Przegląd Prawa Konstytucyjnego
ISSN 2082-1212, https://czasopisma.marszalek.com.pl/10-15804/ppk

https://doi.org/10.15804/ppk.2023.04.24 Publication date: 10.09.2023
2023, no. 4 (74), pp. 15 Acceptance date: 09.08.2023

Citation

CHICAGO: E. Sokalska, *American Progressivism and the U.S. Supreme Court Jurisprudence: Chinese Exclusion Cases – the Origins of the Doctrine of Consular Non-Reviewability,* „Przegląd Prawa Konstytucyjnego" 2023, no. 4, pp. 325–339, https://doi.org/10.15804/ppk.2023.04.24

APA: Sokalska, E. (2023), *American Progressivism and the U.S. Supreme Court Jurisprudence: Chinese Exclusion Cases – the Origins of the Doctrine of Consular Non-Reviewability,* „Przegląd Prawa Konstytucyjnego" no. 4, pp. 325–339, https://doi.org/10.15804/ppk.2023.04.24

Edyta Sokalska
ORCID ID: 0000-0003-0903-7726
Uniwersytet Warmińsko-Mazurski w Olsztynie
E-mail: edyta.sokalska@uwm.edu.pl

American Progressivism and the U.S. Supreme Court Jurisprudence: Chinese Exclusion Cases – the Origins of the Doctrine of Consular Non-Reviewability

Keywords: constitutional law, jurisprudence, judicial review, the Supreme Court of the United States, the Progressive Movement, Chinese immigration
Słowa kluczowe: orzecznictwo, prawo konstytucyjne, Sąd Najwyższy Stanów Zjednoczonych, kontrola sądowa, ruch progresywny, chińska imigracja

Abstract

At the turn of the 19th and 20th centuries, the American reform movements tried to match American ideals with the challenges of the times. Progressive attitudes highlighted the necessity of reforms. The Chinese issue, often risen in the public dialogue, was the subject of deliberation of the Supreme Court, the Congress, and the federal executive branch of government. Chae Chan Ping v. United States and subsequent cases established the doctrine of consular non-reviewability referring to immigration law and delineating the scope of judicial review for decisions concerning the admission of immigrants to the United

States. They also strengthened the plenary power doctrine. We may ask if the Supreme Court judgments were in conformity with the ideas of American Progressivism. Unfortunately, the Chinese Exclusion Cases were not compatible with the visions of progressive reformers and reflected anti-Chinese sentiment rather than an aspiration for reforms.

Streszczenie

Amerykański progresywizm i orzecznictwo Sądu Najwyższego Stanów Zjednoczonych: *Chinese Exclusion Cases* oraz geneza doktryny *Consular Non-Reviewability*

Na przełomie XIX i XX w. ruchy reformatorskie w USA próbowały dopasować amerykańskie ideały do wyzwań czasu. Postępowe podejście podkreślało konieczność reform. Często podnoszona w dialogu publicznym kwestia chińska była przedmiotem rozważań Sądu Najwyższego, Kongresu i federalnej władzy wykonawczej. Chae Chan Ping v. United States i kolejne sprawy ustanowiły doktrynę consular non-reviewability odnoszącą się do prawa imigracyjnego i wyznaczającą zakres kontroli sądowej dla decyzji dotyczących przyjmowania imigrantów do Stanów Zjednoczonych. Wzmocniły one również doktrynę plenary power. Możemy postawić pytanie czy orzeczenia Sądu Najwyższego były zgodne z ideami amerykańskiego progresywizmu. Niestety, Chinese Exclusion Cases nie były kompatybilne z wizjami postępowych reformatorów i odzwierciedlały raczej antychińskie nastroje niż dążenie do reform.

*

I. Introductory remarks

At the turn of the 19th and 20th centuries, the American reform movements tried to match American ideals with the challenges of the times. Progressive attitudes towards human rights, women's suffrage, economy, taxation, foreign policy, labor law, social standards, rapid urbanization, and unrestricted immigration highlighted the necessity of reforms. It should be taken into consideration that the progress was seen from a variety of perspectives, and the progressive movement had never existed as a recognizable organization with common goals. In American legal historiography, the debate concerning the exact contours and reforms of the Progressive Era is still ongoing. There

is also no consent as far as the assessment of the Progressivism is concerned. The authors of older publications – Richard Hofstadter, William E. Leuchtenburg, Robert H. Wiebe – provide a different appraisal of the events than contemporary scholarship – Shelton Stromquist, Maureen A. Flanagan, or Rebecca Edwards[1].

It is significant that at the turn of the 19th and 20th centuries, the jurisprudence of the U.S. Supreme Court profoundly influenced the shape of the legal order in economic and labor law. The Supreme Court judgments in the sphere of civil rights, states' rights and the establishment of the separate but equal doctrine[2] emphasized the significance of federal and state authorities in creating a new economical and social order[3]. Judicial review developed as an important part of the American constitutional order[4]. It was also the period when the Supreme Court restored its position in the American public life[5].

Unfortunately, since the modest scope of this article does not allow for an exhaustive treatment of the subject, the present work is contributory in nature. The article focuses on the perception of the activities of the U.S. Supreme Court in the context of the progressive reforms and ideas advanced during the Progressive Era. The judgments and opinions of the Supreme Court are not exhaustively reviewed, and only certain controversial cases referring to Chinese immigration are selected for closer consideration. The rulings known as Chinese Exclusion Cases (1884–1893) are taken into more detailed examination (particularly Chae Chan Ping v. United States). The work also characterizes some specific systemic mechanisms inherent presently in the American constitutional system. The main questions the present study strives to answer

---

[1] See more in: R. Johnston, *Influential Works about the Gilded Age and Progressive Era* [in:] *A Companion to the Gilded Age and Progressive Era*, eds. C. McKnight Nichols, N.C. Unger, Malden-Oxford 2017, pp. 437–449.

[2] Plessy v. Ferguson, 163 U.S. 537 (1897).

[3] For more about *the separate but equal doctrine* see more in: E. Sokalska, *The U.S. Supreme Court and the Establishment of the 'Separate but Equal Doctrine'* [in:] *Contemporary Problems of Human Rights Selected Aspects*, eds. M. Mamiński, M. Rzewuski, Warszawa 2019, pp. 89–104.

[4] Cf.E. Sokalska, *Searching for Progress: Progressivism and the U.S. Supreme Court Jurisprudence (some remarks)*, "Przegląd Prawa Konstytucyjnego" 2020, no. 5 (57), p. 459, doi. org/10.15804/ppk.2020.05.33.

[5] See more in: *idem, Legal and Political Dimensions of American Federalism: Development and Interpretation*s, Olsztyn 2018, p. 275.

are: Were the U.S. Supreme Court judgments in conformity with the ideas of Progressivism? What were the origins of the doctrine of consular non-reviewability? How can we assess the involvement of the U.S. Supreme Court in law restricting immigration? In this particular study, the historic-descriptive method of theoretical analysis, and the formal-dogmatic method, precisely – the analysis of legal texts (according to the Polish typology), were applied to address the research questions and to reach some conclusions. The first part of the article provides a brief overview of the development of American Progressivism and the trends in progressive reforms. The second part of the publication is devoted to evaluation of the activities of the U.S. Supreme Court in the context of Chinese immigration and law restricting immigration into the United States. It presents the impact of the rulings on reinforcing the plenary power doctrine.

II. Searching for Reforms: Progressive Era

The Civil War caused tremendous upheaval in the life of American society, moral standards, federal politics, federal authorities, and state enterprises. The Reconstruction period (1865–1877) was the time when the Supreme Court was tested. On the one hand, some negative outcomes of the ruling of Dred Scott v. Standford influenced the perception of the Court in society[6], while, on the other hand, the Court emphasized its position as a body responsible for verifying the conformity of other legal acts to the Constitution, and it started to rebuild its significance as an independent federal body[7].

At the turn of the 19th and 20th centuries, the need for reform was articulated not only in the United States but also in the other countries. It is significant that in the early 20th century public life of American and Brit-

[6] 60 U.S. 393 (1857). It was a landmark decision in which the Supreme Court held that the Constitution did not include American citizenship for black people regardless of whether they were enslaved or free. Therefore, the group of rights and privileges it conferred upon American citizens would not have applied to them. See more in: E. Sokalska, *The U.S. Supreme Court Jurisprudence and Reconsideration of Civil and States' Rights (Brown v. Board of Education of Topeka)*, "Przegląd Prawa Konstytucyjnego" 2022, no. 4 (68), pp. 367–368, DOI 10.15804/ppk.2022.04.29.

[7] See: G. Górski, *Sąd Najwyższy Stanów Zjednoczonych do 1930 roku*, Lublin 2006, p. 197.

ish countries – a "search for order" and a "quest for national efficiency" had a comparable place. In fact, the need to adopt public policy and party politics to the realities of industrialized urban societies dominated political discourse in the United States and Great Britain. Despite the fact that the two countries' international and domestic situation differed, the reform agendas of the two nations overlapped at many points. Britain's new Liberalism and American Progressivism developed in separate ways "each interacted with its own, distinctive political culture"[8]. In the opinion of Morton Keller, closer examination of Anglo-American public politics and political parties reveals a mix of similarities and differences[9]. Undoubtedly, during the early 20th century, both politics "confronted the same essential fact: a broad public awareness of the implication and the consequences of modern industrial society"[10].

In America, Progressives reached their height in the early 20th century as a response to vast industrialization, the growth of large corporations, and the fears of corruption in American politics[11]. Rebeca Edwards delineates a Long Progressive Era dating from 1880 to 1894, and a Late Progressive Era running from 1894 to 1920[12]. Progressives were those who worked to regulate and restrict the extraordinary power of big business, purify politics, reduce poverty and other economic injustices[13]. Progressives tried to answer the question of how to change the situation to remedy social ills, how to make governments more responsive to the people, and how to make the economy fair. The popular answer was to use some form or degree of local, state, or federal government to alleviate social ills and economic problems,

[8] M. Keller, *Anglo-American Politics, 1900–1930, in Anglo-American Perspective: A Case Study in Comparative History,* "Comparative Studies in Society and History" 1980, vol. 22, no. 3, p. 464.

[9] *Ibidem.*

[10] *Ibidem,* p. 477.

[11] See more about the roots of progressive change in: L.L. Gould, *America in the Progressive Era, 1890–1914*, London–New York 2013, pp. 1–18; J.M. Beeby, B.M. Ingrassia, *Precursors to Gilded Age and Progressive era Reforms* [in:] *A Companion to the Gilded Age and Progressive Era*, eds. C. McKnight Nichols, N.C. Unger, Malden-Oxford 2017, pp. 21–30; E. Sanders, *Roots of Reforms: Farmers, Workers, and the American State 1877–1917,* Chicago 1999, passim.

[12] R. Edwards, *Politics, Social Movements, and the Periodization of U.S. History,* "The Journal of Gilded Age and Progressive Era" 2009, vol. 8, no. 4, p. 472.

[13] *Idem, New Spirits: Americans in the "Gilded Age" 1865–1905*, 2nd edn., Oxford-New York 2011, p. 5.

and to "reconcile change with tradition"[14]. Progressive reforms came with the new social movement born out of the middle class politicians who were disgusted with corruption in politics. The central theme of the Progressivism was "the reform" in order to protect a public interest and common good, however, the terms were understood in diverse ways. Progressivism developed in many different versions in every region of the country, and it should be emphasized that it crossed the lines of a class, party, and gender. Progressives supported direct democracy, at the same time being suspicious of immigrants[15]. Progressive movement concentrated on the need for efficiency in all areas of society and it established much of the tone of American politics of the first decades of the 20th century. Most scholars agree that during the Progressive Era, the directions of the changes were "progressive", but there is no consensus on how "progressive" they were[16]. Progressives are sometimes criticized for a lack of broader activities to protect the rights of the oppressed facing omnipotent racism and sexism[17].

III. Chae Chan Ping v. United States and subsequent Chinese Exclusion Cases

Growing industrialization and urbanization of the country caused massive immigration especially in the late 19th century. On the one hand, a part of American society was not in favor of such open immigration, therefore there appeared some pressure groups, which wanted the Congress to tighten the

[14] W. Nugent, *Progressivism: A Very Short Introduction*, New York 2010, p. 3.

[15] R. Hofstadter, *The Age of Reform*, New York 1955, pp. 241–242; E. Sanders, *op.cit.*, p. 350.

[16] Cf.: K. McNaught, *American Progressives and the Great Society*, "The Journal of American History" 1966, vol. 53, no. 3, pp. 504–505; At present, in American historiography some "fresh" interpretations of the era can be also found. See, e.g.: S. Stromquist, *Reinventing "The People": The Progressive Movement, the Class Problem, and the Origins of Modern Liberalism*, Urbana–Chicago 2006, passim; E.T. Lim, *The Anti-Federalist Strand in Progressive Politics and Political Thought*, "Political Research Quarterly" 2013, vol. 66, no. 1, pp. 32–45; M.A. Flanagan, *Decades of Upheaval and Reform* [in:] *A Companion to the Gilded …*, pp. 423–436.

[17] See more about the progressive ideas and development of American Progressivism in: E. Sokalska, *Legal and Political Dimensions…*, pp. 268–272; idem, *Searching for Progress*, 446–450.

law governing immigration. On the other hand, employers needed workers, therefore the United States changed the open-door policy in the third decade of the 20th century.

The significant Chinese immigration to the United States began with the California Gold Rush (1848–1855). It continued with subsequent large labor projects, particularly with the building of the first transcontinental railroad. Chinese workers mainly took up low-wage labor, and, in some states, public opinion took a dim view of them. Anti-Chinese animosity became politicized, and the immigrants were blamed for depressed wage levels. The situation of Chinese workers who migrated on a large scale to the United States was very bad. Often coming illegally, they were exploited by the American enterprise.

In connection with Chinese immigration, the Congress introduced some Chinese Exclusion Acts starting since 1882[18]. Chinese Exclusion Act approved on May 6, 1882 was the first significant law restricting immigration into the United States. Federal law provided a ten-year ban on Chinese laborers, and the premise was that they endangered the order of some local communities. Non-laborers were required to obtain some certificates from the Chinese government. There were also placed some new requirements on Chinese workers who had already entered the country. In fact, it was very difficult to prove their status in order to stay in the United States. Furthermore, the Congress refused federal and state courts the right to grant citizenship resident aliens[19]. In 1892, the Geary Act[20] extended the previous exclusion act for the next ten years by adding some new requirements (every Chinese resident had to register and obtain a special certificate without which he faced deportation), and in 1902, the restrictions were made permanent[21]. It is significant that the Chi-

[18] An act to execute certain treaty stipulation relating to the Chinese, May 6, 1882, Pub. L. 47–126, 22 Stat. 58, Chap. 126.

[19] Chinese Exclusion Act (1882), https://www.archives.gov/milestone-documents/chinese-exclusion-act (10.04.2023).

[20] An Act to prohibit the coming of Chinese persons into the United States, Pub. L. 52–60, 27 Stat. 25 (1892). The Geary Act was challenged in the courts, but it was upheld by the Supreme Court in Fong Yue Ting v. United States, 149 U.S. 698, 13 S.Ct. 1016.37 (1983).

[21] Some new regulations were adopted by the Congress with increased immigration from a wider variety of countries following the First World War.

nese Exclusion Acts remained in force until partly modified in 1943, when Chinese immigration was slightly opened up[22].

The Chinese Exclusion Act of 1882 caused that most Chinese workers had to face a dilemma, to return to China to their families, or to stay in the United States. A lot of cases brought before the Supreme Court was the effect of the above-mentioned regulations (so-called Chinese Exclusion Cases in 1884–1893, however, the case of Chae Chan Ping v. United States (1889) is most commonly described as the Chinese Exclusion Case[23]). After the passage of the mentioned law, Chinese Exclusion Cases had an impact on delineation of judicial review for decisions on whether to admit an alien. The Supreme Court in some of its rulings made efforts to alter the factual situation and to alleviate restrictive regulations. In fact, the Chinese issue was the subject of deliberation of the Supreme Court, the Congress, and the federal executive branch of government. It was one of the often risen in the public dialogue[24].

Chae Chan Ping, who was Chinese worker and long-term non-resident of the United States, in the case of Chae Chan Ping v. United States decided by the Supreme Court on May 13, 1889, challenged the constitutionality of the amendment to the Chinese Exclusion Act – the Scott Act of 1888[25]. He was denied entry to the United States by the border officers after his trip to China under the mentioned addendum, which voided the certificate to re-enter the United States, obtained previously by Ping. He did not agree with the decision, and took some legal steps. The alien filed a writ of habeas corpus, and finally, the case reached the Supreme Court. The lawyers representing Ping challenged the authority of the federal legislative and executive branches to overturn international treaties, claiming that it was the subject of judicial oversight. They also argued that the right of visitation was a form of property protected by the Fifth Amendment[26].

---

[22] For more about the situation of Chinese immigrants see: Ch.J. McClain, *In Search of Equality: The Chinese Struggle against Discrimination in Nineteenth-Century America*, Berkeley 1994, pp. 1–385.

[23] 130 U.S. 581 (1889).

[24] Cf.G. Górski, *op.cit.*, p. 225.

[25] An Act a supplement to an act entitled "An Act to execute certain treaty stipulation relating to the Chinese", Pub. L. 50–1064, 25 Stat. 504 (1888).

[26] Cf.R.C. Villazor, *Chae Chan Ping v. United States: Immigration as Property*, "Oklahoma Law Review" 2015, vol. 68, pp. 137–138.

Finally, the Supreme Court unanimously upheld the decision of the lower court. In the ruling of the Court, Justice Stephen Johnson Field presented a number of reasons for the decision of the Supreme Court, declaring that judiciary was not the proper place to appeal any violation of national treaties. It was a diplomatic matter for the governments of the respective countries. He also clarified that according the previous precedents (concerning diplomatic communication and international treaties between the United States and other countries) the government had the authority to regulate immigration according to the national interest, even if any particular decision was in question. According to Justice Field, "the power of the government to exclude foreigners from the country whenever, in its judgment, the public interests requires such exclusion, has been asserted in repeated instances, and never denied by the executive or legislative departments"[27]. The Supreme Court noted that "»jurisdiction over its own territory […] is an incident of every independent nation«, and if the United States did not have the ability to exclude non-citizens, it would mean that »it would be subject […] to the control over another power«"[28].

In Chae Chan Ping v. United States, the question of whether legislation preventing foreign citizens from reentering the country is within the constitutional powers of Congress. Chinese workers took legal steps to return, when the law preventing Chinese immigrants from entering or reentering the United States had been passed. The law confirming the authority of Congress within this sphere as an inherent attribute of sovereignty was upheld by the Supreme Court. Even though, there was no specific clause giving Congress a power over immigration, the decision interpreted the Constitution as granting Congress broad authority to deal with foreign affairs and immigration[29].

It is significant that some commentators apply the term of Chinese Exclusion Cases also to subsequent cases considered by the Supreme Court, e.g.

---

[27] *Chinese Exclusion Case,* https://constitutioncenter.org/the-constitution/supreme-court-case-library/Chinese-exclusion (5.04.2023).

[28] R.C. Villazor, *op.cit.,* p. 137. For an in-depth examination of the case see: G.J. Chin, *Chae Chan Ping and Fong Yue Ting: The origins of Plenary Power* [in:] *Immigration Stories,* eds. D.A. Martin, P.H. Schuck, New York 2005, pp. 7–30.

[29] *Chinese Exclusion Case, op.cit.*

Chew Heong v. United States[30], US v. Jung Ah Lung[31], Fong Yue Ting v. US, Wong Quan v. US, Lee Joe v. US[32], Lem Moon Sing v. US[33], or US v. Ju Toy[34]. The mentioned cases also related to the Chinese Exclusion Acts and Chinese immigration.

IV. The doctrine of consular non-reviewability

It should be taken into consideration that Chae Chan Ping v. United States and the overmentioned cases had a precedential value for the doctrine of consular non-reviewability and the plenary power doctrine[35]. The Supreme Court declared that decisions regarding whether to exclude or admit aliens belong to the political branches. Donald S. Dobkin is of the opinion that the doctrine of consular non-reviewability, which emerged in the 20th century, might be best understood by viewing it in light of its historical origins. He focuses on the racist and xenophobic attitudes that helped in shaping the doctrine, and that continue to make it difficult for non-citizens of the United States to start legal proceedings before the court. The Chinese Exclusion *Case* was "the beginning of a long line of cases that entrenched this judiciary doctrine as a mainstay in immigration law"[36].

---

[30] 112 U.S. 536 (1884).

[31] 124 U.S. 621 (1888).

[32] 149 U.S. 698 (1893). About *Fong Yue Ting v. US* see more in: T. Hester, *"Protection not Punishment": Legislative and Judicial Formation of US Deportation Policy 1882–1904*, "Journal of American Ethnic History" 2010, vol. 30, no. 1, p. 11.

[33] 158 U.S. 538 (1895).

[34] 198 U.S. 253 (1905).

[35] In American constitutional law plenary power, it is a power that has been granted to a body in absolute terms, with no review of or limitations upon the exercise of that power. For more about the development of the *plenary power doctrine* see in: D.A. Martin, *Why Immigrations' Plenary Power Doctrine Endures*, "Oklahoma Law Review" 2015, vol. 68, no. 1, *Symposium: Chae Chan Ping v. United States: 125 Years of Immigration's Plenary Power Doctrine*, pp. 29–56; S.H. Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, "The Supreme Court Review" 1984, vol. 1984(6), pp. 255–307.

[36] D.S. Dobkin, *Challenging the Doctrine of Consular Non-Reviewability in Immigration Cases*, https://law.yale.edu/sites/default/files/area/conference/ilroundtable/ILR13_DIDonaldDobkinChallengingtheDoctrine.pdf (28.03.2023).

Currently, the doctrine of consular non-reviewability refers in the United States to immigration law, where the decisions concerning visa made by consular officers[37] cannot be appealed in the United States judicial system. The doctrine is sometimes described as consular absolutism[38]. It is significant that the American courts, including the Supreme Court, have created a number of exceptions to the doctrine of consular non-reviewability, e.g. Kleindiest v. Mandel[39].

The doctrine of consular non-reviewability is closely related to the plenary power doctrine. It excludes from judicial review the substantive immigration decisions of Congress and the federal executive branch of government. It is worth to consider that Donald S. Dobkin assumes that despite the importance of Chae Chan Ping v. United States in the context of the development of the federal government's plenary power over immigration law, it does not seem to be a case that has received significant attention in constitutional casebooks[40].

Although the case of Chae Chan Ping v. United States and the subsequent cases can be placed in the domain of public international law, they should be also considered in the context of constitutional law. Due process of law is a constitutional guarantee that prevents governments from impacting citizens in an abusive way. The Fifth and Fourteenth Amendments guarantee that no person shall "be deprived of life, liberty, or property, without due process of law". According to the present understanding, due process also limits legis-

---

[37] Foreign Service Officers working for the United States Department of State.

[38] See harsh criticism of Harry N. Rosenfield referring to consular non-reviewability in his article published in 1955: *Consular Non-reviewability: A Case Study in Administrative Absolutism*, "American Bar Association Journal" Dec. 1955, vol. 41, no. 12, pp. 1109–1112, 1181–1183.

[39] 408 U.S. 753 (1972). Cf.K. Johnson, *Argument preview: The doctrine of consular non-reviewability – historical relic or good law?*, SCOTUSblog (Feb. 18, 2015, 9:55 AM), https://www.scotusblog.com/2015/02/argument-preview-the-doctrine-of-consular-non-reviewability-historical-relic-or-good-law (1.04.2023). Moreover, it is also interesting to consider that according to Gerald L. Neuman, in the period of 1882–1952 "no express authorisation for judicial control of administrative decisions existed in the immigration statutes. Nonetheless, the federal courts exercised such control in numerous cases, and the Supreme Court repeatedly corrected immigration officials' interpretations of law. See: G.L. Neuman, *Jurisdiction and the Rule of Law after the 1996 Immigration Act*, "Harvard Law Review" Jun. 2002, vol. 113, no. 8, p. 1967.

[40] The scholar even enlists the books. Cf.D.S. Dobkin, *op.cit.*, p. 138.

lation and protects certain areas of individual liberty from regulation. The misconception is that due process is reserved only for citizens. The Fifth and Fourteenth Amendments refer to persons, not just citizens According to James V. Calvi and Susan Coleman "anyone, including both legal and illegal aliens, within the jurisdiction of the United States is entitled to due process"[41]. This is because the Framers of the mentioned amendments regarded life, liberty, and property as basic human or natural rights which do not depend upon citizenship for protection against government abuse[42].

Administration of immigration law in the United States is rooted in doctrines established in the late 19th century immigration cases. In his essay, Julian Lim connects current anxieties over immigration, borders, and national sovereignty to the plenary power doctrine that came out of the Supreme Court's decision in Chae Chan Ping v. United States. He presents the ways in which current policy continues to reflect Gilded Age anxieties about territory, migration, sovereignty, and diverse populations[43]. It is significant that modern commentators often emphasize Justice Field's xenophobic and anti-Chinese rhetoric. Describing the Chinese as "strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country"[44], the Justice was also in favour of racial division.

V. Concluding remarks

After the Progressive Era, the purpose of the New Deal was to minimize the effects of the worldwide economic crisis. Keynesian model of economy and so-called American liberalism or modern liberalism. The New Deal represented a significant shift in politics and domestic policy. Modern liberalism of that stage promoted general welfare of all citizens. Federal regulation of the

[41] J.V. Calvi, S. Coleman, *American Law and Legal Systems*, Upper Saddle River 2009, p. 147.

[42] *Ibidem*.

[43] J. Lim, *Immigration, Plenary Powers, and Sovereignty Talk: Then and Now*, "The Journal of Gilded Age and Progressive Era" 2020, vol. 19(2), pp. 217–229, DOI: https://doi.org/10.1017/S1537781419000641.

[44] V.C. Romero, *Elusive Equality: Reflections on Justice Field's Opinions in Chae Chan Ping and Fong Yue Ting*, "Oklahoma Law Review" 2015, vol. 68 (165), p. 167.

American economy increased significantly, complex social programs were initiated, and growing power of labor unions was noticed.

Chinese Exclusion Acts were restrictive laws placed on Chinese labor. American Congress condemned the Chinese Exclusion Acts in 2011–2012, and it affirmed a commitment to preserve civil rights and constitutional protection for all people[45]. The activities of the Supreme Court during the Progressive Era have been the subject of various interpretations in the American literature in the 20th and 21st centuries[46]. We may ask if the Supreme Court judgments were in conformity with the ideas of American Progressivism[47]. Unfortunately, the Chinese Exclusion Cases were not compatible with the visions of progressive reformers and reflected anti-Chinese sentiment rather than an aspiration for reforms. Justice Stephen Johnson Field was not progressive with respect to either immigration policy or race relations. It is also interesting to consider that the discussed cases were not subjected to the broader analysis on the plane of constitutional law despite the fact that they touched the right to due process of law guaranteed by the Constitution.

It is significant that the rulings in the Chinese Exclusion Cases were important in the context of judicial reviewability of immigration decisions. Chae Chan Ping v. United States and subsequent cases established the doctrine of consular non-reviewability referring to immigration law and delineating the scope of judicial review for decisions concerning the admission of immigrants to the United States. They also strengthened the plenary power doctrine.

Literature

Beeby J.M., Ingrassia B.M., *Precursors to Gilded Age and Progressive era Reforms* [in:] *A Companion to the Gilded Age and Progressive Era*, eds. C. McKnight Nichols, N.C. Unger, Malden-Oxford 2017.

[45] Chinese Exclusion Act (1882), https://www.archives.gov/milestone-documents/chinese-exclusion-act (10.04.2023).

[46] W.H. Rehnquist, *The Supreme Court. Revisited and Updated*, New York, 2001, pp. 100–110.

[47] E.g., *Buck v. Bell* (274 U.S. 200 (1927)) confirms the departure from progressive ideas in the Supreme Court jurisdiction. About the legitimization of eugenic practices see: Ł Machaj, *Buck v. Bell, czyli eugenika w Sądzie Najwyższym Stanów Zjednoczonych*, "Studia nad Faszyzmem i Zbrodniami Hitlerowskimi" 2009, vol. 31, pp. 421–427.

Calvi V.S., Coleman S., *American Law and Legal Systems*, Upper Saddle River 2009.

Chin G.J., *Chae Chan Ping and Fong Yue Ting: The origins of Plenary Power* [in:] *Immigration Stories*, eds. D.A. Martin, P.H. Schuck, New York 2005.

Dobkin D.S., *Challenging the Doctrine of Consular Non-Reviewability in Immigration Cases*, https://law.yale.edu/sites/default/files/area/conference/ilroundtable/ILR13_DIDonaldDobkinChallengingtheDoctrine.pdf.

Edwards R., *New Spirits: Americans in the "Gilded Age" 1865–1905*, 2nd edn., Oxford–New York 2011.

Edwards R., *Politics, Social Movements, and the Periodization of U.S. History*, "The Journal of Gilded Age and Progressive Era" 2009, vol. 8, no. 4.

Flanagan M.A., *Decades of Upheaval and Reform* [in:] *A Companion to the Gilded Age and Progressive Era*, eds. C. McKnight Nichols, N.C. Unger, Malden-Oxford 2017.

Górski G., *Sąd Najwyższy Stanów Zjednoczonych do 1930*, Lublin 2006.

Gould L.L., *America in the Progressive Era, 1890–1914*, London–New York 2013.

Hester T., *"Protection not Punishment": Legislative and Judicial Formation of US Deportation Policy 1882–1904*, "Journal of American Ethnic History" 2010, vol. 30, no. 1.

Johnson K., *Argument preview: The doctrine of consular non-reviewability – historical relic or good law?*, https://www.scotusblog.com/2015/02/argument-preview-the-doctrine-of-consular-non-reviewability-historical-relic-or-good-law.

Johnston R., *Influential Works about the Gilded Age and Progressive Era* [in:] *A Companion to the Gilded Age and Progressive Era*, eds. C. McKnight Nichols, N.C. Unger, Malden-Oxford 2017.

Keller M., *Anglo-American Politics, 1900–1930, in Anglo-American Perspective: A Case Study in Comparative History*, "Comparative Studies in Society and History" 1980, vol. 22, no. 3.

Legomsky S.H., *Immigration Law and the Principle of Plenary Congressional Power*, "The Supreme Court Review" 1984, vol. 1984(6).

Lim E.T., *The Anti-Federalist Strand in Progressive Politics and Political Thought*, "Political Research Quarterly" 2013, vol. 66, no. 1, DOI: 10.1177/1065912911430668.

Lim J., *Immigration, Plenary Powers, and Sovereignty Talk: Then and Now*, "The Journal of Gilded Age and Progressive Era" 2020, vol. 19(2), DOI:10.1017/S1537781419000641.

Machaj Ł, *Buck versus Bell czyli eugenika w sadzie Najwyższym Stanów Zjednoczonych*, "Studia nad Faszyzmem i Zbrodniami Hitlerowskimi" 2009, vol. 31.

Martin D.A., *Why Immigrations' Plenary Power Doctrine Endures*, "Oklahoma Law Review" 2015, vol. 68, no. 1, *Symposium: Chae Chan Ping v. United States: 125 Years of Immigration's Plenary Power Doctrine*.

McClain Ch.J., *In Search of Equality: The Chinese Struggle against Discrimination in Nineteenth-Century America*, Berkeley 1994.

McNaught K., *American Progressives and the Great Society*, "The Journal of American History" 1966, vol. 53, no. 3.

Neuman G.L., *Jurisdiction and the Rule of Law after the 1996 Immigration Act*, "Harvard Law Review" Jun. 2002, vol. 113, no. 8.

Nugent W., *Progressivism: A Very Short Introduction*, New York 2010.

Rehnquist W.H., *The Supreme Court. Revisited and Updated*, New York 2001.

Romero V.C., *Elusive Equality: Reflections on Justice Field's Opinions in Chae Chan Ping and Fong Yue Ting*, "Oklahoma Law Review" 2015, vol. 68(165).

Rosenfield H.N., *Consular Non-reviewability: A Case Study in Administrative Absolutism*, "American Bar Association Journal" Dec. 1955, vol. 41, no. 12.

Sanders E., *Roots of Reforms: Farmers, Workers, and the American State 1877–1917*, Chicago 1999.

Sokalska E., *Legal and Political Dimensions of American Federalism: Development and Interpretation*s, Olsztyn 2018.

Sokalska E., *The U.S. Supreme Court and the Establishment of the 'Separate but Equal Doctrine'* [in:] *Contemporary Problems of Human Rights Selected Aspects*, eds. M. Mamiński, M. Rzewuski, Warszawa 2019.

Sokalska E., *The U.S. Supreme Court Jurisprudence and Reconsideration of Civil and States' Rights (Brown v. Board of Education of Topeka)*, "Przegląd Prawa Konstytucyjnego" 2022, no. 4 (68), DOI 10.15804/ppk.2022.04.29.

Sokalska E., *Searching for Progress: Progressivism and the U.S. Supreme Court Jurisprudence (some remarks)*, "Przegląd Prawa Konstytucyjnego" 2020, no. 5 (57), doi.org/10.15804/ppk.2020.05.33.

Stromquist S., *Reinventing "The People": The Progressive Movement, the Class Problem, and the Origins of Modern Liberalism*, Urbana–Chicago 2006.

Villazor R.C., *Chae Chan Ping v. United States: Immigration as Property*, "Oklahoma Law Review" 2015, vol. 68.

Wiebe R.H., *The Search for Order, 1877–1929*, New York 1967.