

Enforcing Chinese Exclusion

The Scott Act of 1888, Part 1

By Philip Chin

By 1888, the Civil War, the hideousness of Reconstruction, the hatred that had engendered, and years of economic depression had established political facts on the ground that were particularly hostile towards the Chinese in America. An unbroken arc of Southern states were now solidly Democrat and busy building the legal and political framework for segregation. These Southern Democrats had allied with Western Republicans to pass Chinese Exclusion laws in exchange for lax congressional oversight. Federal authorities would look the other way as state governments across the South systematically violated the civil and political rights of African Americans.

The country as a whole was still traumatized by the losses suffered in the Civil War. Today's historians estimate that 3% of the total American population had died during the war, either directly in battle, through injuries, or by disease. That would be the equivalent of losing just over 9 million people in today's 2012 population. If the Civil War had been the price to free the slaves and give civil rights to African Americans on paper, what would be the cost of actually enforcing those rights? Most white Americans had no intention of ever exploring what that answer might be. If they even thought of the Chinese in America at all by 1888 they saw them more as a matter for law enforcement, not of civil rights. As Senator John Sherman, Republican of Ohio and reluctant supporter of Chinese exclusion said at the time, "Whatever differences there may have been in the Senate or in the country with regard to the restriction of Chinese immigration, the time has come when I believe the general sentiment of the people is that the law on the subject should be fairly enforced; that the Chinese laborer should be excluded from enjoying the benefits of our country because he will not adapt himself to the civilization of our country."

President Grover Cleveland had directed Secretary of State Bayard to negotiate a new treaty with the Chinese Government. The time the immigration of Chinese laborers would be banned for ten years followed by an automatic renewal of another ten years if there was no renegotiation or renunciation of the treaty. There would no longer be the charade of saying it was a temporary ban as proponents of Chinese Exclusion had argued over and compromised about to overcome the squeamishness of their fellow members of Congress and the president as they had in 1882. The Bayard-Zhang Treaty of 1888 however did retain the provision protecting Chinese that were grandfathered in as legal American residents by the 1882 law. Those Chinese would still be allowed to come and go as they pleased with proper identification provided by American immigration authorities, even though this had worked out badly in practice. Many of these documents were challenged as fraudulent in the US federal courts by the same American immigration authorities that had issued them. This had become just another legal way of harassing the Chinese and discouraging others from coming to America even those allowed to do

so legally. The very few genuinely fraudulent document holders that were caught were held up as examples of how all Chinese immigrants were out to violate American law.

In May 1888, the Senate approved the Bayard-Zhang Treaty but with two amendments; the first canceled all return certificates of the Chinese who were then outside the United States, unilaterally abrogating one of the key provisions of the Angell Treaty of 1880 allowing free travel. The second would impose a permanent twenty year ban that would continue indefinitely if the treaty wasn't renegotiated or renounced. Congress as a whole then passed legislation implementing the treaty in anticipation of Chinese ratification in August 1888. Chinese delay led to fears of a rejection of the treaty so on September 3, 1888, Representative William L. Scott, a Democrat of Pennsylvania, introduced H.R. 11336 to force the Bayard-Zhang Treaty provisions as amended into United States law without first getting any agreement from the Chinese Government.

His key line of attack was on the fraudulent return documents and how the system had been abused, ignoring just how few genuine frauds had actually been caught. That the United States federal courts were enforcing the law without overt bias and actually protecting the civil rights of the Chinese was simply intolerable in his eyes, "As the truth is a merchantable commodity from a Chinese point of view, those certificates were in many instances sold to Chinamen who had never been in this country, who took them and came to the United States in violation of the law. When a Chinaman reached the port of San Francisco, the duty of the collector of the port under the law was to determine his identity; and when the collector by positive evidence knew that the Chinaman offering the certificate was not the person to whom it had been originally issued, the collector at once required such Chinaman to leave the country. But it was just here that the United States courts came in and upon habeas corpus proceedings declared in many instances that the Chinaman offering the certificate was the original owner. By this process, Chinese laborers by the thousands have been permitted to come to the United States fraudulently, under certificates that had never been issued to them."

Nobody in the House of Representatives pointed out the exaggerations and hyperbole being used by Scott. The only point the other congressional representatives present appeared to be concerned about was keeping those certificate holders who weren't then in the United States from ever returning to the country. Would the proposed law be strict enough to accomplish this? Representative Scott assured them that it would be. After thirty minutes of "debate" the bill was passed by voice vote.

The Senate moving with extraordinary speed took up the bill just hours after it passed the House. Senator William M. Stewart, Republican of Nevada, introduced the bill for immediate consideration. entirely bypassing the Senate Foreign Relations Committee.

Senator Henry Teller, Republican of Colorado, made his attitude quite clear, "There are now about one hundred thousand Chinese who have come into this country, and I myself will welcome any legislation that shall deport every single one of them from the United States and send them back to China, where they belong."

Senator James Z. George, Democrats of Mississippi, expressed his strong racial bias, "My objection to the immigration of Chinese into this country is not that they do not stay here, not that they do not become citizens of the United States, but it is based upon an entirely different ground. They are an inferior race, unfit for citizenship in the United States and unfit to be competitors with American laborers."

Senator Matthew C. Butler, Democrat of South Carolina, asked if the proposal banning the return of Chinese to the United States under the certification system violate existing treaty obligations with the Chinese Government.

Senator John Sherman, Republican of Ohio, agreed that it would, "Undoubtedly, because the existing treaty provides for the certificates; they have been issued under the existing treaty, and by virtue of those certificates the Chinese have a right to come back here for a certain time and under certain circumstances. It is only because the provisions of the law and of the treaty have been violated by fraud and perjury that such a measure as this would be justified."

Senator Butler spoke again and while he supported the measure he questioned why it was being pushed with such urgency, "I think it is a game of politics, this whole business, and not a very seemly one, either, I must say. But for the fact that we are on the eve of a Presidential election and each party wants to get the vote of the Pacific slope, this Senate would not be engaged in this debate."

Senator James Z. George then launched a vitriolic attack against the Republicans. He attacked the Burlingame Treaty and the Republicans that had passed it. "A great many Chinese came in that door thus opened by the Republican Party... The Republican Party had said the Chinese had an inherent and inalienable right to come - a right that inhered in them as men, a right which they could not alienate, a right which it would be an outrage of any people in the world to deprive them of. That is what is meant by an inherent and inalienable right."

"Now we find our Republican friends, having through all this long series of years fought under this banner, not only for Chinese immigrants to take bread out of the mouth of the American laborer, but also having fought for what they called in grandiloquent language in the treaty of 1868 the inherent and inalienable right of a Chinaman to come here and to be a citizen and to vote... We who have borne the heat and burden of the day, when we march forward to get toward the setting sun, covered with dust and wearied with this strife to exclude the Chinese are met by these eleventh hour men."

Senator John H. Mitchell, Republican of Oregon angrily responded pointing out that it had been the Democratic Governor of California, John McDougal, who'd spoken to the state legislature in 1852 to welcome the Chinese, "He was the first man in the United States of America who ever referred to Chinese immigrants as being the most desirable of our adopted citizens, or as being desirable at all as citizens. He was a Democrat, the head of the Democratic Party in California."

"When the Senator from Mississippi therefore gets up here in his defiant way and charges the Republican Party of this country with opening the door to Chinese immigration to this country, he simply proclaims to the world his own ignorance of what he is talking about, or else he is not

as careful as he should be in refraining from knowingly misrepresenting the facts. The door to Chinese immigration was opened by the Democratic Party of California in the manner I have stated."

Partisan exchanges over who was to blame for Chinese immigration continued all throughout the next day. Senator Henry Teller, Republican of Colorado said it was the Republicans that had first proposed restricting Chinese immigration, quoting Governor Leland Stanford of California who said in his inaugural address in 1862, "While the settlement of our State is of the first importance, the character of those who shall become settlers is worthy of scarcely less consideration. To my mind, it is clear that the settlement among us by an inferior race is to be discouraged by every legitimate means... There can be no doubt but that the presence among us of a degraded and distinct people must exercise a deleterious influence upon the superior race and to a certain extent repel desirable immigration. It will afford me great pleasure to concur with the Legislature in any constitutional action having for its object the repression of the immigration of the Asiatic races."

Senator Teller failed to mention that Governor Stanford, along with his business partners of the Central Pacific Railroad, had soon started hiring and importing Chinese laborers, up to 12,000 of them hired at the peak, to build the Western half of the Transcontinental Railroad (1863-1868) just after he had so strongly denounced them in the California State Legislature. Stanford was widely condemned for his hypocrisy but later became US Senator for California and the founder of Stanford University.

Teller continued his denunciation of the Democrats, raising the specter of the Civil War to attack the Democrats, "Mr. President, I might mention many other things to support my position that it was cheap labor that the Democratic Party wanted and it was cheap labor for which they went to war. It is cheap labor that they want today. Mr. President, I do not want cheap labor. I know that cheap labor may be had from Chinamen; I know it may be had from slaves, but I do not want it, and I do not intend by my vote to have it. I believe American laborers all over this country are sufficiently intelligent to see that free trade means cheap labor, that it is akin to the old system which we abolished, and I do not believe that they will kindly listen to lectures given to me from the other side of the Chamber by the Senator from Mississippi or the Senator from Alabama, or any other Senator who will stand in his place now, or who would a few years, and assert the right of one man to own and control another."

A third day of debate continued the partisan bickering. Senator James Z. George, Democrat of Mississippi, again blamed Republicans for Chinese immigration but apologized for stating the doors had been opened by them in 1868 with the Burlingame Treaty. Instead he blamed Republicans for passing anti-coolie legislation in 1862 that had contained the loophole provision allowing "any voluntary emigration." Senator George then again went through the whole list of Republican failings over Chinese immigration as he had on the first day. More angry exchanges with Republican senators followed until a vote was called. Thirty two voted in favor, none were opposed, and forty four were recorded as absent. A quorum of thirty nine senators present was needed to pass a bill so the measure failed.

The next day, September 6th, Senator John Sherman, Republican of Ohio, argued that perhaps the Senate was acting too hastily. The intentions of the Chinese Government were not known yet and it would be better to secure a new treaty rather than violate the old one. "I do not care to be embarrassed about voting on this bill, and I appeal to the Senate to let the matter stand over a day or two until we ascertain the facts. No harm can result to the people of California from a short delay... I do not like to see the Congress of the United States rush pell-mell like a herd of buffaloes, at the fire of a single shot, by some rumor that may prove to be false."

Senator Orville Platt, Republican of Connecticut, who'd been an opponent of the Chinese Exclusion Act in 1882 then spoke up in favor of exclusion, "I do not take much stock in this idea that they should not be permitted to come here because they belong to a particular race; but I have come to see and believe, and in that respect my sentiments have somewhat changed, that the great bulk of the population of China, and especially that portion of it that will come here to enter into competition with our laborers, is of a character which is incapable of assimilation with us in any form, incapable of having the aspirations which an American citizen must have in order to make him a real sovereign of the Republic. I have come to believe that, and I am so thoroughly satisfied of this that I have become willing to exclude all Chinese laborers from the United States."

Senator Joseph E. Brown, the former Confederate governor of Georgia and now Democratic Senator of that state, had been one of the few Democrats to argue against the Chinese Exclusion Act. He'd ended up abstaining from the 1882 vote. He now offered an amendment to exempt from exclusion those Chinese laborers absent from the United States carrying return certificates who were already in transit back to the United States upon enactment of such a law. This he argued would create special hardship, "If the bill becomes a law, he would be met by an officer of the United States, who would inform him that notwithstanding he had wife and children and property in San Francisco and may have lived there for twenty years, and notwithstanding he had left home with the guarantee of both governments that he should return on his certificate, that the Congress of the United States, without giving either him or the Chinese Government any previous notice, has passed a law forbidding his return, but he must return to China. Doubtless there will be a number of such cases, and it seems to be not only a great hardship, but a cruelty and an outrage that no existing public sentiment nor any political exigency can justify."

Such a position so conciliatory towards the Chinese was near political suicide for any Democrat by 1888 so Brown made it clear that while he supported the proposed legislation he was concerned that it was violating existing obligations under the Angell Treaty by legislative fiat. "This proposed act is in the very teeth of the treaty, and is in the very teeth of the implied pledge made by this Government to each Chinaman who was a resident of the country at the time the treaty was ratified, and who has complied with the statute on that subject, that he shall have the right to return to his home in this country."

Senator Henry Teller, Republican of Colorado, then made a point of order saying that Brown's amendment was already too late. Amendments could no longer be proposed once the third reading of the bill had already been ordered. Senator Brown then sought to get unanimous consent for consideration of his amendment but Senators Teller and Mitchell (R-Ohio) both objected so the proposal failed.

Senator Wilkinson Call, Democrat of Florida, then displayed the same contradictory ideas and bizarre reasoning he'd shown in the debates over Chinese Exclusion in 1882 when he'd objected to the legal flaws of the legislation and anticipated the problems it would cause then voted for it anyway simply because the people of the West Coast wanted such legislation. For a Democrat in racially segregated Florida in the 1880s his views were extraordinary, arguing as they seem to be for universal racial equality, "I have not deceived myself with the allegation that these people should be excluded because they do not assimilate with the people of the United States, that they do not intermix and intermarry with them, when there are twelve millions of people in this country as diverse from the white American people as any two races within the whole range of creation. Is there not as great diversity between the colored man, the African, and the white man, as there is between the Mongolian, the yellow man, and the white man? Yet the African make a reasonably good citizen and performs a useful part in the public economy of the country...

"Neither is there anything in the proposition that American labor is to be degraded, or that it is to be substituted by and with an inferior race and a different civilization. These are not the economics which are to prevail in this country or in the world's future."

Nevertheless he supported the legislation because whites on the Pacific Coast wanted it even if he disagreed with their reasoning, "I should accord them the right to keep them out, although it be true that these foreigners, these Mongolians, may be made useful citizens... I recognize the fact that they have an ancient civilization from which something is to be learned; that they have eminent examples of virtue and character in their history; that for thousands of years they have maintained government and unity of race and civilization, and that their history for the most part is unstained with the blood and human suffering which have characterized other peoples."

The Senate voted once more, thirty seven were in favor, none opposed, and thirty nine were absent. Again, the Senate had failed to muster a quorum.

Another vote was taken the next day and this time a quorum was reached. Thirty seven voted in favor, thirty six were absent. Senators Joseph E. Brown, Democrat of Georgia, George F. Hoar, Republican of Massachusetts, and James Wilson, Republican of Iowa, were the only three that voted against. Senator Brown had established his reputation as a rather eccentric thinker as Confederate Governor of Georgia. He was such a proponent of state's rights that he opposed conscription into the Confederate Army and even withdrew the Georgia militia from Confederate military service right after the Battle of Atlanta in 1864, ostensibly to help bring in the fall grain harvest, but really to keep them from having to serve outside of Georgia even to save the Confederacy. Senator Hoar had been a consistent pro-Chinese advocate throughout his career, supported the women's right to vote, and would later stand out for opposing the Spanish American War and denouncing US imperialism in the Philippines. Senator Wilson had been a Radical Republican in the House of Representatives (1861-1869) whose first act when he took Senate office in 1883 had been to introduce unsuccessful legislation to have the federal government enforce a ban on racial discrimination by private individuals and organizations that would have essentially gutted state Jim Crow laws. He was about seventy to eighty years ahead of the majority of his fellow politicians and citizens on civil rights.

Senator Henry Blair, Republican of New Hampshire, who'd voted for the Scott Act, then moved to reconsider the vote, restarting arguments again.

Senator Wilkinson Call of Florida spoke up restating that while he favored the bill he thought the Scott Act was the wrong way to go, "It seems to be as if this whole discussion and all these measures are intended to show which party or which individual will go farthest in appearing to persecute and oppress these Chinese people, as if that were the object rather than to devise a proper and an efficacious method of preventing their migration in any great numbers into this country, and at the same time preserving commercial relations and good feeling with the Government of China."

He also felt that absolute exclusion of all Chinese as many of his colleagues had spoken up in favor of was also a mistake and too far overreaching, "I believe the Chinese civilization has something which can be taught advantageously to all people... I believe that when other peoples and nations have been committing the most horrible cruelties, religious fanaticism and political cruelties, these people, who have existed for so many years, with so many examples of the moral virtues which our religion teaches, are not... to be treated as pestilence and a scourge, and a necessary evil to be banished from all communication with mankind."

Senator Teller then moved to table the motion to reconsider. All it required was a simple majority vote to move the Scott Act forward. The tabling motion failed to achieve a quorum three times. Thirty nine senators had to be present for each vote to make a quorum, but not enough could be found voting. After each failed vote a motion was made to adjourn that easily achieved quorum but those against adjournment held the majority each time. It was clear that enough senators were actually present in the Senate building but not enough were willing to stand up to have their votes counted. Exasperated by these maneuvers the Senate finally adjourned on a voice vote for the weekend.

What could explain this legislative shambles? It certainly wasn't sympathy towards the Chinese, at least not for the majority of senators. Most of them, and the American public in general, fully believed in the doctrine of white racial supremacy. This was well evidenced by public speeches, votes, newspaper editorials, and even in the most respected scientific journals of the time. Memories of what came to be called the Long Depression (1873 through 1879) played a part. Those years of economic misery had allowed demagogues like Denis Kearney to scapegoat the Chinese and charge them with taking away white American jobs. The near hysterical public demand for anti-Chinese legislation from the Western states was still a potent force in national politics, especially when presidential elections were so close from 1876 through the 1880s. Republicans and Democrats were eager to pass the blame onto the other party for Chinese immigration. Being an anti-Chinese politician also had the upside in that it came with no political price as they had taken away the right of Chinese to naturalize and become voters.

Senator John Sherman's argument that the Chinese Government's position on the Bayard-Zhang Treaty wasn't known yet and that it would be premature for the Senate to act undoubtedly reflected the private feelings of many senators. Under the Constitution, the Senate is charged with the solemn duty of approving treaties signed by the United States. They take the matter of upholding those treaties very seriously. Breaking the Angell Treaty allowing the return of legal

American residents as the Scott Act proposed was a very grave step, even using fraudulent immigration documents as an excuse. The United States would be breaking its solemn word to another country. In the 19th Century the concept of a gentleman's honor and the value of his word were inextricably tied together and this concept extended to the Senate and the treaties that it approved of. Reluctant senators could now point to their vote to support the Scott Act to satisfy their racist constituents while at the same time denying it a quorum to let it actually move ahead.

Chinese American Heroes would like to thank **Martin B. Gold** for his book, ***“Forbidden Citizens - Chinese Exclusion and the U.S. Congress: A Legislative History”*** upon which this work is based.