discrimination. They took refuge in law and legal process.

Interwoven in the analysis of Chinese petitions for amparo and institutional approaches to law run the rich threads of individuals using law in their everyday lives. Recently, I completed a chapter entitled “By a Single Vote: Quong Fat and Chinese Amparo Petitions Before the Supreme Court of Mexico, 1917 to 1932” for a Mexican Supreme Court volume honoring the 1917 Constitution’s centennial.<sup>10</sup> The chapter begins with a desperate telegram from attorney Agustín Centeno Barcena regarding the threatened expulsion of Chinese from Sonora in late 1919. The clipped phrases of his message punctuated its urgency: “Municipal government of Cananea, supported by governor, to close Chinese stores, confiscate merchandise, expel all Chinese on December 31st. Beg Congress direct the Secretary of War order federal military leaders in Sonora to send sufficient troops Cananea, guarantee safety of Chinese, avoid assaults, probable massacre.” The threatened expulsion of his Chinese clients was less than two weeks away as he begged the National Chamber of Deputies to act.

Quong Fat’s case before the Supreme Court revolved around enforcement of Sonora’s 1919 Labor Law, which required businesses to employ at least 80 percent Mexican nationals. The municipal government of Cananea had fined and imprisoned 19 businessmen and closed their businesses



*Nogales, Sonora, February 1933:  
Chinese people entering the United States after being run out of Mexico.*

for allegedly employing too many fellow Chinese. The Chinese sought amparo. A mere two days before the threatened expulsion, the Supreme Court finally began reviewing the case. Ultimately, by a majority of one vote, the Court found that the fines and imprisonment imposed on Quong Fat and his compatriots did not violate the 1917 Constitution’s right to work or the separation of judicial and administrative responsibilities.

In May 2017, I published “Women’s Suffrage, the Anti-Chinese Campaigns, and Gendered Ideals in Sonora, Mexico, 1917–1925.”<sup>11</sup> In the decade after the 1917 Constitution, at least two women in Sonora, María de Jesús Váldez and Emélica Carrillo, sought greater political participation for women at the same time that they sought to exclude and expel Chinese from the state. Historians identify Emélica Carrillo as the only Sonoran woman actively seeking suffrage in the 1920s, but they fail to note the virulent racism on which her argument depended.

Carrillo petitioned the Sonoran State Congress directly for the right to vote in March 1925, stating, “We want the right to vote and to stand for election just as do adult men.” She questioned the congress, “Are women so unworthy that you compare us with delinquents, with thieves, with animals? Do you suppose that we don’t have souls and

intelligence, so you can treat us like animals? Or, perhaps you expect that we will organize a coup and rise up with arms, as appears to be the Mexican custom?” Delinquents, thieves, and animals could not vote in Mexico; neither could women. Men fought violently for suffrage; women might too.

Carrillo sought the franchise for Sonoran women with a focused purpose: vanquishing the Chinese. At bottom, her petition in favor of women’s suffrage relied as much on hatred of Chinese people as on women’s intrinsic merit as human beings of dignity and intelligence. Carrillo approached female suffrage instrumentally, as a means to a specific end rather than as an inherent good or right in and of itself. Carrillo seems naively optimistic that the anti-Chinese legislators in the Sonoran State Congress would see the justice of granting women the vote. Her petition failed. Sonoran women did not receive the vote until nearly 30 years later.

My earlier scholarship investigated other aspects of legal development in post-revolutionary Mexico, first in “Making Mexico: Legal Nationality, Chinese Race, and the 1930 Population Census”<sup>12</sup> and then in “Marriage and *Mestizaje*, Chinese and Mexican: Constitutional Interpretation and Resistance in Sonora, 1921–1935.”<sup>13</sup> “Making Mexico” explores the interactions involved in the 1930 Mexican census. The

census sought to draw Mexico's inhabitants into the national fold, in part by the act of counting itself, in part by eliminating any count of race. In the official narrative, race no longer stratified Mexican society. The official census count of 3,571 Chinese in Sonora tells a tale of the contested nature of that purported reality. The census count derived from different perspectives, enacted by counted individuals, census takers, civil service employees, and consumers of official data; by census categories; by legal constructs of nationality and marital status; and by social constructions of race. Law informed but did not decide who counted as Mexican in the 1930 census.

"Marriage and *Mestizaje*" highlights resistance to Sonora's 1923 anti-miscegenation Law 31 as Mexican women and Chinese men brought amparo petitions. Judge Espinosa made real in the lives of a despised minority the promises of equality and liberty set forth in Mexico's 1917 Constitution. He did so by strictly applying the law and, thus, asserting the supremacy of the federal Constitution over discriminatory state and municipal laws—a bright moment of constitutional interpretation and judicial independence in Mexico.

Currently, I am working on two additional pieces of this scholarly project. The first involves Chinese resistance to the segregation imposed by Law 27, passed as a companion to the anti-miscegenation Law 31. Law 27 sought to segregate Chinese



*Nogales, Sonora, mid-1930s*

power. That debate occurred within formal institutionalized processes of judicial decisions, legislative enactments, and executive decrees but also in newspapers, political campaigns, and the everyday lives of citizens. Twenty-five women in Nacozari de García sent a petition to the Sonoran State Congress protesting Law 31, arguing that it unfairly restricted basic liberty and rights regarding marriage.<sup>14</sup> They argued for the rule of law even as they protested a specific law.

In 1924 the municipality of Cananea imprisoned and fined Filomena Valdez and

February 29 when *El Nacionalista* and *El Intruso* [two anti-Chinese newspapers] published notices regarding the jailing of five Chinese men and their respective female partners, including me among the women. As a review of official records would reveal, I was not taken to jail. It is true that I live with Mr. Pablo C. Wong. In fact, I have lived with him for eleven years during which time there were no laws that prohibited our relationship. Therefore, no one has the right to condemn our relationship because laws cannot have retroactive effect."<sup>17</sup>

Valdez did not cite Article 14 of the 1917 Constitution, but she could have: "No law shall be given retroactive effect to the detriment of any person." The 1930 census data indicates that Filomena Valdez was an uneducated woman who could neither write nor read.<sup>18</sup> Nonetheless, in a public forum she defended herself and her life in legal terms through an appeal to a basic principle of justice and the rule of law.

These are the people about whom I care most—Filomena Valdez and Pablo Wong, the women of Nacozari de García, Carlos Wong Sun and Juana Ramirez, and Quong Fat and his 18 coplaintiffs. They placed their tremulous hope in law and legal process, in a Constitution whose first article guaranteed its rights and protections to every individual present in the Republic—national or foreigner. Their understanding of law may

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spatially in *barrios chinos*, Chinese ghettos. I examine how similar racial zoning laws in the United States influenced the anti-Chinese activists who sponsored Law 27 in Sonora. The second article explores the way religion and the anticlerical post-revolutionary Mexican state compounded racial discrimination against Chinese in Sonora.

The Chinese experience in Sonora exposed a debate most fundamentally about law, its meaning, and its organizing

her partner Pablo Wong \$100 each for violating Law 31's anti-miscegenation provisions.<sup>15</sup> Through an amparo petition, Valdez and Wong sought judicial relief, arguing that they had "lived together for more than [eleven] years without public scandal and without offending public morals in the least."<sup>16</sup> The day before she took formal legal action, Valdez purchased a paid notice on the front page of the newspaper *El Intruso* to argue, "I have seen the numerous comments since



Nogales, Sonora, February 1933: Chinese people forced out of Mexico.

not have been sophisticated or learned like that of attorney Agustín Centeno Barcena or Judge Arsenio Espinosa. Nonetheless, their willingness to rely on legal process and turn to the courts helped move post-revolutionary Mexico toward law as its organizing principle. I find hope in these stories, hope that Mexico can see in its own history a model for lawyers and judges and lay people to organize around law rather than violence and perhaps combat the near-revolutionary levels of violence that plague it today.

Likewise, I am interested in how elite, privileged individuals used their legal training to benefit and protect the disadvantaged. When Chinese petitioners had attorneys to represent them in their amparo claims, they had a much better chance at receiving the amparo they sought. Lawyers matter. In the United States during the violent period of Jim Crow segregation, lawyers—especially lawyer and future Supreme Court Justice Thurgood Marshall—mattered. When Marshall traveled south, “there rose whispers of relief: the lawyer was coming.”<sup>19</sup> I imagine Chinese in Sonora likewise whispered with relief, “*Ay viene el abogado.*”

It is here that my scholarship intersects with advocacy and pedagogy. Several of my colleagues and I travel with law students and new graduates to Dilley, Texas, to volunteer with the CARA Pro Bono Project at the South Texas Family Detention Center, which

houses hundreds—sometimes thousands—of women and children who are fleeing violence, conflict, and oppression in other countries. Our main purpose is to prepare the women for their credible fear interviews with asylum officers. When lawyers and law students are present to help, more than 90 percent of the women are released from detention to pursue asylum claims in the United States. Without lawyers, the majority are deported back to the violent situations they fled. The good work our students do in Dilley teaches the disempowered to take refuge in law.

The lawyers and law students are coming.



#### NOTES

- 1 “Queda en Tijuana El Juez de Nogales,” *Prensa* (San Antonio, Texas), June 2, 1925, 7.
- 2 Cynthia Radding de Murrieta and Juan José Gracida Romo, *Sonora: Una historia compartida*, 322–33 (México: Instituto de Investigaciones Dr. José María Mora, 1989), 322–33; Barry Carr, *The Peculiarities of the Mexican North, 1880–1928* (Glasgow: University of Glasgow, 1971), 1.
- 3 Radding de Murrieta and Gracida Romo, *Sonora*, 322.
- 4 Carr, *Peculiarities*, 8.
- 5 Cynthia Radding de Murrieta and Rosa María Ruiz Murrieta, “La reconstrucción del modelo de progreso 1919–1929,” in *Historia General de Sonora*, vol. 4, *Sonora moderno 1880–1929*, 315–54, 319–21, ed.

Alejandro Figueroa Valenzuela (Hermosillo, Sonora: Gobierno del estado de Sonora, 1997).

- 6 Radding de Murrieta and Gracida Romo, *Sonora*, 146, 148; see also Héctor Aguilar Camín, *La frontera nomada: Sonora y la revolución mexicana* (México: Siglo Veintiuno Editores, 1977), 9 (“The Sonoran hegemony in the post-revolutionary years was of vast and lasting effect.”).
- 7 Evelyn Hu-DeHart, “La comunidad china en el desarrollo de Sonora,” in *Historia General de Sonora*, vol. 4, *Sonora moderno 1880–1929*, 195–211, 198, ed. Alejandro Figueroa Valenzuela (Hermosillo: Gobierno del estado de Sonora, 1997).
- 8 Dirección General de Estadística, Quinto Censo de la Población, Estado de Sonora, México, D. F. (1934), Población clasificada por nacionalidad y sexo, 109.
- 9 Roberto Chao Romero, *The Dragon in Big Lusong: Chinese Immigration and Settlement in Mexico, 1882–1940*, 69 (PhD dissertation, University of California, Los Angeles, 2003).
- 10 Kif Augustine-Adams, “Por un solo voto: Quong Fat y el amparo de personas de origen chino ante la Suprema Corte de Justicia de la Nación, de 1917 a 1932,” 53–119, in *Estudios sobre la Suprema Corte de Justicia realizados en Estados Unidos* (Ciudad de México: Suprema Corte de Justicia de la Nación, 2017).
- 11 Kif Augustine-Adams, “Women’s Suffrage, the Anti-Chinese Campaigns, and Gendered Ideals in Sonora, Mexico, 1917–1925,” 97(2) *The Hispanic American Historical Review* 223–258 (2017).
- 12 Kif Augustine-Adams, “Making Mexico: Legal Nationality, Chinese Race, and the 1930 Population Census,” 27(1) *Law & History Review* 113–44 (2009).
- 13 Kif Augustine-Adams, “Marriage and *Mestizaje*, Chinese and Mexican: Constitutional Interpretation and Resistance in Sonora, 1921–1935,” 29(2) *Law & History Review* 419–63 (2011).
- 14 “Al margen del Problema Chino,” *El Intruso*, 29 de diciembre de 1923, 1; “El Problema Chino—Iniciativa de un muy honorable ayuntamiento,” *El Intruso*, 28 de diciembre de 1923, 2.
- 15 *El Intruso*, 29 de febrero de 1924, 1.
- 16 Amparo Petición 364A, Pablo Wong y Filomena Valdez, 6 de marzo de 1924.
- 17 *El Intruso*, 5 de marzo de 1924, 1.
- 18 Census, Sonora, Cananea, image 70, line 86; <https://www.familysearch.org/ark:/61903/1:1:M49V-VZ8>, <https://www.familysearch.org/ark:/61903/3:1:S3HY-6SM3-2NM?i=69&cc=130731>.
- 19 Gilbert King, *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America*, 14 (New York, New York: Harper, 2012).