

## **Enforcing Chinese Exclusion Part 3**

### **The Geary Act 3**

### **Senate Debates**

**By Philip Chin**

Debate resumed on Monday, April 25th. Senator Watson Squire, Republican of Washington, spoke first. He described the economic conditions that had led to anti-Chinese attitudes, notably the economic depression of the 1870s stemming from the Panic of 1873 that had evolved into the worldwide Long Depression (1873-1879.)

"The work upon the railroads in that part of the country had been to a large degree suspended and many of the laboring class were without employment. A profound feeling of dissatisfaction and unrest prevailed among the masses, and hostility against the Chinese was developed to a remarkable degree. Public meetings were held at which heated discussions prevailed. The Chinese were driven from their mines and their habitations destroyed."

As territorial governor of the Washington Territory from 1884 to 1887 Senator Squires had worked with federal troops to protect the Chinese from mob violence. He described the experience as giving him better understanding of the situation and turned him against the Chinese, "These trying events led me to understand, as I had never done before, the intense feeling of antagonism that is seated in the breasts of the great body of our laboring people in reference to the Chinese."

He noted into the congressional record the report he'd written back in 1866 while he was territorial governor that laid out the problems in getting convictions against anti-Chinese mobs, "Although a large proportion of our citizens entertain feelings of loyalty and patriotism toward the Government... they are inclined to be lenient to those who engage in acts hostile to the Chinese, and this fact makes it extremely difficult to secure convictions of this class of offenders against the law."

He'd also noted at the time that because of the limited number of customs agents involved that enforcing Chinese exclusion along the Canadian border was a near impossible task.

His conclusion in 1866 was that the need for Chinese labor had passed with the building of the railroads, "The hiving hordes of Chinese in the towns is thought to interfere with the healthy growth and development of society, and is a constant source of uneasiness and dissatisfaction to the white laborer."

Senator Squires expanded upon his observations from 1866 about insecure borders and brought his talk back to the present day in 1892. Too many Chinese were continuing to

slip into the country illegally from Canada and laborers were still being admitted into the country legally but based upon false residency or birth claims. If such problems continued he would favor a total ban on all Chinese.

Senator Squires then noted that the San Francisco US Attorney had said that claims of US citizenship through native birth had skyrocketed since exclusion had become law. Such claims were now being made in a full 75% of all deportation cases brought before the area's United States District Court. Such cases shouldn't rely solely on untrustworthy Chinese witnesses alone. He recommended that, "In accordance with the recommendation of the district attorney at San Francisco, I would legislate that at least one white witness shall be required to prove native birth."

Senator John Mitchell, Republican of Oregon, argued that the clause nullifying every treaty signed between the United States and China should be kept in the bill. Abrogating every treaty would set no precedent as the Angell Treaty guarantee of return certificates had already been unilaterally nullified by the Scott Act as many other members of Congress had already stated.

"If we are willing to go one step in the abrogation of the provisions of any one of those treaties for the purpose of protecting our own interests in this country against Chinese immigration, we should be willing to take all necessary steps to make our legislation effective. That is my position. This I think the bill of the House of Representatives does and I think the existing legislation does not."

He said the fact that China had not broken off trade relations with the United States over the Scott Act showed that fears of Chinese economic retaliation were overblown. He also denounced China for already breaking the treaty by not doing more to crack down on abuse of the return certificate system.

"It has been carried on presumably with their knowledge and consent, because it does not seem that there was any protest made or any steps taken by the Chinese Government or any representative of the Chinese Government to repress the illicit immigration or the horrors accompanying it."

Senator Mitchell also pointed to the Chinese failure to ratify the Bayard-Zhang Treaty as the cause that had precipitated the Scott Act. Changing immigration policy through treaties was obviously pointless with the Chinese and Congress had to act on its own on the matter.

Senator Wilkinson Call, Democrat of Florida, had distinguished himself in previous debates with his strong defense of the Chinese as a culture and as a people but had nevertheless always bizarrely voted for anti-Chinese measures because the people of the West Coast wanted such legislation and Senator Call believed they should get what they wanted. Now he urged caution in regards to the Geary Act.

"Mr. President the importance of this bill and the policy which is establishes entitle it to a high degree of careful consideration. The bill proposes the entire exclusion of Chinese

from the United States, and as a consequence, the entire exclusion of the people of the United States from China. It is a bill declaring it to be the policy of the people of the United States that there shall be absolutely no intercourse between them and the vast multitudes which comprise the population of China."

"Shall we assume that so vast a portion of the human race is incapable of civilization and progress? Shall we declare that the principles of our republican Government and our religion are a failure and can have no effect upon these people when brought into contact with them? Such a proposition finds no warrant in reason and no warrant in the history of these people."

"If it were for no other reason than the vast antiquity of these people, the learning and tradition that must be accumulated amongst them, this policy of non-intercourse and prohibition would be in itself subject to the severest condemnation."

General debate was then closed. Senators voted on adopting the Senate Foreign Relations Committee version of the Geary Act to replace the House version by a vote of 43 in favor, 14 against, and 31 abstentions. Because the bill had been amended from the House version the floor was now reopened to add further amendments to the bill.

Senator Orville Platt, Republican of Connecticut, who'd supported the Chinese then switched sides to support exclusion, now proposed to extend all anti-Chinese legislation except the Scott Act. That law had broken treaty obligations and Senator Platt wanted nothing to do with it.

"I cannot vote for the bill without this amendment. We are told that the passage of that act was a violation of the [Angell] treaty of 1880. It is agreed on all sides that it was a violation of that treaty. It has been remonstrated against by the Chinese Government... Under these circumstances, I cannot again vote by an extension of that act to abrogate the treaty or vote for a bill which is in conflict with it."

"I know I voted for it before. I voted for it under protest. As all Senators know, it was voted for under somewhat peculiar circumstances. It has been thrown in the face of everybody who voted for it and who is today opposed to the House bill that we violated or abrogated the treaty of 1880 that we propose to do it again by this bill; and that we should not stickle very much about going further and violating the treaty more."

Senator John Sherman, Republican of Ohio, opposed the Platt amendment because he preferred comprehensive immigration changes instead of piecemeal ones, but he took the opportunity to also denounce the Scott Act, "I believe the Scott law was one of the most vicious laws that have been passed in my time in Congress. I believe now and I believed then that it was a mere political race between the two Houses, then opposed to each other in politics, in the face of a Presidential election. I say it was a mere political race to try and influence the vote in the last Presidential election."

Such haste, he believed, had destroyed any hope of reaching a diplomatic solution over immigration policies through treaty with China.

The Platt proposal was defeated decisively.

The next proposed amendment was to lengthen the term of imprisonment of Chinese caught for the second time to one year and impose a prison term of six months for a first offense. Senator William Chandler, Republican of California, argued that, "The Senate provision is only for imprisoning a Chinaman unlawfully coming in here on a second conviction. It is already developed in this debate that the deportation of Chinamen who come here unlawfully, without imprisoning them, does not deter them from coming."

This proposal was rejected by voice vote.

Senator Charles Felton, Republican of California, proposed that all Chinese in the United States be given one year to secure a certificate of residence from the collectors of internal revenue. Any caught without such a certificate would then be automatically classified as here illegally. This too was rejected by voice vote.

With no further amendments offered, the Geary Act, as amended, was approved by voice vote and a joint Congressional conference was agreed to iron out differences between the House and Senate versions.

## **Senate and House Debates**

The joint conference report was submitted on April 2, 1892. It proposed reinserting two provisions removed from the Senate version of the Geary Act. No bail would be given to Chinese in habeas corpus petitions. Chinese laborers would also have to get a certificate of residence. In deportation proceedings testimony about lawful residency had to be supported by "at least one credible white witness."

Senate debate on the joint conference report started on May 3, 1892. No amendments were allowed under the procedures for a joint conference report. Senator John Sherman, as Chairman of the Senator Foreign Relations Committee, had been a member of the joint conference, but had refused to join the majority in approving of it. He began the debate by explaining his reasoning.

"Many Chinese persons must apply to our officers to get a certificate and to prove their right to obtain that certificate, and they must hold it and have it and possess it at all times as an evidence of their right to stay in this country. So we should have one hundred or two hundred thousand people, nearly all men who have to make a living by their daily labor, scattered through our country, mostly employed in the humbler occupations of life, armed with their certificates, liable to be called upon by any collector of customs or his officers, by any internal revenue collector, by any marshal, by any officer of the United States to show that certificate, and unless he can show it or prove its loss - a thing very difficult to be done, for he must make certain proof by one white witness, although very few white men can distinguish Chinamen unless they are acquainted with them - he is liable to be deported abroad to the country from which he came or to China. The burden of proof rests upon him to show he was here at the time

of the passage of this law. He does not stand like an ordinary person presumed to be entitled to all rights and privileges, but he must prove himself in the affirmative."

"This inaugurates in our system of government a new departure, one I believe never before practiced, although it was suggested in conference that some such rules had been adopted in the old slavery times to secure the peaceful and quiet condition of society."

Senator Sherman believed that the certificate system, presumption of guilt, and denial of bail were in violation of the Burlingame Treaty obligation that the Chinese had to be treated just like any other citizen from a most favored nation. He also made it clear that while he was perfectly willing to exclude Chinese from the United States, doing so should be done through diplomacy and treaties rather than through Congress.

Senator Joseph Dolph, Republican of Oregon, argued that the certificate system would be of great benefit to the Chinese laborers, "Any Chinese laborer now in the United States is liable to be arrested today on a claim that he has wrongfully come into the United States... and is not entitled to remain in the United States; and he is liable to be tried on that charge before a judge or before a commissioner, and anybody maliciously or otherwise may cause his arrest and the trial of that question. But if he had a certificate duly issued in legal force, he would be exempt from any interruption and annoyance of that kind. So the certificate would really be a benefit to him. It would be evidence of his right to be in the United States and to remain in the United States which he could carry with him at all times."

Senator Richard Coke, Democrat of Texas, asked Senator Dolph about the provision requiring at least one credible white witness to testify in favor of a Chinese in deportation hearings. Was this intended to exclude non-whites as witnesses?

Senator Dolph responded, "I think the intention of the conference committee was to provide a witness who was not a Chinese witness. I presume that was it; the use of the word white was accidental. It was copied from the House bill but I do not think any harm can come from this provision, because all Chinese in this country are employed by white people."

Senator John Morgan, Democrat of Alabama, had also been part of the joint conference. He argued that the conference version of the Geary Act represented a significant improvement from the original House version. Instead of banning all the Chinese except for diplomats, the old exemptions were still being made for merchants, scholars, and tourists, as well as diplomats. He also argued that barring bail in habeas corpus cases brought by the Chinese was reasonable in light of many Chinese skipping bail and never appearing for their court hearings. Chinese would be kept aboard ship until their habeas corpus hearing was concluded, under the responsibility of the ship's captain, not held in government custody.

In effect Senator Morgan was saying that the government would have no responsibility for violating the civil rights of the Chinese being held as it would be the ship's captain holding them captive, not the government. That any commercial ship captain would

have to be insane to wait around in port keeping a Chinese prisoner for weeks or months waiting for their deportation case to be adjudicated was left unsaid.

Presuming the Chinese were guilty before any trial also didn't bother Senator Morgan, "The question is raised here whether we do not put a criminal attitude upon a Chinaman the moment he undertakes to land in the United States and compel him to move out of it. Yes, we do. The treaty does that when the treaty limits his right to come here, and does not give him the full right and privilege of landing on our shores. He comes claiming a privilege, but not having it under the treaty absolutely, and he must show that he falls within the meaning of the treaty and of those laws that we have passed to carry the treaty into execution. In doing that, the onus of proof is always upon him..."

"It is not for the Government to show that he has come here improperly, for if the Government had that duty imposed upon it, we should never be able to discharge it with any justice or equity."

Senator Orville Platt, Republican of Connecticut, objected to the certificate system and the presumption of guilt in deportation cases that the new law would create. Congress was saying that the only Chinese allowed to get such a certificate would be those that could prove that they were in the United States prior to passage of the Chinese Exclusion Act of 1882. Proving that residency to a collector of internal revenue would be very difficult especially if the Chinese had moved within the ten years since 1882. This would constitute a "very great injustice."

Senator Wilkinson Call, Democrat of Florida, announced he would vote against the conference report, saying the denial of bail provision was unconstitutional.

"There can be no question that this new bill is in absolute violation of the rights of the Chinese who are here under the former treaty. there is no doubt that the judicial power of the United States by the Constitution is extended to every Chinaman who is here under the protection of that treaty. Now, for an act of Congress to say that Chinaman shall not have that protection according to the terms of that treaty is beyond the power of Congress, in my judgment. To say that an alien who comes here and claims the right to come under any treaty, whether he possesses it or not, shall be denied bail when taken before a United States court for the purpose of investigating the question is unquestionably an act of barbarous legislation in respect to the people of any country whatever."

The vote on the conference report saw 30 senators voting in favor, 15 against, and 43 abstentions. The measure was passed and the conference report was passed back to the House of Representatives for their action.

With just two days remaining before exclusion expired the House resumed debate on May 4, 1892. Representative Thomas Geary, Democrat of California, who'd introduced the original bill said, "All those drastic features that some gentlemen found so much fault with have been eliminated by the Senate. The Senate has agreed to this report, and we are anxious to get this through, because the law expires on the day after tomorrow."

Representative Robert Hitt, Republican of Illinois, pointed out that the conference had in fact added new language to the bill, notably the certificate requirement and the denial of bail provisions. His denunciation of the Geary Act reflected his past as a close friend of Abraham Lincoln and as a longtime opponent of slavery.

"It compels every man in this country who is a Chinese laborer to go to the collector of internal revenue, provide his title to remain in the country, and apply for a certificate - a pass, a sort of ticket of leave. To obtain it he must himself prove his whole case; he is assumed not to be entitled to it; the burden of proof is all upon him. The rule of all free countries and all civil laws is reversed. He must prove residence here through a long series of years, back to the date of enactment of the whole series of stringent laws since the [Angell] treaty of 1880. He must find the witnesses in different places where he may have worked or resided, and one witness must be a white man. Even colored men are not admitted as credible witnesses. Everyone can understand how difficult, how almost impossible it is, to make out such a long and costly line of proof, especially to a laboring man. This he must prove affirmatively or he cannot get a certificate. If he is not granted a certificate, and we can readily see how officers on the Pacific Coast would be glad to refuse it, he is arrested, imprisoned for six months or less, and then expelled from the country. If he obtains it, he must carry it around with him or be liable instantly and always to arrest, imprisonment, and deportation, like a convict. It is proposed to have 100,000 or some gentlemen assert, 200,000 men in our country ticketed, tagged, almost branded - the old slavery days returned."

"Never before in a free country was there such a system of tagging a man like a dog to be caught by the police and examined, and if his tag or collar is not all right, taken to the pound or drowned or shot. Never before was it applied by a free people to a human being, with the exception (which we can never refer to with pride) of the sad days of slavery..."

He ended his speech by saying the bill, "so plainly violates our promises that none can vote for it or mention that vote without a blush."

The House voted in favor of the conference report 186 in favor, 27 opposed, and 115 abstentions. With this the Geary Act extended the Chinese Exclusion Act of 1882.

Chinese in America resisted the law by refusing to register as required. Only a little over three thousand registered out of the estimated population of one hundred thousand. They had the tacit support of the Chinese Government and the overt support of the Chinese Six Companies that urged that registration fees instead be contributed to a legal defense fund to fight the law. The legal challenges against the Geary Act were finally consolidated in the case of *Fong Yue Ting v. United States*, 149 US 698 (1893). The Supreme Court by a 5-3 decision dismissed all constitutional challenges. Justice Horace Gray, in his majority opinion, ruled that, "Congress, having the right, as it may see fit, to expel aliens of a particular class has undoubtedly the right to provide a system of registration and identification of the members of that class within the country..."

Justice Stephen Field wrote in his dissent, "The decision of the Court, and the sanction it would give to legislation depriving resident aliens of the guaranties of the Constitution, fill me with apprehensions. Those guaranties are of priceless value to every one resident in the country, whether citizen or alien. I cannot but regard the decision as a blow against constitutional liberty when it declares that Congress has the right to disregard the guaranties of the Constitution intended for the protection of all men domiciled in the country with the consent of the Government, in their rights of person and property."

Justice David Brewer concluded sarcastically in his dissent that, "In view of this enactment of the highest legislative body of the foremost Christian nation, may not the thoughtful Chinese disciple of Confucius fairly ask, 'Why do they send missionaries here?'"

In the end the Geary Act's registration system proved to be a failure because of continued and widespread civil disobedience. In general, the Chinese population in America not only continued to refuse to register with internal revenue collectors for residence certificates, but also refused to pay their own deportation costs back to China. To catch and deport the estimated 97,000 or more Chinese that had failed to register would have cost the federal government an immense amount of money that it simply was unwilling to spend. The few funds that Congress provided for enforcement was nowhere near the price necessary for the system of registration and deportation to effectively function. Not for the first or last time Congressional ambitions had exceeded their willingness to pay for it.

**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.