China Men, United States v. Wong Kim Ark, and the Question of Citizenship

I.

The middle chapter of Maxine Hong Kingston's China Men is called "The Laws." Summarizing legislation and court decisions that have affected those of Chinese descent living in the United States, it complicates the already complicated effort to determine the genre of a book that self-consciously resists pre-set categories. Narrated by a Chinese-American woman who succeeds in simultaneously honoring her male ancestors and challenging their patriarchal customs, China Men celebrates their imaginative and physical efforts to establish and transform a new home despite resistance to their presence. Part autobiography, part retold and altered Chinese legends and European novels, such as Robinson Crusoe, the book also turns out to be a chronicle of legal history.

Not knowing quite what to do with Kingston's second book, the publishers label it "Nonfiction/Literature." One blurb on the paperback cover calls it "a history," while another says that it consists of "myths and stories." This defiance of easy generic classification is appropriate for a book about a narrator's effort to understand how people from a country whose name evokes the notion of "center" landed "in a country where [they] are eccentric people."[1] Kingston's placement of her chapter on the laws at the formal center of her book should also remind those in the field of literary studies intent on "political" criticism about the need to pay careful attention to legal history.

According to Catherine Gallagher, by turning to the "micro-

politics of daily life" such criticism has "displaced or supplemented" traditional "important economic and political agents and events" with "people and phenomena that once seemed wholly insignificant, indeed outside of history: women, criminals, the insane, sexual practices, and discourses, fairs, festivals, plays of all kinds."[2] Kingston's bizarre story of an "eccentric" people in the United States might seem a literary example of the sort of criticism that Gallagher advocates, since even though she places "The Laws" in the middle of her book, she makes clear from what surrounds the chapter that a summary of the most traditional of political events cannot possibly give an adequate account of the experience of those of Chinese ancestry in the United States.

But if Kingston dramatizes the need to "supplement" traditional economic and political analysis with what one of the book's blurb's calls "the lode of a culture's deepest realities," the central location of "The Laws" suggests that to "displace" such analysis is to risk providing inadequate descriptions of the "micro-politics of daily life." As Kingston makes clear, laws may not completely determine the shape of people's lives, but they do affect how they can be fashioned. Citizenship laws are a case in point. Unfortunately, however, when those following "the new direction being taken in American literary studies" turn their attention to questions of citizenship, they rarely pay attention to legal definitions, and when they do they almost always emphasize the law's power to repress.[3] Kingston also calls attention to a history of legal repression by listing various Chinese exclusion

acts. But she also lists positive examples. In doing so she honors the imaginative efforts of Chinese immigrants who learned quickly how to appropriate the American legal system to their advantage.[4] For instance, under the year 1898 she notes: "Another victory. The Supreme Court decision in The United States v. Wong Kim Ark stated that a person born in the United States to Chinese parents is an American. The decision has never been reversed or changed, and it is the law on which most Americans of Chinese ancestry base their citizenship today" (CM 155-56).[5]

In this essay I will analyze both this 1898 Supreme Court case and Kingston's 1980 work of the literary imagination. By bringing legal and literary analysis together, I hope to offer an understanding of a potential within United States citizenship that we would not get if they were kept apart. I will start with Wong Kim Ark and end with China Men, since Kingston's vision of citizenship is in part dependent upon conditions made possible by the legal case. But only in part, because, as important as the results of Wong Kim Ark are, they are limited. No formal legal definition can ultimately determine what the nature of citizen participation in civic life will be. Obviously, works of the imagination, like Kingston's, cannot either. But they can, more extensively than the law, provide a vision of what constitutes active citizenship.

To be sure, laws, such as those concerned with voting rights, can enhance possibilities for active participation. Furthermore, almost every court decision concerning citizenship implies at least

a minimal vision of what it entails, including Wong Kim Ark, which refuses to base citizenship by birth on racial descent. The case also makes clearer the relation between subjects and citizens in modern democracies, a relation that I will explore before turning to China Men. Even so, the case's vision of citizenship can be developed in a variety of ways. If, as Gary Jacobsohn has argued "American citizenship is a source of identity as well as rights," we need to distinguish between the different sorts of identity that it can suggest.[6] The importance of China Men lies in the particular identity that its thematic and formal treatment of citizenship implies. What distinguishes Kingston's treatment is her way of imagining a continually reconstructed sense of "We, the People," through a dynamic interaction among citizens that acknowledges the importance of one's ethnic heritage without concluding that it ultimately determines one's identity.

Insofar as politics is, as Aristotle called it, the art of the possible, such imaginative visions have a crucial role to play in political criticism. But because those visions are just that--imaginative--traditional political analysis, including legal analysis of particular cases, continues to have an important role as well.[7] Unfortunately, many recent critics who evoke citizenship in literary studies neglect both concrete political analysis and imaginative vision. Instead, they devote their primary energy to demonstrating how claims about democratic citizenship are ideological tools in service of a repressive state. Much of this criticism depends on the conflation of political and psychological

subjection most powerfully articulated by Louis Althusser.

II.

In "Ideology and Ideological State Apparatuses (Notes towards an Investigation)" Althusser claims to describe the structural conditions in which "ideology hails or interpellates individuals as subjects," conditions "making it clear that individuals are always-already interpellated by ideology as subjects, which necessarily leads to one last proposition: individuals are always-already subjects."[8] Locating ideology in the material practices of institutions like the family, the church, the educational system, and cultural discourses, Althusser stresses both the importance of psychological studies of subject formation for political analysis and the need to take cultural and political forces into account in any discussion of the individual subject. He also challenges the commonly held belief that political suppression results from governments employing an elaborate system of controls to repress individual subjects who ideally inhabit a realm free from ideology. Instead, for him the construction of individual subjectivity is possible only within ideology.

The impossibility of escaping ideology leads Althusser to his most polemical announcement: "ideology has no history."[9] His point is not that individual ideologies lack a history; it is instead that political systems escape ideology no more successfully than individuals. Althusser's insistence that ideology lacks history helps to explain what would seem to be a curious omission by a Frenchman writing on political subjectivity. Simon Schama has

argued that the one indisputable story of the French Revolution is the creation of the juridical entity of the citizen.[10] Althusser, however, makes no effort to distinguish how subjects of a monarch might differ from citizens in a republic. In fact, the one time in the essay that he mentions citizens he places the word in quotation marks. But the reason for this neglect is clear: citizens might claim to be different from traditional subjects, but they too are ideological subjects. Indeed, Althusser's theory of interpellation suggests that the most effective forms of ideology are those in which subjects consent to the very terms of their subjection.

Made in the Cold War, Althusser's claim that "ideology has no history" helped to demystify celebrations in the West about the "freedom" of its citizens. In that context--and still today--it is important to point out that democratic citizens are also subjects within ideology. But doing so is only part of our task. We also need to distinguish among the individual histories of particular ideologies and delineate the limitations and possibilities of subjects under particular systems. Subjects may be constructed within ideology, but not all ideologies are the same. Those working within an Althusserian framework need to remember that Althusser articulates an ideology with a history of its own.

Althusser's limits are especially significant in a post-Cold War world in which people proclaim the end of history by effacing crucial differences among political systems. Thus it is no accident that Étienne Balibar, Althusser's former collaborator, has recently addressed the question of citizenship. As if responding

to his former colleague, Balibar answers the question, "What Comes After the Subject?" with "the citizen." Dating that succession at 1789, he insists that any history of the relationship between political and psychological subjects take into account the historical importance of citizenship since the French Revolution. This citizenship, he claims, "is not one among other attributes of subjectivity, on the contrary: it <u>is</u> subjectivity, <u>that form</u> of subjectivity that would no longer be identical with subjection for anyone."[11] Balibar knows that this dream of pure emancipation is impossible; nonetheless, the concept is important because it opens up new possibilities for subjectivity.

Althusser's instructive example of linking political and psychological subjects has had the damaging effect of encouraging others to turn linkages into a condition of identity. The political helps to determine how psychological subjects are formed, but it does completely control them. The dream of such total control is, of course, totalitarianism. As events one hundred years after the French Revolution indicated, resistance to that dream comes, not from subjectivities formed in an asocial realm, but from those formed in civil society; that is, the space of human associations, such as family, church, and neighborhood groups, between the state and the individual. Of course, for Althusser all such associations are part of the state's ideological apparatus. But this totalizing move indicates how much his theory suffers from ignoring the way in which modern democracies define citizenship in order to allow people to develop subjectivities in civil society.

A great strength of the turn to the "micro-politics of daily life" is that it focusses attention on the civil sphere. But to call that sphere political is to risk effacing categories that, even though linked, need to be distinguished from one another. For instance, too little attention has been paid to how the traditionally political can foster possibilities within civil society. Laws do not only restrict; they can also generate possibilities. As Hannah Arendt notes, "to abolish the fences of laws between men--as tyranny does--means to take away man's liberties and destroy freedom as a living political reality; for the space between men as it is hedged in by laws, is the living space of freedom."[12]

According to Peter Riesenberg the concept of citizenship has proved so durable "because it has been viewed not only as an instrument useful in controlling the passions and attenuating private concerns, but also as a means well suited to draw out the best in people."[13] This aspect of citizenship explains why it appeals to people seeking to combat the consumer-driven individualism that dominates American society today. To demystify the notion of citizenship is to risk losing as a possible political weapon a concept that imagines self fulfillment through commitment to the public good, a vision of the public good that when defined in the civil sphere serves, according to Balibar, as a way for citizens far removed from direct political governance to constrain, repress, or supervise the apparatuses of state power.[14]

My point is not to celebrate citizenship uncritically. If the

modern concept of democratic citizenship opens up possibilities for subjectivity, it does not escape contradictions. For instance, citizenship seems to draw out the good in some only by excluding others. Indeed, Riesenberg notes that one of the "principal functions" of citizenship "has been as an agent or principle of exclusion. . . . It has encompassed and defined privilege and constituted the means to discriminate against non-citizens."[15] In China Men, for example, proof that the narrator's family has been accepted as fullfledged American citizens comes when a brother clears military security to join the Navy in the Vietnam War. "The government was certifying that the family was really American, not precariously American, but super-American, extraordinarily secure--Q clearance Americans" (CM 299). A Chinese-American family is accepted into the national community only when that community defines itself against another during war.

It is precisely this exclusive tendency within the concept of citizenship that makes United States v. Wong Kim Ark so important. Not because it made United States citizenship universally inclusive--no notion of national citizenship could do that--but because it denied a racial determination of citizenship by birth.

III.

In 1873 Wong Kim Ark was born in San Francisco of Chinese parents. In 1890 his parents moved back to China, and Wong Kim Ark visited them, returning to San Francisco on July 26, 1890. In 1894 he again visited China. Returning in August 1895, he was denied entrance by the United States government under existing Chinese

exclusion acts.

An exclusion act was in force in 1890. But in 1890 the San Francisco customs officer considered Wong Kim Ark a native-born citizen of the United States; the 1895 officer did not. One reason for this change was a new federal administration. In 1892 the Democrat Grover Cleveland had been elected President. His support in California depended upon Representative Geary, who earlier in the year had sponsored an act that both extended the first exclusion act of 1882 and added some harsher measures. Geary's justification of his bill neatly demonstrates the xenophobic tendencies that defenses of citizenship can unleash. "Because the first duty of governments is to their own citizens, and securing to them protection and enjoyment of their life and liberty," he declared, "the consideration of the effect on other people is not of consequence."[16] The Cleveland administration tacitly agreed when it ruled that someone of Chinese parents born in the United States was a subject of China, not a citizen of the United States. In contrast, Wong Kim Ark claimed that he was a citizen by birth under the citizenship clause of the Fourteenth Amendment.

The case received wide attention in law journals.[17] Eventually it came before the Supreme Court, and in 1898 the Court in a 6 to 2 decision ruled in his favor.[18] The decision turned on interpretations of the citizenship clause of the Fourteenth Amendment, which reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they

reside." This clause was necessitated by Justice Taney's infamous opinion in Dred Scott v. Sandford (1857) that placed the power of the federal government squarely behind the institution of slavery. In the case Scott, a slave, argued that he had become free when his master took him into a free territory. One issue facing the Court was whether Scott had the right to bring suit, a right often reserved for citizens. As a result, Taney made some of the Supreme Court's first rulings on citizenship, a concept contained in the Constitution, but not defined.

Working within what sounds like an egalitarian framework, Taney argued that "The words 'people of the United States,' and 'citizens,' are synonymous terms, and mean the same thing. They both describe the political body, who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty."[19] But if Taney's definition confirmed the republican belief that the sovereign body of the people consists of only one class of citizens, he used it to deny citizenship to free blacks as well as slaves. Since there is only one class of citizens, he argued, the "deep and enduring marks of inferiority and degradation" implanted on blacks excluded them from the community that originally constituted the sovereign people of the nation.[20]

The citizenship clause of the Fourteenth Amendment is clearly designed to nullify Taney's ruling. Since almost all of African

descent alive in 1868 had been born in the United States, the clause guarantees them both United States and state citizenship. The possibility of citizenship for those few not born in the United States was opened up in 1870 when Congress passed a new naturalization act. In 1790 Congress's first naturalization act restricted the right of naturalization to "any alien, being a free white person."[21] Although the act was modified at various times, that language remained. But in 1870 the right was extended to "aliens of African nativity, and to persons of African descent."[22]

The 1870 act did not, however, open up naturalization to those of Asian descent. On the contrary, by 1882 Chinese, with a few exceptions, were forbidden from even entering the country. Nonetheless, the Fourteenth Amendment would still seem to guarantee citizenship to anyone of Chinese descent born in the United States. But the government's challenge to Wong Kim Ark's claim to citizenship indicates that the guarantee was not so certain. The controversy focused on the phrase "subject to the jurisdiction thereof." Was jurisdiction territorial or national?

Wong Kim Ark claimed that it was territorial, that anyone within the territorial limits of the United States is subject to its jurisdiction. If that were the case, the government responded, the phrase "subject to the jurisdiction thereof" would be unnecessary, since it would mean the same thing as "born or naturalized <u>in the United States</u>." Instead, the phrase should be defined nationally, since even when citizens or subjects of a country are outside of its territorial limits they are still

subject to its jurisdiction. Indeed, when a United States couple outside the country gives birth to a child, the child is a United States citizen because it, like its parents, is assumed to be under United States jurisdiction. Similarly, the argument ran, when a child of Chinese parents was born in the United States it, like its parents, was deemed subject to Chinese jurisdiction and thus was born a Chinese subject. The issue facing the Court was, in other words: does the United States determine citizenship by birth according to jus soli (by soil) or jus sanguinis (by blood)? Thirty years after the amendment's enactment the Court finally had to rule on how to interpret one of its crucial phrases.

The argument for granting Wong Kim Ark citizenship insisted that the United States had simply taken over the common law doctrine that all people born in the king's realm are subjects of the king. Writing for the six-judge majority, Justice Gray began by noting that the Constitution uses the terms "citizen of the United States" and "natural-born citizen of the United States," but does not define them. As a result, following the Court in Minor v. Happersett (1875), he turned to the common law. Operating according to jus soli, English common law declared that all children born within the king's realm were subjects of the king except those born of foreign ambassadors or of alien enemies occupying part of the king's dominions, since such children could not be said to be "born within the allegiance, the obedience, or the power, or, as would be said at this day, within the jurisdiction of the King" (WKA 655). Common law doctrine, Gray

asserted, was simply adopted by the United States. The Fourteenth Amendment did not change that situation; it merely reaffirmed it in such a way as to overturn Taney's Dred Scott ruling that limited United States citizenship to whites. The phrase "subject to the jurisdiction thereof" was included for two reasons. First, it emphasized the common law exceptions of children of ambassadors and occupying armies. Second, it excluded "children of members of the Indian tribes, standing in a peculiar relation to the National Government, unknown to the common law" (WKA 682). The latter was ruled upon by the Court in Elk v. Wilkins (1884), the first case that substantively interpreted the phrase in question.

The case resulted when John Elk, an American Indian, renounced his tribal loyalty and claimed American citizenship under the Fourteenth Amendment. Writing for a seven to two majority, Justice Gray denied his claim, arguing that although loyal members of Indian tribes are in a "geographical sense born in the United States," they are "no more 'born in the United States and subject to the jurisdiction thereof,' within the meaning of the first section of the Fourteenth Amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations."[23] As a result, even though Elk had renounced his tribal loyalty, he could not claim automatic citizenship at birth. The only way for him to become a citizen, therefore, was through naturalization.

But American Indians were a special case.[24] To confirm his

argument that the phrase "subject to the jurisdiction thereof" should be read territorially, Gray pointed to the final clause of Section 1 of the Fourteenth Amendment: the equal protection clause, which states that no state shall "deny to any person within its jurisdiction the equal protection of the laws." "It is impossible," Gray wrote, "to construe the words 'subject to the jurisdiction thereof,' in the opening sentence as less comprehensive than the words 'within its jurisdiction,' in the concluding sentence of the same section: or to hold that persons 'within the jurisdiction' of one of the States of the Union are not 'subject to the jurisdiction of the United States'" (WKA 687).

Concluding his argument for a territorial interpretation, Gray contended that an interpretation excluding children born to aliens within the United States from the jurisdiction of the United States would "deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States" (WKA 694).

The only remaining question for the Court to decide, he declared, was whether the citizenship clause applied to Chinese as well. Citing a number of Supreme Court cases involving Chinese, he concluded that "Chinese persons born out of the United States, remaining subjects of the Emperor of China, and not having become citizens of the United States, are entitled to the protection of and owe allegiance to the United States, so long as they are permitted by the United States to reside here; and are 'subject to the jurisdiction thereof,' in the same sense as all other aliens

residing in the United States" (WKA 694). The fact that Congress had passed exclusion acts and had not allowed Chinese to become naturalized citizens did not affect the provisions concerning citizenship by birth proclaimed by the Fourteenth Amendment. Born in the United States, Wong Kim Ark was a natural-born citizen. Since he had not renounced his citizenship, he remained a citizen and should be allowed to re-enter the country.

The dissent was written by Chief Justice Fuller, joined by Justice Harlan, who had been the lone dissenter in Plessy v. Ferguson decided two years earlier. Harlan had also dissented when the Court denied citizenship to John Elk.[25] Fuller took issue with the majority's appeal to common law. Citing a number of authorities, he showed that common law had not simply been adopted by the United States, especially on the issue of citizenship. In fact, he argued, the common law doctrine of jus soli was a feudal doctrine that had no place in American law. It had "no more survived the American Revolution than the same rule survived the French Revolution" (WKA 710). Common law assumed a subject's indissoluble loyalty. The United States, however, was founded on the right to alter allegiance. Declaring their independence, former colonial subjects asserted their right to form a new political entity. A country of immigration, the United States was founded on the implicit recognition of people's right to expatriate from their former countries. Explicitly, the United States had acknowledged the right of expatriation in a law passed by Congress on July 27, 1868, the same year that the Fourteenth Amendment was

adopted. For Fuller this law marked the United States' clear break with common law doctrine and ruled out a common law reading of the amendment.

Another argument against the common law interpretation depended on a distinction between subjects and citizens. It was made by George D. Collins, who along with the Solicitor General filed the government's brief in the case. In an 1895 law review essay Collins pointed out that under common law "the question was not what constituted a citizen of the nation, but what constituted a subject of the king." The "subordinate status of subject. . . , however appropriate to monarchy, is fundamentally repugnant to republican institutions."[26]

Collins could have reinforced his argument by referring to Dred Scott. In Dred Scott slaves were certainly subject to the jurisdiction of the United States. But they were not citizens. Thus, even if prior to the Fourteenth Amendment the United States had adopted common law, Dred Scott made clear that it did not make all subjects automatic citizens. Indeed, Taney denied citizenship, not only to slaves, but to free blacks by including them as part of a subject race. Commenting on a provision in the Articles of Confederation that determined each state's quota for the armed forces in proportion to its "white inhabitants," he declared: "Words could hardly have been used which more strongly mark the line of distinction between the citizen and the subject--the free and the subjugated races."[27] Since it was universally granted that the purpose of Fourteenth Amendment was to overturn Dred Scott, it

would seem to follow that in granting citizenship to blacks, the Fourteenth Amendment broke with feudal practices of subjection, including the common law doctrine associated with them. The standard practice for countries to move from feudal practices to republican ones was to determine citizenship by descent. Thus it made perfect sense to argue that with the Fourteenth Amendment the United States followed that practice.

Fuller found textual evidence for a jus sanguinis reading in the 1866 Civil Rights Bill. Passed two months before the same Congress proposed the Fourteenth Amendment, it states: "That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States" (emphasis added).[28] "The words 'not subject to any foreign power,'" Fuller insisted, "do not in themselves refer to mere territorial jurisdiction, for the persons referred to are persons born in the United States. All such persons are undoubtedly subject to the territorial jurisdiction of the United States, and yet the act concedes that nevertheless they may be subject to the political jurisdiction of a foreign government. In other words, by the terms of the act all persons born in the United States, and not owing allegiance to any foreign power, are citizens" (WKA 720). Passed in part with the intention of guaranteeing the constitutionality of the 1866 act, the Fourteenth Amendment carried the same meaning in the crucial phrase of its citizenship clause.

In his law review essay Collins argued that, if the framers of

the amendment had wanted to indicate jurisdiction territorially, they would have written "subject to the jurisdiction of its laws," since clearly anyone within United States territory, except for mutually agreed upon representatives of foreign countries, is subject to its laws. But they had instead used a phrase that indicated national, not territorial, jurisdiction.[29] When they wanted to indicate territorial jurisdiction, as in the equal protection clause, they were perfectly capable of doing so.

To be sure, the majority claimed that a jus sanguinis ruling would deny citizenship to children born in this country of many immigrant aliens. But for Fuller this argument was wrong. Elk v. Wilkins held that the crucial phrase means "not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance."[30] Immigrant aliens permanently domiciled in the United States had implicitly acknowledged a break with their home country, so that when their children were born they were completely subject to the jurisdiction of the United States. But the situation of Chinese, Fuller argued, was different. Forbidden by the Chinese government from expatriation and forbidden by United States law from naturalization, Chinese "seem in the United States to have remained pilgrims and sojourners" (WKA 726). Since they were not completely subject to the jurisdiction of the United States, their children could not become automatic citizens by birth.

Pointing to an inconsistency in the majority's argument,

Fuller noted that the Court had granted the government power to expel or deport aliens, but not citizens. To grant citizenship to children of people forbidden from becoming citizens themselves was to allow the government to break up families by expelling parents, but not children. Furthermore, if the jus soli interpretation were granted, all children born abroad of United States citizens since 1868 would be denied citizenship, since they were not born in the United States. A jus sanguinis interpretation would account for their citizenship because both they and their parents were still subject to the jurisdiction of the United States.

Despite Fuller's argument, the Court decided in favor of Wong Kim Ark. As a result, according to an expert quoted by Gray, "The right of citizenship [in the United States] never descends in the legal sense, either by the common law, or under the common naturalization acts. It is incident to birth in the country, or it is given personally by statute" (WKA 665).

But as important as the decision was and remains for a more inclusive vision of American citizenship, it was and is limited. A formal definition of who can be a natural born citizen does not provide a vision of the type of civic life that a citizen will be born into. For instance, whether a country has a jus soli or jus sanguinis determination of citizenship has little or no effect on how citizens interact with one another or the relation between citizens and the political body that governs them. Another limitation is that the Court's decision does not govern naturalization laws, which remain in the hands of Congress. In

many ways inclusive laws of naturalization are much more important for guaranteeing a heterogeneous citizenry than rulings deciding eligibility for citizenship at birth. After all, if naturalization laws do not discriminate according to race, within a generation children of many races will be born citizens even when a country adheres to jus sanguinis.

But to point to these limits is not to imply that the Court's decision in Wong Kim Ark lacks importance. Indeed, its extensive discussion of citizenship helps place in context a number of issues that are crucial for an understanding of Kingston's vision of citizenship in China Men.

IV.

One source of confusion in discussions of citizenship is the relation between subjects and citizens. It is tempting to oppose the two terms. The opposition between subjects and citizens is so common that even a sophisticated theorist like Balibar adheres to it when he argues that modern citizenship claims to be free from subjection. In Wong Kim Ark, however, the dissenters' claim that subjects and citizens are opposing terms was rejected by the majority. In rejecting it, Justice Gray cited that major figure in American legal history, Chancellor Kent, who wrote: "Subjects and citizens are, in a degree, convertible terms as applied to natives; and though the term citizen seems appropriate to republican freemen, yet we are, equally with the inhabitants of all other countries, subjects, for we are equally bound by allegiance and subjection to the government and law of the land" (WKA 665). To be

sure, if subjects and citizens are in certain cases convertible terms, they are not identical. All citizens might be subjects, but not all subjects are citizens. Nonetheless, the crucial point is that subjects and citizens are not oppositional concepts. Indeed, the citizenship clause of the 14th Amendment underscores their relationship when it makes citizenship a condition of subjection.

If, as Kent recognized, citizens are always already subjects, criticism that exposes their subjection loses much of its force. In fact, we should remember that the inclusive definition of citizenship adopted by the Court in Wong Kim Ark depended on establishing continuity between a rule for feudal subjects and one for citizens in a democracy. Furthermore, Gray's first citation of Kent on the link between subjects and citizens occurred in an essay that he wrote as a young lawyer refuting Taney's decision in Dred Scott.[31] Liberated from the need to demystify claims that citizenship frees people from all forms of subjection, we are in a better position to investigate whether citizenship in modern democracies opens up possibilities for new and different forms of subjectivity. To do so we need to consider one of the most important questions of modern democratic theory: how citizens relate to the state.

It might seem that the distinguishing feature of democratic citizenship is a set of "nearly reciprocal obligations" with the state.[32] But, as Hobbes's famous social contract should remind us, reciprocity between subjects and the state exists in absolutist forms of government as well as in democratic ones. Significantly,

Hobbes also refers to his subjects as citizens, as does the Renaissance theorist of French absolutism Jean Bodin, whose subject-citizens also exchange reciprocal obligations with the sovereign. Indeed, these reciprocal obligations mark the difference between subject-citizens and mere subjects. What "makes a citizen," he declares, is "the mutual obligation between subject and sovereign by which, in return for the faith and obedience rendered to him, the sovereign must do justice and give counsel, assistance, encouragement, and protection to the subject."[33]

Democracies are, therefore, not the only systems in which subject-citizens willingly consent to the terms of their subjection. Citizens in democracies are no different from Bodin's subject-citizens, for instance, when it comes to exchanging loyalty for certain guaranteed privileges, an exchange that also makes them subjects. Even so, citizens in democracies do have a different structural relation to the government. As John A. Hayward put it in 1885, "A subject is under subjection to a monarch, and a citizen is under subjection to a government of which he is a component part."[34] This difference restores to citizenship an aspect that Aristotle, if not Bodin, found essential: "the knowledge and capacity requisite for ruling as well as being ruled." Citizens, Aristotle defines as, "all who share in the civic life of ruling and being ruled in turn."[35]

For Bodin and Hobbes the sovereign and subject-citizens are distinct bodies that negotiate a mutual agreement. In a modern representative democracy the governed and governing are not

identical, but they are also not distinct. The relationship between governed and governing in representative democracies opens up various possibilities for political agency and subjectivity.

One possibility is suggested by classical liberalism. If in Hobbes's and Bodin's absolutist systems the sovereign bestows rights on individuals, in the classical liberalism of Locke people create government to protect inalienable rights supposedly possessed by all individuals prior to the existence of civil society. To be designated a citizen in classical liberalism is not, therefore, to add to one's basic rights; it is to be called on to participate in honoring, protecting, and preserving them. According to Balibar, for those lodged within this tradition, "the men of 1776 and 1789, the men of liberty and revolution, became 'citizens' because they had universally won access to subjectivity. Better said: because they had become conscious (in a Cartesian, or Lockean, or Kantian) way, of the fact that they were indeed free 'subjects,' always already destined to liberty (by their 'birthright')."[36] Thus, in classical liberalism possibilities for expanding subjectivity do indeed depend on the belief that the psychological subject precedes ideology. But there is another way to think of citizenship in representative democracies.

In the tradition of classical republican virtue best described by J.G.A. Pocock, rights do not precede political and civil society; instead, as in the thought of Hobbes and Bodin, they are a product of it.[37] Within this tradition citizenship involves much more than the protection of already existing rights; it is the very

condition of having rights. Chief Justice Earl Warren articulated this perspective when he claimed that "Citizenship is man's basic right for it is nothing less than the right to have rights."[38] Classical republicans may share Bodin's and Hobbes's belief that citizenship creates the possibility for possessing rights, but, unlike the two absolutists, they do not conceive of a sovereign above the people. Instead, for them sovereignty is identical with the people. Thus, citizenship in a republic is not simply the right to have rights, it is also the right to participate, as the res publica (the public body), in the construction of those rights.

If classical liberalism emphasizes the need to protect the sanctity of private individuals, classical republicanism places value on active citizen participation in the public sphere. Indeed, within republicanism active citizen participation would seem to make possible the vision of citizenship that, I will argue, is dramatized in China Men, one that allows for the perpetual construction and reconstruction of the conditions in which citizens' identities and subjectivities take shape. In fact, however, more often than not classical republicanism has lent itself to a static sense of identity rather than a dynamic one.

Classical republicanism honors the founding moment of a republic for embodying timeless truths. One consequence is that rights designated at the moment of foundation become fundamental and thus as fixed as natural rights in classical liberalism. Another consequence is that too often the sovereign people are defined as those who founded the republic, a definition making it

impossible to redefine "the people" in light of changing circumstances. The dangers of this view are illustrated by Taney in his Dred Scott decision, which restricted citizenship to descendants of "the people" who participated in the original founding of the nation. Similarly, Harlan's dissent in Wong Kim Ark can in part be attributed to his republican beliefs. Harlan was intent on overturning Taney's sense of the people. But he did so by appealing to a new founding moment: the Civil War and the amendments that reconstituted the nation. There was no place for those of Chinese descent in that vision. In his Plessy dissent, Harlan contrasts the Chinese, whom he labels "a race so different from our own that we do not permit those belonging to it to become citizens of the United States," with "citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union."[39]

Another limitation of classical republicanism is its stress on group identity: citizens participated actively in the public sphere, but they did so as representatives of groups (estates) that determined who they were. This attribute of republicanism has direct relevance to the political situation in the United States today where people are more and more identified in terms of race. Because race has been used to exclude various people from citizenship, today's politics of race are understandably intent on challenging those static aspects of classical republicanism that rule out a perpetual redefinition of who constitutes "the people." Even so, the emphasis on group identity can risk limiting the

possibilities of identity as much as classical republicanism's identification of someone as a member of an estate.

Addressing the complicated problem of how to conceive of a public sphere that both recognizes the dangers of confining an individual's identity to membership in a group and the reality that group membership plays a determinant role in shaping one's identity, Robert Post writes, "Democratic public culture must. . . be understood as distinct from the cultures of particular groups and communities. Even though we know that in actuality the identities of individuals are formed through socialization into the specific mores of specific and historical groups and communities, the ideal of self-determination requires that public culture always maintains the possibility of citizens imagining themselves as something other than what in fact they are."[40]

Just as China Men resists existing generic categories, so it dramatizes a way of constructing identities that defy existing racial categories. In doing so, it generates a model for a public culture in which citizens can imagine themselves to be other than what they are. That possibility is enhanced in turn by active participation in a civil sphere made up of the heterogeneous citizenry enabled by the Court's decision in Wong Kim Ark.

Thus before turning to Kingston's work, I want to emphasize once again Wong Kim Ark's importance. The decision might have been and continues to be limited; nonetheless, it provided an important vision. Jacobsohn summarizes the effect of its refusal to allow descent to determine citizenship: "Henceforward the ability of the

native-born to share in the aspirational content of American national identity was formed only by one's relation to the physical boundaries of the United States."[41]

In addition to affirming that vision, the case had important practical effects. Although it did not overrule existing exclusion acts, it did open a small but significant opportunity for those of Chinese descent--as well as other excluded groups--living in the United States. In a country with liberal naturalization laws, distinctions between jus soli or jus sanguinis are not so important, but the United States at the turn of the century was not such a country. In fact, soon after the Court's decision Congress tightened restrictions on Asian immigration. Within that context, Wong Kim Ark countered those who wanted to restrict citizenship according to race. Insofar as people of different races--citizens or not--inhabited the territory under United States jurisdiction, as they did, children of different bloods would most likely be born and become automatic citizens, as indeed they have been. (Which is why some nativists are campaigning to repeal the Fourteenth Amendment's citizenship clause.) Our analysis of China Men can begin with Kingston's account of how Chinese immigrants took advantage of the possibilities that Wong Kim Ark opened.

V.

An important movement in this episodic book is from a chapter entitled "The Father from China" to one called "The American Father." Imagining how that transformation occurred, the narrator presents three different stories. In one her father entered the

country legally; in another he was born in the United States and received automatic citizenship; in another he entered illegally. These accounts speak to the many ways in which China Men were Americanized. They might also seem to question the validity of legal determinations of citizenship, since the effect of bringing them into relation with one another is to blur the distinction between the "legal" fathers and the "illegal" one.

The non-native born "legal" father should have been allowed to enter even under existing exclusion acts because there was an exception for scholars, and he had passed the Imperial Examination. But he is warned that immigration officials will not let him in. "Listen, stupid, nobody gets to be classified 'Scholar.' You can't speak English, you're illiterate, no scholar, no visa. 'Coolie.' Simple test" (CM 45). Aware that immigration officials might not honor his legitimate examination certificate, he searches for documents that they will honor. First, his relatives' families "unburied their documents--visas, passports, re-entry permits, American birth certificates, American citizenship papers" (CM 46). He also lets it be known that he was on the market to buy documents from locals who are legal citizens of the United States. "These Americans had declared the birth of a new son for every year they had been visiting in China and thereby made slots for many 'paper sons.' When a Sojourner retired from going-out-on-the-road or died, he made another slot. Somebody took his place" (CM 46). The father, therefore, goes "with two sets of papers: bought ones and his own, which were legal and should get him into the Gold Mountain

according to American law. But his own papers were untried, whereas the fake set had accompanied its owners back and forth many times" (CM 46-47). About to face officers of the law who might not recognize an authentic document, the "legal" father comes prepared to gain entrance with fake ones.

Further blurring of legal and illegal occurs because of a historical accident. During the San Francisco earthquake the Hall of Records burned. "Citizenship papers burned, Certificates of Return, Birth Certificates, Residency Certificates, passenger lists, Marriage Certificates--every paper a China Man wanted for citizenship and legality burned in that fire. An authentic citizen, then, had no more papers than an alien. Any paper a China Man could not produce had been 'burned up in the fire of 1906.' Every China Man was reborn out of that fire a citizen" (CM 150).

Often denied citizenship by restrictive laws, Chinese immigrants imaginatively used documents to create legal citizens. In telling her imaginative stories about her Chinese male ancestors, Kingston follows in their tradition by repeating their act in the document that she produces. In doing so she also appropriates the male power to name. If they created and adopted "paper sons," she creates and adopts "paper fathers."

It is important to remember, however, that these imaginative acts would have been impossible if it had not been for the ruling in Wong Kim Ark. Without that ruling no one of Chinese descent would have been an authentic citizen. If no one had the possibility of becoming a citizen by birth, it would have been

useless to create "paper" sons since not even "real" ones would have been citizens. Indeed, prior to Wong Kim Ark paper documents asserting citizenship were worthless, as shown when a grandfather working on the transcontinental railroad is duped into buying fraudulent citizenship papers from a "Citizenship Judge." But after Wong Kim Ark even a child born of illegal immigrants can receive valid papers. There is perhaps no more poignant example of the egalitarian implications of the decision in Wong Kim Ark than the fact that in the eyes of the law children of illegal immigrants have the same right to citizenship as children of longstanding citizens. Certainly, if the majority had not prevailed, Kingston would have been forced to tell a very different story about the transformation of the "Father from China" into "The American Father." Indeed, the first chapter comes before the chapter on "The Laws," while the second comes after it.

If laws played a crucial role in the father's Americanization, they did not play a completely determining one. The acquisition of formal citizenship is important, but, as African Americans had learned, it does not guarantee people acceptance as "true" Americans. The father's transformation into "the American father" depended on a redefinition of what makes an American as well as on formal citizenship. Kingston indicates the importance of such a redefinition by placing a chapter called "The Making of More Americans" between "The Laws" and "The American Father."

China Men invites a rethinking of American identity by responding to the standard question--What makes an American?--with

the question--Who made America? To answer that question is to alter the myth of the country's founding fathers by reminding us of the material, as well as the political, making of the country.[42] China Men, the book shows, had an important role in the making of America. For instance, "They built railroads in every part of the country--the Alabama and Chattanooga Railroad, the Houston and Texas Railroad, the Southern Pacific, the railroads in Louisiana and Boston, the Pacific Northwest, and Alaska. After the Civil War, China Men banded the nation North and South, East and West, with crisscrossing steel. They were the binding and building ancestors of this place" (CH 146). Imagining a grandfather at the ceremony celebrating the completion of the transcontinental railroad, the narrator proclaims, "The white demon officials gave speeches. 'The Greatest Feat of the Nineteenth Century,' they said. 'The Greatest Feat in the History of Mankind,' they said. 'Only Americans could have done it,' they said, which is true. Even if Ah Goong had not spent half his gold on Citizenship Papers, he was an American for having built the railroad" (CM 145).

Relying on questionable historiography, Taney's exclusive racial definition of "We, the People" had confined the term to descendants of the whites who had participated in the original constitution of the country. Kingston's inclusive definition opens the term to all who contributed to the country's making. And since the country is in a perpetual process of remaking, she allows for the inclusion of new founding fathers, for the perpetual making of more Americans. Furthermore, the role that people play in making

America affects their relation to the land.

In Wong Kim Ark the government supported its jus sanguinis interpretation by quoting Vattel on the international law of citizenship: "The true bond which connects the child with the body politic is not the matter of an inanimate piece of land, but the moral relations of his parentage. . ."[43] For Kingston, however, the land is animated by the human labor that makes it productive. On the island of O'ahu in the Hawai'ian islands, the narrator wanders into the sugar cane fields cultivated by her great grandfather. "I have heard the land sing. I have seen the bright blue streaks of spirits whisking through the air. I again search for my American ancestors by listening in the cane" (CM 90). Imagining her grandfather in the fields, she details how the laborers had not been allowed to talk while working. Her grandfather, however, was a "talk addict" (CM 110) and needed to express himself. Tricking the overseer, he led workers into the cane where they dug a deep hole and yelled into it.

> They had dug an ear into the world, and were telling the earth their secrets.
>
> "I want home," Bak Goong yelled, pressed against the soil, and smelling the earth. "I want my home," the men yelled together. "I want my home. Home. Home. Home. Home."
>
> Talked out, they buried their words, planted them (CM 118).

Listening to the cane years later, Kingston imagines the lives of

the workers who cultivated the land. "Soon the new green shoots would rise, and when in two years the cane grew gold tassels, what stories the wind would tell" (CM 118). If Locke felt that human labor making the land productive gave someone possession of the land, Kingston suggests that workers' labor gives them a claim to belong to the land.

When Kau Goong, the narrator's great uncle, is urged to go to Hong Kong to reunite with his wife who has smuggled herself out of the People's Republic in order to be with him, he eventually balks. "'I've decided to stay in California.' He said, 'California. This is my home. I belong here.' He turned and, looking at us, roared, 'We belong here.'" (CM 184). Anticipating the title of one of the best books arguing for inclusive American citizenship--Belonging to America--Kau Goong stakes his claim to a new home.[44]

Kau Gong's affirmation that he belongs in California is an important part of the process in which those who are formally citizens are recognized by themselves and others as Americans. His roaring, "We belong here," signals Kingston's recognition of the pull of a diasporic identity.

Diaspora derives from the Greek word speirein, which means to sow or scatter. Meaning dispersion, it also suggests the need to take root after sowing. Indeed, at the end of his chapter, "the American father" finally owns a home and plants "trees that will take years to fruit" (CM 255). But if Kingston recognizes the need for groups to establish roots in a new land, she also knows that the United States is made up of numerous diasporic communities and

that no group's identity remains the same in its new home. Acutely aware of how individual identity is shaped by one's cultural heritage, Kingston does not consider it ultimately determinant. On the contrary, for her, identity is fashioned as much by where one lives and with whom one interacts as by where one comes from. For instance, the narrator's brother "returns" to a China where he has never been (which is in fact Hong Kong) with expectations of encountering a culture that will make him feel at home. Instead, like many before him, he is made aware of his "Americanness" (CM 294). At the same time, Kingston plays with our notion of what is "authentically" Chinese by including a "black Chinese Red Communists" (CM 86), the narrator's black cousin and uncle living in the People's Republic.

Kingston's destabilization of identities suggests her kinship with champions of what has come to be called border identity, although, as we will see, there is a crucial difference. A hybrid identity constituted by the multiple subjectivities that people have from occupying spaces between different cultures, border identity challenges the seeming arbitrariness of national boundaries--and thus national citizenship--in an increasingly mobile global society. If the concept of citizenship is to be preserved at all, it would seem to require redefinition in terms of different geographic units such as cities or in terms of multiple or at least dual nationalities.[45]

In Wong Kim Ark an argument against adopting a jus soli policy for the United States while much of the world retained jus

sanguinis was that doing so created possibilities for dual citizenship. Commenting on Wong Kim Ark, the Harvard Law Review concluded, "This difficulty, however, is more apparent than real. When a child is born in America of Chinese parents, China claims him by jus sanguinis, America by jus soli. It is not a question whether he is an American or a Chinaman; he is both. . . . The duality of citizenship is a fact only in a third country. In China, he is a Chinaman; in America, an American."[46]

The title page of Kingston's book might seem to endorse this conclusion. In addition to the English title of China Men, Kingston includes the Chinese written character for "Gold Mountain Warriors," the name adopted by Chinese journeying to California, which was known as the Gold Mountain.[47] Even so, these two titles have a significantly different effect from what the Harvard Law Review concludes about Wong Kim Ark's status. The title in Chinese identifies the book's protagonists with the United States; the title in English with China. Rather than belonging to both America and China, the book's protagonists might seem to belong to neither. Yet Kingston is very clear that those of Chinese descent living in the United States have full claim to United States citizenship.

Redefining what it means to be an American without abandoning the term itself, Kingston distances herself from at least some border theorists. If she recognizes the existence of multiple subjectivities and ties to multiple identities, she also counters border theorists' romance with displacement with an awareness of how important a sense of belonging is for people occupying a land

with others. Active citizenship fosters that sense of belonging.[48] Even so, to belong to America in Kingston's world is not to have a set identity. It is instead to have the opportunity to participate in a process of reconstructing one's identity that interaction with numerous groups makes possible. If similar interactions take place elsewhere, none is exactly the same as the one taking place within the territorial limits of the United States. In suggesting a model for that interaction, Kingston makes her contribution to the vision affirmed in Wong Kim Ark when the Court refused to base citizenship by birth on descent.

Kingston's dynamic model of citizenship brings us to a topic that links literary and political concerns: representation. Within the American literary tradition the most prominent attempt to represent the interaction of a diverse citizenry is Walt Whitman's embrace of it through an expansion of the self. But this expansion depends on the synecdochic ability of a part to represent the whole, as Whitman takes on the task of speaking for others, especially those who have often been silenced. China Men formally embodies a subtly different strategy of representing how persons within a given territory interact with and affect one another.[49]

Unlike Whitman's "I," Kingston's narrator makes no claim to speak for who she is not, although she does continually imagine who she is not, especially when she takes on the difficult task of telling the story of China Men. In order to accomplish that task she goes to the closest source that she has, her father, and tries to get him to speak. But he is silent about his past. Her

response is: "I'll tell you what I suppose from your silences and few words, and you can tell me that I'm mistaken. You'll just have to speak up with the real stories if I've got you wrong" (CM 15). Similarly, Kingston invites her readers to speak up and tell their stories if she's gotten the account of Americanization wrong.

Kingston offers a self-consciously fictionalized narrative, whose function is to provoke diverse voices to speak for themselves rather than to speak for them. Not a naive celebration of identity politics, the formal structure of the book stresses a common life that can be created by the dialogue of different voices without effacing their differences.[50] That dialogic structure is emphasized by the book's first and last chapters. The first is entitled "On Discovery"; the last "On Listening." Discovery in Kingston's world comes not only from speaking one's voice and representing one's interests, but, equally important, from listening to others. This dynamic process of provoking new voices into a civic dialogue of listening and speaking opens up possibilities for perpetually redefining both the constitution of the body politic and the identities of the individuals it embodies. If to be an American citizen means subjecting oneself to the country's laws, Kingston imagines how citizen participation in a heterogeneous society can subject what it means to be an American to continual revision.

Notes

1. Maxine Hong Kingston, China Men (New York: Random House, 1980), p. 15. Future page references will be included parenthetically within the text.

2. Catherine Gallagher, "Marxism and the New Historicism," in The New Historicism, ed. H. Aram Veeser (New York: Routledge, 1989): 43.

3. The quoted phrase is Michael Moon and Cathy Davidson's description of contributors to their collection Subjects and Citizens (Durham: Duke U.P., 1995), p. 2. The one legal definition of citizenship cited in the volume comes from the Dred Scott case.

4. See especially Charles McClain, In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth-Century America (Berkeley: U. of California P., 1994). Kingston's legal history is not perfectly accurate. For instance, she lists the important victory of Yick Wo v. Hopkins as 1896 when it was 1886 and her account of the 1879 constitution is a bit misleading.

5. It is noteworthy that a recent book on Asian American literature and citizenship that pays close attention to the law does not even mention United States v. Wong Kim Ark. See Lisa Lowe, Immigrant Acts: On Asian American Cultural Politics (Durham: Duke U.P., 1996).

6. Gary J. Jacobsohn, Apple of Gold: Constitutionalism in Israel and the United States (Princeton: Princeton U.P., 1993), p. 89.

7. Lauren Berlant's recent work shows the value of using a "cultural studies" approach to supplement traditional political

analysis. But Berlant's failure seriously to engage that analysis means that her notion of citizenship lacks historical depth. Especially lacking is any effort to distinguish her attack on what she sees as the recent "privatization" of citizenship from other attacks such as those made by Michael J. Sandel. See Berlant's The Queen of America Goes to Washington City: Essays on Sex and Citizenship (Durham: Duke U.P., 1997) and Sandel's Democracy's Discontent (Cambridge: Harvard U.P., 1996). The political scientist Judith N. Shklar has noted that "There is no notion more central in politics than citizenship, and none more variable in history, or contested in theory." American Citizenship (Cambridge: Harvard U.P., 1991), p. 1. Literary scholars writing on citizenship might consider engaging that history and theory.

8. Louis Althusser, "Ideology and Ideological State Apparatuses (Notes towards an Investigation)," Lenin and Philosophy, and Other Essays, trans. Ben Brewster (New York: Monthly Review Press, 1971), pp. 175-76.

9. "Ideology," p. 160. For a different challenge to Althusser's account of interpellation, see Judith Butler, "'Conscience Doth Make Subjects of Us All,'" French Yale Studies 88 (1995): 6-26.

10. Simon Schama, Citizens: A Chronicle of the French Revolution (New York: Knopf, 1989), 858.

11. Étienne Balibar, "Citizen Subject," in Who Comes After the Subject?, eds. Eduardo Cadava, Peter Connor, and Jean-Luc Nancy, (New York: Routledge, 1991), 38-39, and "Subjection and Subjectivation," in Supposing the Subject, ed. Joan Copjec, (New

York: Verso pres, 1994), 12. Other important essays on citizenship by Balibar are "Propositions on Citizenship, Ethics 98 (1988): 723-730 and "Is European Citizenship Possible?" Public Culture 8 (1996): 355-376.

12. Hannah Arendt, The Origins of Totalitarianism, 2nd. ed. (New York: Meridian Bks., 1958), p. 446.

13. Peter Riesenberg, Citizenship in the Western Tradition (Chapel Hill: U. of North Carolina P., 1992), p. xi.

14. Balibar, "Is European Citizenship Possible?": 367-38.

15. Riesenberg, Citizenship in the Western Tradition, p. xvii.

16. T. J. Geary, "Should the Chinese Be Excluded?" North American Review (1892): 65. On the duties that we owe to people beyond our borders see, "Symposium on Duties Beyond Borders," Ethics 98 (1988): 647-756.

17. See, for instance, George D. Collins, "Are Persons Born Within the United States Ipso Facto Citizens Thereof?" The American Law Review 18 (1884): 831-838 and "Citizenship by Birth," American Law Review 29 (1895): 385-395, Henry C. Ide, "Citizenship by Birth--Another View," American Law Review 30 (1896): 241-252, "Citizenship," The American Law Journal 2 (1885): 3-6, John A. Hayward, "Who Are Citizens," The American Law Journal 2 (1885): 315-319, Marshall B. Woodworth, "Citizenship of the United States Under the Fourteenth Amendment, American Law Review, 30 (1896): 535-555 and "Who Are Citizens of the United States? Wong Kim Ark Case--Interpretation of Citizenship Clause of Fourteenth Amendment," American Law Review 32 (1898): 554-561, Boyd

Winchester, "Citizenship in Its International Relation, American Law Review (1897): 504-513, Simeon E. Baldwin, "The Citizen of the United States," Yale Law Journal 2 (1893): 85-94 and "The People of the United States," Yale Law Journal 8 (1899): 159-167, "Comment," Yale Law Journal 7 (1898): 366-367, "Citizenship of Children of Alien Parents," Harvard Law Review 12 (1898): 55-56 (Reprinted in Central law Review, 46 (1898): 498, and "Comment," Central Law Review 42 (1896): 299-300.

For recent analysis, see Owen M. Fiss, Troubled Beginnings of the Modern State, 1888-1910 (New York: Macmillan, 1993), pp. 313-315 and Charles J. McClain, "Tortuous Path, Elusive Goal: The Asian Quest for American Citizenship," Asian Law Journal 2 (1995): 33-60.

18. 169 U.S. 649 (1898). Future page references will be included parenthetically within the text. Not on the Court when the case was argued, Justice McKenna did not take part in the decision.

19. 19 How. 393 at 404 (1857).

20. 19 How. 393 at 416 (1857).

21. Act of Mar. 26, 1790, ch. 3, #1, 1 Stat. 103 (repealed 1795).

22. Act of July 14, 1870, ch. 254, #7, 16 Stat. 256.

23. 112 U.S. 94 at 102 (1884).

24. Partially in response to Elk, the Dawes Act of 1887 allowed Native Americans who showed themselves competent in managing land allotments to become citizens. The 1924 Citizenship Act then extended citizenship to all Native Americans, making the jurisdictional issue in terms of citizenship irrelevant.

25. In his Elk dissent Justice Harlan provided a different interpretation of the citizenship clause. For Harlan the phrases "born and naturalized in the United States" and "subject to the jurisdiction thereof" did not refer to the same temporal moment. Whereas the majority interpreted the phrase as if it read "All persons born subject to the jurisdiction of, or naturalized in, the United States are citizens of the United States and the State in which they reside," in fact it allowed for persons born in the United States to "claim the rights of national citizenship from and after the moment they become subject to the complete jurisdiction of the United States" (112 U.S. 94 at 121 [1884]). Since Elk became completely subject to United States jurisdiction the moment that he renounced tribal loyalty, he should have been granted citizenship. But this interpretation was in a dissent.

26. Collins, "Citizenship by Birth": 386-87. Collins makes a similar argument in his 1884 essay, "Are Persons Born Within the United States Ipso Facto Citizens Thereof?": 832.

27. 19 How. 393 at 418 (1857).

28. Quoted by Fuller (WKA 719-20).

29. Collins, "Citizenship by Birth,": 389-90.

30. 112 U.S. 94 at 102 (1884).

31. Horace Gray, A Legal Review of the Case of Dred Scott as Decided by the Supreme Court of the United States from the Law Reporter for June, 1857 (Boston: Crosby, Nichols, and Co., 1857), p. 15.

32. Moon and Davidson, Subjects and Citizens, p. 2.

33. Jean Bodin, Six Books of the Commonwealth (London: Blackwell, 1967), p. 21.

34. Hayward, "Who Are Citizens": 315.

35. Aristotle, The Politics (London: Clarendon P., 1946), pp. 105 and 134.

36. Balibar, "Subjection and Subjectivation," p.11. Balibar argues that Heidegger irreversibly challenged this way of thinking and then turns to citizenship to challenge Heidegger's revision. The more accurate explanation, according to Balibar, is that "the men of 1776 and 1789" began "to think of themselves as free subjects, and thus to identify liberty and subjectivity" because in "conquering and constituting their political citizenship" they "had abolished the principle of their subjection" (11-12). Close attention to the transatlantic tradition of republicanism can lead one to a similar view without a detour through Heidegger.

37. J.G.A. Pocock, The Machiavellian Moment (Princeton: Princeton U.P., 1975)

38. Perez v. Brownell, dissenting, 356 U.S. 44 at 64 (1958).

39. 163 U.S. 537 at 561 (1896)

40. Robert Post, "Introduction: After Bakke," Representations 55 (1996): 8. See also, Jürgen Habermas, "Multiculturalism and the Liberal State," Stanford Law Review 47 (1995): 849-54.

41. Jacobsohn, Apple of Gold, p. 92. Not everyone affirms such a vision. If Kingston considers Wong Kim Ark a "victory," Lisa Lowe, while not discussing the case itself, condemns a "formally equivalent" definition of citizens because it masks persistent

racial inequalities from "the racial and ethnic immigrant populations to whom that notion holds out the promise of membership." But Lowe does not recognize the difference between the formal legal definition of a political subject and the kinds of subjectivity that such a definition can allow. Advocacy of formal legal equality as a way of determining eligibility for citizenship should not be confused with arguments for a "color-blind Constitution." Refusal to take race into account in determining who can become a citizen is not a denial that race can affect the opportunities of citizens living within the polis. Immigrant Acts, p. 144. For a different attack on the "decorporealizing" abstraction of "formally equivalent" citizenship, see Michael Warner, "The Mass Public and the Mass Subject," Habermas and the Public Sphere, ed. Craig Calhoun (Cambridge: MIT Press, 1992), pp. 377-401. In contrast, see Chantal Mouffe's endorsement of Hannah Arendt's view that "one's identity as a citizen should not be made dependent on one's ethnic, religious or racial identity." Dimensions of Radical Democracy (London: Verso, 1992), p. 9.

42. See David Leiwei Li, "China Men: Maxine Hong Kingston and the American Canon," American Literary History 2 (1990): 482-502.

43. Quoted by Fuller (WKA 708).

44. Kenneth L. Karst, Belonging to America (New Haven: Yale U.P., 1989).

45. See the special issue on "Cities and Citizenship," in Public Culture 8 (1996). In contrast, see Frederick Buell's argument that globalization does not abolish national culture; it alters it.

National Culture and the New Global System (Baltimore: Johns Hopkins U. P., 1994). See also David Hollinger's argument that today's diasporic situation is not as historically unique as someone like Arjun Appadurai claims. Postethnic America (New York: Basic Bks., 1995), pp. 151-52.

46. "Children of Alien Parents": 56.

47. The original title was Gold Mountain Man. See Maxine Hong Kingston, "On Understanding Men," Hawaii Review 7 (1977): 43-44.

48. Working very much within an Althusserian framework, Lowe faults him, nonetheless, for failing to recognize that sites of interpellation are "not only multiple but also hybrid, unclosed, and uneven" (Immigrant Acts, p. 146). Lowe champions the hybrid identities of immigrants for their capacity to challenge hegemonic state rule that is enforced through rituals of citizenship. But it is just as likely that such hybrid subjects will be interpellated as deracinated consumers for a capitalist, global economy than as resistant subjects. Is it possible that people interpellated as citizens might retain a potential to resist the tendency to identify all people as simply consumers?

49. For Kingston's engagement with Whitman, see of course her Tripmaster Monkey (New York: Random House, 1990). See also Xilao Li, "Walt Whitman and Asian American Writers," Walt Whitman Review 11 (1993): 179-94.

50. On dialogue in other recent works of "minority" fiction, see Paulla Ebron and Anna Lowenhaupt Tsing, "From Allegories of Identity to Sites of Dialogue," Diaspora 4 (1995): 125-151.