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# Chinese (PRC & ROC) Nationality Laws and Reconceptualizing Asian-American Identity

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Existing Asian-American Jurisprudence (AAJ) scholarship has largely focused its attention on the impact of American laws on the experiences of Asian-Americans in the United States, particularly with respect to the themes of racialization and identity. This Article adopts a transnational and comparative approach, focusing on how Asian-Americans—specifically, Chinese-Americans—are racialized and affected by social perceptions and the nationality laws in their ancestral home countries, the People’s Republic of China (PRC) and the Republic of China (ROC, or unofficially, Taiwan). Examining Chinese-Americans’ social (namely, perceptions and expectations from PRC and ROC society) and legal treatment (via nationality law) in these countries arguably allows us to reconceptualize Chinese-American identity as not simply a narrative of Americanization, but also one of Sinification. Coupled with perceptions of “foreignness,” “disloyalty,” and “inassimilability” in the United States, a twilight zone of Chinese-American identity occurs, where Chinese-Americans are in a tug-of-war between what might be described as “dueling vectors” of their American identity and the identity of their home countries. They may not feel fully accepted as “Americans,” but at the same time they may feel “over-accepted” as “Chinese” by the PRC or ROC. This Article uses specific case studies, namely the experiences of Chinese-American ESL teachers working and living in the PRC and ROC, former U.S. Ambassador to China Gary Locke, and NBA basketball player Jeremy Lin, to highlight the tensions between Americanization and Sinification of Chinese-American identity both by PRC and ROC society as well as PRC and ROC nationality law.

## INTRODUCTION

On Sunday, October 9, 2016, Michael Luo—a middle-aged American of Chinese descent born in Pittsburgh—had finished attending church services in New York City’s well-to-do Upper East Side.<sup>1</sup> He was with his baby, his friends, and his

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1. Chris Fuchs, *Politicians, Asian Americans Respond After New York Times Editor Told to ‘Go Back to China’*, NBC NEWS, (Oct. 10, 2016), <http://www.nbcnews.com/news/asian-america/>

family while they searched for some lunch amidst the rain.<sup>2</sup> Luo's baby stroller and his accompanying group had inadvertently blocked the path of a seemingly "normal," "well dressed" woman, who was clad in a "nice rain coat" and carrying an "iPhone 6 Plus."<sup>3</sup> Annoyed, this woman shouted, "Go back to China!" at Luo and his group.<sup>4</sup> Luo ran to "confront" the woman, who took out her phone, threatened to call the police, and then screamed at Luo to "go back to your fucking country."<sup>5</sup> Luo promptly retorted, "I was born in this country!"<sup>6</sup>

Luo, the deputy Metro editor at the New York Times, later tweeted about this experience<sup>7</sup> and penned an open letter addressed to the woman. The open letter was published in the New York Times<sup>8</sup> and elicited an outpouring of responses in writing<sup>9</sup> and video<sup>10</sup> from many Asian-Americans who shared their encounters and experiences with racism. In his open letter, Luo argued that this incident symbolized and epitomized the still-prevalent struggles with racism faced by Asian-Americans as a whole—namely, the "persistent sense of otherness" and the idea that "no matter what we [Asian-Americans] do, how successful we are, what friends we make, we don't belong. We're foreign. We're not American."<sup>11</sup>

Luo's experience encapsulates the continued racialized stereotypes of Asian-Americans as somehow different and more foreign (and therefore, less American) than white Americans and other minorities in America. Asian-American jurisprudence (AAJ) scholarship has focused heavily on understanding, critiquing, and explaining how American law has caused, encouraged, and perpetuated such stereotypes. As Neil Gotanda has pointed out, AAJ scholarship has sought to reinterpret cases, statutes, and legal history in, *inter alia*, the narrative of race, i.e., the characterization of Asians as a "permanently foreign race . . . incapable of becoming Americans."<sup>12</sup> This stereotype, in turn, "became a regular dimension to the racialization of Asian-Americans."<sup>13</sup> In other words, AAJ scholarship has specifically pointed to notions of Asiatic inassimilability and the process of Asiatic

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politicians-asian-americans-respond-after-new-york-times-editor-told-n663746.

2. Michael Luo, *An Open Letter to the Woman Who Told My Family to Go Back to China*, N.Y. TIMES (Oct. 9, 2016), <http://www.nytimes.com/2016/10/10/nyregion/to-the-woman-who-told-my-family-to-go-back-to-china.html>.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Michael Luo (@michaelluo), TWITTER (Oct. 9, 2016, 5:55 PM), [https://twitter.com/michaelluo?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor](https://twitter.com/michaelluo?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor).

8. Luo, *supra* note 2.

9. Michael Luo, 'Go Back to China': Readers Respond to Racist Insults Shouted at a New York Times Editor, N.Y. TIMES (Oct. 10, 2016), <http://www.nytimes.com/2016/10/11/nyregion/go-back-to-china-readers-respond-to-racist-insults-shouted-at-a-new-york-times-editor.html? r=0>.

10. John Woo & Yousur Al-Hlou, *Race in America: #thisis2016: Asian-Americans Respond*, N.Y. TIMES, Oct. 13, 2016, <http://www.nytimes.com/video/us/10000004706646/thisis2016-asian-americans-respond.html>.

11. Luo, *supra* note 2.

12. Neil Gotanda, *New Directions in Asian American Jurisprudence*, 17 ASIAN AM. L.J. 5, 8 (2010).

13. *Id.*

racialization, arguing that the Asiatic racial categorization has prevented and continues to prevent US-born and foreign-born Asian-Americans from “obtaining full citizenship rights” and “denying them full political participation.”<sup>14</sup> Existing AAJ scholarship has also intensely studied issues related to law and Asian-American identity, which is intimately connected with the aforementioned racialization of Asian-Americans as perpetual foreigners. Specifically, AAJ scholarship has attempted to “describe and advocate for a collective Asian-American identity” and to also “identify important imposed ascriptive racial stereotypes” (e.g., the notion of Asian-Americans as more foreign and less American than whites or other American minorities).<sup>15</sup>

In elucidating the above issues and questions, existing AAJ scholarship has predominantly looked to the following specific, substantive areas of US law: criminal law, constitutional law, and, especially, immigration law, the “most familiar terrain of Asian-American jurisprudence.”<sup>16</sup> Indeed, as Julian Lim has noted, the “history of immigration exclusion has remained a vital component of Asian American jurisprudence, as attested to by its prominence in the scholarship and on Asian American jurisprudence course syllabi.”<sup>17</sup> The focus of AAJ scholarship on these areas of law is not surprising: these areas often highlight an individual Asian-American’s prejudicial experience and treatment under American law as well as his or her challenges fighting perceptions of inassimilability and threatening foreignness.

There have been calls within AAJ scholarship, however, to broaden the field and adopt new approaches. Significantly, AAJ scholars have now engaged in “explorations of international law, transnational law, the law of the American colonies, and our [America’s] imperial presence in Asia” and how they affect the Asian-American experience.<sup>18</sup> Julian Lim has argued that the traditional major substantive themes of AAJ—i.e., immigration, citizenship, and race—should be expanded by adopting not solely an American but a *transnational* viewpoint and perspective in order to reconceptualize Asian-American identity.<sup>19</sup> For example, Lim does not only consider American law’s treatment of Chinese immigrants (perhaps most notoriously epitomized by the Chinese Exclusion Act of 1882<sup>20</sup>), but also engages in a transnational analysis by looking at Asian immigrants to other parts of the world, such as Africa and Southeast Asia, and their corresponding experiences.<sup>21</sup> Lim argues that this transnational approach highlights the “multidirectional circuits” of people and ideas. It helps us to reconceptualize Asian-American identity and the

14. Neil Gotanda, *Citizenship Nullification: The Impossibility of Asian American Politics*, in *ASIAN AMERICANS AND POLITICS: PERSPECTIVES, EXPERIENCES, PROSPECTS* 79, 80, 83 (Gordon H. Chang ed., 2001).

15. *Id.* at 16.

16. Gotanda, *supra* note 12, at 8.

17. Julian Lim, *Reconceptualizing Asian Pacific American Identity at the Margins*, 3 U.C. IRVINE L. REV. 1151, 1155 (2013).

18. Gotanda, *supra* note 12, at 60.

19. Lim, *supra* note 17, at 1156.

20. Chinese Exclusion Act, 22 Stat. 58 (1882), *repealed by* Chinese Exclusion Repeal Act of 1943, 57 Stat. 600.

21. Lim, *supra* note 17, at 1159.

Asian-American experience by “rejecting the interpretations of Chinese immigration as a one way voyage toward Americanization, with its heartrending accounts of Chinese victims mired in anti-Chinese hostility and racism.”<sup>22</sup> The transnational approach instead stresses transnational Chinese immigrants as “agents of change, an empowering symbol for modern Asian-Americans caught in and improvising at the cross-roads of globalization.”<sup>23</sup> In short, a transnational approach can help provide new interpretive frameworks and models for reaching a fuller understanding of Asian-American identity and the Asian-American experience.

At a broad level, this Article is inspired by transnationalism’s impact on traditional AAJ scholarship. It similarly seeks to adopt a transnational, comparative interpretive approach to expand the traditional legal areas explored by AAJ and, thereby, move AAJ scholarship into new directions. More generally, as opposed to most AAJ scholarship, which has sought to narrate Asian-American experiences, including the treatment and racialization by other Americans, in the United States, this Article focuses on the experiences and prejudices faced by Asian-Americans in their *ancestral* home countries. As discussed above, most of AAJ scholarship on identity and Asian racialization has focused on *American* law’s effects on Asian-Americans. However, to my knowledge, there is no AAJ scholarship on how Asian-Americans are racialized and how their identity is affected by *foreign* law, specifically, the law of their ancestral home countries. This Article considers *foreign* nationality law—namely Chinese nationality law, including the nationality laws of the People’s Republic of China (PRC) and the Republic of China (ROC)<sup>24</sup>—to examine how foreign nationality law can further complicate Asian-American, specifically Chinese-American, identity. To my knowledge, it is also the first Article to provide an AAJ analysis of PRC and ROC nationality law. To be sure, there has been considerable scholarship, namely works rooted in psychology, which examines the attachment of Asian-Americans (including Chinese-Americans) to their ethnic identities and home countries—including examining attachment theory to explain Asian-Americans’ links with their home countries—as well as scholarship examining the concept of Asian-Americans’ ethnic identities (i.e., “the degree to which individuals identify with their country of ancestral origin”<sup>25</sup>),<sup>26</sup> but no scholarship to my knowledge has looked at the role of foreign nationality law and its effects on Chinese-American identity or has brought these concepts of ethnic identity into sustained dialogue with AAJ methods.

At a specific level, this Article argues that a focus on both (1) Chinese-Americans’ broader experiences in their ancestral home states (the ROC and PRC) and

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22. *Id.*

23. *Id.*

24. The ROC is unofficially known as “Taiwan.”

25. Sapna Cheryan & Jeanne L. Tsai, *Ethnic Identity*, 2006 HANDBOOK OF ASIAN AMERICAN PSYCHOLOGY 125, 125.

26. As examples of such scholarship, see *id.*; see also Cliff Akiyama, Bridging the Gap Between Two Cultures: An Analysis on Identity Attitudes and Attachment of Asian Americans, 8 BRIEF TREATMENT & CRISIS INTERVENTION 251 (2008).

how PRC and ROC *society* perceives and treats them, as well as (2) their *legal* treatment under ROC and PRC nationality laws allows us to reconceptualize Chinese-American identity as involving dual journeys of Americanization and Sinification. This leads to a twilight zone, a tug-of-war of sorts, between what we might call the “dueling vectors” of “Chinese” and “American” identity. As much of AAJ scholarship and the Michael Luo story have shown, in the journey of “Americanization,” Chinese-Americans in the United States continue to be perceived as simultaneously foreign and not American enough. However, when they go to their ancestral home countries, they are Sinified. Namely, they are often treated by Chinese society as being simply “Chinese,” where the “American” component of their “Chinese-American” identity is downplayed, ignored, or diluted. They may also face an expectation in the ancestral home countries to be more loyal to the “Chinese” component of their “Chinese-American” identity. If they fail to do so, they are perceived as being “not Chinese enough.” This Article further posits that such expectations and social treatment are (perhaps inadvertently) buttressed and strengthened by the nationality laws of the PRC and ROC, which create challenges for Chinese-American identity by, in some cases, ascribing—by legal fiat—Chinese nationality and hence Chinese identity to Chinese-Americans, even Chinese-Americans born and raised in the United States or other Western countries. In other words, PRC and ROC law treats certain Chinese-Americans as PRC or ROC nationals, and, in so doing, can be described, conceived, and understood<sup>27</sup> as forcibly removing their American nationality and identity and thereby completing the Sinification process. Thus, Chinese-American identity is complicated and put into a twilight zone because Chinese-Americans may feel they are not perceived as “American enough” in the United States, but, at the same time, they may not feel fully “Chinese” because they were not born or raised in the ROC and PRC, despite their social and legal ascription of Chinese nationality and identity in the ROC and the PRC. To summarize, examining Chinese-Americans’ social and legal treatment (via nationality law) in the ROC and PRC allows us to reconceptualize Chinese-American identity not as a simplistic narrative of the “one way voyage to Americanization”<sup>28</sup> but as a two-way street of “dueling vectors”, a twilight zone where Chinese-Americans are in a tug-of-war of sorts between America and their ancestral home country.

This Article proceeds as follows. Section 1 discusses the social treatment (e.g., stereotypes and racism) and twilight zone-type identity struggles faced by Chinese-Americans in their ancestral home countries (the PRC and ROC), where they are often treated as, and expected to be, “Chinese.” Given that AAJ (and indeed, the entire critical race theory field) has been enriched by the methodological use of story-telling and personal narrative,<sup>29</sup> two case studies—the experiences

27. Just to be absolutely clear, I am not making a causation claim here (e.g., I’m not arguing that PRC and ROC nationality laws cause PRC or ROC people and society to treat Chinese-Americans in a certain way). My claim, as indicated here, is a conceptual claim.

28. Lim, *supra* note 17, at 1159.

29. As Robert Chang has pointed out, “Asian American Legal Scholarship (another moniker

of Chinese-American ESL teachers and former U.S. Ambassador to China Gary Locke—will be discussed. Section 2 discusses how these social stereotypes are reinforced by the legal treatment of Chinese-Americans by PRC and ROC nationality law, which in certain cases, automatically treats Chinese-Americans not as Americans but legally as PRC or ROC nationals. Section 3 discusses the experiences of NBA basketball player Jeremy Lin as a case study of a Chinese-American legally considered to be an ROC national and a Chinese-American in the identity twilight zone. Finally, this Article concludes with a brief discussion of the normative implications of its reconceptualization of Chinese-American identity.

## I. CHINESE-AMERICAN EXPERIENCES IN THE PRC AND ROC: SOCIAL ATTITUDES TOWARD CHINESE-AMERICANS

This section discusses the social treatment and twilight zone-type identity struggles faced by Chinese-Americans in their ancestral home countries (the PRC and ROC), where their identity is fully “Sinicized”—i.e., the journey of Sinification. In other words, the “Chinese” aspect of their Chinese-American identity is emphasized while the “American” aspect is downplayed or even ignored. Furthermore, there exists an expectation on the part of Chinese society that the Chinese-American should be more loyal or sensitive to his or her “Chinese-ness.” Failure to do so will result in allegations of disloyalty to his or her Chinese identity. To illustrate the above, I will use two case studies—the experience of Chinese-American ESL teachers in the PRC and the ROC, as well as the treatment of former U.S. Ambassador to China, Gary Locke, by Chinese society. I hope these two case studies will collectively show that such identity struggles are not just faced by Chinese-American “ordinary” civilians, but also by high-ranking, prominent U.S. government officials. Therefore, these case studies will also reveal just how deeply-rooted, common, and powerful these social perceptions and stereotypes of Chinese-Americans are in the PRC and ROC. Accordingly, they deserve more scholarly attention than they have received by AAJ scholars.

### A. THE EXPERIENCE OF CHINESE-AMERICAN ESL TEACHERS IN THE PRC AND ROC

Chinese-Americans looking for English-teaching work in the PRC and ROC often face discrimination and bias. Despite being native speakers of English and often possessing excellent academic qualifications and teaching experience, Chinese-Americans are simply viewed as “Chinese” and not sufficiently “American” enough to teach English for Chinese students and their parents. Connie Wu, a Chinese-American Berkeley student who lived in the PRC, summed up this attitude in a Berkeley student study abroad blog post. She related that she often found herself “struggling to justify to the [Chinese] locals that although I am ethnically Chinese, I am also American. To the locals, I am just Chinese—not American. . . .

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for AAJ) contends that personal narrative is an important tool in addressing the oppression of Asian Americans.” Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1268 (1993). For Chang’s defense of the use of story-telling and personal narrative by AAJ scholars, see pgs. 1268–1286.

So in the eyes of many Chinese people, white Americans are the only authentic Americans.”<sup>30</sup>

The downgrading and deletion of Chinese-Americans’ American identity causes considerable difficulty for Chinese-Americans looking for ESL work. At a general level, Wu explains the discrimination faced by Chinese-Americans in the ESL teaching market in the PRC:

Our Asian faces immediately make our English skills suspect, which leads to quick denials of employment simply because of the way we look. We are often questioned by suspicious employers about whether we speak fluent English, how long we have been in the United States, how well we know English grammar, and even whether we are really Americans. Even after passing such an interrogation, we are usually denied the teaching position. Our credentials often mean very little when it comes to hiring foreigners to teach English. My Asian friends in the English-teaching market describe themselves as second rate, hired only to fill in gaps. And now that Chinese schools require each applicant to send in a picture, the first wave of weeding out the “inauthentic” English speakers will be made much easier. As expected, we ABCs or almost-ABCs are among the first ones to go.<sup>31</sup>

To provide some specific examples and narratives (of which there are many<sup>32</sup>), I have personally experienced similar discrimination when looking for an unpaid, *volunteer* English teaching position in *Beijing* in 2007 (this *locus in quo* bears emphasis—Beijing is the capital of China and one of Asia’s most international cities). English is my native language—I am a Chinese-American born and raised in New Jersey. A Beijing upper elementary school was seeking volunteer English teachers to teach English conversation classes after school. Seeing this as an opportunity to both pursue my passion in teaching and interact with Beijing youth, I applied via the school’s third-party recruiter. Aware of the discriminatory practices of Chinese employers, I deliberately did not include a photo with my CV. Instead, I emphasized my educational and teaching qualifications, which I thought would be attractive to the Beijing school. At the time of application, I had a bachelor’s degree from Harvard University, was fluent in written and spoken Mandarin, had experience teaching elementary, middle, and high school students, and had multiple publications.

Much to my surprise, even though I did not include a photo, I was called by the recruiter to attend an in-person interview, which would include him and representatives from the school (I spoke to the recruiter only in English). On the day of my interview, I walked into the room and saw the recruiter and the school representatives.

30. Connie Wu, *Encountering Discrimination as an Asian-American in China*, U.C. BERKELEY CHINA DISPATCH 6: STUDENT J. SUMMER DISPATCHES FROM THE FIELD (2004), [www.berkeley.edu/news/students/2004/china/china6.shtml](http://www.berkeley.edu/news/students/2004/china/china6.shtml).

31. *Id.*

32. See, e.g., JADA TAN RUFO, *BANANA GIRL: AN ASIAN AMERICAN WOMAN’S LIFE IN CHINA* (2015) (sharing, *inter alia*, discrimination faced by Asian-Americans in the PRC English teaching market).



The school representatives, upon seeing me, immediately remarked in Mandarin Chinese, “Oh my God, this is just a Chinese!” I replied that I was an American and that English was my native language. They interviewed me (in hindsight, probably just out of courtesy), and a few days later, the recruiter called to inform me that I was rejected. Apologetic, he explained that the reason for the rejection was largely because I was ethnically Chinese and that the school representatives considered me simply as Chinese. What makes this story more interesting, however, is that a few weeks later, the recruiter called me again, asking me if I would be interested in teaching that afternoon’s class because one of the foreign teachers was ill. In other words, I would be a substitute—to use Wu’s words, a “second rate” hire, “hired only to fill in gaps.”<sup>33</sup> At first, I vehemently declined, explaining that I did not want to contribute to hiring practices that perpetuated the treatment of Chinese-Americans as second-rate English teachers. The recruiter, however, begged me to help him and said I could meet the other foreign teachers and take a bus together to the school. I finally agreed to help teach the class, but I explained that he should understand that I was doing this only as a favor. Admittedly, I was also interested in seeing what the other foreign teachers were like. When I arrived at the bus stop, there were approximately five other foreign teachers there. The first thing I noticed was that all of them were Caucasian. Some were native English speakers, but others were not—one foreign teacher was Russian and another was French, and their spoken English was not excellent. In other words, the Beijing middle school preferred to hire non-native English speakers over native English speaking Chinese-Americans.

The treatment of Chinese-American ESL teachers as “just Chinese” and hence as less desirable can also be seen in the ROC. Lianne Lin, a Chinese-American media personality, actress, model, and writer,<sup>34</sup> has also publicly shared her ESL teaching experiences and challenges to her identity that she experienced in the ROC. Like Wu’s and my experience in the PRC, Lin also experienced an involuntary stripping away of her American identity in the ESL market, and a disbelief by ROC society that (in her words), “an Asian can be a “real” American.”<sup>35</sup> Lin related her personal story about applying for English teaching jobs in Taipei, the ROC’s capital and most cosmopolitan city:

I applied to every major school I could find in Taipei but got very few replies, just a few interviews that went nowhere. I got some substitute teaching gigs at kids’ schools through friends and started tutoring privately on my own. Another friend set me up with an interview at his school, where I was offered a position with an “ABC pay rate”, which is only 400 NTD per hour (\$13.50 USD). This was ridiculous because I know that the rate should [sic] 600 NTD (\$20 USD) or higher. This was my first time ever facing pay rate inequality, and I didn’t accept the job. Another friend who is hapa (mixed Asian/white)

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33. Wu, *supra* note 30.

34. Lianne Lin’s official website is located here: <http://heylianne.com>.

35. Lianne Lin, *Reverse Racism in Taiwan*, 8ASIAN (Oct. 23, 2013), <http://www.8asians.com/2013/10/23/reverse-racism-in-taiwan>.

easily got a job in a well-known adults' school and helped me turn in a resume. But later, my friend told me that his boss said that they didn't want to hire ABC teachers. Apparently, as soon as the schools see either my photo or my Chinese last name, my resume goes into the trash. I felt frustrated and angry, but completely powerless. I felt like all I could do was keep trying and hope for the best. . . . It seemed that image was more important than skill level or qualifications.<sup>36</sup>

What is perhaps most striking about Lin's account is that she confirms there is an official "ABC (American-born Chinese)" pay scale in certain ROC language schools where ABCs—just by their "Chinese-ness"—are paid on a different scale than Caucasian-Americans. Lin also explained that perceptions that Chinese-Americans are less "American," too "Chinese," and hence may not have as good English skills are not only held by employers but by customers and clients—i.e., students' parents "who are paying a lot of hard-earned money for their kids to study English and they want to see their kids with an "All-American" white teacher."<sup>37</sup> In this sense, we can see how pervasive such perceptions are in ROC society. Indeed, in the ROC, there is even an official group called "Teachers Against Discrimination in Taiwan" (TADIT) founded by non-Caucasian English teachers in the ROC (including Chinese-Americans). TADIT maintains a website and blog where non-Caucasian English teachers living and working in the ROC can share stories about discrimination. TADIT even has published a list of what they call "equal opportunity" language schools in the ROC which do not seem to engage in the discriminatory or American identity-stripping practices as experienced by Wu, Lin, and me.<sup>38</sup>

These identity-stripping practices are in fact unwelcomed by many Chinese-Americans, as seen in the examples above. Wu, Lin, and I all made a conscious effort to re-assert our American identity, unfortunately an exercise in futility. While many Chinese-Americans have a deep appreciation for their ancestral home countries—Lin, for example, wrote that she was "heartbroken to feel rejected by a country [the ROC] that I loved so much"<sup>39</sup>—they do not feel comfortable fully relinquishing their American identity and do not feel they are culturally 100 percent "Chinese" as PRC or ROC society might expect them to be. Thus, there is a twilight-zone effect. They are labeled "perpetual foreigners" back home in the United States, where they are perceived as not "American" enough. And, in the PRC or ROC, despite being perceived as solely "Chinese," they do not feel "Chinese" enough.

#### B. EXPECTATIONS OF LOYALTY TO CHINA AND THE "BANANA" ATTACK: THE CASE OF GARY LOCKE

The forced "Sinification" of Chinese-Americans by Chinese society and the simultaneous forced removal of the "American" aspect of Chinese-American

36. Id.

37. Id.

38. The TADIT website can be located here: [www.taditaiwan.wordpress.com](http://www.taditaiwan.wordpress.com).

39. Lin, *supra* note 35.

identity does not only affect “ordinary” Chinese-American civilians like ESL teachers. Even the highest-ranking American government officials are not immune. In particular, another phenomenon we observe in Chinese-Americans’ ancestral home countries, besides the Sinification of Chinese-American identity (as seen through the ESL teacher stories above), is an expectation on the part of Chinese society that the Chinese-American should be more loyal to his or her ancestral home country. Again, the “American” aspect of Chinese-American identity is largely discounted or ignored. Failure of the Chinese-American to display such loyalty will result in vicious attack.

The story of former U.S. Ambassador Gary Locke helps to highlight such identity struggles and the experience of Chinese-American identity as being in a twilight zone between two polar opposites—“American-ness” and “Chinese-ness.” Locke, a former governor of Washington and a third-generation Chinese-American born and raised in Washington, served as U.S. ambassador to China from 2011 to 2014. To date, he was the first and only Chinese-American to have served in this position and is the only Chinese-American to have ever served as a state governor. In his public nomination speech following President Obama’s nomination announcement on March 9, 2011 in the White House, Locke remarked:

I’m going back to the birthplace of my grandfather, my father, my mom and her side of the family, and I’ll be doing so as a devoted and passionate advocate for America, the country where I was born and raised.<sup>40</sup>

These remarks are telling because Locke seemed to have been going out of his way to deliberately, defensively, and affirmatively emphasize his American identity, attempting to confirm and reassure the American public that despite his genetic and familial roots in the PRC, he would be a “devoted and passionate advocate for America.”<sup>41</sup> In other words, he sought to confirm his loyalty to his American identity and to the country where he was “born and raised.”<sup>42</sup> An interesting comparison can be made with Jon Huntsman’s remarks when he was nominated by President Obama to serve as U.S. Ambassador to China in 2009. Despite arguably having much closer ties to East Asia than Locke—Huntsman is fluent in written and spoken Mandarin and lived and worked in the ROC for many years—Huntsman’s remarks lacked anything akin to Locke’s remarks above. He did not confirm, for example, that he would be representing America’s interests in China.<sup>43</sup>

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40. President Barack Obama & Secretary Gary Locke, *Remarks by the President in Announcing Secretary Locke as New Ambassador to China*, OBAMA WHITE HOUSE (Mar. 9, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/03/09/remarks-president-announcing-secretary-locke-new-ambassador-china>.

41. *Id.*

42. *Id.*

43. President Barack Obama & Governor Jon Huntsman, *Remarks by the President in nominating Governor Jon Huntsman as Ambassador to the People’s Republic of China*, OBAMA WHITE HOUSE (May 16, 2009), <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/remarks-president-nominating-governor-jon-huntsman-ambassador-peoples-republic-chin>.

Indeed, in interviews with Chinese news celebrity Yang Lan in 2012, Locke also sought to emphatically emphasize his American identity. He also commented on the Chinese societal expectation that—because of Chinese ethnicity—he as a Chinese-American will remain loyal and mindful of China’s interests, thereby having the effect of downplaying his American identity:

I’m very proud of my Chinese ancestry . . . it can be a [disadvantage] . . . perhaps there may be some expectations by the Chinese people, that I being of Chinese ancestry am to represent the Chinese viewpoint. I am Chinese by ancestry, I’m a Chinese-American born in America. I’m proud of my Chinese ancestry, but I’m also proud of the contributions of America. But I am here as a representative of the president of the United States of America and the American people, to advocate on behalf of America.<sup>44</sup>

In the same interview, Locke also explained how his lack of fluency in Mandarin Chinese is beneficial because it makes it clearer to Chinese society that he does not in fact represent their interests simply because of his Chinese ethnicity:

I am not fluent in Mandarin . . . I think perhaps [sic] has a blessing, because the Chinese people perhaps expect me because of my face and my ancestry, they expect me to be 100 percent Chinese, and if I’m fluent in Chinese, then am I representing America or am I representing China? I am the representative of the president of the United States of America Barack Obama and the American people, and so perhaps the fact I do not speak Mandarin reminds people that I am representing America.<sup>45</sup>

First, we can see that in the same interview, Locke took pains to reiterate twice (almost defensively as if to remind viewers) that he represents the United States and the American people. Furthermore, as we can see above, Locke even more explicitly discusses the identity-stripping phenomenon, where Chinese society completely disregards the “American” aspect of his “Chinese-American” identity and instead sees him simply as “100 percent” Chinese. More importantly, there exists not just an expectation that he will have cultural sensibility, but political sensibility and complete political loyalty to the PRC.

These attitudes and social treatment were even more prominent after Locke resigned from the ambassadorship and departed for the United States. Segments of the Chinese media—specifically an editorial in the China News Service—attacked Locke as a race traitor to the Chinese. The editorial called him a “banana with yellow skin and a white heart,” accusing the U.S. government of deliberately using

44. Interview by Yang Lan (杨澜) with Gary Locke in China (Feb. 2012), see Yang fang kuai che (杨访快车) [Yang Lan One on One], *Yang Lan fang tan lu Luo Jiahui* (杨澜访谈录骆家辉) [Yang Lan Interviews Gary Locke], YOUKU (2012), [http://v.youku.com/v\\_show/id\\_XMzUzMzg3OTY0.html?from=s1.8-1-1.2&spm=a2h0k.8191407.0.0#paction](http://v.youku.com/v_show/id_XMzUzMzg3OTY0.html?from=s1.8-1-1.2&spm=a2h0k.8191407.0.0#paction). This interview was also noted in the PRC press; see *Yang Lan One on One’s Exclusive Interview of Gary Locke: “I’ve Served as U.S. Ambassador Now for Half-a-Year”* (《杨澜访谈录》专访骆家辉：我上任这半年), SOHU ENT. NEWS(搜狐娱乐) (Feb. 13, 2012), <http://yule.sohu.com/20120213/n334566885.shtml>.

45. Id.

Locke's ethnicity as a "ploy" to create trouble for the PRC and mislead the Chinese people.<sup>46</sup> Specifically, the editorial argued that Locke was disloyal to China partly because of his human rights advocacy and his role in helping Chen Guangcheng, a blind grassroots Chinese human rights advocate, escape the PRC to the United States in 2012.<sup>47</sup> For his assistance to Chen Guangcheng, the editorial also blasted Locke as a "guide dog."<sup>48</sup>

As Kaiser Kuo, director of international communications for Baidu, has argued, the use of the term "banana" by the China News Service was deliberately malicious and intended to convey "that Locke is a race traitor who lacks the political loyalty to the Chinese nation that his blood should somehow confer."<sup>49</sup> Hyeon-Ju Rho, a U.S. public interest lawyer and Asian-American rights advocate, pointed out that the "banana critique suggests something interesting about the Chinese reaction to Locke. Initially, many thought he might be easier to deal with than his predecessors because he was 'one of us.' Disappointment set in when—surprise, surprise—Locke stood firm in representing U.S. interests."<sup>50</sup>

Again, the key point to the above discussion is that Chinese-Americans are involuntarily Sinicized, where their Chinese identity is emphasized at the expense of their American identity. Chinese-American identity—such as Locke's Chinese-American identity—can be conceptualized as a being in a twilight zone, a tug-of-war between the "Chinese" and "American" vectors of their Chinese-American identity. Locke is simply caught in such a zone: he explicitly emphasized his "American-ness," almost trying to justify his nomination by confirming his loyalty to the American nation and dispelling concerns that he was not "American" enough or "too foreign." When he arrived in China, he explicitly admitted that he faced an expectation on the part of the Chinese that he would be more loyal to the PRC due to his Chinese ethnicity and Chinese identity. However, Locke clearly saw himself as American, not Chinese. Similarly, Chinese-American ESL teachers experience a coerced Sinification and thus consequently face employment discrimination.

## II. CHINESE (ROC AND PRC) NATIONALITY LAWS: AN AAJ ANALYSIS

The previous section attempted to lay out and discuss the social treatment of Chinese-Americans in the PRC and ROC, specifically their coerced Sinification.

46. *China Media Hurls Racist Slur at Departing US Envoy Gary Locke*, STRAIT TIMES (Mar. 1, 2014), [www.straittimes.com/asia/china-media-hurls-racist-slur-at-departing-us-envoy-gary-locke](http://www.straittimes.com/asia/china-media-hurls-racist-slur-at-departing-us-envoy-gary-locke). The original Chinese editorial is Wang Ping (王平), *Bie le, Luo Jiahui* (别了 骆家辉) [*Farewell, Gary Locke*], ZHONGGUO XINWEN WANG (中国新闻网) [CHINA NEWS SERVICE] (Feb. 27, 2014), <http://www.chinanews.com/gn/2014/02-27/5892576.shtml>.

47. *Id.* Chen Guangcheng's escape is detailed in his memoir; see CHEN GUANGCHENG, *THE BAREFOOT LAWYER: A BLIND MAN'S FIGHT FOR JUSTICE AND FREEDOM IN CHINA* (2014); see also J.M., *Chen Guangcheng: The Great Escape*, THE ECONOMIST (May 2, 2012), <http://www.economist.com/blogs/analysts/2012/05/chen-guangcheng>.

48. *China Media Hurls*, supra note 46.

49. Kaiser Kuo et al., *A Racist Farewell to Gary Locke: A ChinaFile Conversation*, FOREIGN POL'Y (Mar. 3, 2014), [www.foreignpolicy.com/2014/03/03/a-racist-farewell-to-gary-locke](http://www.foreignpolicy.com/2014/03/03/a-racist-farewell-to-gary-locke).

50. *Id.*

This next section argues that such social treatment is in fact (perhaps inadvertently) buttressed and strengthened by the nationality laws of the PRC and ROC, which in some cases, may automatically impose Chinese nationality and hence Chinese identity to Chinese-Americans, even to Chinese-Americans who may have never set foot in the PRC or ROC. In other words, Chinese-Americans may be Sinicized not only by Chinese society through the cultural perceptions and expectations discussed in the preceding section, but also by the law itself—specifically, Chinese (PRC and ROC) nationality law. It is also important to note at the outset that this section does not seek to provide a comprehensive overview of the PRC or ROC nationality law.<sup>51</sup> Rather, the article seeks to provide an AAJ analysis of these nationality laws and focus on those provisions that may affect Chinese-Americans, their nationality (or more precisely, nationalities), and their identity.

#### A. NATIONALITY ACT OF THE REPUBLIC OF CHINA (ROC) ON TAIWAN

ROC nationality is governed under the Nationality Act of the ROC, which covers the “acquisition, loss, restoration, and revocation of the nationality of the Republic of China.”<sup>52</sup> A few general points about the ROC Nationality Act should be made before delving into the applicable provisions. First, the ROC generally follows the *jus sanguinis* principle of nationality law. Second, there is technically no concept of “citizenship” under ROC law. The first distinction is between individuals who are and are not nationals of the ROC (i.e., foreigners). However, being an ROC national does not necessarily guarantee you right of abode or other rights that citizenship traditionally confers on individuals—e.g., the right to vote, the right to certain government benefits such as social security. To enjoy such rights and benefits, one must be an ROC national with household registration. This is the second important distinction. ROC nationals *without* household registration are still treated as ROC nationals by the law and are entitled to hold ROC passports<sup>53</sup> (i.e., they are not foreigners), but without household registration they do not have a ROC national ID number, which denies them access to many government resources.<sup>54</sup>

51. For an overview of PRC nationality law, see Tung-Pi Chen, *The Nationality Law of the People’s Republic of China and the Overseas Chinese in Hong Kong, Macao and Southeast Asia*, 5 N.Y.L. SCH. J. INT’L & COMP. L. 281 (1984); George Ginsburgs, *The 1980 Nationality Law of the People’s Republic of China*, 30 AM. J. COMP. L. 459 (1982); Stephanie Wang, *Does the Nationality Law, and its Prohibition of Dual Nationality, Need Reform?*, 3 TSINGHUA CHINA L. REV. 313 (2011). For an overview of nationality law in the ROC, see also Cheng-Chi Hsiao (蕭成洽), *Wo guo guojifazhi yu shishi xiankuang zhi yanjiu* (我國國籍法制與實施現況之研究) [Nationality Laws of R.O.C. and Research on Present Enforcement] (2005) (unpublished master’s thesis, Ming Chuan University) (<http://ndltd.ncl.edu.tw/cgi-bin/gs32/gswweb.cgi/login?o=dncldr&s=id=%22093MCU05636028%22.&searchmode=basic>).

52. Nationality Act, Art. 1 (2006) (promulgated by Hua-Zhong-Yi-Zi Order of President, effective Jan. 27, 2006), [http://www.moi.gov.tw/english/english\\_law/law\\_detail.aspx?sn=82](http://www.moi.gov.tw/english/english_law/law_detail.aspx?sn=82) (China).

53. The passports of ROC nationals without household registration lack a ROC national ID number. They also generally cannot be used for visa-free travel to other countries, in contrast to ROC passports of ROC nationals with household registration (i.e., ROC passports with national ID numbers). For further discussion, see *No Visa-Free Entry to U.S. for Nationals Without Household Registration: Report*, CHINA POST (May 31, 2012), <http://www.chinapost.com.tw/taiwan/foreign-affairs/2012/05/31/342851/No-visa-free.htm>.

54. The plight of ROC nationals without household registration is discussed in *Group Calls*

However, they are also ineligible for benefits that foreigners may enjoy—for example, ROC nationals without household registration are not considered “international students” and therefore are not eligible for international student scholarships provided by the government. Furthermore, the ROC still has mandatory military conscription for all able-bodied males. So, ROC nationals without household registration may also have to fulfill mandatory military service obligations if they enter the ROC on their ROC passports and stay in the ROC over a set number of days.<sup>55</sup>

How might the ROC Nationality Act possibly affect Chinese-Americans specifically? Chinese-Americans born in the United States may involuntarily have ROC nationality ascribed to them by the Nationality Act via their parents. The operative provisions—found in Article 2 of the ROC Nationality Act—are as follows:

A person shall have the nationality of the ROC under any of the conditions provided by the following Subparagraphs: (1) His/her father or mother was a national of the ROC when he/she was born. (2) He/she was born after the death of his/her father or mother, and his/her father and mother was a national of the ROC at the time of death. . . .<sup>56</sup>

Because the ROC recognizes and permits dual nationality, Chinese-Americans who are born and raised in United States are often considered ROC nationals under Article 2 through the following means: (1) the individual’s mother, father, or both parents are ROC nationals, born and raised in the ROC; (2) the mother, father, or both parents then emigrate to the United States, where they acquire U.S. citizenship while not renouncing their ROC nationality—in other words, they hold both a U.S. and a ROC passport, which is allowed as both the United States and the ROC permit dual nationality; (3) the parents (who have not yet renounced ROC nationality) give birth to their son/daughter in the United States, who acquires U.S. citizenship via birthright citizenship, and due to Article 2 of the ROC Nationality Act, also is automatically conferred ROC nationality (note the use of the operative word “shall” in “shall have the nationality of the ROC” in Article 2). If at least one of the individual’s parents was an ROC national when he/she was born in the United States, this hypothetical Chinese-American will be considered as a ROC national and is eligible to apply for an ROC passport by submitting, *inter alia*, proof of ROC nationality through a certificate of ROC nationality (which, for Chinese-Americans, can usually be issued by one of the ROC’s overseas missions upon providing certain documentation).<sup>57</sup>

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*for Full Citizen’s Rights*, TAIPEI TIMES (Sept. 20, 2011), <http://www.taipetimes.com/News/taiwan/archives/2011/09/20/2003513729>.

55. Shenqing Zhonghua minguo guoji—Waijiaobu: Kan Lin Shuhao benren yiyuan (申請中華民國國籍 外交部: 看林書豪本人意願) [Applying for ROC Citizenship—Ministry of Foreign Affairs: It’s Jeremy Lin’s Choice], JINRI XINWEN (今日新聞) [NOWNEWS] (Feb. 17, 2012), <http://www.nownews.com/n/2012/02/17/418863>.

56. Nationality Act, Art. 2 (2006), (promulgated by Hua-Zhong-Yi-Zi Order of President, effective Jan. 27, 2006) [http://www.moi.gov.tw/english/english\\_law/law\\_detail.aspx?sn=82](http://www.moi.gov.tw/english/english_law/law_detail.aspx?sn=82) (China).

57. For more details, see *Apply for a Passport*, BUREAU OF CONSULAR AFFAIRS, MINISTRY OF FOREIGN AFFAIRS, REPUBLIC OF CHINA (TAIWAN), <http://www.boca.gov.tw/ct.asp?xItem=1298&CtNode=763&mp=2>;

What practical implications does this have? First, the imputation of ROC nationality, as we can see, is involuntary. Second, some caveats are in order. It is true that for ordinary travel to the ROC our hypothetical Chinese-American can simply enter the ROC on his/her U.S. passport. It is also true that our hypothetical Chinese-American would have to make affirmative steps if he/she wanted to apply for an ROC passport. Furthermore, as discussed above, ROC nationality does not itself bestow on the holder all the rights and duties that the concept of citizenship would normally convey—one must have household registration. If our hypothetical Chinese-American wanted to be a “full-fledged” ROC national with household registration (i.e., with a ROC national ID card), he/she would have to move to the ROC, reside in the ROC for a certain period of time, and complete an application process to establish residency (note that this process is *not* naturalization, because only foreigners—non-ROC nationals—can be *naturalized*).<sup>58</sup> However, even if our hypothetical Chinese-American makes no further steps to fully materialize his/her ROC nationality, the automatic ascription of ROC nationality may still have consequences. For example, if the individual wishes to apply for any special programs or scholarships for foreigners, his/her ascribed ROC nationality may disqualify him/her. Personally, I ran into this issue during college when I tried applying for an ROC government scholarship for international students to go to the ROC for summer study. I was not knowledgeable about the intricacies of ROC nationality at the time, and so I went to the Taiwan Economic and Cultural Office (TECO) in Boston to apply for the scholarship. The form asked me for personal particulars and the like, but it also asked me for specific information about my parents and where they were born (my parents emigrated to the United States from the ROC). After submitting the application, I received a phone call from TECO Boston about a week or so later, informing me I cannot apply for the scholarship because I am not considered an “international” student. Because my parents were ROC nationals when I was born in the United States, I am also considered an ROC national under ROC law. TECO Boston explained that while I did not qualify for “international student” status, I could apply for “Overseas Chinese” status and an “Overseas Chinese” certificate and, thus, qualify to apply for special ROC government programs designed for “Overseas Chinese.”<sup>59</sup> In other words, I had been Sinicized—made an ROC

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*see also Application for Overseas Chinese Identity Certificate*, OVERSEAS COMMUNITY AFFAIRS COUNCIL, REPUBLIC OF CHINA (TAIWAN), <http://www.ocac.gov.tw/OCAC/Eng/FAQ/List.aspx?nodeid=455>; Enforcement Rules of the Overseas Chinese Identity Certification Act (2016) (promulgated by Order of OCAC, effective Jun. 23, 2016), <http://www.ocac.gov.tw/law/EngLawContent.aspx?Type = E&id=5> (China).

58. For more details about ROC household registration, *see Household Registration Act (2015)*, (promulgated by Hua-Zong-Yi-Zi Order of the President, effective Jan. 21, 2015), [http://www.moi.gov.tw/english/english\\_law/law\\_detail.aspx?sn=327](http://www.moi.gov.tw/english/english_law/law_detail.aspx?sn=327) (China) and *Enforcement Rules of the Household Registration Act (2015)*, (promulgated by Hua-Zong-Yi-Zi Order of the President, effective July 10, 2015), [http://www.moi.gov.tw/english/english\\_law/law\\_detail.aspx?sn=349](http://www.moi.gov.tw/english/english_law/law_detail.aspx?sn=349) (China).

59. For more details about this certificate, *see Application for Overseas*, *supra* note 57; *see also Overseas Chinese Identity Certification Act*, *supra* note 57.



national—without even any conscious decision on my part. In TECO Boston's view, I was first and foremost an ROC national, and only secondly, an American.

In short, as we have seen, the nationality law of the ROC is quite expansive and can ascribe ROC nationality automatically upon a Chinese-American who may have never set foot in the ROC. While this may not have any real effect on a Chinese-American who never plans to stay in the ROC for an extended period, it can affect those Chinese-Americans who do want to live and work in the ROC and hence emphasizes their "Chinese" identity over their "American" one.

#### B. NATIONALITY LAW OF THE PRC

The Nationality Law of the PRC is less expansive than that of the ROC but may nevertheless automatically impute PRC citizenship on Chinese-Americans born in the United States. It is "applicable to the acquisition, loss, and restoration of nationality of the People's Republic of China."<sup>60</sup> Unlike the ROC, the PRC does not recognize dual nationality.<sup>61</sup> The applicable provision that can affect Chinese-Americans born abroad is Article 5:

Any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.<sup>62</sup>

The above provision is similar to Article 2 of the ROC Nationality Act in the following respect: it doesn't matter whether a person is born in the PRC or overseas. If at least one of his parents is a Chinese national, said person "shall have Chinese nationality."<sup>63</sup> In other words, the conferral of PRC nationality is automatic (note the word "shall"). The ROC Nationality Act also provided that it doesn't matter whether a person is born in the ROC or overseas—so long as at least one of his parents is a ROC national when he is born, he shall be considered an ROC national. However, the PRC Nationality Law is less expansive given two caveats which limit the automatic attribution of PRC nationality to persons born to PRC nationals abroad: if at least one of his/her PRC national parents have "settled abroad" and if the person "acquired foreign nationality at birth," he/she shall not have PRC nationality.<sup>64</sup>

The latter caveat is usually easily satisfied for Chinese-Americans born in the United States, because they will acquire U.S. citizenship immediately at birth, assuming they satisfy the requirements of birthright citizenship in the United States. As for the former caveat, what exactly does "settled abroad" mean? The phrase

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60. Nationality Law, *STANDING COMM. NAT'L PEOPLE'S CONG. GAZ.*, Art. 1 (1980) (promulgated by Order No. 8 of the Chairman, effective Sept. 10, 1980), <http://www.gov.hk/en/residents/immigration/chinese/law> (China).

61. Nationality Law, *supra* note 60 at Art. 3.

62. Nationality Law, *supra* note 60 at Art. 5.

63. *Id.*

64. *Id.*

“settled abroad” can also be found in Article 9 of the PRC Nationality Law, which states that “[a]ny Chinese national who has *settled abroad* (emphasis mine) and who has been naturalized as a foreign national or has acquired foreign nationality of his own free will shall automatically lose Chinese nationality.”<sup>65</sup> According to PRC regulations, “settled abroad” generally means having “the right of permanent residence in another country and living there for an aggregate of two years, with at least eighteen months consecutive residence.”<sup>66</sup> Thus, taking our hypothetical Chinese-American, how might he be involuntarily accorded PRC nationality? The situation could be the following: his parents who are PRC nationals travel to the United States. Before they can satisfy the “settled abroad” caveat, they give birth to him or her in the United States. Although the son/daughter automatically acquires foreign nationality (i.e., US citizenship) at birth, because his PRC national-parents have not yet “settled abroad,” he will be considered under PRC law as a PRC national until he takes steps to renounce his PRC nationality.<sup>67</sup>

What are the implications of our hypothetical Chinese-American’s situation? He is considered a PRC national, but he is also an American citizen. However, as discussed above, the PRC does *not* recognize dual nationality. Let’s assume our hypothetical Chinese-American gets an American passport. If he decides to travel to the PRC, legally speaking, the PRC will not recognize his American passport (despite his being born and raised in the United States) because under PRC law he is a PRC national. Therefore, he must either renounce his PRC nationality first, in which case the PRC government will recognize his US passport and issue him a visa, or he must apply for a PRC passport and enter the PRC as a PRC national (or, in some cases, enter the PRC first on his foreign passport but then apply for nationality determination, recognition of their PRC nationalities, and issuance of exit-entry permits or a PRC passport to allow them to leave the PRC), despite the fact that he was not born in the PRC.<sup>68</sup> Assuming he does not renounce his PRC nationality, it also holds that our hypothetical Chinese-American would *not* be entitled to American consular protection while in the PRC. In other words, PRC nationality law has also automatically Sinicized the Chinese-American, stripping away his “American” identity and nationality.

The automatic conferral of PRC nationality has especially affected Chinese-Canadians born in Hong Kong or born to parents who are Chinese nationals with Hong Kong permanent residency (also known as Hong Kong Chinese, or Hong Kong residents of Chinese descent). While the focus of this Article is on

65. Nationality Law, *supra* note 60 at Art. 9.

66. Wang, *supra* note 51, at 320.

67. See e.g., *Application for Renunciation of Chinese Nationality*, THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION: IMMIGRATION DEPARTMENT, [http://www.immd.gov.hk/eng/services/chinese\\_nationality/Application\\_for\\_Renunciation\\_of\\_Chinese\\_Nationality.html](http://www.immd.gov.hk/eng/services/chinese_nationality/Application_for_Renunciation_of_Chinese_Nationality.html).

68. Indeed, although dual nationality is not permitted by the PRC, children (of PRC nationals) who hold foreign passports often enter the PRC on their foreign passports, and then their parents can apply to China’s public security authorities for exit-entry documents to leave the country. See Song Xixiang, *Development of the Nationality Law of China—on Nationality Issues of Hong Kong and Macau Residents*, 3 FRONTIERS L. CHINA 611, 622 (2008).

Chinese-Americans, the experience of these Chinese-Canadians and their Sinification under PRC nationality law is instructive and, by analogy, allows us to further understand the implications of the PRC Nationality Law's reach to ethnic Chinese with foreign nationalities. In July 2016, Hong Kong's main English-language newspaper, the *South China Morning Post*, reported a situation where two teenagers—born and raised in Canada but whose parents were born in Hong Kong—had applied to visit the PRC with a student study group through a Toronto travel agency.<sup>69</sup> They applied for PRC visas for their Canadian passports, but their application was allegedly initially denied after the PRC consulate discovered that their parents had been born in Hong Kong.<sup>70</sup> The teenagers were allegedly told they had to apply for the Mainland Travel Permit for Hong Kong and Macau Residents, normally reserved for Chinese nationals who are permanent residents of Hong Kong or Macau.<sup>71</sup> In addition, Canada's foreign ministry even pressed Beijing after reports that naturalized Canadians who were born in Hong Kong were not being allowed to travel to the PRC on ten-year visas in their Canadian passports.<sup>72</sup> This larger issue of certain Chinese-Canadians being treated as PRC nationals caused considerable uproar and alarm among numerous Chinese-Canadians. It even drew the vexation of Canadian Prime Minister Justin Trudeau, who remarked that “[a] Canadian is a Canadian is a Canadian,” demanding that anyone who holds a Canadian passport and arrested in the PRC should have Canadian consular protection.<sup>73</sup>

What happened to these Chinese-Canadians, and how were they legally Sinicized by the PRC, their Canadian nationality and identity effectively removed? In the case of Chinese nationals with Hong Kong permanent residency—or Hong Kong Chinese for short—the effects of PRC nationality law are even more pronounced. Under Article 9 of the PRC Nationality Law, any Chinese national “who has settled abroad and who has been naturalized as a foreign national or has acquired foreign nationality of his own free will shall automatically lose Chinese nationality.”<sup>74</sup> However, for Hong Kong Chinese, the situation is different. They will still be considered under PRC law to be Chinese citizens (pursuant to the “Explanations of Some Questions by the Standing Committee of the National People's Congress Concerning the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region”<sup>75</sup>) even after

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69. Ian Young, *You might have been born in Canada—but does Beijing think you could be a Chinese Citizen?*, S. CHINA MORNING POST (July 6, 2016), <http://www.scmp.com/news/world/untied-states-canada/article/1985978/you-might-have-been-born-canada-does-beijing-think>.

70. *Id.*

71. *Id.*

72. *Ottawa seeks answers: HK-born Canadians are denied 10-year mainland visas and told to travel as Chinese citizens, reports claim*, S. CHINA MORNING POST (June 29, 2016), <http://www.scmp.com/news/hong-kong/article/1982905/ottawa-seeks-answers-hk-born-canadians-are-denied-10-year-mainland>.

73. Alex Lo, *When a Canadian may not be a Canadian*, S. CHINA MORNING POST (Aug. 27, 2016), <http://www.scmp.com/comment/insight-opinion/article/2009621/when-canadian-may-not-be-canadian>.

74. Nationality Law, *supra* note 60 at Art. 9.

75. Explanations of Some Questions by the Standing Committee of the National People's Congress

acquiring foreign nationality (e.g., Canadian or American citizenship) unless they apply to the Hong Kong Immigration Department to report this “change in the nationality” and “make a declaration”<sup>76</sup> to be recognized as foreign citizens and, upon approval, will no longer be treated as PRC nationals.<sup>77</sup> The Hong Kong Immigration Department summarizes the situation as follows:

Under the Nationality Law of the People’s Republic of China (CNL), Hong Kong residents who are of Chinese descent and born in Chinese territories (including Hong Kong) are regarded as Chinese citizens. They are not entitled to consular protection in the HKSAR and other parts of the People’s Republic of China notwithstanding that they hold or have held British Dependent Territories Citizen passports, British National (Overseas) passport, or any other foreign passports. If such Hong Kong residents holding foreign passports choose to be treated as foreign nationals in the HKSAR, they may make declarations of change of nationality to the HKSAR Immigration Department. Upon approval, they will no longer be regarded as Chinese citizens and can enjoy consular protection from the country of their declared nationality.<sup>78</sup>

Therefore, in the Canadian teenagers’ alleged situation, even if their Hong Kong Chinese parents emigrated to Canada and became naturalized as Canadian citizens, the PRC would consider them PRC nationals if they did not take active steps to declare a change of nationality. Then, under Article 5 of the PRC Nationality Law, their children (i.e., the teenagers) would be involuntarily considered PRC nationals.

In conclusion, viewing PRC and ROC nationality laws through an AAJ lens allows us to see how these laws have the practical effect of buttressing the social stereotypes and treatment of Chinese-Americans in the ROC and PRC by legally and involuntarily removing the “American” aspect of Chinese-American identity and automatically conferring Chinese (be it PRC or ROC) nationality on the Chinese-American. There is thus a tug of war of nationalities and identities between Americanization and Sinification.

### III. PUTTING IT TOGETHER: JEREMY LIN AND THE TWILIGHT ZONE OF CHINESE-AMERICAN IDENTITY

The experience of Jeremy Lin can help highlight the identity struggles of Chinese-Americans as being in a twilight-zone and a tug-of-war among their ethnic and American identities, pulled in both directions by the “dueling vectors” of

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Concerning the Implementation of the Nationality Law of the People’s Republic of China in the Hong Kong Special Administrative Region (1996), <http://www.immd.gov.hk/eng/residents/immigration/chinese/law.html>.

76. Explanation 5 of the *Explanations*, *id.*

77. *Can Chinese nationality be lost or renounced?*, HKU COMMUNITY LEGAL INFO. CENTRE, [http://www.clc.org.hk/en/topics/immigration/chinese\\_nationality/q5.shtml](http://www.clc.org.hk/en/topics/immigration/chinese_nationality/q5.shtml). For details about the declaration process, see *Application for Declaration of Change of Nationality*, H.K. IMMIGR. DEP’T, [http://www.immd.gov.hk/eng/services/chinese\\_nationality/Declaration\\_of\\_Change\\_of\\_Nationality.html](http://www.immd.gov.hk/eng/services/chinese_nationality/Declaration_of_Change_of_Nationality.html).

78. Application for Declaration of Change of Nationality—Introduction, *supra* note 77.

Americanization and Sinification, but at the same time experiencing perceptions of “foreignness” on the American side and expectations of being fully Sinicized on the Chinese side. Furthermore, Lin’s identity is further complicated by current politics and debates over national identity in the ROC, where an increasing number of Taiwanese do not identify themselves with the ROC (i.e., as “Chinese”).

Lin, who as of October 2016 plays in the NBA with the Brooklyn Nets, was born in Los Angeles County and raised in the San Francisco Bay Area. His parents, who emigrated to the United States in the 1970s, were both born in the ROC and retain their ROC nationality, holding dual citizenship in the United States and the ROC.<sup>79</sup> Lin’s paternal lineage can be traced back to Fujian province, and his paternal ancestors later moved to Taiwan as immigrants in the early eighteenth century as “part of a large wave of Fujian migration from which most of Taiwan’s current residents are descended.”<sup>80</sup> Lin’s maternal lineage can be traced back to Zhejiang province; his maternal grandmother left Zhejiang for Taiwan at the end of the Chinese Civil War.<sup>81</sup>

Despite being born and raised in the United States and not having spent any significant time in East Asia, Lin experienced racism on his path to the NBA, and, more specifically, was perceived as a “foreigner” and as not “American” enough. In other words, like Michael Luo’s experience in New York City, Lin has been perceived first and foremost as “Chinese,” and not as “American.” Lin has related how some have shouted, “Go back to China,” at him during his basketball career;<sup>82</sup> how young kids referred to him as “the Asian” on the basketball playground;<sup>83</sup> how fans shouted, “Sweet and sour pork,” and, “Wonton soup,” at Georgetown;<sup>84</sup> and an opponent at the Ivy League who referred to him as a “chink.”<sup>85</sup> He was even referred to by ESPN commentators as a “chink in the armor,”<sup>86</sup> and when Madison Square Garden Network displayed a photo of Lin, it superimposed a fortune cookie on Lin. Moreover, in an interview with a Taiwan talk show “Zhen qing buluoge” (“True Love Blog”) on GoodTV (hao xiaoxi) Network in 2011, Lin shared how an opposing team’s coach demeaned Lin in front of his players by saying, “You

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79. Keith Bradsher, *An Odd Game a Grandmother can Appreciate*, N.Y. TIMES (Feb. 15, 2012), [http://www.nytimes.com/2012/02/16/sports/basketball/jeremy-lins-grandmother-watches-along-with-taiwan.html?\\_r=2&pagewanted=all](http://www.nytimes.com/2012/02/16/sports/basketball/jeremy-lins-grandmother-watches-along-with-taiwan.html?_r=2&pagewanted=all).

80. *Id.*

81. *Id.*

82. Bryan Chu, *Asian Americans Remain Rare in Men’s College Basketball Players: Players, Coaches Cite Race Factors*, S.F. GATE (Dec. 16, 2008), <http://www.sfgate.com/sports/article/Asian-Americans-remain-rare-in-men-s-college-3258007.php>.

83. Julianne Hing, *Jeremy Lin on the Loneliness of Asian-American NBA Trailblazing—J. Lin Talks Race, Turnovers, and the Bible Verse that’s Getting Him Through*, COLORLINES (Mar. 27, 2015), <http://www.colorlines.com/articles/jeremy-lin-loneliness-asian-american-nba-trailblazing>.

84. *Id.*

85. *Id.*

86. Hadley Freeman, *Jeremy Lin Row Reveals Deep-Seated Racism Against Asian-Americans*, GUARDIAN (Feb. 21, 2012), <https://www.theguardian.com/commentisfree/cifamerica/2012/feb/21/jeremy-lin-racism-asian-americans>.

can't let that Oriental kid do that."<sup>87</sup> Lin also shared how some coaches asked him, "What's the difference between Chinese people and Japanese people?"<sup>88</sup> In other words, despite Lin being a born-and-bred American and of course an American citizen, many of his opponents and even his fans saw him primarily as a non-American, as a Chinese, and as a foreigner.

However, at the same time, the ROC and PRC also claimed Lin as one of their own, each essentially emphasizing Lin's "Chinese" identity at the expense of his "American" identity. Indeed, as Melissa J. Brown has pointed out with respect to Lin:

They [Han people in the PRC and the ROC] look at a person like Jeremy Lin—born and raised in the U.S.—as still fundamentally Han. They don't understand that such a person is socially, culturally, and politically American, regardless of his/her genes, and despite the racism and discrimination in the U.S. . . . I don't think that most people in Taiwan understand that Lin is really American any more than most people in China do.<sup>89</sup>

This resulted in a minor geopolitical conflict of sorts between the ROC and PRC, which engaged in "a kind of metaphysical battle" for Lin's identity.<sup>90</sup> First, what social treatment and expectations did the PRC and ROC have with respect to Lin?

In the PRC, fans have emphasized his "Chineseness," arguing that his Chinese face, Chinese name, and yellow skin all contribute to making him "Chinese" despite the fact that he was born in the United States.<sup>91</sup> Xinhua News, one of the PRC's largest news services, even argued that Lin should be offered and accept PRC citizenship so he could play on the PRC team in the London Summer Olympics.<sup>92</sup> Certain segments of PRC society have also tried to downplay and strip away his American identity. For example, one PRC writer argued that Jeremy Lin is akin to an iPhone—made in the PRC and the ROC but marketed and perceived as an "American" product.<sup>93</sup> The implication is that Lin is actually Chinese, not American. Other PRC writers have focused on Lin's maternal ties to Zhejiang. Lin visited Zhejiang in 2011 and the visit was described as Lin's return—"going back"—to Zhejiang.<sup>94</sup> The use of the phrase "going back" arguably attempted to convey the

87. Interview by Amanda Lee 李晶玉 with Jeremy Lin & Jeremy Lin's Mother in Taiwan (Good-TV Network, True Love Blog, 2011), DangsHouse, *Jeremy Lin & his mother interview on TV (2011-Taiwan)*, YOUTUBE (Aug. 8, 2012), <https://www.youtube.com/watch?v=zaRP-iZ53MY> (transcribed by author).

88. Id.

89. Palash Ghosh, *Jeremy Lin: The Tug of War Between Taiwan and China*, INT'L BUS. TIMES (Feb. 22, 2012), <http://www.ibtimes.com/jeremy-lin-tug-of-war-between-taiwan-china-214116>.

90. Id.

91. Matthew T. Combs & Jeffrey N. Wasserstrom, *The Guard's Three Bodies: Linsanity, Celebrity and National Identity*, 30 INT'L J. HIST. SPORT 1259, 1262 (2013).

92. Id.

93. Id. at 1263.

94. Id.

notion that Lin was going back to his true home—Zhejiang in China—and, therefore, implied that his true home was not in fact the United States.

Lin experienced similar expectations and social treatment with respect to his identity in the ROC, which emphasized his ROC (Taiwan) identity at the expense of his American one. Liu Bi-rong, a political scientist at Soochow University in the ROC, remarked that “Jeremy Lin may not consider himself a Taiwanese, and his success has had nothing to do with Taiwan, but Taiwanese regard him as *one of their own* (emphasis mine).”<sup>95</sup> Similarly, Chris Wang, a journalist and author of “Taiwan Hoops” (a basketball blog), remarked that “[the] Taiwanese think of Jeremy Lin as . . . a son of Taiwan because his parents came from Taiwan, and now Chinese [PRC] television is making the same claims, saying he’s from Zhejiang or some place.”<sup>96</sup> Indeed, ROC media and even ROC politicians called Lin the “pride of Taiwan.”<sup>97</sup> Lin even met former ROC President Ma Ying-jeou in 2010. In the meeting, Lin presented Ma with a signed basketball.<sup>98</sup> In a 2012 meeting between President Ma and a visiting U.S. congressional delegation, Ma brought up various points of commonality between the United States and the ROC, including the fact that they “both appreciate Jeremy Lin.”<sup>99</sup> One of the U.S. congressional delegation members then replied, “I’m sorry to tell you that Jeremy Lin is an American, a true-blooded born American who happens to be of Taiwanese ancestry, and we are proud to have him.”<sup>100</sup> Although the comment was humorous and light-hearted, it can also be interpreted as a competing American claim to Lin, an emphatic confirmation that Lin is first and foremost an American—not Chinese or Taiwanese.

ROC society’s love of Lin and the social and cultural emphasis on his Chinese identity also spilled over into debates over his legal nationality, which eventually reached the highest echelons of the government. In May 2012, a Taichung (a major city in central Taiwan) middle school quiz contained a question which asked students what Lin’s nationality was.<sup>101</sup> Most of the students answered “Taiwanese” while “American” was the second most popular response. At first, students who answered “Taiwanese” did not receive credit for the response, which caused a political debate in Taichung.<sup>102</sup> A director in the Taichung Education Bureau argued that students should receive credit for whatever answer they put down, and even the mayor of Taichung expressed his personal view that Lin was Taiwanese, but legally an American.<sup>103</sup> Growing public debate over Lin’s nationality eventually prompted a government response via Deputy Minister of the Interior Chien Tai-lang, who remarked, “Of course Lin is an ROC national . . . [s]ince Lin was born to parents who

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95. Palash Ghosh, *Jeremy Lin: Chinese or Taiwanese?*, INT’L BUS. TIMES (Feb. 20, 2012), <http://www.ibtimes.com/jeremy-lin-chinese-or-taiwanese-214102>.

96. *Id.*

97. Combs & Wasserstrom, *supra* note 91, at 1263.

98. *Id.* at 1264.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

are ROC nationals, he is *automatically* (emphasis mine) granted ROC nationality. He is therefore an ROC national, unless he formally renounces his ROC nationality, but he hasn't done so as far as I know."<sup>104</sup> The Ministry of Foreign Affairs also chimed in on the debate, making a public announcement that Lin can apply for an ROC passport of his own volition, and once he gets the ROC passport, he cannot stay in the ROC over 183 days a year, or else he will have to serve his ROC military service obligation.<sup>105</sup>

Chien's remarks were indeed accurate, as Lin is automatically considered an ROC national—even though he was born and raised in the United States—due to Article 2 of the ROC Nationality Act (discussed in the previous section). Thus, the ROC's social treatment of and expectation that Lin is first and foremost "Chinese" and not "American" was in fact reinforced by ROC nationality law. The fact that Lin's ROC nationality was such a public issue in ROC society and among the highest echelons of the ROC government—the Ministry of Foreign Affairs and the Ministry of the Interior actually felt the need to publicly comment on one specific person's nationality status (it would be extremely rare for the United States Department of State or the Department of Homeland Security to comment on a private individual's or celebrity's nationality status)—shows just how important the issue of Lin's "Chinese" and "Taiwanese" identity was to ROC society and also arguably reflects how deep-rooted the motivating social expectations and perceptions are in ROC society.<sup>106</sup>

Thus, Jeremy Lin's case highlights how nationality law can buttress social attitudes and perceptions of Chinese-Americans in their ancestral home countries. However, it is important to point out that Lin's ROC identity and ties are even further complicated by the domestic politics and debates over China vs. Taiwan identity in the ROC today. Although Taiwan is officially known as the ROC and, therefore, Taiwanese citizens are legally ROC nationals and hence "Chinese" ("Chinese" is both a term of ethnicity and nationality in the ROC, which continues to claim that it is the sole legitimate government of mainland China and Taiwan—"Chinese" refers to the ROC and not the PRC), more and more young Taiwanese feel less a connection toward the ROC today and refuse to refer to themselves as "Chinese," even if "Chinese" refers to the ROC and not the PRC. In a survey on the national identification of the people of Taiwan held by the Taiwan Competitiveness Forum and the Apollo Survey and Research Company in May 2014, 47 percent of respondents answered, "Yes," to the question of whether they are Chinese, and 47 percent answered, "No."<sup>107</sup> This survey showed a downward trend in Taiwanese people

104. Loa Lok-sin, *Jeremy Lin is Legally an ROC National: Official*, TAIPEI TIMES (June 7, 2012), <http://www.taipeitimes.com/News/front/archives/2012/06/07/2003534707>.

105. Shenqing Zhonghuaminguo, *supra* note 55.

106. Some ROC news outlets—namely the China Post's editorial staff—pointed out the absurdity of focusing on the content of Lin's nationality and argued that his hard work and diligence should be what inspires Taiwan youth. See, e.g., *Jeremy Lin's Hard Work, Not Ethnicity, Should Inspire Youth*, CHINA POST (Feb. 18, 2012), <http://www.chinapost.com.tw/editorial/2012/02/18/331991/Jeremy-Lins.htm>.

107. Joe Hhung, *Are we Chinese or Taiwanese*, CHINA POST (June 16, 2014), [www.chinapost.com](http://www.chinapost.com).



identifying with a Chinese nationality—indeed, when the survey was conducted in February 2013, 90.4 percent of respondents had accepted their ROC “Chinese” national identity.<sup>108</sup> Recent results are even more dramatic—one opinion poll held in 2016 showed that only 11 percent of Taiwanese people now regard themselves as “Chinese,” and 73 percent consider themselves to be only “Taiwanese.”<sup>109</sup>

Part of the reason is due to internal strife within the ROC’s domestic politics. Indeed, “national identity is commonly viewed as being the most salient political issue dividing Taiwan’s party politics.”<sup>110</sup> The Kuomintang (KMT) Party, which upholds the “one-China principle” where the ROC is the sole, legitimate government (and not the Chinese Communist Party in Beijing) of China, wants to protect and preserve the ROC and ROC identity. The Democratic Progressive Party (DPP), the current ruling party of Taiwan, however, generally advocates for Taiwanese independence and self-determination. In recent years, the DPP has taken active steps to “de-Sinicize” the ROC to de-emphasize and even strip away Taiwan’s “Chinese” identity and to emphasize “Taiwanese” identity. For example, under former ROC President Chen Shui-bian (of the DPP), Taipei’s international airport was renamed from “Chiang Kai-shek International Airport” (Chiang Kai-shek was a former president of the ROC who went to Taiwan and led Taiwan’s first government after his defeat in the China Civil War) to “Taiwan Taoyuan International Airport,”<sup>111</sup> “Chunghwa Post” was renamed to “Taiwan Post,”<sup>112</sup> and “Chiang Kai-shek Memorial Hall” was renamed to “Taiwan Democracy Memorial Hall,” as part of Chen’s and the DPP’s efforts to remove links between Taiwan and mainland China.<sup>113</sup> Chen’s government also added the word “Taiwan” to ROC passport covers<sup>114</sup> and also pushed through educational reforms which sought to decrease coverage of traditional Chinese culture and literature, such as dropping Confucius and Mencius from the mandatory literature course list.<sup>115</sup> The DPP has also proposed the removal of Sun Yat-sen (founder of the ROC) portraits from ROC government buildings and also schools, an effort which was interpreted as removing “Chinese historical

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tw/print/410221.htm.

108. *Id.*

109. *Three out of four Taiwanese do not consider themselves to be Chinese (youths even less so)*, NATIONALIA (Mar. 15, 2016), [www.nationalia.info/new/1073a/three-out-of-four-taiwanese-do-not-consider-themselves-to-be-chinese-youths-even-less-so](http://www.nationalia.info/new/1073a/three-out-of-four-taiwanese-do-not-consider-themselves-to-be-chinese-youths-even-less-so).

110. Dafydd Fell, *Taiwan’s Party System in the Ma Ying-jeou Era*, in *Political Changes in Taiwan Under Ma Ying-jeou: Partisan Conflict, Policy Choices, External Constraints, and Security Challenges* 37, 43 (Jean-Pierre Cabestan & Jacques deLisle eds., 2014). For a review of the political debate over Taiwan’s national identity, see Norman P. Ho, *Crafting the Taiwanese*, *Harv. Int’l Rev.* (Apr. 18, 2007), <http://hir.harvard.edu/soviet-legaciescrafting-the-taiwanese>.

111. Fell, *supra* note 110, at 47.

112. *Id.*, noting that “Chunghwa” refers to “China.”

113. Caroline Gluck, *Taiwan to Rename Chiang Landmark*, BBC NEWS (May 19, 2007), <http://news.bbc.co.uk/2/hi/asia-pacific/6672017.stm>.

114. Duncan Hewitt, *Taiwan Passport Change Angers China*, BBC NEWS (Jan. 13, 2002), <http://news.bbc.co.uk/2/hi/asia-pacific/1758230.stm>.

115. Ho, *supra* note 110.

and cultural influences on the island.”<sup>116</sup> Some in the DPP have also proposed abolishing Sun’s status as “father of the nation.”<sup>117</sup> More recently, under current ROC president Tsai Ing-wen (also of the DPP), the DPP has proposed further chipping away at the ROC. For example, it has proposed again to rename China Airlines—the ROC’s flagship carrier—to Taiwan Airlines.<sup>118</sup> President Tsai herself has also refused to accept the “1992 Consensus,” which has served as the basis for cross-strait talks between the ROC and PRC where both the ROC and PRC agree there is only one China in the world, but they each have their own interpretations (since each the PRC and ROC claim to be the sole, legitimate government of China).<sup>119</sup> Also, when visiting Panama, one of the few countries which has diplomatic relations with the ROC, Tsai signed a message for Panama with the title “President of Taiwan (ROC)” rather than “President of ROC (Taiwan),” which was interpreted as her de-emphasizing the status of the ROC despite the fact that the ROC is the official name of Taiwan.<sup>120</sup> Many Taiwanese independence supporters (many of whom are of the DPP) have even attempted to modify and deface their ROC passports themselves, sticking tailor-made stickers which say “Republic of Taiwan” over the official “Republic of China” etching on the ROC passport.<sup>121</sup>

This additional layer of complexity of ROC identity—the debate over “Chinese” vs. “Taiwanese”—has also further exacerbated the twilight zone/tug-of-war nature of Chinese-American identity faced by Lin. In the United States, he has faced racialization and perceptions that he is not “American” enough. On the other hand, he has been Sinicized by the PRC and the ROC both socially and, in the case of the ROC, legally with respect to nationality. However, there is evidence to suggest that, given his American identity, Lin also feels that he does not completely belong in the ROC. In a trip to the ROC, he related: “the first time I went to Taiwan, there were cameras, paparazzi, TV stations outside my hotel 24 hours a day

116. Kyle Churchman, *Sun Yat-sen and the Future of Taiwanese Independence*, NAT’L INT. (Mar. 8, 2016), <http://nationalinterest.org/feature/sun-yat-sen-the-future-taiwanese-independence-15428>.

117. Zhang Yongqin 張永秦, *Taiwan minjindang tian feichu Sun Zhongshan guofu diwei* 台灣民進黨提案廢除孫中山國父地位 [Taiwan’s DPP Proposes to Eliminate Sun Yat-sen’s Status as Father of the Nation], VOA (VOICE AM.) (Feb. 23, 2016), <http://www.voacantonese.com/a/reactions-on-law-of-sun-yat-sen-20160223/3202983.html>.

118. *Konghua daqian hai diu hangquan: gaiminghui gaokua Huahang* 恐花大錢還丟航權 退休老董：改名會搞垮華航 [Wasting Money and Throwing Away Aviation Rights—Former Director: Renaming Will Ruin China Airlines], LIANHE XINWEN 聯合新聞 [United Daily News] (July 20, 2016), <http://udn.com/news/story/6656/1841172>.

119. Yeni Wong et al., *Tsai’s Refusal to Affirm the 1992 Consensus Spells Trouble for Taiwan*, THE DIPLOMAT (Aug. 26, 2016), <http://thediplomat.com/2016/08/tsais-refusal-to-affirm-the-1992-consensus-spells-trouble-for-taiwan>.

120. *Tsai Ingwen fang Banama qianmingshu “Taiwan zongtong” yinqi Zhengyi* 蔡英文訪巴拿馬簽名署「台灣總統」引爭議 [Tsai Ing-wen’s Signature “President of Taiwan” during Panama Visit Sparks Debate], BBC NEWS (CHINESE) (June 28, 2016), [http://www.bbc.com/zhongwen/trad/china/2016/06/160628\\_taiwan\\_president\\_tsai](http://www.bbc.com/zhongwen/trad/china/2016/06/160628_taiwan_president_tsai).

121. Ellie Ng, *I am from the Republic of Taiwan: Taiwanese Declare Independence with Passport Stickers*, H.K. FREE PRESS (Aug. 12, 2015), [www.hongkongfp.com/2015/08/12/i-am-from-the-republic-of-taiwan-taiwanese-declare-independence-with-passport-stickers](http://www.hongkongfp.com/2015/08/12/i-am-from-the-republic-of-taiwan-taiwanese-declare-independence-with-passport-stickers).

non-stop.”<sup>122</sup> As Lin further explained, “It’s a unique thing that I have this platform and I can grow the game there [the ROC] . . . but honestly, I find it a bit scary.”<sup>123</sup>

Most revealing, in response to questions about his identity, Lin has answered such questions in a “tactful” manner,<sup>124</sup> attempting to touch all possible bases. This reflects the twilight-zone nature of his identity, as Lin must address his “American” and “Chinese” identities. And, with respect to his “Chinese” identity, Lin must also contend with the political debates regarding “Taiwanese” vs. “Chinese” identity in the ROC. For example, in one interview, Lin “carefully”<sup>125</sup> responded that “[i]t’s humbling, a privilege, and an honor. I’m really proud of being Chinese, I’m really proud of my parents being from Taiwan.”<sup>126</sup> As some commentators have pointed out, “Lin seems to want to embrace both China and Taiwan, careful not to alienate either nation.”<sup>127</sup> Brown, in her analysis of Lin’s above response, explained:

Lin knows all this [i.e., the fact that most people in Taiwan do not understand that he is really American any more than most people in China do] and is being extremely tactful . . . [t]he word Chinese in English is ambiguous about whether it refers to ethnic or national identity, leaving room for the PRC press and fans to translate it as they choose. However, he also clearly states that his connection is to Taiwan.<sup>128</sup>

At a 2012 press conference in Hong Kong organized by Hong Kong property company New World Development Company Limited to inaugurate New World Springboard (a Hong Kong community youth program),<sup>129</sup> Lin was asked by a Chinese reporter, “I wanna ask, how do you see your identity, as a Chinese, Taiwanese, or Asian, or American?”<sup>130</sup> Lin first chuckled almost sarcastically, as if he has been asked this question multiple times, and he responded:

Well first and foremost my identity is in Christ, and so that’s where I see my identity. In addition, I think, me as a person, if you look at my history, it’s, you know, I have grand-parents, great grand-parents from China, my parents born and raised in Taiwan, I was born and raised in America, and so there’s a lot of history.<sup>131</sup>

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122. Will Leitch, *Rocket Man*, GQ (Oct. 16, 2012), <http://www.gq.com/story/jeremy-lin-gq-november-2012-cover-story?currentPage=1>.

123. Id.

124. Ghosh, *supra* note 89.

125. Ghosh, *supra* note 95.

126. Id.

127. Id.

128. Ghosh, *supra* note 89.

129. Press Release, New World Development Company Limited, New World Group Launches New World Springboard—NBA Star Jeremy Lin Makes Debut Appearance in Hong Kong to Officiate at the Inaugural Ceremony (Aug. 9, 2012), <http://www.nwd.com.hk/content/new-world-group-launches-new-world-springboard-nba-star-jeremy-lin-makes-debut-appearance>.

130. Asian Ballers, *Jeremy Lin 林書豪 “Chinese, Taiwanese, and American” Heritage Ethnicity Nationality*, YOUTUBE (Feb. 16, 2013), <https://www.youtube.com/watch?v=tKsLZGjGam0> (transcribed by author).

131. Id.

In the above response, we can see Lin avoiding the Chinese vs. Taiwanese vs. American identity issue, instead emphasizing his identity as a Christian. He directly answered the interviewer's question by answering that he was, by identity, a Christian. He then proceeded to cover all possible bases—the PRC, the ROC (Taiwan), and America, although not in a way which directly answered the interviewer's question. Lin's response here further highlights the twilight-zone and tug-of-war notion of Chinese-American identity discussed in this Article. His experience is a specific, actual example of how Chinese-American identity is not just about issues associated with "Americanization," but also with "Sinification" (which itself is a complex process, depending on what you mean by "Chinese"—PRC, ROC, or Taiwanese). Given the perceptions of "foreignness" in the "Americanization" vector and the discomfort with being fully "Sinicized," Chinese-Americans' identities are tugged in various directions.

### CONCLUSION

This Article has attempted to reconceptualize and complicate discussions of Chinese-American identity in AAJ scholarship through an examination of how Chinese-Americans are perceived and treated by PRC and ROC society and, more importantly, PRC and ROC *law*. It has shown—through the examples of Chinese-American ESL teachers and former U.S. Ambassador to China Gary Locke—that Chinese-Americans are subjected to forced Sinification. At the same time, such social perceptions and treatment are reinforced by PRC and ROC nationality law, which can automatically confer PRC or ROC nationality on Chinese-Americans, even those who were born in the United States and have never stepped foot in the ROC or PRC. In other words, PRC and ROC society and their legal systems remove the "American" aspect of "Chinese-American" identity. Political debates within the ROC whether Taiwanese are "Chinese" ("Chinese" as in the ROC) or "Taiwanese" further complicate Chinese-American identity. At the same time, Chinese-Americans face continued perceptions of "foreignness" and "inassimilability" which hinders their ability to fully "Americanize." The net effect of this tug-of-war of sorts is a Chinese-American twilight zone of identity. The case of Jeremy Lin offers a specific example of a Chinese-American who has experienced such effects and has had to describe his identity in American, Chinese, and Taiwanese terms.

What are the normative implications of the reconceptualization of Chinese-American identity? Of course, one may lament this twilight zone of Chinese-American identity and argue that Chinese-Americans have an identity crisis of sorts because they feel they do not belong anywhere—not perceived as "American" enough in their home country of birth and being perceived as "too Chinese" by their ancestral home countries, the ROC or PRC. However, the twilight zone nature of Chinese-American identity need not be a negative or a cause for despair. Chinese-Americans can and should view their multiple identities—and perhaps nationalities—as a positive. It can allow them to seamlessly assimilate into both the United States (the racialization and "foreignness" attributions notwithstanding) and

their ancestral home countries, where they are perceived as fully “Chinese” both by society and by the law. This seamless assimilation has practical and abstract benefits as well. The practical benefits are obvious—their cross-cultural, cross-identity sensibilities would be highly sought after by employers in an increasingly globalized economy. The abstract benefits also merit attention—Chinese-American identity is in fact enhanced and enriched by both Chinese/Taiwanese culture and identity, as well as American identity. A space is created for Chinese-Americans to have more freedom and *flexibility* to create and forge their own identities depending on the specific time and place.