"No, No, No, No!": Three Sons of Connecticut Who Opposed the Chinese Exclusion Acts

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I. INTRODUCTION

There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana...are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race.

—Justice John M. Harlan¹

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¹ Plessy v. Ferguson, 163 U.S. 537, 561 (1896). Harlan was anti-Chinese, as seen in his famous dissent. Law Professor Gabriel Chin has recently examined how Harlan's Chinese jurisprudence can be understood. *See, e.g.*, Gabriel J. Chin, *The Plessy Myth: Justice Harlan and the Chinese Cases*, 82 IOWA L. REV. 151, 166-67 (1996)(suggesting that "In a handful of articles, legal scholars have noted and criticized the troublesome language in Harlan's dissent; most of these focused on Asian Americans, rather than Plessy, Harlan, or equal protection in general. For the most part, however, Harlan's discussion of Chinese and his larger body of Chinese jurisprudence is distorted or ignored."); Gabriel J. Chin, 32 AKRON L. REV. 629, 633 (1999)("Harlan cannot be regarded as a defender of Asian civil rights. Based on his voting record, he was the most ardent defender of African American civil rights were in critical cases. In most of the critical cases with respect to Asian litigants, he voted against them.").

In 1882, with the passage of the initial Chinese Exclusion Act, the United States committed an overt act of discrimination against its resident Chinese population. The Act, signed by then President Chester A. Arthur on May 6, 1882, had an undistinguished and mild official title, promising merely to implement treaty restrictions. However, its practical effect was devastating.² A Chinese man writing several years later, in the early 1900s, cried out pitifully:

American laws are fierce like tigers: People are jailed inside wooden walls. Detained, interrogated, and tortured, Birds plunged into an open trap--O, sufferings! Tragedy, to whom can I complain--I yell to the sky:

There is no way out! If only I had known the difficulty of passing the Golden Gate! Fed up with this treatment I regret my journey here... I am innocent, yet treated guilty; how can I take this? When can I get out of this prison and find happiness?³

The controversial Exclusion Act produced much lively discussion when initially proposed in 1870, and as it was debated to 1904. According to Professor Andrew Gyory, the creation of Chinese immigration as a national issue and the passage of the first Chinese Exclusion Act on May 6, 1882, marked a turning point in American history.⁴ "It was the first immigration law passed by the United States barring one specific group of people because of their race or

 $^{^2}$ See also, Arthur Announces His Approval of the Chinese Bill, DAILY ALTA CALIFORNIA, May 10, 1882, at 1.

³ LAND WITHOUT GHOSTS: CHINESE IMPRESSIONS OF AMERICA FROM THE MID-NINETEENTH CENTURY TO THE PRESENT 58 (R. David Arkush & Leo O. Lee trans. and eds., 1989).

⁴ ANDREW GYORY, CLOSING THE GATE: RACE, POLITICS, AND THE CHINESE EXCLUSION ACT 6 (1998). Professor Kevin R. Johnson suggests that, "The horrible mistreatment of Chinese immigrants by federal, state, and local governments, as well as by the public at large, in the 1800s represents a bitter underside to U.S. history...The timing of the backlash in U.S. history against the Chinese is critically important. Congress passed the first wave of anti-Chinese immigration laws not long after the Fourteenth Amendment, which barred states from denying "any person ... the equal protection of the laws," became the law of the land." *See* Kevin R. Johnson, *Race and the Immigration Laws: The Need for Critical Inquiry*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 187, 189 (Francisco Valdes et al. eds., 2002).

nationality."⁵ By changing America's traditional policy of open immigration, this landmark legislation set a precedent for future restrictions that all but ended Asian immigration in the late nineteenth and early twentieth centuries.⁶ Remarkably for one reason or another, and despite the broad significance of the Chinese Exclusion Act, there were fifty years of silence that followed the attempted passage of one of these Acts in 1904. Nothing was ever said by either side on this issue, and surprisingly, it has received little attention from mainstream historians.⁷ Only recently has it become common knowledge that the 1882 Act was the "Pearl Harbor" of the anti-ethnic provisions in our immigration laws. In fact, a new emphasis has been placed on the matter of Chinese exclusion at academic institutions and in the history community generally.

During the past generation a new body of scholarship has transcended the limitations of both earlier legal history and misunderstanding about Chinese exclusion. A groundbreaking exploration has laid the foundation for emergence of the new history. The new history questions an earlier thesis that, although condemning the Chinese on racial, cultural, and religious grounds, congressmen favored Chinese exclusion solely because they favored the working person, and sought protections for their business interests.⁸

⁵ GYORY, *supra* note 6, at 6.

⁶ See Ozawa v. United States, 260 U.S. 178, 198 (1922) (holding that persons of Japanese descent were not eligible for naturalization); Fong Yue Ting v. United States, 149 U.S. 698, 707 (1893) (upholding deportation of aliens unable to naturalize); see also, Karen C. Wong, Discrimination Against the Chinese in the United States, in THE LIFE, INFLUENCE AND THE ROLE OF THE CHINESE IN THE UNITED STATES, 1776-1960 216, 217-18 (1976)("[The Exclusion Act] accomplished the effective exclusion of Chinese laborers for Chinese immigration dropped to zero. This was the first time that the American government had ever stopped people of a specific origin from coming to the United States. No Chinese citizen could be legally admitted to the United States as an immigrant from 1882 to 1944 when the Chinese Exclusion Act was repealed."); Gabriel J. Chin, The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965, 75 N.C. L. REV. 273, 281 (1996) ("Asians were the only group whose immigration laws was categorization by race and ancestry, rather than by place of birth.").

⁷ GYORY, *supra* note 6, at 6.

⁸ *Id.* at 5. At this time "Racial politics, which had proved effective in the past, would be resurrected. The politics would not be white versus black, however, but 'Caucasian' versus Chinese. The upcoming election would make 1876 the year that Chinese immigration became a presidential political issue for the first time." *Id.* at 75.

Further, while scholarship has now brought these tragic events under a new light, no modern work is exclusively devoted to the non-Chinese opponents to this legislation. Mistakenly, historian Roger Daniels has commented that principled political opposition to the anti-Chinese movements at the national level was all but non-existent.⁹ In reality, there certainly was opposition to the Chinese Exclusion Act. This opposition was centered with the Republicans of New England who made the most objections to the enactment of the legislation. This opposition was at times overt, sometimes subtle; it was delivered in the halls of Congress, in campaign speeches, in written memoranda, and in publications.¹⁰

This article examines Connecticut's significant role in the opposition process. There were three vocal opponents: Joseph Roswell Hawley, Orville Hitchcock Platt, and George Frisbee Hoar. Who were these men? What were their roles in opposing Chinese exclusion and why did they take their respective position on Chinese exclusion? The "Three Sons of Connecticut,"¹¹ Connecticut Senators Hawley and Platt, and Massachusetts Senator Hoar,¹² were leaders in opposing the anti-Chinese legislation in the Senate, where all of the most significant public decisions of that time period were made. This article offers their biographies and traces the nature of their opposition. It also examines the manner in which, and the reasons why, three Republicans, who took such a radical stand on the issue of slavery and racial discrimination, resolved to oppose discrimination against ethnic groups other than

⁹ See generally, ROGER DANIELS, ASIAN AMERICANS (1988). Today it is generally believed that the opponents only favored the Chinese to strengthen trade opportunities for New England businessmen, or to help the Chinese missionaries. *See also*, JUSTUS D. DOENECKE, THE PRESIDENCIES OF JAMES A. GARFIELD & CHESTER A. ARTHUR 83-84 (1981). Books with specific named references INCLUDED MARY ROBERTS COOLIDGE, CHINESE IMMIGRATION (1909); S. TSAI, THE CHINESE EXPERIENCE IN AMERICA (1986); DELBER MCKEE, CHINESE EXCLUSION VERSUS THE OPEN DOOR POLICY (1977).

¹⁰ This was an interesting political time. This was only 13 years since the passage of the Fifteenth Amendment, 16 years from the passage of the Fourteenth Amendment, 17 years from the conclusion of the Civil War, and 25 years from the founding of the Republican Party.

¹¹ Hartford, Connecticut, was a "hotbed" of opposition to Chinese exclusion, as this article will show. Hartford's pro-Chinese outlook was praised in a 1929 speech. The Hartford Times trumpeted: "Chinese Credit Hartford with being the Cradle of Chinese Republic," HARTFORD TIMES, Feb. 16, 1929 at 18.

¹² Hoar was the grandson of Roger Sherman, Connecticut's signer of the Declaration of Independence, the Articles of Confederation, and the Constitution.

blacks. As the years passed, they became model conservatives, but never wavered from their pro-Chinese stand. Although congressional opposition to Chinese immigration had actually begun forming in the mid-1870s, its swiftness amazed many observers.¹³ When Congress first debated Chinese citizenship in 1870, virtually no one suggested tampering with the nation's century-old policy of open immigration.¹⁴ During the next twelve years, Chinese exclusion would become an article of faith for both parties that would dictate political platforms and shape presidential campaigns.¹⁵

It was also crucial that these men were Senators. In this time period, it was the Senate where significant policy decisions were being made. As Oscar Handlin points out: "In these years [1867-1901] the Senate became the pivotal political institution of the republic."¹⁶ Moreover, 1880-1900 were years of evolution. "The institution by 1900 had acquired the character and form it was to retain through the twentieth century."¹⁷ This story of Chinese exclusion in the Senate of

¹³ Even before the 1870s, opposition to the possibility of Chinese immigrant suffrage was expressed. *See, e.g.*, GARY Y. OKIHIRO, MARGINS AND MAINSTREAMS: ASIANS IN AMERICAN HISTORY AND CULTURE 133-34 (1994) ("The logic of [the] twentieth-century racial discourse derived from nineteenth-century Europeans who had promoted the ascendance of science and Darwinsim, industrial development and commerce, and imperialism. But it also sought to explain the global subjugation of nonwhite by white and the threats posed to that racial hierarchy by unruly nonwhites in the colonies. . ."); John Hayakawa Torok, *Reconstruction and Racial Nativism: Chinese Immigrants and the Debates on the Thirteenth, Fourteenth, and Fifteenth Amendments and Civil Rights Laws*, 3 ASIAN L.J. 55, 82-83 (1996) ("Republican Senators Conness of California and Williams and Corbett of Oregon opposed Senator Sumner's proposal to eliminate the limiting work 'citizens' in the amendment so that aliens would also be protected in their voting rights. Senator George H. Williams, Republican of Oregon...feared that the enfranchisement and political empowerment of Chinese immigrants would result in Chinese hegemony on the west coast.").

¹⁴ GYORY, *supra* note 6, at 5. NEIL T. GOTANDA, CITIZENSHIP NULLIFICATION: THE IMPOSSIBILITY OF ASIAN AMERICAN POLITICS, IN ASIAN AMERICANS AND POLITICS: PERSPECTIVES, EXPERIENCES, PROSPECTS 81-82 (Gordon H. Chang ed., 2001) (discussing how the Chinese were denied citizenship in the United States and claiming that "Citizenship remains one of the crucial legal and political categories around which the exercise or denial of democratic right turn.").

¹⁵ See also, GYORY, supra note 6, at 184 ("As the politicians and platforms would soon make clear, Chinese exclusion was only a matter of time. The issue would play an exciting and thoroughly unexpected role in the coming campaign, and the presidential election of 1880 would result in a resounding victory for bigotry.").

¹⁶ Foreword to David Rothman, Politics & Power: U.S. Senate 1869-1901 (1966).
¹⁷ Id.

the 1880-1900 period shows how three senators took a significant position on this issue.

This article is divided into several sections. Part II introduces the biographies of the three sons of Connecticut, and discusses their lives before the advent of anti-Chinese legislation. These sections provide the background about the personal lives of these Senators necessary to achieving a fuller understanding of the motivations of Hawley, Platt, and Hoar in opposing racial restrictions against the Chinese. Part III examines the beginnings of the state and local anti-Chinese sentiment in California. The origins of the anti-Chinese movement were rooted in economic depression, which in turn encouraged racial and cultural scapegoating. Part IV explores the Congressional debates over a series of racist federal legislation, including The Chinese Exclusion Act of 1882, which was passed by Congress to exclude the Chinese from coming to this country. Part V concludes by discussing the significance of these Connecticut Senators in the history of the Chinese struggle against discrimination in Nineteenth Century America.

II. BEFORE THE LEGISLATION

A. Biographies of the Three Connecticut Sons

Before describing the debates in the Senate that ensued, it is necessary to trace the careers of Hawley, Platt, and Hoar.¹⁸

1. Joseph Rowell Hawley

Hawley was a significant figure of the late 19th century although probably few Connecticut residents would even recognize the name.¹⁹He was a person of wide-ranging interests, and cut a dashing and impetuous figure across the Connecticut scene. Although born in North Carolina on October 31, 1826, his home was Farmington and his roving minister father soon returned from North Carolina. The family

 $^{^{18}}$ Hawley is discussed in detail as, unlike Platt and Hoar, no full biography has been written about him.

¹⁹ No specific biography of Hawley exists. There are brief references to Hawley in McNulty's *Older Than the Nation*, a history of the *Hartford Courant*. JOHN BARD MCNULTY, OLDER THAN THE NATION: THE STORY OF THE HARTFORD COURANT 88-143 (The Pequot Press, Inc. 1964). A book, Ellsworth Grant's *The Miracle of Connecticut*, has a chapter on Hawley. ELLSWORTH S. GRANT, THE MIRACLE OF CONNECTICUT 103-106 (The Connecticut Historical Society and Fenwick Productions 1992).

spent much time in the Hartford area, but later moved to Cazanovia, New York.

Hawley graduated from nearby Hamilton College in 1847, where he earned a reputation as a debater and honor's student.²⁰ He then taught school and studied for the bar. In 1850 he returned to Hartford and formed a law firm with John Hooker, husband of Harriet Beecher Stowe's sister, Isabella.²¹ In 1891, Hawley wrote of his decision to come to Hartford:

It was forty-two years ago last May that I came to [senior partner] John Hooker's office in Farmington, Conn., to study law, and made acquaintance with his beautiful young wife, who nevertheless, seemed to me a very mature lady. It was my intention to spend but one summer, or, at the most, but one year in the East, and then go to Wisconsin with my beloved friend and classmate, Guy McMaster of Bath, Steuben county, N.Y. I stayed in Hartford and Guy stayed in Bath, dying there about four years ago, having been long an honored and able judge, following precisely in the footsteps of his father.²²

Hawley's practice was not very exciting, primarily consisting of the collection of bills and notes.²³ Though Hawley's law practice was financially successful, he nevertheless found it to be tediously dull. His sole Connecticut Supreme Court case occurred when he assisted Hooker in *Case v. Spaulding*.²⁴ The pair was able to convince the Court that their client did not act as a guarantor of a note and thereby become liable on endorsement. Such dry going was not enough to hold Hawley, full of

²⁰ Hawley was admired by his fellow classmates and became close to several of them. His best friend at Hamilton was Charles Dudley Warner. Warner was later to become Hawley's business partner in Hartford and co-authored *The Gilded Age* with Mark Twain. MARK TWAIN & CHARLES DUDLEY WARNER, THE GILDED AGE (Oxford University Press, 1996).

 $^{^{21}}$ Hooker, a direct descendent of the Founder of Hartford, Thomas Hooker, was the Senior Partner in the law firm admitted to the bar in 1841.

²² JOHN HOOKER, SOME REMINISCENCES OF A LONG LIFE 175 (Belknap & Warfield 1899).

²³ An entry in Hawley's diary of Wednesday, March 1, 1854 renders: "Poor Debtor Hearing-Jail 10 a.m. with Judge Phelps (D.W. Pardee)." An entry of 1857 notes a project involving "assignment of sundry creditors."

²⁴ Case v. Spaulding, 24 Conn. 578 (1856).

self-described "zeal", to involve himself in the matters of the day, in the legal profession. He was always a "boy at heart." He branched out inevitably into other social and political interests beyond the law.

On Christmas day, 1855, Hawley married a cousin of the Beechers, Harriet Ward Foote.²⁵ Hawley immediately became a part of the Nook farm society, bringing him into the company of author Mark Twain and the Reverend Joseph Twichell.

Hawley also joined the finest Hartford literary society, what was to become the Monday Evening Club, with Charles Dudley Warner, his fellow classmate from Hamilton College who came to Hartford at Hawley's invitation prior to the Civil War. Hawley's papers delivered at the club between 1869 and 1899 concerned such topics as capital and labor, taxation, constitutional reform, and the future of New England and the country as a whole. There were several topics related to immigration, in particular, the prosecution and discrimination against foreigners, delivered by other members. William Hammersley delivered a talk on the general subject of immigration on April 5, 1870; two members delivered a talk on "Agitation against the Jews in Germany" on January 17, 1881; another member discussed "The Jews" on December 16, 1889.

Every engaging discussion at the Evening Club informed Hawley of the social issues of the day. For example, Hawley's position on the issue of slavery became clear early for he was in the abolitionist camp. Interestingly, Hawley's uncle, who was called "Father Hawley", was also a well-known Connecticut abolitionist. In 1855, Hawley and Hooker "bought" the Rev. Dr. James W.C. Pennington who had been an escaped slave from Maryland. He then became educated and was established in Hartford as a preacher at Talcott Street Congregational Church.

Hawley first became interested in Chinese exclusion when he was out of office in the early 1870s. He was the editor of *The Courant* and trying to gain election to Congress. He had a close personal friendship with his Hartford minister, the Reverend Joseph Twichell. Joseph Twichell was a Civil War veteran who had served as a chaplain in many civil war campaigns including Gettysburg.²⁶ After the war he

²⁵ Hawley's first wife, Harriet, while in Washington, spent many hours on behalf of the fair treatment of Indians.

²⁶ LEAH A. STRONG, JOSEPH HOPKINS TWICHELL: MARK TWAIN'S FRIEND & PASTOR 20-37 (University of Georgia Press 1966). Twichell had a positive relationship with a variety of minority groups. He and Twain, for example, maintained friendships with Hartford's Jewish community, attending services at Temple Beth

became the pastor of the Asylum Hill Congregational Church in Hartford and presided there for 50 years. Twichell was always involving his parishioners in his many interests.²⁷ Mark Twain was Twichell's friend. Twichell and Twain hiked in Farmington and even traveled the world together. Both Twain and Hawley contributed to Twichell's projects.²⁸

Interestingly, Twichell took on a fatherly role with a Chinese resident named Yung Wing. In 1854, Yung Wing became the first native Chinese graduate of Yale.²⁹ He settled back in China, but he repeatedly returned to the United States to visit his friends in Hartford.³⁰ In 1871, Yung Wing succeeded in a long-time vision by starting an educational mission in Hartford that would bring students from China to study as he did. Some of the Chinese students returned to China and some settled in the United States.³¹ Even after Yung Wing's educational mission failed, Chinese scholars kept coming into Hartford, so that the whole Nook Farm community became involved in Chinese matters.³²

One professor at Yung Wing's educational mission was Kwong Ki Chiu, another graduate of Yale. He had published several books including a dictionary for American businessmen and phrase books in Chinese. He used to write to Hawley about Chinese affairs and Hawley later mentioned on the floor of the Senate that they were old friends. Through Yung, Kwong, and other scholarly associates, Hawley became quite aware of Chinese issues. In his experience in the 1876 centennial, moreover, Hawley met the Chinese businessmen who came to set up the Chinese exhibits. These Chinese businessmen later traveled to Hartford. In addition, references to Yung Wing were made by Twichell concerning Yung Wing's difficulties in getting re-admitted to the United States after some years in China. Twichell wrote to Yung Wing and instructed him to write a letter to Hawley to help him with his immigration difficulties. At that point, of course, Hawley was a senator and had government

27 Strong, at 92-96.

²⁹ See generally, GYORY, supra note 6, at 9.

30 Id.

31 *Id*.

32 Id.

Israel. Hawley's Hartford Courant gave favorable reports of Jewish activities in Hartford. DAVID G. DALIN AND JONATHAN ROSENBAUM, MAKING A LIFE, BUILDING A COMMUNITY: A HISTORY OF THE JEWS OF HARTFORD (Holmes & Meiers Publishers, Inc. 1997).

²⁸ *Id.* at 84-85, 92-93.

contacts that could resolve immigration problems.³³ The Yung Wing-Twichell connection was a very strong influence on Hawley.

Politics served as a magnet that pulled Hawley away from his tired debtor-creditor legal practice. In 1852, Hawley was chosen as a delegate to the National Free Soil Convention. After 1854, Hawley began to drift away from his law practice. At about this same time, he also started editing, on a part-time basis, an abolitionist newspaper, and an "organ" of the free soilers known as the "Evening Press." The newspapers were also used to espouse the new Republican causes.

On February 4, 1856 he held a meeting in his office in Hartford, at which the Connecticut Republican Party was founded. Attendants included his partner Hooker and his friend Gideon Wells. Ellsworth Grant writes:

As an undergraduate he had won first prize in declamation and now used his oratorical ability in fiery speech after speech. Recognizing the division among Democrats, the decadence of the Whigs and the impotence of Free-Soilers, Joe Hawley surged ahead, a young rebel hell-bent on creating a brand new political machine...On February 4, 1856, the Connecticut Republicans organized in Hawley's office...." He was the special leader of young men, and his inspiring appeal, 'say you will boys' drew from his audiences the enthusiastic promise of sure success"³⁴

In 1856, Hawley commenced a vigorous campaign on behalf of the first Republican Presidential candidate, John C. Fremont. Hawley was without reserve for Fremont, rallying extensively throughout the country. In the three months preceding the election, in addition to organizing parade after parade, he toured the state, putting his skills as a debater to use. Although only 30 years old, he had a great hold on followers. A large parade was held in the closing days of the campaign, where paraders proudly carried posters in the street reading "Hawley Our Champion." Hawley was in the midst of politics, and he loved every moment of it.

In 1857, the law practice was still limping along, with the necessary preparation of documents, such as assignments to sundry creditors. This irritant was soon disposed of. Hooker closed the firm

³³ E. Worthy, Jr., Yung Wing in America, 34 PAC. HIST. REV. 265, 284 (1965).

³⁴ ELLSWORTH GRANT, MIRACLE OF CONNECTICUT 103-104 (Oliver Jensen ed. Connecticut Historical Society 1995).

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and in the following year became the reporter of Connecticut Supreme Court judicial decisions.

Hawley, already deeply involved in the abolitionist, Republican crusade, took his part-time paper and merged it into the *Hartford Evening Press*, intending the paper as a forum for the Connecticut Republican Party.³⁵ In 1860, he convinced Charles Dudley Warner to leave his legal career in Chicago and join the *Press* in Hartford.

In 1860, Hawley again made a major effort on behalf of Abraham Lincoln. Of course, Hawley was a radical Republican who believed in the Union, the abolition of slavery, and the entire Republican platform. Hawley's advocacy was not limited to the newspaper, for he soon gained a reputation for being a pugnacious fighter as well. Twenty-four hours after Fort Sumter was attacked in April, 1861, Hawley had formed Rifle Company A, First Connecticut Volunteers (later known as "Hawley's Regiment").³⁶ Charles Dudley Warner was left in charge of the Evening Press from 1861-1865, while Hawley and a regiment he formed called "Hawley's Rangers" fought in thirteen battles. He first distinguished himself at the Battle of Bull Run. Bull Run was a loss for the Union side, but he protected his men, and they never forgot how he helped them when they had to retreat from disaster at the First Bull Run. The veterans never forgot his courage in that and other campaigns. Captain Hawley stayed in the army the entire period of the Civil War, and he was mustered out as General Hawley.

"Fighting Joe Hawley" returned as a war hero to Connecticut in 1866. He then became the Republican candidate for Governor. As a cult hero, Hawley was needed at every Fourth of July celebration and rally on behalf of the former Union troops, and he developed a standard speech. His typical stump speech was recently republished in *The Hartford Courant.*³⁷ He would picture life in the foremost republic of all time and the struggle for free government, equal rights, education and peace. Hawley exclaimed, "Should this vision of inutterable glory be blotted out?" "No, no, no, no!" he would boom out. And everybody would, of course, applaud wildly.

³⁵ He initially teamed up with William Faxon, later Assistant Secretary of the Navy.

³⁶ As one participant of the Monday Evening Club reported: "[H]e made several attempts to write an adequate editorial sustaining the call [for volunteers]; then suddenly throwing down his pen, he exclaimed to his associates, 'Boys, I'm going to do the fighting for the office; you must run the paper.""

 $^{^{37}}$ A speech of September 10, 1879, at the dedication of a Civil war memorial in Torrington, Connecticut.

With that kind of spirit there was no stopping Hawley, and he was immediately elected the first post-Civil War governor of Connecticut. But even with a populace enamored with Civil War veterans, Hawley found the election of 1866 tough going. He adhered to the tenets of the Radical Republicans and strongly opposed President Johnson. His positions hurt him with more conservative Republicans as well as the Democrats. He won the election by a mere 500 votes over James E. English, his Democratic opponent.

During Hawley's governorship, there were tremendous ups and downs. Immediately after the Civil War, the economy experienced a setback. As with later wars, Connecticut served as the great "provision state" during the 1860-1865 combat, but afterwards the economy slumped.

As in other times, the governor had political troubles when the economy took a downturn. The Hawley Governorship lasted only one term. Hawley lost the next election in 1868 by 500 votes. 38

Interestingly, Hawley returned to newspaper publishing with the same usual involved pace he maintained while in public affairs. He continued to use *The Evening Press* as a vehicle to further his party's platform. *The Hartford Courant*, the mouthpiece of the Whigs and then the Know-Nothing parties, was at loose ends following the Republican ascendancy. Hawley then purchased *The Courant* and merged *The Hartford Evening Press* into it. In 1868 he became the owner, publisher and editor of *The Hartford Courant*, and continued in these capacities up until his death in the early 1900s.³⁹

Hawley never gave up his Republican enthusiasm as he traveled around the country supporting Republican causes. Always in demand as a speaker, Hawley served as chairman at three successive Republican Conventions, and was well known for his boisterous enthusiasm.⁴⁰

As one who never retreated from a fight, Hawley entered into a bruising battle with his former Civil War compatriot Benjamin Butler in

³⁸ It was marred by a fight between railroad and shipping interests (the railroaders wanted to bridge the Connecticut River at its mouth while the shippers successfully blocked the proposal). Connecticut was also hit with its usual post-war recession.

³⁹ Hawley, had previously induced his friend, Charles Dudley Warner, who was practicing law in Chicago, to come to Hartford and he continued to serve as an editor along with him at *The Courant*.

⁴⁰ At one convention, Hawley devoted a speech to the veterans, where he uttered a watchword of American politics. There was a debate about cutting back on a bond that had been issued to veterans in payment of their Civil War obligations. Hawley attacked the proposal at the convention and said that a soldier's bond should be as sacred as a soldier's grave.

1870, in his efforts of opposing Butler's quest to become elected Governor of Massachusetts based on his anti-Chinese platform.⁴¹ Both Hawley and Butler were generals in the Civil War, but each claimed the other shirked his duties. Hawley said that he thought that Butler was on the wrong track; Chinese laborers should be quite common in the East in the near future.⁴²

Hawley also took on the chairmanship of the Centennial Commission to organize the first international exposition in Philadelphia, which ran from May to November 1876.⁴³ Hawley planned the American exhibits, and made sure that America's presentation sparkled, as he knew that visitors from overseas would view our goods and our technological developments such as the telephone. Even Mark Twain came down from Hartford to see the exhibition and brought his family with him.⁴⁴

Hawley served in Congress after 1872. At times, he was successfully re-elected, and at other times, he failed at re-election.⁴⁵ By 1879, Hawley decided he would run for the U.S. Senate. In those days, before the Seventeenth Amendment to the Constitution, Senators were chosen by the State legislature. Therefore, whichever party had the highest enrollment in the State controlled who became the next U.S. Senator. Since the Republicans dominated in 1879, whoever won the

⁴¹ This use of a anti-Chinese platform will later be emulated by many other politicians who wanted to advance and further their own careers.

⁴² The Glorious Fourth, N.Y. TIMES, Jul. 5, 1870 at 5.

⁴³ Hawley had an interesting and politically tricky assignment in 1876. He was appointed to a bipartisan commission established by the President to mediate between the disputing Democratic and Republican candidates for governor. Each candidate was claiming to have won the election. The Democrat was a former Confederate soldier who had lost an arm and leg in the war. He railed against carpet baggers and black rule. The Republican, a carpet-bagger, was recognized by an election board. Eventually Hawley and the other commissioners recommended that the Democrat be installed. The victory was supported by too many Louisiana whites to concluded otherwise. TINSLEY E. YARBROUGH, JUDICIAL ENIGMA 99-102 (Oxford University Press 1995).

⁴⁴ Today in the Mark Twain House, on the second floor in the girls' room, there is an illustrated banner on the wall that Twain probably picked up at the centennial celebration. Twain praised Hawley for his efforts and for having "taken in gate-money amounting to as much as \$121,000 a day – 'and never stolen a cent of it!'" GUY CARDWELL, THE MAN WHO WAS MARK TWAIN 85 (Yale University Press 1991).

⁴⁵ He was appointed to fill a vacancy in the First Congressional District in 1872, won re-election in 1872, failed in re-election in 1874 and was re-elected to a two-year term in 1878.

Republican caucus would be chosen Senator. Unfortunately for Hawley, Orville Hitchcock Platt won that contest after numerous votes. The socalled "Midnight Caucus" went on for several days in January of 1879 and, while favored, Hawley lost the contest on a late ballot. All over the country, editorials attacked the outcome. In Boston, *The Evening Transcript* asked, "Was the Republican Caucus a bunch of 'nutmegs'? They failed to settle the talented Hawley as opposed to the unknown Orville Platt."⁴⁶

In 1881, Hawley finally achieved his goal when he obtained the endorsement of the Republican Party for Senate, and became U.S. Senator. He served from 1881 until he resigned from the Senate in 1904. When Hawley came into the Senate, the newspapers declared that this war hero, eloquent speaker, founder of the Republican Party, and statesman would succeed in the Senate. They also predicted that his fellow Republican, Platt, would be a backbencher. Actually, just the opposite happened.

Time and again, Hawley was drawn from the work of the Senate. He continued to edit material and send dispatches to the *Hartford Courant*. "Joseph Hawley...held tight to the reigns of the *Hartford Courant* during this thirty years in the House and Senate."⁴⁷ McNulty summarizes his link to the newspaper:

One *Courant* legend has it that whenever Senator Hawley returned from Washington and was in the streets of Hartford, the word would quickly get about that "the General is in town." Next morning, the editorials would sparkle.⁴⁸

Senator Hawley formed an effective partnership with Platt, each serving in the Senate until they both died in 1905.⁴⁹ Hawley loved a

⁴⁶ BOSTON EVENING TRANSCRIPT, Jan. 17, 1879.

⁴⁷ DONALD A. RITCHIE, PRESS GALLERY 133 (Harvard University Press 1991).

⁴⁸ JOHN BARD MCNULTY, OLDER THAN THE NATION 97 (The Pequot Press 1964).

⁴⁹ Platt once joked that "[a]ll the politics of Connecticut seems to depend on which is going to die first, Hawley or I." LOUIS A. COOLIDGE, AN OLD-FASHIONED SENATOR 535 (1910). They, in fact, died virtually together. Platt attended Hawley's funeral in cold Connecticut March weather and caught a cold. This was the start of pneumonia and his final illness. He died on April 21, 1905. A shocked *Hartford Courant* reflected the general population when it editorialized that now all three were gone--Hawley, Platt, and Hoar. The Senate had two new Senators after 1905.

good fight. On one occasion, he threw a chair down the aisle while in debate on the floor of the Senate. Needless to say, the newspapers loved Hawley's vitriolic attacks. As he wore down and held other interests toward the end of his career, he would periodically become embroiled in well-published controversy. Throughout, Hawley was strongly protectionist and in favor of "sound money." As a veteran, he naturally took on responsibilities for increasing the country's coastal defenses, establishing a volunteer army and organizing the regular army during and after the Spanish-American War (1898). He also was chairman of the civil service committee, and strongly supported civil service reform. 50

2. Orville Hitchcock Platt

Platt was born in Judea, a section of Washington, Connecticut, on July 17, 1827. Graduating from the Gunnery School in Washington and Litchfield Law School, he became a member of the Connecticut bar in 1850. He eventually opened his office in Meriden, Connecticut, and practiced there for 30 years.

Described by Albert Beveridge as having determined features (over six feet tall and bony) Platt took the traditional route in founding his law office. He struggled to find clients while playing baseball, going fishing, and getting involved in politics. His eventual specialties were corporate law, patent law, and real estate transactions. Merrill notes, "Platt was interested in Yankee tinkerers and entrepreneurs who had become manufacturers, large or small."⁵¹

Platt's political career continued upward as his law office grew more successful. The records show that by 1879, he had held the following offices, some simultaneously: Meriden Judge of Probate; Clerk of the State Senate; Connecticut Secretary of the State; State Senator; Speaker of the State House; and State's Attorney for New Haven County.

Interestingly, Platt was active in the "Know-nothing" or "American" party. This party has been associated with antiintellectualism and bigotry. But small-town lawyer Platt used this party

At Hawley's funeral, he was praised as a skilled editor, a dedicated government official and a patriot. His minister, Joseph Twichell, also noted that he had an independent and uncharacteristic view of Chinese exclusion.

⁵⁰ Hawley become more and more conservative, favoring the tariff and all the other things that defined a good Republican in the later 1890s, such as anti-labor legislation. ⁵¹ MERRILL. THE REPUBLICAN COMMAND (1971) at 27.

in the pre-Republican days to further his anti-slavery ideals. Before 1856 he became state chairman of the American Party and after the organization of the Republicans, brought his party into the Republican fold.

In the Senate, he was skeptically viewed as he began his career.⁵² But he showed "untiring industry, honest and sound judgment." He soon won the respect of his fellow Senators and became one of the "big four"--Senators who controlled policy during the McKinley and Roosevelt administrations.

Orville Hitchcock Platt had surprised Hawley in 1879 by obtaining the Republican Caucus' endorsement for Senate. To his dismay, Hawley had to wait two more years to obtain his own nomination. Afterwards, fellow Connecticut Senator Platt also became known as an extensive opponent to Chinese exclusion, and he made long speeches until the end of his career in 1905. Once Hawley joined Platt in 1881, the two were an inseparable team. Often, being fond of old associations, George Frisbee Hoar joined their company in the legislative battle.

According to an essay that appeared in the May 4, 1894 edition of the *N.Y. Evening Telegram*, Hawley was always glad to see a Connecticut man. He followed his constituents. Unlike Hawley, Platt was colder and more devoted to legislation. Truly, Hawley and Platt worked in lock step. Both were voices of conservatism. Platt was the leading senator against eight-hour day legislation.⁵³

While Hawley and Platt were a team, there were vast differences in style. Platt was elected in what seemed a fluke, a compromise candidate out of the midnight caucus. He was seen as run-of-the mill initially. Hawley, one year older, was the better orator and cut a more dashing figure. At the beginning of Hawley's career, he was vigorous

⁵² Mr. Platt is said to be a lawyer of considerable ability, but he has no such national reputation as General Hawley." BOSTON EVENING TRANSCRIPT, Jan. 17, 1879 at 4. Also on Jan. 29, 1879, the *Transcript* commented on the "cheap quality of the newly elected Senators."

⁵³ E. Smith, Conservatism in the Gilded Age: The Senatorial Career of Orville Platt (1976) (dissertation). Platt, although less vocal than Hawley, was involved in civil rights crusades over the years. Platt was born in Judea, a section of Washington, Connecticut. In Judea, Platt's parents were active anti-slavery advocates. They feuded with a local pastor in Judea over the anti-slavery crusade. Platt as a senator joined a campaign in 1892 to help "Minnie Cox," a black Post Mistress in Mississippi who was forced out of her post until Theodore Roosevelt intervened. Platt later wrote on January 31, 1903 to Robert N. Jackson, that any person "who is an official of the United States government, black or white, rich or poor, man or woman, is entitled to the protection of this government in the discharge of his duties."

and involved in the legislative process.⁵⁴ But Platt, the more typical of 19th century Connecticut politicians, became the more significant of the two. As Platt rose in prominence, his views began to hold greater weight than Hawley's. One historian has called Platt "without doubt the most important Connecticut figure in national political affairs in the later nineteenth and twentieth centuries."⁵⁵ Today he is considered one of the foremost Connecticut people ever to serve in the U.S. Senate.⁵⁶ Indeed, when Platt died, Theodore Roosevelt recognized him as the best man in the Senate.

As may be seen, Orville Platt took a much more pragmatic and cautious approach in opposing the Chinese Exclusion Act than Hawley did, for he denied that the Republicans were committed to any particular group or faction, but insisted that the bill must satisfy the existing treaties.

3. George Frisbee Hoar

Senator George Frisbee Hoar of Massachusetts, a close friend to both Hawley and Platt, had a profound influence on the Chinese immigration controversy. He has, like Platt, been the subject of several historical studies, and has authored a two-volume autobiography. He was very much a patrician, who had impeccable family credentials.⁵⁷ Hoar was born on August 29, 1826, in Concord, Massachusetts, the grandson of Roger Sherman--the Connecticut patriot who signed the Declaration of Independence, the Articles of Confederation and Constitution. According to Beisner, "His 'illustrious ancestors' also included a president of Harvard, two great-grandfathers, a grandfather, and three great-uncles who fought at Concord Bridge."⁵⁸

Hoar was opposed to Chinese exclusion, and he spoke up virtually every time the issue came up, once telling Senate proponents that they would someday wear sackcloth and ashes for supporting

⁵⁴ During the time, Hawley retained control of The Courant, and sponsored some legislative projects, but never quite reached the special status level that Platt held.

⁵⁵ CONNECTICUT HISTORY AND CULTURE: AN HISTORICAL OVERVIEW AND RESOURCE GUIDE FOR TEACHERS 153 (David J. Roth ed., 1985).

 $^{^{56}}$ His service to the State of Connecticut was indicated by his receiving a doctor of laws from Yale in 1886.

⁵⁷ GYORY, *supra* note 6, at 225.

⁵⁸ ROBERT L. BEISNER, TWELVE AGAINST EMPIRE 140 (1968).

exclusion. Hoar's parents were also deeply committed to civil rights. In his biography, Hoar described the following incident:

After she became a young lady, my mother, with Fanny afterward Mrs. Wood, and Mary Hillhouse, Ellsworth, daughter of the Senator, established a school to teach voung colored children to read and sew. The colored people in New Haven were in a sad condition in those days. The law of the State made it a penal offence to teach a colored child to read. These girls violated the law. The public authorities interfered and threatened them with prosecution. But the young women were resolute. They insisted that they were performing a religious duty, and declared that they should disobey the law and take the consequences. A good deal of sympathy was around in their belief. The New Haven authorities had to face the question whether they would imprison the daughter of a Signer of the Declaration of Independence, who had affixed his signature to the great affirmation that all men are created equal, the daughters of two Framers of the Constitution, and the daughter of James Hillhouse, then the foremost citizens of Connecticut, for teaching little children to read the Bible. They gave up their attempt. The school kept on and flourished. President Dwight raised a considerable fund for it by a course of features, and it continued down to become within my own recollection. What became of the fund which was raised for its purpose I cannot tell 59

In another instance of action against the established majority, in 1844 Hoar's father protested against a South Carolina state law that discriminated against black seamen.

By 1849, Hoar had graduated from Harvard Law School and was admitted to the Massachusetts Bar. He began practice in Worcester, Massachusetts. Hoar states in his autobiography that he settled in Worcester because the new anti-slavery party had its headquarters there. He established a successful law practice representing the local gentry and served as town attorney for most towns in the county.

Like Hawley, Hoar answered the call of public service in tandem. By 1852 Hoar was elected to the Massachusetts State House of

⁵⁹ 1 GEORGE F. HOAR, AUTOBIOGRAPHY OF SEVENTY YEARS 16 (1903).

Representatives and in 1857 to the State Senate. Like Hawley⁶⁰ he became a crusader for the anti-slavery movement as the chairman of the Free Soil Committee in Worcester and helped found the Massachusetts Republican Party.

After the Civil War in 1869 he was elected to the United States House of Representatives for four terms. Hoar then switched to the Senate in 1877 where he remained until his death in 1904. He was considered a "scholar in politics," an overseer of Harvard College, a trustee of both Worcester Polytechnic Institute and Clark University, a regent of the Smithsonian, and president of the American Historical Association and the American Antiquarian Society. "He spent his spare time reading poetry or history and translating Thucydides. The owner of an excellent personal library, he could often be found browsing in Washington used bookstores for items to add to his collection."⁶¹

Hoar was a genuine statesman. While Hoar looked like a genial "Mr. Pickwick," "in reality he was pugnacious and cantankerous, quick to take offense and ready to give insult always convinced of the dishonest or venality to him who opposed his views."⁶² Hoar's enemies were the Democrats--"the old slave-owner and slave driver, the saloon keeper, the ballot stuffer, the Klu Klux Klan, the criminal class of the great cities, the men who cannot read or write...find their congenial place in the "Democratic Party."⁶³ But even more so, he excoriated the "mugwumps," turncoat Republicans who supported "good government" and Grover Cleveland. They were disloyal and "the vilest sort of political assassin."⁶⁴

Hoar was furious with those of his party who split off to support Cleveland in 1884. He told one Cleveland-supporting friend: "There was a time when I hoped to meet you in heaven, it is gone."⁶⁵

62 BEISNER, *supra* note 60, at 141.

⁶⁴ Id. at 144.

⁶⁰ Like Hawley, he always favored the protective tariff. It would lead to a man having luxuries like a piano or leisure time for reading. Mar. 29, 1882, BOSTON EVENING TRANSCRIPT.

⁶¹ BEISNER, *supra* note 60, at 141. As an intellect with an aristocratic heritage, he could not support Oliver Wendell Holmes for the Supreme Court. Hoar complained that he was "a man of pleasant personal address…but without strength, and without grasp of general principles." G.E. WHITE, JUSTICE OLIVER WENDELL HOLMES: LAW AND THE INNER SELF 304 (1993).

⁶³ Id. at 143.

⁶⁵ Buying the President, N.Y. TIMES, Oct. 1, 1904. Hoar's old nemesis Cleveland noted that "Hoar has done so many good things and said so many spiteful things."

Hoar's views on equal treatment for women were clearly set forth in a letter written to the *New York Times* just after his death. Lillie Devereaux Blake, president of the National Legislative League wrote: "He was instrumental in the passage of many laws which gave to us better opportunities of education or of wage earning, and, above all, he was the fearless champion of our [women's] absolute political equality."⁶⁶

Hoar's views on equal rights for all were drawn from heredity. As Hawley's editorial declared on Hoar's death: "[H]e never entirely got over his [parental tutelage and] youthful feeling about the slaveholders."⁶⁷ Hawley praised him as an orator with a command of the English tongue which "many senators nowadays possess."⁶⁸ *The New York Times* in March 1904 and October 1904 featured quotations from his most eloquent speeches, all carefully prepared and argued. One, opposing war with Spain, was quoted to show Hoar's "wonderful style and ability."

Hoar declared that:

I confess I do not like to think of the genius of America angry, snarling, shouting, screaming, kicking, clawing with her nails. I like rather to think of her in her August and serene beauty, inspired by a sentiment, even toward its enemies, not of hate, but of love, perhaps a little pale in eyes, but with a smile on her face; as sure, as determined, unerring, invincible as was the Archangel Michael when he struck down and trampled upon the demon of darkness.⁶⁹

Hoar's position on women's suffrage issues extended to his position against Chinese Exclusion. Perhaps because he was Roger Sherman's grandson, Hoar was constantly referring to the Declaration of Independence in discussing the Chinese issue. The Declaration moved toward the "bright star," the correct path. The anti-Chinese legislation

RICHARD E.WELCH, JR., GEORGE FRISBIE HOAR AND THE HALF-BREED REPUBLICANS 171 (1991).

⁶⁶ A Tribute to Senator Hoar, N.Y. TIMES, Oct. 4, 1904.

⁶⁷ Mr. Hoar of Massachusetts, HARTFORD COURANT, Sept. 30, 1904.
⁶⁸ Id

⁶⁹ Senator Hoar Dead After a Long Illness, N.Y. TIMES, September 30, 1904 at 1.

broke with this heritage. Hoar denounced the anti-immigration treaties, yet his position won few backers.⁷⁰

III. THE BEGINNING OF STATE AND LOCAL ANTI-CHINESE SENTIMENT

Racially and culturally, the Chinese were frequently compared with black Americans and white Americans--comparisons that stressed racial hierarchies, the perceived immorality of the Chinese, their supposed cultural inferiority, and their ultimate unassimilability into American society.⁷¹

Without doubt, a long legacy of discrimination against the Chinese has existed on many fronts, including immigration,⁷² business,⁷³ education,⁷⁴ and on social and political levels.⁷⁵

⁷⁰ See also, GYORY, supra note 6, at 229.

⁷¹ K. SCOTT WONG, *Cultural Defenders and Brokers: Chinese Responses to the Anti-Chinese Movement, in* CLAIMING AMERICA: CONSTRUCTING CHINESE AMERICAN IDENTITIES DURING THE EXCLUSION ERA 3, 6 (K. Scott Wong et al. ed., 1998).

See also, KEVIN R. JOHNSON, *The New Nativism: Something Old, Something New, Something Borrowed, Something Blue, in* IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 165, 168-169 (Juan F. Perea ed. 1997) ("Chinese immigrants were racially different, foreign, and, in effect, un-American. Deeply negative images of the Chinese, exacerbated by the difference of race, obviously influenced the legislatures that enacted the exclusion laws as well as the courts that upheld them. Chinese immigrants found it impossible to assimilate. This resulted in no small part from resistance to their assimilation by dominant American society. Neither the courts nor the body politic accepted the Chinese as members of the national community.").

⁷² See Ozawa v. United States, 260 U.S. 178, 198 (1922) (upholding the denial of citizenship to Japanese); See also, Fong Yue Ting v. United States, 149 U.S. 698, 725 (1889) (upholding the Chinese Exclusion Act); Chae Chan Ping v. United States, 130 U.S. 581, 610-11(1889) (limiting ethnic Chinese from returning to United States after leaving country); Bessho v. United States, 178 F.245, 248 (4th Cit.1910)(upholding immigration act limiting privileges of naturalization of Japanese); In re Ah Yup, 1 F. Cas. 223, 224 (D. Cal. 1878) (No. 104) (holding that Chinese immigrant was ineligible for naturalization).

⁷³ See Yick Wo v. Hopkins, 118 U.S. 356, 374 (1886)(invalidating racially motivated laundry ordinances); See also, CHARLES J. MCCLAIN & LAURENE WU MCCLAIN, *The Chinese Contribution to the Development of American Law, in* ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA, 1882-1943 3, 12 (Sucheng Chang ed., 1993) (indicating that 240 of 320 laundries were Chinese-owned in San Francisco). The laundries were symbols of Chinese success, and were often targets of attack. *Id.*

⁷⁴ See Lau v. Nichols, 414 U.S. 563, 569 (1974)(holding that the school district's failure to provide English language instruction to Chinese-speaking students created

Resentment towards the Chinese reverberated in the laws that barred them from meaningful participation in American society.⁷⁶ This discrimination began as soon as the first wave of Chinese immigrants set foot on the shores of this country.⁷⁷

The number of Chinese was minuscule in the United States until the discovery of gold in California in 1849. With the scarcity of laborers in the minefields, Chinese immigration was initially encouraged.⁷⁸ In

⁷⁶ See SUCHENG CHAN, Race, Ethnic Culture, and Gender in the Construction of Identities among Second-Generation Chinese Americans, 1880s to 1930s, in CLAIMING AMERICA: CONSTRUCTING CHINESE AMERICAN IDENTITIES DURING THE EXCLUSION ERA 127, 131 (K. Scott Wong et al. ed. 1998) ("Chinese Americans endured social segregation, economic discrimination, political disenfranchisement, and legal handicaps as a result of their physical and biological differences, regardless of whether these differences were putative or real."); CHARLES J. MCCLAIN & LAURENCE WU MCCLAIN, *The Chinese Contribution to the Development of American Law, in* ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA, 1882-1943 3,4 (Sucheng Chang ed., 1993) (describing anti-Chinese ordinances and taxation laws which existed during early days of Chinese immigration); HYUNG-CHAN KIM, *American Naturalization and Immigration Policy: Asian American Perspective, in* ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY 1, 2 (Hyung-chan Kim ed. 1996) (describing unjust policies in early United States history against person of Asian ancestry).

⁷⁷ See generally, Daina Chiu, Comment, *The Cultural Defense: Beyond Exclusion, Assimilation and Guilty Liberalism*, 82 CAL. L. REV. 1053 (1994) (asserting that American society has historically discriminated against Asian Americans). *See also,* LISA LOWE, IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS 4 (1996).

⁷⁸ See generally, A HISTORY OF THE CHINESE IN CALIFORNIA: A SYLLABUS (Thomas W. Chinn, et al. eds. 1969)("The arrival of the Chinese was looked upon favorably by Californians at first. They were considered to be clean, industrious, and desirable, and in the days when workmen were scarce, they fueled the need for laborers, cooks, and domestic servant. They were invited to participate in important state celebrations, their picturesque and colorful costumes gaining them popularity."); *Cf.*, ROBERT G. LEE, ORIENTALS: ASIAN AMERICANS IN POPULAR CULTURE 24 (1999)("Economic growth in California in the middle decades of the nineteenth century was chaotic, and prosperity wildly uneven. During the 1850s, the San Francisco-based

unequal educational opportunities); *See also*, Gong Lum v. Rice, 275 U.S. 78, 85 (1927) (upholding "separate but equal doctrine" in public schools against native born United States citizens).

⁷⁵ See RONALD TAKAKI, A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA 200-201 (1993) (describing hostile political climate toward Chinese immigrants); ESTHER NGAN-LING CHOW, *The Feminist Movement: Where Are All the Asian American Women?*, in FROM DIFFERENT SHORES: PERSPECTIVES ON RACE AND ETHNICITY IN AMERICA 187-88 (Ronald Takaki, ed, 1994) (discussing early nineteenth century legislation excluding Chinese immigrants from being lawful members of society).

1868, the Burlingame Treaty was signed with China to facilitate immigration. During the nineteenth century, Chinese immigrants were lured to California during the Gold Rush to work in the mines and provide cheap labor for the construction of the transcontinental railroad.⁷⁹ Chinese labor, almost exclusively from the Kwantung province, expanded beyond mining to agriculture and to the building of the transcontinental railroad. By 1882, the Chinese population was given as 375,000, 90% of which were male. The figure was inflated, however, by the number of double entries--many of the immigrants went home to China and later returned to the U.S.

Soon after the completion of the railroad in the 1870s, the country entered an economic downturn, and the Chinese became scapegoats for the nation's economic ailments.⁸⁰ There was a severe economic downturn in 1873. When the initial curiosity about the Chinaman began to fade, the resentment against the Chinese became more apparent.⁸¹ Although the Chinese quickly gained a reputation for

economy experienced four separate cycles of boom and bust related more to local supply and demand problems than to the national business cycle.")

⁷⁹ See Frank H. Wu, Neither Black Nor White: Asian American and Affirmative Action, 15 B.C. THIRD WORLD L.J. 225, 232 (1995) (reporting that Chinese immigrants primarily labored on transcontinental railroad); Charles J. McClain, Jr., The Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850-1870, 72 CAL. L. REV. 529, 548 (1984) (examining Chinese Americans' struggle for racial justice). See also, LISA LOWE, IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS 8 (1996) (arguing that "the contradictions of Asian immigration...have placed Asians 'within' the U.S. nation-state, its workplace, and its markets, yet linguistically, culturally, and racially marked Asians as 'foreign' and 'outside' the national polity. Under such contradictions, late-nineteenth-century Chinese immigrants labored in mining, agriculture and railroad construction but were excluded from citizenship and political participation in the state.")

⁸⁰ See also, ROGER DANIELS, ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850 58-66 (1992) (summarizing anti-Chinese violence that punctuated the legislative history of the Anti-Chinese movement); STUART CREIGHTON MILLER, THE UNWELCOME IMMIGRANT: THE AMERICAN IMAGE OF THE CHINESE 7 (1969); VICTOR G. NEE & BRETT DEBERRY, LONGTIME CALIFORNIA': A DOCUMENTARY STUDY OF AN AMERICAN CHINATOWN 60 (1973); GABRIEL CHIN, ET AL. EDS., BEYOND SELF-INTEREST: ASIAN PACIFIC AMERICANS TOWARD A COMMUNITY OF JUSTICE 15 (1996)("[The Chinese] were [s]ubject to widespread prejudice, they were often the target of racially motivated violence, especially in uncertain economic times. By one count, there were over three hundred documented murders of Chinese as a result of racial violence in the West between 1860 and 1887.").

⁸¹ See Charles J. McClain, Jr., *The Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850-1870, 72 CAL. L. REV. 529, 535 (1984) (illustrating* that as more Chinese arrived, resentment against them began to build); Thomas Wuil

being exceedingly industrious and hardworking⁸², they soon fell victim to the ill will of whites.⁸³ Chinese were seen as taking away the jobs of native workers.⁸⁴ Although there is no consensus on any one particular explanation of the prejudice that whites held against the Chinese, one commentator nevertheless suggests that:

Capital in the 1880s utilized racialized divisions among laborers to maximize their profits; it needed the exclusion further Chinese immigration to prevent of а superabundance of cheap labor, and the disenfranchisement of the existing Chinese immigrant labor force, or prevent capital accumulation by these wage laborers... [In addition,] by excluding and disenfranchising the Chinese in 1882, the state could constitute the 'whiteness' of the citizenry and grant political concessions to 'white' labor groups who were demanding immigration restrictions.⁸⁵

Still, other scholars have suggested that the Chinese were harassed because of their differences in appearance, language, and their

Joo, New "Conspiracy Theory" of the Fourteenth Amendment: Nineteenth Century Chinese Civil Rights Cases and the Development of Substantive Due Process Jurisprudence, U.S.F. L. REV. 353, 358 (1995) ("Anti-Chinese sentiment was largely economically motivated; this is reflected in the Exclusion Acts, which were directed specifically at Chinese laborers. In the mid-1800s, Chinese laborers and gold prospectors entered a California economy where Native Americans and African-Americans were already seen as threats to free white labor ... Chinese entrepreneurs in the American West had experienced great early success in the cigarmaking and shoemaking industries, but the downturn in the Western economy in the 1870s, combined with anti-Chinese agitation from white competitors, drove the Chinese out of these businesses. The laundry business remained open to the Chinese because whites considered it 'menial and undesirable'."

⁸² See McClain, supra note 83 (examining Chinese Americans struggle for racial justice).

⁸³ See id. at 529 (detailing accusations of "unfair labor" made against the Chinese by labor leaders, newspapers, and politicians).

⁸⁴ See also, KEVIN R. JOHNSON, THE NEW NATIVISM: SOMETHING OLD, SOMETHING NEW, SOMETHING BORROWED, SOMETHING BLUE, IN IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 168 (Juan F. Perea, ed. 1997)("Anti-Chinese sentiment was at its worst in California where many demanded legislation to force the Chinese out of the state. At the 1878 California constitutional convention, for example, proponents of Chinese exclusion expressed alarm about the 'Oriental Invasion.'").

⁸⁵ Lisa Lowe, IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS 13 (1996).

"foreign culture."⁸⁶ According to David Donald, white workers "resented the willingness of the Chinese to work long hours for 'coolies' wages; they distrusted the unusual attire, strange diet, and particular habits of the Chinese; and they disliked all these things more because the Chinese were a yellow-skinned people."⁸⁷ In addition, legal scholar Neil Gotanda observes that:

During the anti-Chinese campaigns in the West, Chinese were racialized through this subtle but significant transformation in the meaning of the term Chinese...instead of, or in addition to, the cultural trope of inferiority, the social characteristic attributed to the Chinese was that of permanent *foreigness*. Chinese were inassimilable to American society.⁸⁸

⁸⁶ Id.: see also BILL ONG HING. TO BE AN AMERICAN: CULTURAL PLURALISM AND THE RHETORIC OF ASSIMILATION 15-16 (1997) ("An important element in the anti-Chinese crusade was doubt that they could successfully assimilate into American society...As immigrants, the Chinese posed the first serious threat to the melting pot concept. They were believed to be immutable, tenaciously clinging to old customs, and recalcitrantly opposing progress and moral improvement."); STUART CREIGHTON MILLER, THE UNWELCOME IMMIGRANT: THE AMERICAN IMAGE OF THE CHINESE (1969) ("The presence of the Chinese on the West Coast reenforced many of the negative stereotypes of them, which in turn interacted with other anxieties affecting nineteenth-century American society."); CHARLES J. MCCLAIN & LAURENE WU MCCLAIN, THE CHINESE CONTRIBUTION, TO THE DEVELOPMENT OF AMERICANS, IN ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA, 1882-1943, 25-56 (Sucheng Chang ed., 1993) (noting general distaste whites had for Chinese culture and lifestyles);; John Hayakawa Torok, Reconstruction and Racial Nativism: Chinese Immigrants and the Debates on the Thirteenth, Fourteenth, and Fifteenth Amendments and Civil Rights Laws, 3 ASIAN L.J. 55, 57 (1996) (stating that Chinese immigrants were racially inferior and threatening to white Christian hegemony). Frank H. Wu, From Black to White and Back Again, 3 ASIAN L.J. 185, 186 (1996) (Book Review) ("In the nineteenth and early twentieth century, Asian Americans were a distinct class only when considered as foreigners...").

⁸⁷ DAVID DONALD, LIBERTY & UNION 201 (1978). *The San Francisco Morning Call* reported that "Those who have devoted their attention to the Chinese, their habits, their mode of living, and what they consume, have, after many years of close observation, arrived at the indisputable conclusions that they are the most clannish set of beings that ever set foot on American soil, and that their aim is not the development of the country, nor its aggrandizement, nor to benefit those of the Caucasian race, but to enrich themselves at the expense of those of other nations." *See* S.F. MORNING CALL, Apr. 23, 1882 at 1.

⁸⁸ Neil Gotanda, *Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee*, 47 UCLA L. REV. 1689, 1694 (2000).

Professor Robert Lee echoes Gotanda's sentiments by further noting that:

The racialized construction of a category of proletarianized common labor as "coolie labor" preserved Free Labor as an ideological refuge, if not an economic reality, of the white workingman. The racialized category of coolie labor enabled the working-class movement to articulate its goals not around the issue of proletarianization but around the demand for the repatriation of craft privileges and the family wage.⁸⁹

Not surprisingly, when these resentments against "coolieism" were coupled with a depressed economy, a hospitable climate was created for the Chinese Exclusion Movement.⁹⁰

IV. THE LEGISLATION FOR THE CHINESE EXCLUSION: THE MOVEMENT TO 1879

A. The Emergence of Xenophobia on the West Coast

Most of the documented incidents of anti-Chinese animus, products of intense racial nativism, occurred in California, which had a large concentration of Chinese.⁹¹ The debate over the passage of

 $^{^{89}}$ See also, ROBERT G. LEE, ORIENTALS: ASIAN AMERICANS IN POPULAR CULTURE 53 (1999).

⁹⁰ See e.g., R.D. MCKENZIE, ORIENTAL EXCLUSION: THE EFFECT OF AMERICAN IMMIGRATION LAWS, REGULATIONS, AND JUDICIAL DECISIONS UPON THE CHINESE AND JAPANESE ON THE AMERICAN PACIFIC COAST 15-23 (1970) (addressing the multifaceted reasons for the development and sustenance of the exclusion movement); RONALD TAKAKI, A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA 206 (1993) (commenting on pervasive anti-Asian sentiment against Chinese laborers resulting from the 1877 Railroad strike). *Cf.*, Karen C. Wong, *Discrimination Against the Chinese in the United States*, THE LIFE, INFLUENCE AND THE ROLE OF THE CHINESE IN THE UNTIED STATES, 1776-1960: PROCEEDINGS, PAPERS OF THE NATIONAL CONFERENCE HELD AT THE UNIVERSITY OF SAN FRANCISCO, JULY 10, 11, 12, 1975, 216 (1976) ("The Chinese were driven out of the mines about the same time as the railroads were being built.").

⁹¹ See also, GYORY, supra note 6, at 26. (reporting that "anti-Chinese hostility became a central factor uniting the labor movement in California in 1867. Among workers nationwide, however, it played no role whatsoever."); ROBERT F. HEIZER & ALAN F. ALMAQUIST: THE OTHER CALIFORNIANS: PREJUDICE AND DISCRIMINATION UNDER SPAIN, MEXICO, AND THE UNITED STATES 197-98

Chinese exclusion fueled anti-Chinese animus throughout the West, especially in San Francisco, where Chinese immigration "fueled [the City's] explosive population growth in the 1850s and 1860s."⁹² The pledge of the Anti-Chinese League of San Francisco read: "Chinese immigration to the Untied States is detrimental to the best interests of the white race, and if not speedily checked and prevented will lead to the death and degradation thereof."⁹³

By the late 1870s, "battle lines were drawn between employers who wanted to use Chinese labor and the workers and independent small farmers who" supported Chinese exclusion.⁹⁴ From 1876 to 1884 the platforms of the Democratic and Republican Parties contained attacks on

^{(1971) (&}quot;The Chinese ran afoul of the racist feelings of the American settlers...It may be suggested that in the absence of blacks the anti-Negro sentiments of California were applied to the Chinese. The combination of the antipathy of the laboring class and the politicians' espousal of the anti-Chinese cause proved too much for the Chinese, who were ineligible for naturalization and could not vote."); RONALD TAKAKI, A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA 194 (1993)(reporting that by 1870 75% of 63,000 Chinese in United States resided in California). See generally, Charles J. McClain, Jr., The Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850-1870, 72 CAL. L. REV. 529, 529 (1984) (noting that Chinese immigrants initially worked in California's gold mines, and later provided labor for the construction of the Transcontinental Railroad and for other trades); John Hayakawa Torok, Reconstruction and Racial Nativism: Chinese Immigrants and the Debates on the Thirteenth, Fourteenth, and Fifteenth Amendments and Civil Rights Laws, 3 ASIAN L.J. 55, 63 (1996) ("Legal efforts to prevent Chinese migration occurred at the state and municipal levels in California both before and after the Civil War.").

⁹² See also, ROBERT G. LEE, ORIENTALS: ASIAN AMERICANS IN POPULAR CULTURE 23 (1999) ("Compared to the country as a whole, an extraordinarily ethnically diverse population settled in San Francisco. In 1850 only one in ten Americans had been born overseas, but fully half of San Francisco's residents had been born abroad. In 1860 San Francisco trailed after only New York and Boston as a center of immigration.")

⁹³ A Timely Movement to Induce People Not to Employ Chinese, DAILY ALTA CALIFORNIA, Apr. 10, 1882, at 1. San Francisco was the center of much of the anti-Chinese violence. See DAVID M. BROWNSTONE, THE CHINESE-AMERICAN HERITAGE 85 (1988) ("During the 1870's, as physical attacked on Chinese communities grew throughout the West, San Francisco's Chinatown became very much like a fortress under siege. The Six Companies hired special non-Chinese police, not to bring order to Chinatown but to repel anti-Chinese mobs. These mobs had threatened to overrun and drive out the Chinese on several occasion, especially at the hierarchy of the anti-Chinese riots in 1877. Many Chinese-American organizations armed themselves, and prepared to fight as necessary should Chinatown be invaded.").

⁹⁴ See also, SHI-SHAN HENRY TSAI, THE CHINESE EXPERIENCE IN AMERICA 57 (1986).

Chinese immigration. The Republican 1876 platform called for investigation of the "Mongolian problem," while the Democratic platform demanded modification and legislation to prevent the "immigration of Mongolians."⁹⁵ The anti-Chinese movement reached its pinnacle in 1875, when the Bank of California failed and the state slid into one of its worst economic downfalls in history.⁹⁶ During this time period, the Chinese "immigrant problem" was confined primarily to California and the San Francisco region in particular.

As is customary in these circumstances, a demagogue arose to rally the European immigrants against the Chinese. One commentator suggests that:

> Chinese workers frequently replaced another group of laborers whose cultural and racial status was itself ambiguous and fluid--the Irish. Throughout the second half of the nineteenth century, the Irish and the Chinese maintained an antagonistic relationship. Chinese immigrant workers were often cited by commentators on the state of labor relations as superior replacement for Irish workers, who were seen as undisciplined, ill-tempered, and recalcitrant. In turn, Irish labor leaders were among the most prominent in the anti-Chinese movement. In California especially, trade union leaders, Democratic California Workingman's politicians, and Partv voiced in forging a working-class demagogues

 $^{^{95}}$ Cf., *id.* ("[H[ostilities toward the Chinese were a part of the general xenophobia of white Protestant Americans, who also resented Catholics and immigrants from southern and Eastern Europe. The racist views that supported these fears included the belief that 'Mongolian' blood was debased, that the Chinese mind was politically retarded, and that further Chinese immigration would threaten Aryan dominance in America," quoting Stuart C. Miller).

⁹⁶ See Karen C. Wong, *Discrimination Against the Chinese in the United States*, THE LIFE, INFLUENCE AND THE ROLE OF THE CHINESE IN THE UNTIED STATES, 1776-1960: PROCEEDINGS, PAPERS OF THE NATIONAL CONFERENCE HELD AT THE UNIVERSITY OF SAN FRANCISCO, JULY 10, 11, 12, 1975, 217 (1976). *See also*, ROBERT G. LEE, ORIENTALS: ASIAN AMERICANS IN POPULAR CULTURE 53 (1999) (arguing that the stratification of the labor market and the racialization of class, and the homogenization of industrial labor "reconfigured the categories of race and ethnicity in the 1870s and 1880s. Central to this configuration of race was the emergence of a labor movement that defined the American working class in racial as well as economic terms.").

consciousness around a rhetoric of anti-monopoly and white supremacy.⁹⁷

A recent Irish arrival, self-proclaimed working class leader, and the nation's foremost anti-Chinese agitator,⁹⁸ Dennis Kearney organized and led the Workingman's Party with the adopted slogan, "The Chinese must go!"⁹⁹ "More than other groups, Irish workers perceived themselves directly threatened by the Chinese"¹⁰⁰ Eventually, this social prejudice evolved into legalized discrimination when state and local laws were drafted to discriminate against the Chinese.¹⁰¹ As more

⁹⁹ Kearney's Workingman's Party "manifesto" read:

100 ROBERT G. LEE, ORIENTALS: ASIAN AMERICANS IN POPULAR CULTURE 67 (Sucheng Chan et al eds., 1999); see also Frank H. Wu, Neither Black Nor White: Asian American and Affirmative Action, 15 B.C. THIRD WORLD L.J. 225, 231 (1995). Chinese were seen as such a great threats against white America, that many states passed anti-miscengentation statutes to prohibit Asian-white intermarriage. See Hrishi Karthikeyan & Gabriel J. Chin, Preserving Racial Identity: Population Patterns and the Application of AntiMiscegenation Statutes to Asian Americans, 1910-1950, 9 ASIAN L.J. 1, 1-4 (2002).

¹⁰¹ See, e.g., Charles J. McClain, Jr., The Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850-1870, 72 CAL. L. REV. 529, 535-36 (1984) (discussing how the Chinese presence provoked hostility that evolved into discriminatory legislation); see also Lucy E. Salyer, "Laws Harsh as Tigers": Enforcement of the Chinese Exclusion Laws 1891-1924, in ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA 1882-1943, 57, 60-66 (Sucheng Chaned., 1991) (examining enforcement of exclusionary laws against Chinese by federal court); Gabriel J. Chin, Regulating Race: Asian Exclusion and the Administrative State, 37 HARV. C.R.-C.L. L. REV. 1, 1-15 (2002)(describing the motivations and practices of many states that actively discriminated against the Chinese and other Asian groups during the 1800s); A Case on Court Yesterday -- The League of Deliverance, The Morning Call, July, 10, 1882 at 4 (describing the activities state and local discriminatory activities imposed on the Chinese). Cf., Richard P. Cole & Gabriel J. Chin, Emerging From the Margins of Historical Consciousness: Chinese Immigrants and the History of American Law, 17 LAW & HIST. REV. 325, 332 (1999)("[C]hinese immigrants had contributed to a constitutional transformation of federal-state relations

⁹⁷ ROBERT G. LEE, ORIENTALS: ASIAN AMERICANS IN POPULAR CULTURE 61 (1999).

⁹⁸ See also, GYORY, supra note 6, at 37-109.

To be American death is preferable to life on a par with the Chinaman...Treason is better than to labor beside a Chinese slave...The people are about to take their own affairs into their own hands and they will not be stayed wither by...state military,[or] United States Troops. *See also* DAVID M. BROWNSTONE, THE CHINESE-AMERICAN HERITAGE 82 (David M. Brownstone & Irene M. Franck eds., 1988) (describing Kearney as one of the worst examples of a labor leader who used bigotry to advance his career).

Chinese immigrated to the United States, this xenophobia gradually spread across the nation.

Eventually, the movement to exclude the Chinese at the Congressional level commenced.¹⁰² In the years leading up to the 1876 presidential elections, California's politicians launched a national campaign to introduce anti-Chinese issues onto the national agenda by arguing that California's Anti-Chinese Movement would attract the workingman's vote, and they proceeded to detail the Chinese menace to white labor.¹⁰³ Despite opposition, especially among Republicans, both political parties went on record favoring restrictions on Chinese immigration. Many saw the Chinese as a mere symbol of the problem.

According to historian Andrew Gyory:

The single most important force behind the Chinese Exclusion Act was national politicians of both parties who seized, transformed, and manipulated the issue of Chinese immigration in the quest for votes. In an era of almost perfectly balanced party strength, presidential elections pivoted on a few thousand ballots, and candidates flailed

that would contribute to the expansion of individual rights, especially during the twentieth century. Chinese immigrants plated a more central part in a second revolution in American government that began during the late nineteenth century. It endowed the federal government with broad and exclusive powers to make law regulating immigration. ")

¹⁰² See Edward C. Lydon, *The Anti-Chinese Movement in Santa Cruz County, California: 1859-1900, in* THE LIFE, INFLUENCE AND THE ROLE OF THE CHINESE IN THE UNITED STATES, 1776-1960 219, 233 (Chinese Historical Society of America ed., 1976) ("After the passage of the Chinese Exclusion Act in 1882, the California anti-Chinese movement waited expectantly for Chinese immigration to stop and Chinese emigration to begin. But, by 1884, an air of frustration permeated the state as 'Chinese must go' forces saw that the Chinese remained. They expressed dismay that Chinatowns seemed to get larger, and each arrival of a vessel in San Francisco with Chinese aboard brought charges that the federal government . . . was not enforcing the Exclusion law.")

¹⁰³ See ANDREW GYORY, CLOSING THE GATE: RACE, POLITICS, AND THE CHINESE EXCLUSION ACT 7-8 (1998)("In 1876, Democrats and Republicans locked horns in the most competitive presidential election since the Civil War and believed that the electoral votes of the West Coast could make the difference. Both parties embraced the Chinese issue and pushed for immigration restriction ... By advocating anti-Chinese legislation to attract votes, national politicians pursued the identical strategy local politicians had used in California in the 1850s and 1860s."); Moses Rischin, *Foreword* to STUART CREIGHTON MILLER, THE UNWELCOME IMMIGRANT: THE AMERICAN IMAGE OF THE CHINESE vii (1969)(stating "that anti-Chinese attitudes were national [in scope and]that they antedated the coming of coolie migration by at least a generation ...").

desperately to capture them. Chinese immigrants, powerless and voteless, became pawns in a political system characterized by legislative stalemate and presidential elections decided by razor-thin margins. Politicians also used Chinese immigration as a smoke screen. In a period of rising class conflict, they aimed both to protect working-class voters and to deflect attention from genuine national problems--economic depression, mass poverty, and growing unemployment--by magnifying and distorting a side issue of paltry significance into one of seemingly overriding national importance.¹⁰⁴

The movement to exclude became a crucial favor in California politics and could not go unnoticed at the national political level. Both Democrats and Republicans took positions favoring aspects of Dennis Kearney's call for restrictions.

President Grant called attention to the problem in his sixth annual message, December 7, 1874. Speaking out against one aspect of Chinese immigration, the contract labor system, he called for legislation to regulate the "headmen" who own the laborer "almost absolutely."¹⁰⁵ The Contract Labor System was outlawed completely in 1885 in the Foran Act. In the course of this 1874 address, Grant stated that it was a "generally conceded fact" that Chinese males came to this country involuntarily and females "are brought for shameful purposes, to the disgrace of the communities where settled and to the great demoralization of the youth of those localities."

Hostility toward the Chinese reached serious proportions in the early 1880s.¹⁰⁶ In 1880, the Republicans called for limitations and

¹⁰⁴ GYORY, *supra* note 6, at 15.

¹⁰⁵ About this time, Bingham notes, Joseph R. Hawley spoke out against Grant, breaking with the national Republican Party on anti-Chinese legislation. Hawley appeared with President Grant on the same platform while serving as Chairman of a Republican National Convention. HAROLD J. BINGHAM, HISTORY OF CONNECTICUT 619 (1962).

¹⁰⁶ SHI-SHAN HENRY TSAI, THE CHINESE EXPERIENCE IN AMERICA 67 (Warren F. Kimball & David Edwin Harrell, Jr. eds., 1986). Law Professor Robert Chang recalls one of the most tragic examples of violence against Chinese during this time:

[[]I]n 1877 in Chico, California. While attempting to burn down all of Chico's Chinatown, white arsonists murdered four Chinese by tying them up, dousing them with kerosene, and setting them on fire. The arsonists were members of a labor union associated with the Order of

restrictions while the Democrats sought a total Chinese immigration ban, except for travel, education or foreign commerce, and that the ban be closely "guarded." The last year the platform contained language on Chinese immigration, 1884, the Republicans called for maintaining the present law and such as needed to carry out its purposes; the Democrats declared that our "gates" should be closed to such immigrants.

During the first session of the 44th Congress, 1876, the first attempt to exclude the Chinese was made. On January 6, 1876, California Representative Piper introduced a joint resolution seeking modification of the outstanding Chinese treaties. "Mongolians [were] by nature, disposition, and habits incapable of assimilating within our laws and customs, tend[ing] to establish a foreign colony in the Republic, and directly bring[ing] American free labor on competition with that which is semi-servile."¹⁰⁷ On January 18, 1876, Californian Luttrell introduced a bill to prevent naturalization of Chinese. In the Senate a committee was appointed of three senators, chaired by Senator Aaron Sargent of California, to hold hearings on the West Coast, and to make a report. The pending house bills were dropped until this committee had finished its work. The committee heard testimony from 103 people, most hostile to the Chinese immigrants, described as unfit to reside in the United States. One scholar relates that:

Caucasians, a white supremacist organization that was active throughout California. The Order of Caucasians blamed the Chinese for the economic woes suffered by all workers.

The Chinese Massacre of 1885 also took place in the context of a struggling economy and a growing nativist movement. In Rock Springs, Wyoming, a mob of white miners, angered by the Chinese miners' refusal to join their strike . . . killed twenty-eight Chinese laborers, wounded fifteen, and chased several hundred out of town. A grand jury failed to indict a single person.

Robert S. Chang, *A Meditation on Borders, in* IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 244, 250 (Juan F. Perea ed., 1997).

107 E.P. HUTCHINSON, LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY 68(1981). See also, Message of Mayor Blake to be Board of Supervisors, S.F. DAILY EVENING BULLETIN, Mar. 14, 1882 at 1 ("The Chinese, though they are with us, are not of us. They are so far as they can be a Government by themselves"...Chinatown in this city is as distinct from this municipality, ...as is the most remote province of China, except that, being in ur midst, it can sell use its merchandise and send out its swarms to invade and destroy our industries and invite use to an adoption of its vices...this state of things will continue as long as Chinatown continues.)

On April 3, 1876, the California legislature appointed a special committee to investigate the social, moral, and political effects of Chinese immigration. While the committed was holding its hearings, a mass rally sponsored by anti-Chinese partisans was held in the Union Hall of San Francisco. The meeting passed a resolution demanding an end to Chinese immigration and authorized a memorial to the United States Congress to be presented personally by distinguished citizens.¹⁰⁸

Responding to the pressures imposed by California and other Western states, in July 1876, Congress appointed a joint special committee to investigate Chinese immigration and or provide a conspicuous forum to consider all viewpoints on this volatile issue.¹⁰⁹

Beginning in 1870, politicians were known to approach the issue of Chinese exclusion and couch it in the language of class imperative, and as such, the Chinese exclusion served as a panacea for a plethora of problems.¹¹⁰ As Andrew Gyory explains, "Although immigration restriction offered scant relief and appealed to few wage earners, politicians seized it, amid the clamor for government retrenchment, as an easy solution with which they could pass defenders of working people everywhere. As a result of the national railroad strike, Chinese exclusion would find new champions in the highest echelons of government."¹¹¹

In that same year, the California Congressional Committee examined 103 witnesses and the testimony was published in a 1,200-page report.¹¹² The report called for a revision of the 1868 Burlingame Treaty and demanded restrictive legislation as well.¹¹³ California representatives urged federal legislation because some of their own attempts at restricting Chinese settlement had been, or would be, struck

 $^{^{108}}$ Shi-Shan Henry Tsai, The Chinese Experience in America 58 (1986). 109 $_{Id.}$

¹¹⁰ GYORY, supra note 6, at 96.

¹¹¹ See id. at 37-96.

¹¹² Shih-Shan Henry Tsai, The Chinese Experience in America 59 (1986).

¹¹³ *Id.* ("Since the committee was dominated by Californians and its report was principally drafted by the biased [Congressman Aaron A.] Sargent, the committee recommended that 'measures be taken by the Executive toward a modification of the existing treaty with China, confining it to strictly commercial purposes; and that Congress legislate to restrain the great influx of Asiatics to this country'.")

down by federal judges.¹¹⁴ For example, an ordinance requiring the Chinese to cut off their ques had been struck down in federal court as unconstitutional, as had a law imposing a capitalization tax on the Chinese.

B. THE NORTH ADAMS EXPERIMENT AND THE EAST COAST EXPERIENCE

A strange incident occurring in North Adams, Massachusetts, played a role in both Hawley's and Hoar's views.¹¹⁵ In 1870, a man named Calvin Sampson who ran a local shoe factory in North Adams, Massachusetts, decided that he would employ Chinese laborers to work at his factory. Immediately there was a controversy among the Northeast populace. People could not deal with the fact that Chinese laborers were coming into the region. Sampson imported 75 Chinese laborers, as part of a labor dispute with the non-Chinese union "Knights of St. Crispin." The Knights first tried without success to unionize the Chinese laborers. Then, as the Chinese proved that they could generate a profit in the shoe trade, the Knights turned to agitation against the use of "Celestials."

After the Democrats began to attack the whole project, the issue became politically charged. The Massachusetts Democratic Party strongly supported the Knights. The Republicans, faced with their long-standing views on equality for all, split between those calling for legislation to exclude the "Mongolian horde" and others who (possibly for business reasons) supported the Chinese. In the former group was Wendell Phillips, who abandoned the "prewar humanitarianism that had permeated his gift against the peculiar institution."¹¹⁶ The latter group often spoke of the analogy between the struggle to eradicate slavery and the immigration of Chinese.

While their views changed in the early twentieth century, the Democrats in the late 1800s were completely anti-Chinese, as were the Republicans from the Western states. The Eastern Republicans, however, were split down the middle: on the one hand were those who

¹¹⁴ See, e.g., MILTON KONVITZ, THE ALIEN AND THE ASIATIC IN AMERICAN LAW 10 n.29 (1946); see accord., Choy Lung v. Freeman, 92 U.S. 275, 277 (1875).

¹¹⁵ Frederick Rudolph, *Chinamen in Yankeedom: Anti-Unionism in Massachusetts in 1870*, 53 AM. HIST. REV. 1, 1-15 (1947) (discussing Chinese immigration and labor unrest in Massachusetts).

¹¹⁶ GUNTHER BARTH, BITTER STRENGTH: A HISTORY OF THE CHINESE IN THE UNITED STATES 1850-1870 199 (1964).

were moved by the labor protests and, on the other,¹¹⁷ those who remembered the bold Civil War cry of "equality for all." Hawley fell into the second camp and his editorials strongly supported the rights not only of the manufacturer to hire the Chinese but also the rights of the Chinese to come to this country and settle wherever they wanted.¹¹⁸ In June 1870, someone wrote a letter to the *Hartford Courant* complaining about Chinese laborers. Hawley's editorials strongly disagreed. He said, "If we did not want problems like these, we should not have put up the stars and stripes and invited all the world to come, be free, work and help make the continent of wilderness blossom like a rose."¹¹⁹ Hawley was completely opposed to those who criticized the Chinese experiment in North Adams.

On June 21, 1870, he penned "The Christians and the Labor Question." According to Hawley, Sampson had every right to employ the Chinese laborers, and the Knights of Labor had no grounds to obtain legislation banning Chinese labor.¹²⁰ Hawley was not happy about the living conditions of the Chinese or the fact that conditions precluded them from settling with their wives and children. But the "odds were" that the number of Chinese could not make a violent change in the condition of labor. In twenty-five years the Chinese might have settled with their families. "We shall see what we shall see." This comment at North Adams in 1870 ignited the first national debate on Chinese immigration.

At a Fourth of July speaking engagement in 1870 where he was, as usual, devoted to waiving the flag and "the bloody shirt," Hawley interrupted his speech to declare his complete support for the rights of the Chinese in the North Adams Affair. "With a flag over our head and the New Testament in our hand, let us bid them come."¹²¹ These words suggest that he was influenced by the liberal Christianity of Joseph Twichell who, at this time, was very much in favor of the Chinese experiment. On that July 4, 1870, Hawley "interrupted his waiving the

¹¹⁷ Cf., DAVID REIMERS, UNWELCOME STRANGERS: AMERICAN IDENTITY AND THE TURN AGAINST IMMIGRATION 12 (1998).

¹¹⁸ STUART C. MILLER, THE UNWELCOME IMMIGRANT: THE AMERICAN IMAGE OF THE CHINESE 1785-1882 182-83 (1969).

¹¹⁹ HARTFORD COURANT, June 24, 1870 at 4.

¹²⁰ See GYORY supra note 112 at 252.

¹²¹ F. Rudolph, *Chinamen in Yankeedom: AntiUnionism in Massachusetts in 1870*, 53 AM. HIST. REV. 1 (1947).

bloody shirt; long enough to greet the [Chinese in North Adams, Massachusetts] in the grand tradition of the Fourth of July oration."¹²² Andrew Gyory reports on Hawley's speech at the July 4th rally:

> 'I don't know how to go to work to lock the door of the United States, [Hawley] said. I wish the Chinese had a better education in regard to American institutions. I wish they could bring with them a better religion; but I believed they all can read. With our flag over me, and the New Testament in my hand, I say, Let them come!" Hawley urged 'keeping open the gateways of the United States to the free access of immigrating peoples.' He also noted that he 'could see no injury to any of our useful institutions by encouraging industrial immigration to our shores from every part of the earth.¹²³

Hawley's involvement did not stop there. His old enemy Benjamin Butler took a position calling for expulsion of the Chinese from North Adams. An editorial in the July 6, 1870, The New York Times mentioned that Hawley and Butler had debated whether Chinese might soon be employed as domestic servants in New England homes. Unlike Butler and working people, Hawley offered tacit endorsement of imported labor, and made no distinction between immigration and importation.¹²⁴ Hawley believed that both should be permitted and even encouraged.125

Hawley was chairman of the Republican National Convention for several years running and the Republican platform at that time was anti-The platform was not at the xenophobic level of the Chinese. Democratic platform, but it still had touches of anti-Chinese rhetoric in it, thanks to the California Republicans. Hawley's remarks at the convention indicated that he broke with members of his own party and President Grant, who attended the convention. Hawley told the surprised

¹²² Gunther Barth, Bitter Strength: A History of the Chinese in the United States, 1850-1870 199 (1964).

¹²³ Id.

¹²⁴ GYORY, *supra* note 112 at 50. Butler's views on Chinese have been summarized in newspaper articles. See also, BOLD BUTLER DISCUSSES THE CHINESE EVIL, DAILY ALTA CALIFORNIA, Apr. 16, 1882 at 1.

The "experiment" as it turned out did not take hold. After a three-year period, most of the Chinese left North Adams as their work contracts concluded. They were not interested in staying in this isolated and unfriendly city.

The fallout from the "North Adams Experiment" continued, however, through the 1870's. It was still a topic in 1882 when Hawley and Hoar opposed the first Chinese Exclusion Act. These efforts were memorialized in an article in *The Daily Alta California* reporting on a Senate session about the sustaining of the anti-naturalization clause and section fifteen being stricken out:

> Hawley said the criticisms [of the phraseology] would apply to the whole bill. It was made a duty of the President for instance, under certain conditions to catch a yellow boy and deport him. "What is the use of arguing the question at all?" . . . [W]e have made up our minds in the middle of the nineteenth century to put this on our statute books, let us do it in silence and in mourning.

. . .

Hoar said that though he believed the bill was destined to pass, he wanted to put on record his conviction that the opinions of a large body of the intelligent people of the country, of the great religious denominations, and of the representatives of communities which owed their prosperity, power and happiness to the dignity they had given to the labor on which they were based, would sooner or later prevail in impressing the position now contemplated. He believed the Pacific Coast itself would come very soon to the position which the Republican party in California had taken years ago in deprecating extreme legislation of the character of that new mind. [Hoar] declared that this legislation, which inflicts a blow at men because of the color of their skin, would be a cause for deep repentance to the American people... [Hoar] declared that General Garfield would have put his right hand in the flames like Cramner, before he would have subscribed his

¹²⁶ H. BINGHAM, HISTORY OF CONNECTICUT 619 (1962).

name to a declaration involving such a blow at the dignity of American labor and of humanity that was involved.¹²⁷

Hoar, who also supported the experiment along with Hawley, was repeatedly attacked on this point by the Western Senators on the floor of the Senate. The West used the incident to illustrate what Easterners really thought of the Chinese when in contact with them. In their view, Eastern Republican opposition was naive and based upon lack of Chinese in their population. But in the later years of this era, the attitudes of Easterners began to change, swinging towards interpreting Chinese immigration as injurious additions to their population.¹²⁸

C. The Fifteen Passenger Act

At the start of the Third Session, 45th Congress, January-March, 1879, Representative Albert S. Willis of Kentucky and Californians combined various bills together into what became known as the "Fifteen Passenger Act." The Fifteen Passenger Bill limited the number of Chinese passengers permitted on any ship coming to the United States to fifteen.¹²⁹ The bill provided that no vessel should take on board at any point in China, or elsewhere, any more than 15 Chinese passengers with the intent to bring them to the United States.¹³⁰ A shipmaster of the vessel was to keep a certified log of all Chinese passengers. Penalties against the Master included a misdemeanor conviction, punishable by fine of \$100,000, imprisonment of six months, and a lien on the vessel.¹³¹ The passengers were also subject to arrest. The House held debate on the bill on January 28, 1879.

Hutchinson remarks that, "The bill was discussed at length in the House, remarks were extended, and various materials were inserted in

130 Id.

¹³¹ See also, ANDREW GYORY, CLOSING THE GATE: RACE, POLITICS, AND THE CHINESE EXCLUSION ACT 37-138 (1999); SHI-SHAN HENRY TSAI, THE CHINESE EXPERIENCE IN AMERICA 59 (1986).

¹²⁷ See also, Progress Made with the Chinese Bill in the Senate, DAILY ALTA CALIFORNIA, Apr. 26, 1882 at 1.

¹²⁸ See also, STUART CREIGHTON MILLER, THE UNWELCOME IMMIGRANT: THE AMERICAN IMAGE OF THE CHINESE 8 (1969); *The Eastern View of Chinese Exclusion*, L.A TIMES, Mar. 30, 1892 at 4.

¹²⁹ See also CHARLES J. MCCLAIN, IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA 147 (1994).

the Congressional Record...The bill was then taken up section by section and passed on January 28 by a vote of 155 to $72.^{132}$ It is doubtful that the Act was a true deterrent to Chinese coming to this country, but it was symbolic. The opponents noted: first, that the Fifteen Passenger Act violated existing treaties that allowed people to come freely from China, and second, that it was the start of a more general federal exclusion effort. Approval of the Act became the subject of battle between the East and the West and massive rallies were held in cities such as San Francisco and Boston.¹³³

The House opponents accused the House of passing the bill only because of California politics. In their view, the bill violated the existing 1869 Burlingame Treaty, already under renegotiation. As such, the Fifteen Passenger Act was a spit in the face to China.

However, in the view of some other commentators on the other side of the issue, "The Fifteen Passenger Bill proved a major advance for the anti-Chinese movement.¹³⁴ Although the measure failed, the debate revealed that the days of unrestricted Chinese immigration were numbered."¹³⁵ The Senate, under the direction of California Congressman Sargent, took the bill up between February 12 and 15, 1879. The Senate added amendments omitting Chinese officials from the bill's scope, and called upon the President to give notice that a portion of the Burlingame Treaty was abrogated.

If nothing else, the Fifteen Passenger Bill crystallized public debate on Chinese immigration in the 1870s. Generally, the West¹³⁶ and the South were pitted against the Easterners:

We are alarmed upon this coast at the incursion of the Chinese. It is not avarice, greed, or cowardice that prompts us, and all classed of our society, to say to the law-makers and opinion-makers of the East that we have a serious apprehension of the consequences of Chinese immigration. In the language of Senator Booth, we declare that it is our conviction 'that the practical issue is, whether the civilization of this coast, its society, morals, and industry, shall be of American or

¹³² HUTCHINSON, supra note 109, at 73.

¹³³ *Turning Away the Chinese*, N.Y. TIMES, Feb. 19, 1879 at 1; *Editorial*, BOSTON EVENING TRANSCRIPT, Feb. 19, 1879.

¹³⁴ See also, Asiatic Aliens: The Senate Continues its Debate on the Chinese Question, S.F. DAILY EVENING BULLETIN, Mar. 7, 1882 at 1.

¹³⁵ GYORY, *supra* note 9, at 167.

¹³⁶ One of the most influential persons behind the Chinese helping the proponents of the Fifteen Passengers Act was Supreme Court Justice Steven J. Field. He stated in a newspaper interview:

Opponents of the bill declared that it was in violation of the Burlingame Treaty, a revival of Know-nothingism, a complete capitulation to the demands of Dennis Kearney and his Workingmen's Party. They reasserted that the Chinese were not coolies nor were they unassimilable. Supporters of the bill, on the other hand argued that these Chinese had no regard for family, did not recognize the relationship of husband and wife, did not observe the tie of parent and child, and were laborers under a mortgage.¹³⁷

The exception to this factionalization was Senate Majority Leader, James J. Blaine. A Maine newspaper owner who had served several terms in the U.S. House before advancing to the Senate, Blaine had been long suspected in a variety of corrupt practices and influence peddling. "Blaine elevated the Chinese issue nationally in a way no other individual--whether in the Senate, in Sacramento, in San Francisco, or in the sandlot--ever could have, and he single-handedly raised the politics of race to a new level."¹³⁸ His overriding goal was to be president; he had already failed against Hayes in 1876 and would fail taking on James Garfield in 1880.

Blaine strongly supported the Fifteen Passenger Act, and later, as Secretary of the State, other anti-Chinese legislation. "Blaine had three goals in championing Chinese exclusion: influencing the California election, swinging western delegates at the Republican Convention, and with workingmen's votes nationwide, winning the presidency."¹³⁹ On February 14, 1876, Blaine held forth with an oration vigorously backing the legislation. "We have this day to choose whether we will have for

Asiatic type.' It is to us a question of property, civilization, and existence. We are in earnest, we are compelled to be, and what we now demand is that the American people shall consider this question. KONVITZ, *supra* note 116, at 101.

TSAI, supra note 11, at 59.

¹³⁹ GYORY, *supra* note 6, at 147.

¹³⁸ GYORY, *supra* note 9, at 145. According to Gyory, "Blaine never admitted any ulterior motive for supporting the Fifteen Passenger Bill, but the evidence is overwhelming. In his otherwise skimpy collection of personal papers, Blaine devoted meticulous attention to gauging reactions to his anti-Chinese effusions. In a scrapbook, he carefully preserved dozens of clippings from editorials around the country commenting on his newfound opposition to Chinese immigration." *Id.* at 147. *Cf., The Eastern View of Chinese Exclusion*, L.A TIMES, Mar. 30, 1982 at 4.

the Pacific coast the civilization of Christ or the civilization of Confucians." According to Campbell, "Blaine was so proud of this speech and of another he delivered on February 15 that he had them both published in his book, *Political Discussion, Legislative, Diplomatic and Popular, 1856-1886.*¹⁴⁰ On the issue of whether it is desirable to exclude Chinese immigration from the United States, Blaine argued that the United States had every right to break a treaty, and citing to China's past violations of the treaty, he warned about the swarming coolies from China which threatened this country.¹⁴¹

1. Defending the Chinese

The Fifteen Passenger Bill inspired virtually no debate in the House. Republican Senator George Robinson of Massachusetts dismissed it as "cheap nostrums," but only two members spoke at any length against it.¹⁴² Of the three "Sons of Connecticut" written about here, only Hoar was in the Senate at the time. Platt was to enter the Senate in the 46th Congress in March 1879. Hawley, who lost to Platt just as the Fifteen Passenger Act was to be considered in the House in January 1879, was preparing to enter the House in March 1879. Hoar, as usual, left nothing unsaid in defense of the Chinese position.

Hoar held a belief that the great mission of Americans is to live out "the truth, that wherever God has placed in a human frame a human soul, that which he so created is the equal of every other like creature on the face of the earth--equal, among other things, in the right to go everywhere on this globe."¹⁴³

Hoar had several reasons for his opposition to the Act, including the connection between the existing Burlingame Treaty and the

¹⁴² See GYORY, supra note 6, at 137-39.

 $^{^{140}}$ Political Discussion, Legislative, Diplomatic and Popular, 1856-1886 (1887).

¹⁴¹ GYORY, *supra* note 6, at 142. "American opposition to the Chinese presence in the United States centered on ... economics and race, both of which were usually framed as a critique of Chinese culture. Euro-American politicians, missionaries, labor leaders, and journalists argued that the Chinese degraded American labor by working for wages well below the standards needed to sustain an American family...because of the nature of their economic arrangements with their employers or mutual societies, the Chinese were accuses of fostering a new system of slavery, or coolieism, in the United States." WONG, *supra* note 73, at 5.

¹⁴³ See id. at 151.

legislation, and the fact that it contradicted what he deemed to be the ideal of American suffrage for all:

But, as I said Mr. President, I do not wish to detain the Senate at this later hour; I wish simply to put on record my own individual opposition to this measure. I am opposed to it, first, because it violates without necessity and in the absence of danger the public faith. I am opposed to it because, if we had the right to accomplish the result by this method, it overthrows the guaranteed rights of so large a proportion of our fellow-citizens, on which so much of their wealth and their commerce depends. I am opposed to it for another reason. I am opposed to it because it violates the fundamental principle announced in the Declaration of Independence upon which the whole institution of this country is founded, and to which by our whole history the American people are pledged.¹⁴⁴

California Senator Sargent replied that his community demanded assistance.¹⁴⁵ There were "armed camps" about to ride over this immigration. The Chinese were threatening the Republican institution. Senator Beck of Nevada also urged passage saying that the Pacific states were threatened by a mongrel race.

To which Hoar replied:

The Senator from California charges me with having uttered what he calls sentimentalities, and with seeking to make sentimentality the guide of our legislative action. Mr. President, I do not understand that those simple rules of conduct which are laid down by the founder of our religion, by the founders of our Republic, by the sense of honor and the sense of honesty of mankind, are properly described by the scornful term which the Senator from California applied to them. The rule which requires nations to keep their faith, which demands that governments shall have regard to the laws of justice, which declared the equality of every human should be with every other human soul, in the right to use the right which God has created for his children in this world--these are the eternal and practical verities

¹⁴⁴ 8 CONG. REC. 1312 (1879).

¹⁴⁵ 8 CONG. REC. 1312 (1879), Mr. Sargent's comments.

which, through all time and everywhere acted upon, lead to property, to wealth, to greatness, and which parted from the government or the individual who departs from them to disaster, to poverty, to destruction. You might as well say that the mariner who trusts that the compass points to the north is relying upon a sentimentality, as to say that the nation which governs itself by these rules of conduct in its legislation is resting upon sentimentality.¹⁴⁶

He was followed by Senator Blanch K. Bruce, a former slave, now the reconstruction Senator from Mississippi, who spoke out against the proposed legislation. The contrast between those speaking out in favor of contamination of "lowly" races and Bruce's opposition must have hit home. Hoar states that Bruce left the Senate respected by both sides in the debate.¹⁴⁷

The Fifteen Passenger Act passed both houses of Congress in February 1879. The bill itself passed the Senate by a vote of 39-7. All that could possibly stop it from taking effect would be the veto of then President Hayes. Then the pressure became intense over whether Hayes would sign the legislation. Hoar entered into a sharp debate with Sargent and Blaine over a telegram from the California Constitutional convention, praising the bill that would reverse the course of American policy on this issue. Sargent had laid the correspondence "on the table," and sought to present it to the Senate. Hoar objected to the acceptance of the telegram by the Senate. Sargent described how "men, strangers to each other, embraced upon the streets and wept for joy," over the passage of the bill. He was pleased that Hoar rejected it, as the objection supported the notion that the West's concerns were being treated with levity.

Hoar reviewed several favorable letters. One D.W. Gage, an attorney in Cleveland, Ohio, had read an extract in *Harper's Weekly* of Hoar's remarks. Oliver Ayer offered glowing praise that "so few New England Senators are for exclusions [of the Chinese] from the privileges that all other countrymen (sic) are receiving. This country has been the asylum of the oppressed of every country and I hope we shall not begin to shut the gate against the Chinese." Edward Pierce praised Hoar. The hypocrisy was apparent. He noted the "spectacle" of some Republicans

¹⁴⁶ 8 CONG. REC. 1314 (1879).

¹⁴⁷ See KONVITZ, supra note 116, at 10. Hoar replied to a comment by Justice Field that the Chinese will not assimilate. "It takes two to assimilate," said Hoar.

shedding tears over the mistreatment of "Africans" and at the same time staging a raid on the Orientals.¹⁴⁸

At this same time, there were numerous demonstrations in the West. Members of both political parties declared in San Francisco that it was the end of the United States if the Fifteen Passenger Act was not signed. Conversely, the Easterners, including prominent figures such as Henry Ward Beecher, increased the pressure arguing that the Act was an affront to the Chinese and to all humanity.

Hawley and the Hartford community responded to Hoar's challenge in the Senate. On February 19, 1879, several *Hartford Courant* stories discussed the bill. The first, a news dispatch on the front page with a dateline of Washington, February 19, 1879, related that there was panic among friends of several presidential candidates over the negative reaction to the Chinese bill. There was no proof that the Chinese embassy had favored passage. There was also a lengthy story about Henry Robinson, a state representative from Hartford, who introduced a resolution calling the Fifteen Passenger Act a flagrant violation, and declared that he hoped it would never become law.

The *Courant* also recorded the views of circus manager P.T. Barnum, then a legislator from Bridgeport. Barnum had an interesting background concerning the Chinese. For several years, starting in 1850, he had exhibited to thousands in his traveling show a "normal Chinese family." "Even the most commonplace actions of Chinese burying their dead or eating draw large crowds."¹⁴⁹ But as a legislator, Barnum was most sympathetic to the Chinese. He replied specifically to Representative Bugbee: "[I]f it could be shown that the Chinese have no souls, then the resolution ought not to pass, but the gentleman seems to admit that they have souls and were made by the same God that made us, and he hoped they would come here, as many of them want to [applause]."¹⁵⁰ Finally, Hawley had his own editorial of February 19, 1879, where he noted that statesmen were having "second thoughts" about the bill. They were surprised that, "in catering to the California

¹⁴⁸ Letter from Edward Pierce to Hoar (February 12, 1879). Letter from Oliver Alyer to Hoar (February 18, 1879). Letter from Oilver Ayer to Hoar (March 1, 1879) (on file with the Massachusetts Historical Society).

¹⁴⁹ See R. MCCUNN, CHINESE AMERICAN PORTRAITS 18 (1988).

¹⁵⁰ See PHILLIP B. KUNHARDT, JR., PHILIP B. KUNHARDT III, PETER W. KUNHARDT P.T. BARNUM AMERICA'S GREATEST SHOWMAN 201 (1995). When Barnum had tried for a U.S. House seat in 1866, Hawley noted that Barnum had the dual character of humbug in public and a decorous gentleman in private. He is a "better man than many of our state supposed."

Hoodlums," they did not receive a more favorable response. He concluded that diplomacy was not the answer, and that we should not be "needlessly insulting" China and jeopardizing our trade. Hawley suggested that, "Perhaps they may not learn a lesson in statesmanship from the men they affect to despise."

The *New York Times* carried Hartford's story to its own pages of February 19, 1879. On the front page for that date was "Opinions East and West." The Western story was from San Francisco. There was an "uneasiness" among the community. The veto of the bill would be a disaster, and the blame would be placed on the Eastern press and clergy. Hartford gave the "Eastern" opinion with the story of Robinson's resolution.

The same *New York Times* article carried an address in Boston by Reverend Henry Ward Beecher (a brother-in-law of Hawley's partner). The Minister addressed the bill as not just a wrong done to the Mongolian, but a wrong done to all Americans. He pleaded for the Chinese because he pleaded for his country.

The Reverend Joseph Twichell of Hartford's Asylum Hill Congregation Church, was one of the leading religious figures against the Fifteen Passenger Act. He blasted Blaine in February, and again later that year in a speech to the American Missionary Society. He likened the legislation to a "medieval edict against the Jews." The country was crying out in protest.

In California, Republican Senator John F. Miller spoke to the Constitutional convention, then engaged in an on-going challenge against the Eastern opponents to "experience" the Chinese "problem." Miller subsequently introduced a bill to exclude Chinese immigrants.¹⁵¹

If the people over on the eastern side will not hear our complaints; if they say this is not an evil, and that the Chinese are as good as any other class of immigrants--that we are making a great noise and confusion about nothing-let us send over four, or five, or ten thousand of these people--those who are dangerous to the well-being of the state--belonging to the criminal and diseased classes; let us send then a brigade or two of these Chinamen, and see how

¹⁵¹ See also, GYORY, supra note 9, at 223; The Chinese Curse: Necessity for Prompt Action by Congress, S.F. CHRON. Mar. 1, 1892 at 3.

they like it. There would be no sure way of changing their views upon the Chinese question. 152

The bill provided that 60 days after the passage of the bill and for 20 years thereafter, the immigration of both skilled and unskilled laborers was to be systematic. These ends were enforced by a rigid system of registration, certification, and identification of Chinese residing in the United States, which subjected the Chinese to imprisonment and deportation.¹⁵³

The Senate debate on the bill lasted for eight days and Miller received support from all of his Western colleagues and most of the Southern Democrats. Republican Henry M. Teller of Colorado and Democrats James Z. George of Mississippi, Wilkinson Call of Florida and John T. Morgan of Alabama were among the outspoken supporters of Miller's bill.¹⁵⁴

Twichell's comment on such statements was as follows: "No; I don't want to go to California to get my view of the Chinese question, I can't trust myself. I'd rather stop here [in Connecticut] and get it from the Bible--get it from the Gospel of Jesus Christ, who tasted death for every man."

A Democratic and Republican rally in San Francisco (Kearney's Party was excluded) urged President Hayes to sign the bill. Hayes noted that, "Our Countrymen on the Pacific Coast...with great unanimity, and with the utmost earnestness desire a change in our relationship with China."

Despite intense lobbying, on March 1, 1879, the Act was vetoed¹⁵⁵ by Hayes because it conflicted with the 1869 Burlingame Treaty.¹⁵⁶ The treaty provided for the free, voluntary migration and emigration of citizens of both countries and guaranteed Chinese subjects visiting or residing in the United States "the same privileges, immunities, or exemptions in respect to travel or residence as may there be enjoyed

¹⁵⁴ SHIH-SHAN HENRY TSAI, THE CHINESE EXPERIENCE IN AMERICA (1986).

¹⁵² CARL BRENT SWISHER, MOTIVATION AND POLITICAL TECHNIQUE IN THE CALIFORNIA CONSTITUTIONAL CONVENTION 1878-1879, 87 (Da Capo Press, 1969).

¹⁵³ See TSAI, supra note 11, at 62.

¹⁵⁵ One influential figure in the veto was S. William Wells, a Chinese history teacher at Yale and a former Missionary and diplomat in China. He feared that the Chinese might reciprocally revoke privileges America had in China; he conveyed this message to Hayes. *Id.* at 60.

¹⁵⁶ Burlingame Treaty, July 28, 1868, U.S.-China, 16 Stat. 739 at 740.

by the citizens or subjects of the most favored nation."¹⁵⁷ An effort to override failed. According to the veto message, such legislation would amount to a "denunciation of the whole treaty." Americans working as merchants and missionaries in China would suffer. Hayes believed Chinese immigration to be slowing down. In his view, what was required was not the emergency action of "immediate suppression," but renewed diplomatic negotiations.

Hartford was right in the thick of it. Of all the cities in the East, Hartford's resolution supporting the veto of the Fifteen Passenger Act appeared on the front page of *The New York Times*.¹⁵⁸ *The Courant* published reports of all votes and debates in the state legislature, and Hawley wrote editorials, accusing the politicians from California of catering to local stone-throwing hoodlums. Hawley wrote that the proponents were going to learn that the Act would not do them any good in the long run, either politically or morally.

The struggle eventually ended when President Hayes sent his long veto message to Congress.¹⁵⁹ Nonetheless, Hayes was concerned about the political consequences of his veto on the Pacific coast. Hayes believed that the West coast was entitled to relief.¹⁶⁰ He noted in his diary that the "Chinese labor invasion was pernicious and should be discouraged."¹⁶¹ But such relief could not be undertaken without negotiations. After all, he continued, it was the United States that had induced the Chinese to come to this country and had proposed the language of the treaty. Hayes argued that if the Chinese-mostly male--did not fit in, and caused the white dominant class to suppress them violently, a new treaty was the only answer.

Not surprisingly, the West reacted in anger to the veto, regardless of its philosophical good intentions. In one town, Hayes was burned in effigy. After the vetoes, the *New York Times* noted that the Californian protests were overdone. This was not the "grand crisis of the Republic." According to the newspaper account, there would be further efforts to limit immigration by treaty, which would be supported by those living in the East.

Hayes, mindful of the politics in the *New York Times* editorial, set about to send a delegation to China to renegotiate the Burlingame

¹⁵⁷ Id.

¹⁵⁸ See also, Congress and the Chinese, N.Y. TIMES, Jan. 29, 1879 at 1.

¹⁵⁹ SHIH-SHAN HENRY TSAI, THE CHINESE EXPERIENCE IN AMERICA 60 (1986).

¹⁶⁰ Id.

¹⁶¹ Id.

Treaty. A nephew of William H. Seward--George Frederick Seward-was then minister to China. On March 25, 1879, he wrote to Hayes urging moderation--the level of immigration was settling down. The problem could be controlled merely by first containing the involuntary immigration. Importantly, at this same time, Seward had his own share of personal problems to deal with. Seward was in trouble with the Democrats; he was accused of embezzlement and corruption while overseeing the building of China's first railroad.

V. THE DEBATE OVER THE CHINESE EXCLUSION ACTS

A. 1882

On June 4, 1879, the House started impeachment proceedings against Seward and he was recalled on December 27, 1879. In place of Seward, Hayes, in the spring of 1880, named as Chief Chinese negotiator James B. Angell, President of University of Michigan. Angell had been recommended by Senator George G. Edmunds of Vermont, whom Hayes had praised for not pressuring him on patronage appointments.¹⁶² Hayes also named John F. Swift, a California Republican who was anti-Chinese, and William H. Trescot of South Carolina, a diplomatic historian and former diplomat. The Hayes administration's position was that immigration should be restricted by a new treaty, but nothing should affect the current Chinese inhabitants of the United States.

With Swift in dissent, Angell and Trescot concluded a moderate treaty along the lines of Seward's suggestions on November 17, 1880. Article I allowed the United States to regulate, limit and suspend, but not prohibit completely, incoming laborers. Other articles prohibited opium importation. The treaty also exempted teachers, students, merchants and travelers from its restriction on immigration. With the new treaty in place, the stage was set for another attempt at passage in Congress of restrictive legislation.

Hoar recounts two episodes relating to the Senate ratification of the new treaty on July 19, 1881. He spoke out so earnestly against ratification that his fellow Republican Massachusetts Senator Henry L. Dawes moved that his speech be published, notwithstanding the rule of secrecy. The Senate would have permitted the printing of the speech, but a Pacific coast senator objected on the ground of special and discriminatory treatment, so Hoar did not publish it. His views became

¹⁶² Discussion of the negotiation of the new treaty taken from ARI HOOGENBOOM, THE PRESIDENCY OF RUTHERFORD B. HAYES 181-84 (1988).

known in any event and he was hung in effigy in Nevada. Senator Dawes, who often sided with Hoar and Hawley on issues, complained that he was ignored—that Hoar was the only one hung in effigy. Senator Jones of Nevada "good-naturedly" replied that he would be glad to take steps to remedy the oversight.

In March 1881, just as Hawley entered the Senate, the exclusionary issue came up again. A new treaty with China in 1880 no longer permitted free and open immigration; instead, it said "reasonable" restrictions could be made by Congress. Immediately, in response, the California delegation to Congress proposed a twenty-year exclusion of all Chinese laborers. After its quick passage, however, President Arthur vetoed the Act, calling twenty years too lengthy a time period.

Brahmin journals welcomed Arthur's veto, but labor groups--in both the East and the West--denounced the President. Californians found Arthur to be more responsible to the commercial interests of the eastern states than to the desires of the Pacific coast. In San Francisco, flags hung at half-mast, and merchants draped their stores as if in mourning.¹⁶³

In the debate on the veto, Senator Sherman concurred with the President. He resented the incipient threat of Senator Farley of California.¹⁶⁴

The suspension as proposed initially was not to apply to Chinese who were in the United States as of November 17, 1880, or before the act took effect. "An elaborate system of registration, certification and identification was specified, with imprisonment and deportation as penalties for fraud."¹⁶⁵ Skilled and unskilled laborers alike were excluded from entry.

Then the California delegation made another suggestion, a tenyear exclusion.

> Within two weeks of the veto, the House had reported out new legislation, retaining the vetoed provisions, but reducing the period of suspension to ten years. The bill having passed the House by a large majority--chiefly Democrats and Pacific Coast Republicans--it went to the

¹⁶³ DOENECKE, *supra* note 11, at 93.

¹⁶⁴ Coolidge describes Farley as the most extreme of the west coast congressmen. Farley frequently raised the issue of the North Adams affair when Hoar spoke. "Senator Dawes came out of a committee meeting to substantiate Hoar's statement that individual contracts were made by the employer with the North Adams Chinese..." *Id.* 165 *Id.* at 169.

Senate Committee on Foreign Relations which reported it back within a few days amended in many particulars so as to be clearer, more exact and less sweeping. Senator Morgan announced that the Committee was not unanimous, at least three members not agreeing with the amendments. Most of these last, however, were accepted by the Senate without debate although all the Coast representatives objected to some of them and Senator Farley of California objected to all change. Section 12 was fundamentally altered by putting the control of deportation in the power of Federal officers, instead of the immigration officers of the district, after the case had been brought into court.¹⁶⁶

The debate that ensued again pitted Westerners and some Southerners against the Eastern Republicans.

Senator Miller opened the debate by referring to the treaty lately negotiated in which the point of restriction had finally been granted by the Chinese Government. He argued that it would not appear inconsistent and vacillating if a measure of restriction should fail in Congress. Both political parties would not agree that it was necessary and the vote on this bill would determine whether they were sincere or had been merely endeavoring to catch votes. The failure of the bill would, he said: "omission all the traffickers in human flesh to employ their infamous trade without impediment, and empty the teeming, seething, slave pens of China upon the soil of California." He attributed the great number of tramps and hoodlums in California during the late depression to Chinese competition, and ended with the assertion that thousands of white persons had quit the State because of it.

Miller received broad support from the other Western Senators as well as Southern Democrats.¹⁶⁷ According to James L. George, Democrat of Mississippi, "This was a white man's government."

Senator Hoar and other New England Senators stood foursquare against the proposed legislation. Hoar's reasons were given in his forceful speech of March 1, 1882. He initially stated:

Thirteen States have become thirty-eight; three million have become fifty million; wealth and comfort and education and art have flourished in still larger proportion. Every twenty years there is added to the valuation of this

¹⁶⁶ M. Coolidge, *supra* note 11, at 177.

¹⁶⁷ See also, Senator Miller's Speech, S.F. CHRON., Mar. 8, 1882 at 8.

country a wealth enough to buy the whole German Empire, with its buildings and its ships and its invested property. This has been the magnet that has drawn immigration hither. The human stream, hemmed in by ranks invisible but impassible, does not turn toward Mexico, which can feed and clothe a worker or South America, which can feed and clothe a hundred worlds, but seeks only that belt of States where it finds this law in operation. The marvels of comfort and happiness it has wrought for us scarcely surpass what it has done for other countries. The immigrant sends back the message to those he has left behind. There is scarcely a nation in Europe west of Russia which has not felt the force of our example and whose institutions were not more or less slowly approximated to our own.

Hoar then rejected what he termed the two motives for the proposed legislation--the "old race prejudice" and fear of economic harm to native workingmen. He spoke of the battle to end slavery and to end Irish discrimination. On anti-Semitism¹⁶⁸ he said:

There is another most remarkable example of this prejudice of race which has happily almost died out here, which has come down from the dark ages and which survives with unabated ferocity in Eastern Europe. I mean the hatred of the Jew. The persecution of the Hebrew has never, so far as I know, taken the form of an affront to labor. In every other particular the reproaches which for ten centuries have been leveled at him are reproduced to do service against the Chinese. The Hebrew, so it was said, was not a Christian... He was an unclean thing, a dog, to whom the crime of the crucifixion of his Saviour was never to be

In my speech in opposition to the Chinese bill..., I alluded to some length to

¹⁶⁸ In the 1879 debate anti-Semitism had again been raised by Hoar. An interesting incident occurred:

the treatment of the Jews in the dark ages and down to a very recent time. Senator Jonas, who was a Jew, paid me some compliments about my speech. I said: "Why will you not remember the terrible history of the men of your own race and blood, and help me resist a like savage treatment of another race?" Mr. Jonas rejected the suggestion with great emphasis, and said:, "Mr. Hoar, the Jews are a superior race. They are not to be classed with the Chinese." 2 Hoar at 59-60.

forgiven. The Chinese quarter of San Francisco had its type in every city of Europe. If the Jew ventured from his hiding place he was stoned. His wealth made him the prey of the rapacity of the noble, and his poverty and weakness the victim of the rabble. Yet how has this oriental conquered Christendom by the sublimely of his patience!....Lord Beaconsfield admits that the Jews contribute more than their proportion to the aggregate of the vile; that the lowest class of Jews are obdurate, malignant, odious, and revolting. And yet this race of dogs, as it has been often termed in scorn, furnishes Europe today its masters in finance and oratory and statesmanship and art and music. Rachel, Mozart, Mendelsohn, Disraeli, Rothschild, Benjamin, Heine, are but samples of the intellectual power of a race which today controls the finance and the press of Europe.¹⁶⁹

With regard to "the character of the Chinese," Hoar found that the race had benefited the State through its hard efforts for little pay, and had not taken away any white jobs. Hoar concluded:

> Humanity, capable of infinite depths of degradation, is capable also of infinite heights of excellence. The Chinese, like all other races, has given us its examples of both. To rescue humanity from this degradation is, we are taught to believe, the great object of God's moral government on earth. It is not by injustice, exclusion, caste, but by reverence of the individual soul that we can aid in this consummation. It is not by Chinese policies that China is to be civilized. I believe that the immortal truths of the Declaration of Independence came from the same source with the Golden Rule and the Sermon on the Mount. We can trust Him who promulgated these laws to keep the country safe that obeys them. The laws of the universe have their own sanction. They will not fail. The power that causes the compass to point to the north, that dismisses the star on its pathway through the skies, promising that in a thousand years it shall return again true to its hour, and keeps His word, will vindicate His own moral law. As surely as the path on which our fathers entered a hundred

¹⁶⁹ 13 Cong. Rec. 1519-20 (1882).

years ago led to safety, to strength, to glory, so surely will the same path on which we now propose to enter bring us to shame, to weakness, and to peril.¹⁷⁰

The Boston Evening Transcript praised Hoar's speech: "Senator Hoar admirably maintains the dignity and influence of the position he fills and worthily represents the Commonwealth in the high legislative assembly of the country." *The Transcript* knew that nearly all would endorse the speech and would agree that the workingman had nothing to fear from the Chinese laborer.

Platt, in his meticulous fashion, made a similar case in opposition. Because of his pragmatic approach, his views were more easily adopted by the Senate than Hoar's. His address was summarized as follows in his official biography:¹⁷¹

Mr. Platt could not bring himself to vote for it. He believed it violated the spirit of the treaty as well as the principles of

Later, in the spring of 1882, a bill was passed to carry into effect the Treaty of 1880. That I resisted as best I could. In opposition to this bill I made an earnest speech showing it to be in conflict with the doctrines on which our fathers founded the Republic; with the principles of the Constitutions of nearly all the States, including that of California, and with the declarations of leading statesmen down to the year 1868. .. the Chinese race had shown examples of the highest qualities of manhood, of intelligence, probity and industry. I protested against a compact between the two greatest nations of the Pacific, just as we were about to assert out great influence there, which should place in the public law of the world, and in the jurisprudence of America, the principle that it is fitting that there should be hereafter a distinction in the treatment of men by governments and in the recognition of their right to the pursuit of happiness by a peaceful change of their homes, based, not on conduct, not on character, but upon race and occupation; by asserting that you might justly deny to the Chinese what your might not justly deny to the Irish, that you might justify deny to the laborer what you might not deny to the idler. I pointed out that this declaration was extorted from unwilling China by the demand of America; and that laborers were henceforth to be classed, in the enumeration of American public law, with paupers, lazzaroni, harlots, and persons afflicted with pestilential diseases.

2 HOAR at 123.

¹⁷¹ L. COOLIDGE, *supra* note 51, at 154-156.

¹⁷⁰ Id. at 1,523. Hoar made the following comment on his 1882 address in this memoirs:

natural rights and justice. On March 8, 1882, he delivered a speech in opposition to the measure, which was emphatic and comprehensive. "To prevent possible damage or alleviate a real misfortune," he said, "I cannot consent to the infraction even of the spirit of a treaty, while professing to be bound by it." He reminded the Senate that a treaty was "a contract between nations," and should be kept like every other contract, in the spirit in which it was made:

"We made this contract which we call a treaty with the Chinese Government, and we must keep it. We must keep it or stand forever disgraced in the eyes of the world. There is no way in which an individual can so soon and so thoroughly forfeit the respect of the community in which he lives as to be sharp in making a contract and sharp in taking an unfair advantage under the contract which the other contracting party never expected that he would take. There is no way in which a nation can so surely forfeit the respect of all other nations as to make that contract called a treaty in shrewdness, and then as shrewdly take advantage of the technical terms of that treaty to accomplish what the other contracting party never intended should be accomplished."

But aside from the fact that the bill was in violation of the treaty, Mr. Platt opposed it because: "The true intent and meaning of it is to declare that henceforth, excepting only the Chinese now here, and the colored people now here, no man shall work in the United States except he be a white man."

He could not give his adherence to such a principle:

In the right to work honestly, the Chinaman is your equal and my equal and the equal of every living man, and I will never consent to the passage of any bill which controvenes [sp] that principle. Do not misunderstand me. I do not say the Chinaman is the equal of the Anglo-Saxon socially or intellectually. What I do say is that, other conditions being equal, he has the same right to come to this country and work that any white foreigner has.

Mr. President, it will not do to put this legislation on that ground. It will not do to say that a white man who has all the characteristics and habits of a Chinaman and who will work as cheap as a Chinaman may come and labor here and a Chinaman may not, because, forsooth, he is a Mongolian. It will not do to invite white men to come and labor, no matter how cheap they may labor, and forbid a Chinaman to come and labor at the same wages. You must put this legislation on some other ground than the ground of race or color.

Having given the reasons for his opposition to the bill, Mr. Platt went on to suggest certain conditions under which he could vote for legislation on the subject:

I would vote for a bill which did not improperly regulate or limit, or unreasonably suspend the immigration of Chinese laborers. I would vote for a bill which should prevent them coming to this country in such numbers as to endanger our political and social institutions. I would vote for a bill which would prevent their coming here as laborers in such numbers as to ruin labor. I would vote for a bill which should prevent their coming here, if they degrade labor or make it dishonorable. But I cannot vote for a bill which has for its only object, for its only aim and result, the extirpation and the exclusion of the Chinaman from this country.... I am willing, and I put on record my willingness, to vote for any law we may properly pass, any law we can pass without violation of treaty obligations, to the end that the labor market of this country shall not be over-supplied by immigration from any quarter; that there shall be no undue and ruinous competition in labor; that honest labor shall not be dishonored or degraded anywhere; that the standard of labor shall be fairly remunerative everywhere; that the man who is willing to do honest work with hand or brain, or both, shall receive wages enough to enable him to live respectably, to educate his children, and respect himself.

In the debate, an effort was made to weaken the bill by changing those excluded from "laborers" to "coolies" or "slaves." This was rejected, and the California sponsors even added an amendment forbidding naturalization of Chinese laborers. The bill successfully passed the Senate 29 to 15 (with 32 absent) and subsequently, the House of Representatives 167 to 66 (with 59 absent).

With this second post-veto 1882 act pending in the Senate, excluding Chinese laborers for ten years, ¹⁷² Hawley joined the debate. ¹⁷³ He said that the whole thing looked to him like the "old fugitive slave law."¹⁷⁴ The provision of the act forbidding Chinese to become citizens of the United States was absolutely incorrect. When Senator Farley of California, who was the most extreme Senate opponent of the Chinese, debated with Hawley about naturalization, Hawley mentioned that his friend, Kwong Ki Chiu, was a graduate of Yale and was a citizen. Farley was quick to react by demanding to know how he had become a citizen of the United States.

Hawley's first point was to distinguish general immigration from the so-called "coolie" immigration, banned by legislation twenty years earlier and even punished by beheading in China. Hawley asserted that he sympathized with some of the feelings of those living on the California coast. He was aware that Connecticut was not immediately affected by the matter. Hawley proceeded to relate of the discrimination against the Irish, the French, and even the English. Mentioning the blacks, he recalled the Civil War struggles for their freedom. More to the point, he objected to the prohibition on naturalization contained within the legislation. To Hawley, it was "undemocratic and un-American," and as such, he objected to a fine on the captain of the vessel who would bring Chinese to this country in violation of the legislation.¹⁷⁵ In his mind at least, it was a re-enactment of the fugitive slave law. In particular, Hawley objected to the term "laborer," which was not clearly defined in the bill.

¹⁷² See e.g., The Chinese Bill Still Hanging in Limbo, S.F. CHRON, Apr. 2, 1882 at 8; Chinese Bill Still Hanging in the Balance, DAILY ALTA CALIFORNIA, Apr. 1, 1882 at 1; The Usual Rumors About the Chinese Bill, DAILY ALTA CALIFORNIA, Apr. 2, 1882 at 1; Anti Chinese Legislation, S.F. DAILY EVENING BULLETIN, Feb. 4, 1882 at 1; Fresh Irruption: Great and Rapid Increase of Chinese Immigration, S.F. CHRON. Feb. 28, 1882 at 4; The Chinese Bill in The Republican Caucus, DAILY ALTA CALIFORNIA, Apr. 22, 1882 at 1; Boston Signatures to a Pro-Chinese Petition, DAILY ALTA CALIFORNIA, Apr. 23, 1882 at 1.

¹⁷³ See also, The Chinese Bill to be Passed on Monday, DAILY ALTA CALIFORNIA, Apr. 15, 1882 at 1; Chinese Bill Reported Back to the Senate, THE MORNING CALL, Apr. 20, 1882 at 3; Passed At Last: The Chinese Bill Gets Through Congress, S.F. CHRON., Mar. 27, 1882 at 8 (describing the last day's debate and discussion over the legislation before it was passed).

¹⁷⁴ 13 CONG. REC. 3,264.; M. COOLIDGE, *supra* note 11, at 177.

¹⁷⁵ Coolieism, Championed by Senator Hoar, S.F. CHRON., Mar. 2, 1882 at 3.

Hawley also attacked the racial nature of the exclusion. "An exclusion based upon race or color is unphilosophical, unjust and undemocratic." It violated the Fifteenth Amendment, which allowed everybody to have an equal chance of voting and participating in government. He claimed the amendment had been passed in part specifically to allow the resident Chinese to become voters without difficulty. He could only conclude that the Senate was under the influence of a temporary passion and a prejudice that "I'm sorry to say is not so temporary."

Hawley's oration was in a losing effort, but he was firm in what he had to say. Hawley spoke to posterity when he declared, "let the proposed statute be read 100 years hence, dug out of the dust of ages and forgotten as it will be except for a line of sneer by some historian, and ask the young man not well read in the history of this country what was the reason for excluding these men and he would not be able to find it in the law." Next, Hawley attacked the "monstrous" preamble that indicated that the Chinese were threatening due order in this country. He called such language disgraceful, and recommended instead that the army be called out to protect the Chinese on the West Coast.¹⁷⁶

In a dramatic conclusion to this address, Hawley said, "I leave the bill to posterity for its condemnation. I plant myself here and now, this moment, on the ground of unconditional hostility and denunciation. I will make no terms with it now or elsewhere, here or thereafter at any time."¹⁷⁷ Hawley was proud of this speech. The address was published as a little tract that Hawley used to hand out during his years in the Senate.

According to the New York Times:

While Mr. Hawley was speaking, Mr. Farley obtained the floor to make some replies, and held it when he finished, giving Mr. Ingalls a chance to play high with some pointed questions. Mr. Farley was describing the peculiarities of the Chinese which make them offensive to Californians.

^{176 13} CONG. REC. 3264.; M. COOLIDGE, *supra* note 11, at 177. *See also*, S.F. CHRON., April 27, 1882 ("There was not room in Massachusetts for even 100 Chinese cheap laborers, but in their magnanimous souls is room in all for 75,000, and if we revolt at the coming of 75,000 more, it is the advice of a Senator from another New England state that General Sherman and the army should be sent here to whip us into submission with bayonets and cannon.").

¹⁷⁷ Coolieism Championed by Senator Hoar, S.F. CHRON., Mar. 2, 1882 at 3; Congressional Record appendix.

Why do you hire them? Asked Mr. Ingalls, and then he went on to say that the people of Kansas do not employ leprous, diseased, or immoral persons to do their work. The supposition of the Kansas Senator was that the Chinese were employed because they would do better work and do it cheaper than any other laborers in California. If the Senator believed that by refusing to employ Chinamen the people could get rid of them, then the Californians could refuse to employ them and they remained against Chinese cheap labor, it was in their own hand and no legislation would be necessary.¹⁷⁸

While Mr. Butler, Mr. Dawes, and Mr. Farley were engaged in a three-cornered argument upon the wisdom of expediency of introducing large masses of cheap laborers into the States, Mr. Edmunds moved for an executive session and the debate was postponed.

The *Hartford Courant* merely restated the content of Hawley's address. After the vote (32-15 in favor of exclusion), *The Courant* commented that the Senate had made some improvements on the bill. According to the paper, it was slightly less obnoxious and inquisitional than the other version, and "It is rather for satisfaction and pride that the two Connecticut Senators voted no."¹⁷⁹

The New York Times, however, was critical of Hawley:

In the dilatory Senate the Anti-Chinese Immigration bill drags its slow length along with a debate that is certainly profitless and needless. Senator HAWLEY, for example, made a furious speech against the bill yesterday, going back to first principles, just as though the measure had never before been heard of and he had a mission to explain its provisions. The fact is that the bill has passed Congress in a far less objectionable form than it now presents, and that the President vetoed it on certain specified grounds. The bill passed by a large majority, and, in its present diluted condition, it is likely to receive a still larger vote. The only question now appears to be whether the bill, in revised form, will meet the objections of the President and receive his signature. If Mr. HAWLEY wants to "place himself right on the record," let him lay his hand upon his

¹⁷⁸ New York Times, April 27, 1882.

¹⁷⁹ HARTFORD COURANT, April 27, 1882.

manly breast and address himself to the period of Connecticut through the column of the official report of the Senate, and so have does with it. His persistent appeals to the palladium of our liberties, and his apostrophes to the flag of the free heart's hope and home are slightly irrelevant.¹⁸⁰

While there is no clear explanation, Hawley did not make any other major Chinese speeches in the Senate in 1882 or in future years;¹⁸¹ there were other Senators who continued to address the issue in the Senate.

Hawley delivered an address in the mid-1880's putting his brand of Republicanism on the side of all dispossessed people, including the Chinese. One could also find his opinions in *The Hartford Courant* editorial pages. He was still in charge of the newspaper even though he was in Washington at this time. Not much was published in his own newspaper that he did not approve, especially the editorials. In 1884, when there was another Chinese Exclusion Act, Hawley's *Courant* praised the opponent Senators and noted that there were eleven opposition Republicans and only one Democrat.

Arthur decided to sign the legislation.¹⁸² Hoar's incoming correspondence in March and April, 1882,¹⁸³ strongly praised his

¹⁸² Riggs has provided the following summary:

¹⁸⁰ N.Y. TIMES, April 27, 1882.

¹⁸¹ One explanation for Hawley's less visible role was presidential politics. Hawley was a candidate for presidency in 1884 and 1888. His campaign literature stressed that he was a candidate for all sections and factions in the country. It was therefore not in his interest to emphasize the Chinese Exclusion issue, which would have harmed his candidacy in the south and West. In addition, Blaine, the candidate for the Republican nomination in 1884, was anti-Chinese. Hawley vigorously supported Blaine at a time when the Republican party was split over his nomination.

Act of May 6, 1882 (22 Stat. 58)(the basic Chinese exclusion act)

^{1.} Suspended immigration of Chinese laborers for ten years (sec. 1)

^{2.} Permitted Chinese laborers resident in the United States November 17, 1880, to obtain certificate from the collector of customs entitling them to return to United States after temporary absence (sec.3).

^{3.} Chinese persons other than laborers could be admitted to United States upon production of a certificate from the Chinese government in the English language, describing the immigrant and certifying to his right to come to the United States under the terms of the treaty with China. This document, which came to be known as the Section Six Certificate, was to be the prima facie evidence of the facts therein states (sec. 6).

position and his speech of March 1, 1882. He received letters from all parts of the country, thanking him and asking for a copy of his speech. In Hoar's constituency, a man from Massachusetts stated that he was "in a state of moral exultation" after reading an account of the speech. A minister's wife from Boston opined that 1,000 homes in San Francisco are speaking his praises. Thomas Drew wrote from the *Boston Herald* to express his "pleasure and satisfaction" with the speech. He recalled hearing Hoar's "first free soil speech." On March 14, 1882, Hoar's brother wrote to pass along that the speech "is very highly praised." He suggested distributing the texts to "every minister in Massachusetts."

There were several other letter-writers from Boston, including the editor of "Cottage and Hearth," and ministers in Waltham, Woburn, Springfield and North Hadley. He was told by friends in California that he was a pariah to most of the citizenry out West. Theophilis B. Hilton of the "Utah Review" was in full agreement with Hoar, as was a writer from Oakland, who related that most people there were blind to the rights of the Chinese. The Oakland writer thanked Hoar and put his faith in the fact that "God is First," and put his fiction in San Francisco, noting on March 6, 1882, that there were residents of his city who were caught up in an "anti-Chinese craze."¹⁸⁴

Hoar also received a number of critical letters after the March 1, 1882 speech, mostly from the Western states, but some from the East as well. A Californian, who knew Hoar when living in Massachusetts, wrote that the Exclusionary Act was needed to "prevent this fair land from becoming a Chinese colony." A former Worcester resident, G.F. Southwick, pleaded with Hoar from his new home in San Francisco to withdraw his opinions. He was now convinced of the rightness of the Exclusionary Act, having seen the situation first hand.

Several college professors wrote asking for copies of Hoar's speech, including instructors from Amherst, Massachusetts Agricultural College, Vassar, and Richard Ely, lecturer in Political Economy at the Johns Hopkins University (founded in 1876).

Perhaps the most prominent person to write Hoar was Frederick Douglass. He wrote twice to Hoar. His first letter was later published in the *Boston Evening Transcript*. It read:

^{4.} Chinese persons who entered the United States improperly after the passage of the act were to be deported upon order of a judge of commissioner of a court of the United States (sec. 12).

¹⁸³ All letters are from Hoar Papers, Massachusetts Historical Society.¹⁸⁴ M.R. Leverson.

You have made me very much obliged to you by sending me a copy of your speech...I really do not know what to make of some our Republican friends on this question. They have allowed 'Dennis' to scare them out of their most cherished principles. They bow to his ignorant notion that every crumb of bread that goes into the mouth of a Chinaman is taken from the mouth of an Irishman. Whereas, the more mouths, the more hands, the more hands, the more labor, the more bread for everybody, is the true view. Let the Mongolian come, the Caucasian will hold his own and I have no fear for the Negro.

His second letter from Washington on March 22, 1882, gave permission to Hoar to quote from the prior letter on Chinese immigration. Douglass continued: "The voice of every friend of the Republican Party and the rest of the country as I think should be raised against the liberal policy toward the Chinese now seeking to get itself into law. Henry Clay said a good thing--when he said he had rather be right than President [and this applies to those opposing the Chinese policy]."

Hoar also was influenced by Yung Wing, and most likely had read of Twichell's views as well.¹⁸⁵ Isabella Beecher Hooker wrote to Hoar on March 10, 1882.¹⁸⁶ From this correspondence it is clear that Hoar knew Yung Wing. Isabella Hooker relates that when Yung Wing was her next-door neighbor in 1878, she told him that she was traveling to Washington, D.C. on behalf of women's suffrage. "He asked me to speak for his people," she related, and she told him, "I'll do what I can." In Washington she met with California Senator Sargent's wife and Chief Justice Waite's wife. Sargent's wife was shocked by the treatment of the Chinese, but her husband disagreed with her. Hooker parenthetically

¹⁸⁵ See also, B.L. SUNG, MOUNTAIN OF GOLD: THE STORY OF THE CHINESE IN AMERICA 21(1967)("In 1847, the Reverend S. R. Brown had brought with him three Chinese boys to the United States to study at the Monson Academy in Massachusetts. One of them was Yung Wing, who later graduated from Yale and who attended high officer in the Chinese Government. He was successful in persuading the Emperor to send other students, to the U.S. for specialized training and education, almost all of whom eventually rendered distinguished service to their country, then emerging from her self-isolation.").

¹⁸⁶ Hoar papers, Massachusetts Historical Society. Mrs. Hooker was Hawley's relative by marriage, and the wife of John Hooker, Hawley's senior partner in law practice. John Hooker was also a cousin of Hoar.

noted: "If they had women's suffrage in California, there would be no Chinese problem."

Two "graduates" of the Chinese Educational Mission wrote to Hoar. Kwong Ki Chiu (the Hartford neighbor of Hawley's later quoted by Hawley in his own address) informed Hoar that he had written to China about the debate and intended to send to China the Senate speeches of Hoar, Dawes, Hawley, and Platt. A New Haven resident, Lew Fun Tan, thanked Hoar and declared that a Connecticut woman Hoar had mentioned in his speech was his former teacher, presumably at the Educational Mission.

Otis Gibson,¹⁸⁷ author of *The Chinese in America*, wrote Hoar two letters. It was not too late to seek an amendment, Gibson said, to the pending legislation that excluded the Chinese from citizenship, to provide for a waiver for Chinese who had been in this country for 21 years. Gibson asserted that this would reward those who really intended to stay in the United States. Gibson was basing his views on the Anti-Chinese view that the immigrants consisted of men who, having earned money in the United States, quickly left the country to return to China.

The Reverend Thomas S. Malcolm wrote a stinging critique to Hoar. Malcolm said that the Germans and Swedes bring their families; the Jews bring their wives and fifty children. However, he noted that the Chinese are unmarried and do not intend to remain here. Even their remaining bones go back to China. Malcolm suggested that territory in Alaska be set-aside for the Chinese immigrants who choose to stay.¹⁸⁸

B. The Exclusionary Act and the 1884 Presidential Campaign

A bill was introduced in 1884 by Representative Healy of California, and supported by other Western legislators, to add more restrictive legislation. A divided report on the bill was issued by the Committee on Foreign Affairs. The Majority Report continued the attack on the Chinese. The report began with a lengthy quote from a decision of Justice Field chastising the "frugal habits" of the Chinese, the "absence of families," and the fact that they could "live with apparent

¹⁸⁷ Daniels describes Otis Gibson a Methodist Minister, paradoxically as "the paladin of pro-Chinese forces... He ran a shelter for reformed Chinese prostitutes...He was strongly anti-Catholic [and yet he believed in equality for all]." Daniels at 51.

¹⁸⁸ WELSH, at 193. Welsh contends that Hoar's stand drew more criticism than praised from his local constituency. He cites two letters written in 1894, one by a newly-formed immigration restriction league of Boston Brahunins, and the other by a cigarmakers union. The sheer volume of the favorable letters in 1882 and 1902 undercuts this contention.

comfort on what would prove almost starvation to white men." He concluded that the "Supplementary Treaty" of 1880 now gave the government the right to restrict Chinese immigration whenever it was threatening the interests of this country.

The Majority Report held that the proposed bill "perfect[ed] the machinery of exclusion already in existence." There was a conflict between the view expressed by Justice Field, which would "exclude Chinese laborers, coming from any and every port," and the decisions of two Massachusetts federal Judges, who refused to apply the 1882 Act to a "Chinese laborer from Hong Kong."

The Committee members demanded an end to "evasion" of the 1882 Act. They also sought to address President Arthur's point that perjury was being committed in interpreting the exempt cases of "merchants" and "travelers." The Western United States courts were being tied up with such business.

The Minority Report mocked the Majority. Even after they succeeded in obtaining their goal of passing legislation to keep Chinese out of California, they cried out for more legislation. No evidence existed of evasion of the 1882 Act; indeed, it appeared to be succeeding in keeping down new arrivals from China.

The provision of the Act to keep Chinese out of this country, regardless of the port of departure, was not justified by the 1880 Treaty. "It may accord with the wishes of some members of the House to forbid the half million English subjects who are of Chinese blood to set foot on our soil, but it would seem to be worthy of serious consideration before such a step is taken whether any exigency has been found to justify it."

The bill passed the House on a vote of 184-13. Next, it headed to the Senate. There, Platt tried and failed to make the exclusion apply only to those traveling from China, rather than all Chinese. The following ensued.

Senators Farley and Jones raised the ruling of Judge Field that "applied to this people as a race" regardless of their point of disembarkation to the United States. Platt and Hoar chastised their opponents:

Mr. PLATT. If the decision has gone that far it is certainly unnecessary to incorporate it in this bill; but Judge Field, I apprehend, whatever he may have decided, did not decide that it was right to engraft in any law a provision of this character. Mr. HOAR. I would like to say that the circuit court in Massachusetts, on full argument, Judges Lowell and Nelson concurring, have decided that the act, which is based in terms upon the treaty with China and nothing else, does not include anybody but Chinese subjects.

Mr. PLATT. But here we propose to go still further. Having enacted a law upon the theory that we had a treaty with China which permitted us to enact such a law, we proposed to go still further now, and to add to that law a provision which will prevent the landing here of naturalized subjects of great Britain and of any other country with who we have no such treaty which would prevent there being landing in the United States. I think what we have goes quite far enough in this matter; and we better not go so far as to say that the subjects of Great Britain protected by her cannot land in the United States because they happened to have been born in China.

The PRESIDENT *pro tempore*. The question is on agreeing to the amendment proposed by the Senator from Connecticut [Mr.PLATT].

The amendment was rejected.

Mr. HOAR. I do not propose in the last day or two of the session to enter anew into a debate of this general policy. This is a bill to execute certain treaty stipulations relating to Chinese and citizens of other countries. It rests in my judgment upon sheer barbarism; and the order which has just passed to read the Declaration of Independence tomorrow. It in fact was passed because in the opinion of its mover the majority of the Senate had not read it.

I wish only to reaffirm my disapprobation of this legislation and the principle on which it depends, and to state that in my judgment the American people will repent in sackcloth and ashes the policy they are inaugurating.¹⁸⁹

¹⁸⁹ 15 CONG. REC. 5938 (1884).

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The Courant's July 4th edition prominently displayed on its first page the fact that the anti-Chinese bill passed. Its editorial praised the 12 Senators (11 Republicans and one Democrat) who opposed the Act. It named the Senators and emphasized that both Connecticut Senators voted "No."

Blaine had been nominated as the Republican candidate for President. This favoritism for Blaine caused problems for the traditional Republicans with those that were sympathetic to the Chinese. Even as he was receiving requests for his July 1884 oration against the 1884 Exclusion Act, Hoar was questioned on his inconsistent support for the anti-Chinese Blaine.

On September 3, 1884, N.R. Johnson wrote the following from Oakland, California:

May a friend who has looked upon you as among the most worthy of Senators ask you, "How can you...be opposed to the Anti-Chinese legislation of the government stand on the Republican platform and advocate the election of Jas. G. Blaine who has . . . from the first, championed the Anti-Chinese legislation?¹⁹¹

While no legislation affecting the Chinese was passed in 1886, the issue of exclusion took up considerable legislative time. Hawley did

¹⁹¹ Letter from N.R. Johnston, 1136 Myrtle St., Oakland, California to Hoar (Sept. 31, 1884)(on file Massachusetts Historical Society).

¹⁹⁰ Act of July 5, 1884, 23 Stat.115 (amended the act of May 6, 1882). Riggs summarized part of this Act, as follows:

^{1.} Section Six Certificate could be issued by any foreign government of which Chinese person was then subject. Section Six Certificate required an antecedent visa at the place of departure by the American consul, who was instructed to inquire into the veracity of the statements in the certificate and to refuse his visa where he found the statements untrue. It was also provided that the Section Six Certificate should be "the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein states disprove by the United States authorities" (ibid). [This last part was added to end a claimed ruse, that new immigrants were entering the U.S. claiming to be mere returnees.]

not appear overtly in these debates, and Platt seldom appeared until 1902. Hoar, however, remains quite outspoken in the Congressional Record. In 1886, a bill was put forward again raising the conflicting decisions under the 1882 legislation. As seen, a decision from Massachusetts by Judge Lowell held the term only to mean Chinese who were native born. The other decision from California, written by Judge Field, held that all Chinese laborers, from whatever port, were excluded.

The proposed legislation, adopting, as one would expect, Judge Field's view ("any laborer of the Chinese race"), was the cause of a debate between Hoar and Senator Ingalls of Kansas on one side, and Senator Sherman of Ohio and the Western Senators on the other.

Hoar immediately attacked the whole concept of exclusion again:

The proposed act, and the statute of which it is an amendment, and the treaty which those two statutes profess to carry into effect, will in my judgment be regarded, if civilization be preserved on this continent, in future ages as among the great blots on the history of the human race. Here is legislation aimed at men, not on account of any individual crime or inferiority or fault, but simply because they are laborers and great foundation principles of this Republic that labor is honorable, and that there ought to be no distinction between human beings in their privileges on account of race.¹⁹²

He feared that this new amendment might act to extend the tenyear exclusion period (due to end in 1892).

Hoar concluded at this point:

If there were not a rivalry between the two political parties of this country for the political vote of the Pacific coast this legislation would be received, in my opinion, with universal extraction from all intelligence and human men. I did not propose to be led by any real or fancied political necessity into a departure from those principles of human freedom and human rights in which I have been educated, which have been the ornament and glory of my own State and my own country, and in departing from which every nation sooner or later is sure to encounter its just and ordained punishment.

¹⁹² 17 CONG. REC. 4959.

I do not propose for one to repeat for myself or to see others repeat without a protest the miserable history of the years which preceded the war, preceded the year 1850, when the two parties of the country undertook to vie with each other in bidding for the votes of supporters of slavery. I deem this Chinese legislation in principle a repetition of that disgrace. I do not mean to have on my own record or to leave to my children any share in the blame.¹⁹³

Sherman, who had joined Hoar in 1882, now supported the proposed legislation with the usual stereotypes:

I did not vote for either of the laws excluding the Chinese not for the treaty; but that question is now settled and no man dreams in our generation at least of reviving that controversy. At any rate if my friend from Massachusetts wants to play the knight-errant in opening up that controversy, I will not join him in the operation. More than that, I am inclined to think that any one who will look over the subject carefully and fairly, especially in the light of the experience in California, must on the whole become convinced that the admission of a foreign race, so entirely inconsistent with ours, so different from ours in modes and habits of thought, a people that are entirely of a distinct race, kind, quality, and religion so different in everything from us not to be allowed to the extent or our trying to absorb that population with the other elements we have got already, some of which may be our theory, and I shared in the belief that it was not wise for us to depart from the old policy of opening up our shores and making this the place where men of all nations might come and enjoy freedom and liberty and the rights of conscience, yet I am not sure but that the time has come when exclusions must be made for the sake of American nationality. But I do not intend to discuss that, and there is nothing in this bill inconsistent with our treaty obligations unless previous laws are inconsistent with them. There is no provision of the bill but what is in harmony with the existing law. Take the amendment that is now before us and what is it? It defines who is meant by existing laws by the term "Chinese laborer."

Mr. HOAR. It extends the exclusion for ten years.

Mr. SHERMAN. This act operates for ten years. I did not know that I shall be here ten years hence, and perhaps my friend may not. He had better not borrow trouble ten years ahead.

Mr. EDMUNDS. You may both go up higher.

Mr. SHERMAN. High, or lower perhaps.¹⁹⁴

Sherman contended that the bill was needed to end the subterfuge of a Chinese person merely entering Hong Kong and thereby avoiding the original 1882 Act.

Ingalls and Hoar objected that this went beyond the 1880 treaty with China.

Mr. HOAR. I want to state on this point before it passes from the mind of the Senate, in justice to Judge Lowell and Judge Nelson, who are my friends and constituents, the exact thing which they decided. It will take but half a minute.

The question which arose in the court in Boston was whether the act of 1882 applied to the Chinese as a race without regard to their nationality, or whether it applied to the Chinese as subjects of the Emperor of China or persons belonging to a particular nation. Nobody ever claimed what the Senator from Ohio has imputed to these two distinguished judges. Judge Field, in the sentence from his opinion which has been read, negates the idea that the Senator from Ohio has put upon this decision. Nobody claimed that a man belonging to the Chinese nation could cross to Hong Kong and ship there and come into this country in violation of our law; but the claim was simply that an Englishman by birth, though of Chinese descent of included in this act, and the origin, was to be argument of these two judges, which I have ready very carefully, seemed to me to be irresistible.

¹⁹⁴ 17 CONG. REC. 4959 (1886)..

In the first place, it is an act to execute certain treaty stipulations relating to [the] Chinese. Now, how is it possible that an act to execute treaty stipulations with the Emperor of China can be supposed to have been intended to apply to a Chinaman born in England and who comes from England?

In the next place, the exceptions in the treaty to which this applied were exceptions put in to carry out a bargain with the Emperor of China under the conditions and circumstances upon which his subjects already here might stay: and that section, the third, related wholly of course to a promise to the Emperor of China, and did not affect our right to deal with the subjects of Queen Victoria.

Then, in the next place, the treaty, which this act says in its title it is carrying out, provides certain methods according to which the rights of Chinese in [this] country, or who shall come in here, not being laborers, should be secured, and goes on to say that on the application of the Chinese ministers our Government will take into consideration any statement which he may make in regard to wrongs or in regard to exceeding the rights conferred and reserved by this treaty.

That was the argument which led these two learned judges to declare that the word "Chinese" means of the Chinese nation and not the Chinese race belonging to their nations. Whether it was a good argument or not I will not detain the Senate now to consider. I think it was.

I do not repeat this argument simply to antagonize what my friend has said, but simply to point out to him that he is altogether mistaken in the belief that the said two judges, whose opinions of this treaty I dare say may have coincided with this--I do not know anything about that--had sanctioned a subterfuge by which a man belonging to the Chinese nation could go over to another nation and take shipping to our ports. They did nothing of the kind.¹⁹⁵

¹⁹⁵ 17 CONG. REC. 4960 (1886).

At this point, the presiding officer declared the amendment agreed to by unanimous consent.

C. The Scott Act of 1888

The Chinese Exclusion Act of 1882 was unsatisfactory to the anti-Chinese sentiment in the United States because there was no immediate reduction of the Chinese population.¹⁹⁶ The Scott Act, passed in 1888, was a more restrictive law that did not permit resident alien Chinese laborers to return to the United States, once having left the country, and barred the return of those Chinese laborers who had been U.S. residents when the law was passed, but were temporarily abroad at the time of the Act's passage.¹⁹⁷

¹⁹⁶ See also, CHARLES J. MCCLAIN, IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA 191-92 (1994); CHINESE HISTORICAL SOCIETY OF AMERICA, THE LIFE, INFLUENCE, AND THE ROLE OF THE CHINESE IN THE UNTIED STATES 1776-1960 194 (1976).

¹⁹⁷ Chae Chan Ping v. United States, 130 U.S. 581 (1889)(upholding Congress' right to unilaterally abrogate treated and declared that Congress had completed constitutional authority to admit or exclude immigrants to the United States). See also Chinese Historical Society of America, THE LIFE, INFLUENCE, AND THE ROLE OF THE CHINESE IN THE UNITED STATES, 1776-1960 194 (1976). "The Scott Act effectively curtailed the influx of Chinese into the country, and coupled with the departure of some of the earlier immigrants, caused the resident Chinese population to decrease." Id. According to legal scholar Frank Wu, [Chae Chan Ping] was the anti-Chinese case wherein the Court began to developed its doctrine of "plenary power," "which allowed it to uphold immigration politics that today a consensus would regard as racist in the most objectionable sense." See also, Frank H.Wu, The Limits of Borders: A Moderate Proposal for Immigration Reform, 7 STAN. L. & PL'Y REV. 35, 35 (1996) (arguing for the abolishment of the archaic plenary power doctrine). Cf., T. ALEXANDER ALEINIKOFF, SEMBLANCES OF SOVEREIGNTY: THE CONSTITUTION, THE STATE, AND AMERICAN CITIZENSHIP, 16 (2002). ("Currently, the plenary power doctrine is said to meet racial discrimination in the immigration context lawful per se. The plenary power doctrine has been a mainstay of constitutional theory. The Supreme Court has thus granted federal immigration laws immunity from judicial review"). According to Aleinikoff, Field's invocation of "sovereignty" in the Chinese Exclusion Case was but one aspect of a larger model regarding the source and extend of the regulatory power of the American states. He criticizes the manner in which the Court has indicated that international law supplies the content for plenary power. Id. at 14. Justice Field invoked the idea of "sovereignty" in the Chinese Exclusion Cases. and that it was but one aspect of a larger model regarding the source and extent of the regulatory power of the American states. Id. Though Field might have derived congressional authority from powers expressly delegated by the Constitution, his appeal to prevailing international law understandings was hardly controversial and spoke no dissent among his brethren." However, Aleinikoff argues that contemporary

Hawley and Platt also had roles to play during the debates over the Scott Act. Hawley had attempted, along with the Republicans from the Northeast, to delay or derail the Scott Act. Hawley had remained absent for the Scott Act vote itself. He had tried to slow its passage.¹⁹⁸ One motive for this approach of not speaking out directly against the Scott legislation was Hawley's own political aspirations. An editorial dated February 17, 1888 in the *Knoxville* (Tennessee) *Farmer* stated:

> General Hawley would be an exceptionally strong candidate in Connecticut, and would also get the Republican vote in New York and New Jersey. But his record on the Chinese questions would make him a weak candidate in the Pacific states. It is hardly credible that he would carry either California, Oregon or Nevada, and there is no reason for supposing that he would be especially strong in Indiana. Besides all this General Hawley's views on the question of state rights borders so nearly on that of the extreme southern view, and that many Republicans, much as they esteem him, would give him only a perfunctory support.

Hawley did not change his overall approach, however, to Chinese Exclusion legislation. His philosophical roots were too deep. There was the speech referred to above, delivered on or about 1885, when he states that he and the Republicans will continue to respond to the blacks, Indians, or "even a Chinaman." In 1890, he turned out all the stops in this stirring speech on black suffrage:

Let the nullification of the ballot be accepted as inevitable and in the interest of civilization and the negroes might as well have been left in slavery, where at least he had one defender against some wrong--the man whose slavery was invested in human chattels. Free, his role weapons of defense is the ballot. The Republican Party will not be silent nor apologetic. It will not equivocate, will not compromise. It will be heard.

When the exclusionary issue again arose, Hawley quietly moved once more to his traditional stance.

international law does not grant nations unlimited rights to discriminate against immigrants. *Id.*

¹⁹⁸ The Chinese Bill Again, N.Y. TIMES, Sept. 20, 1888.

Like Hawley, Platt was also absent for the Scott Act vote, but thought it a political trick of Cleveland, Scott, and the Democrats. Platt said:

If, as every Senator there thinks, if, as the whole country believes, the bill under consideration emanated from the Executive Department, and was started in hot haste immediately after the allying before the President of the United States of a bill passed by Congress upon the subject, it seems to me to be an Executive interference with the Legislative branch of the Government, and I am bound in my character as a Senator to make that remark...

I can not say that this bill is written upon the paper of the Executive Department. I know it is generally believed in both Houses of this Congress that it is. I can not say that the most potential man in the Democratic National Committee in the management of this campaign came from the White House to the Capitol with this bill; but it is generally believed in this chamber and through the Union. If there has been no official notice of unofficial limitation that this treaty has been rejected or is to be rejected by the Chinese Government, why this hot haste to override the act not lying before the Executive for his approval, and to pass this bill, which under such circumstances would be a direct insult to a nation with whom we are desirous of continuing friendly commercial relations? Is this a vote-catching performance? Has it come to this that public office is to be prostituted for Democratic electioneering purposes? And if no, what other reason is there for thrusting in its untimely way this bill upon the attention of Congress?

This bill being here, being bound as a Senator, in spite of all the circumstances which point to other conclusions, to assume that the Executive and the State Department and the Democratic National Committee have some knowledge which has not been communicated to us, that this treaty is not to be ratified, I am going to vote for the bill, and I am going to do so because I am heartily and sincerely in favor of prohibiting and preventing any immigrations into this country of a character which we outright ought not to receive... I put my vote of this bill solely on the ground that I can not assume that there is no necessity for it. If the treaty which we agreed to here is to be ratified by the Chinese Government, and if the bill which we have already passed to carry the treaty into effect is to be approved by the President of the United States, I can not see the necessity for this bill. But I will not, as a Senator, assume that this bill has no necessity beyond it, and that it is simply and purely an electioneering trick, a performance on the part of the Democratic party and its high officials to catch votes in certain guarters of the United States.¹⁹⁹

Around this time, Platt began to take the lead in shaping foreign policy toward China. He attempted to become more aware of the issue by acquiring a book by James A. Whitney, L.L.D, counselor at law, entitled, "The Chinese Question."²⁰⁰ In fact, Whitney attacked Eastern politicians, such as Platt, for developing a "pro-choice" policy and foisting it upon the government, to dispute California's plea. Such sentimentality would only lead to the triumph of a "lesser" civilization over a "higher" civilization. Such books only strengthened Platt's determination to take a conciliatory approach to the resident Chinese.

Hoar was identified as one of the three Senators to vote against the Scott Act, but he gave no statement on the casting of his vote. He earlier opposed the implementing Act for the unratified treaty and made a short statement at that time. He, of course, never voted for *any* of the exclusionary acts. His autobiography ignores the Scott Act. However, Hoar did make the point in the autobiography that he was forced on the

¹⁹⁹ L. COOLIDGE at 160.

²⁰⁰ *Cf.*, STUART CREIGHTON MILLER, THE UNWELCOME IMMIGRANT: THE AMERICAN IMAGE OF THE CHINESE 193 (1969) ("The discussion of the 'Chinese Question' played a significant role in transforming America's conception of the melting pot, from one which amalgamated the best from all the donor cultures into a new synthesis, to one that achieved Anglo conformity,"); K. SCOTT WONG, CULTURAL DEFENDERS AND BROKERS: CHINESE RESPONSES TO THE ANTI-CHINESE MOVEMENT ,IN CLAIMING AMERICA: CONSTRUCTING CHINESE AMERICAN IDENTITIES DURING THE EXCLUSION ERA 31 (K. Scott Wong & Sucheng Chan, eds.1998)("Euro-Americans, in acknowledging that they did not want Chinese immigration, were forced to reevaluate American ideals of equality and free immigration. Racial and cultural differences, wage competition, and questions of a sismilability were fundamental concerns for the Americans involved in the debate over Chinese immigration, but these questions were only specific manifestations of a large issue: Should America remain a country of free immigration, or should it restrict immigration on the basis of racial, class, and cultural grounds?").

Chinese issue in general to break with the majority and certain members of his own party.

As passed, the "Scott Act" was one of the most oppressive of all the acts against the Chinese.²⁰¹ The Act was passed during an election year, with an especially tight race between Grover Cleveland and Benjamin Harrison, and everybody was trying to outdo himself speaking against the Chinese. Interestingly, on a vote to reconsider the Scott Act, Platt voted *not to* reconsider, Hawley was absent, and Hoar voted to

reconsider. The primary effect of the Scott Act was a unilateral cancellation of the certificates held by Chinese who were temporarily out of the country. The Chinese Ambassador recounted the hardships suffered under the act; at the time the act went into effect there were over 20,000 Chinese who had temporarily left the United States with a certificate entitling them to return, and 600 of these were on the ocean on their way back and were refused admission; some of them had families and property interests of many sorts.

Further, no more certificates were to be issued to current nonresident alien Chinese. The scope of the Scott Act went beyond "laborers" to all Chinese. The Scott Act was in clear violation of the Burlington Treaty and the renegotiated Treaty of 1880.

D. The Geary Act and the McCreary Act of 1892

In 1892, Platt again took the lead²⁰² by trying to stop what was known as the Geary Act,²⁰³ an act that actually required all Chinese to

²⁰¹ Act of Oct. 1, 1888 (25 Sta. 504)(known as Scott Act):

^{1.} Prohibited return of any Chinese laborers who departed from United States (sec.1).

^{2.} Forbade the issuance of return certificates to Chinese laborers resident in the United States and canceled outstanding return certificates which had been issued under sections 4 and 5 of the act of May 5, 1882, to Chinese laborers in the United States who had left this country on temporary visits abroad (sec.2).

 $^{^{202}}$ Hoar was absent from Washington with an eye ailment. His correspondents wrote to tell him about the attacks on the Geary Act.

²⁰³ Act of May 5, 1892 (27 Stat. 25). Hawley voted against the Geary Act, but his only comment in the Senate was that it was a bill of "extraordinary severity." Riggs gives the following summary:

Act of May 5, 1892 (27 Stat. 25) (known as the Geary Act).

^{1,} Extended all Chinese exclusion laws for a period of ten years. (sec.1).

^{2.} Placed on Chinese persons apprehended in deportation proceedings the burden of establishing their lawful right to remain in the United States (sec. 3).

^{3.} Prohibited allowance of bail to Chinese persons who had been denied privilege of landing in United States and who thereafter brought habeas corpus proceedings (sec. 5).

register and produce one verifying white witness, or become subject to deportation.²⁰⁴

The Geary Act was the ultimate of insults, in that Chinese were treated as no better than paroled criminals, as all Chinese laborers were required to register and be photographed or faced deportation. Chinese persons arrested under this act were to be deported unless they affirmatively proved their right to remain in the United States... Thus, under th[is] law, it was quite possible for an American-born Chinese, who had never left American soil, to have been deported to China.²⁰⁵

In the May 6, 1892 edition of the *Courant*, there was a strong editorial against the Geary registration that mentioned that Platt had opposed the Geary Act as "unnecessarily harsh, unjust, and violative of treaty obligations." ²⁰⁶ The registration requirement as passed was

²⁰⁶ Fong Yue Ting. v. U.S., 149 U.S. 698 (1893).

^{4.} Required registration within one year of all Chinese laborers then in the United States and provided for the issuance of certificates of residence to those who could establish the legality of their presence in the United States. Those thereafter found in the United States, and were to deported upon order of a United States judge, unless they satisfied such judge (1) that the failure to obtain the certificate of residences was caused by accident, sickness, or other unavoidable cause, and (2) that they were resident of the United States on May 5, 1892, which fact had to be proved by the testimony of at least on credible white witness (sec.6). *See also*, B.L. SUNG, MOUNTAIN OF GOLD: THE STORY OF THE CHINESE IN AMERICA 56 (1967) (noting that the phrase "not a Chinaman's chance" was born soon after the passage of the Geary Act). "[The] appetites [of anti-Chinese Californians] were [whetted by the first taste of exclusion, the west was soon clamoring for more stringent measures.").

²⁰⁴ See also, CHARLES J. MCCLAIN, IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA 201-05 (1994).

²⁰⁵ See also, CHINESE HISTORICAL SOCIETY OF AMERICA, THE LIFE, INFLUENCE, AND THE ROLE OF THE CHINESE IN THE UNITED STATES, 1776-1960 194 (1976). "As harsh as the letter of the law was, the laws were administered as adversely to the Chinese as could be done. The various Chinese exclusion laws as written only applied to Chinese 'laborers.' However, the term 'laborer' was given so broad an interpretation that it encompassed everything except those classes specifically exempted by the Chinese-American treaty-merchants, students, teachers, officials and travelers. Thus, for example, accountants, doctors, clerks, wives of laborers, innkeepers and restauranteurs were laborers for purposes of the exclusion acts. As a result of this statutory construction it was illegal for practically every resident of China to immigrate to the United States." *Id*.

challenged in the United States Supreme Court, which upheld it in a close six to three vote.207

Justice Horace Gray, writing for the majority, stated:

After some year's experience under that treaty, the government of the United States was brought to the opinion that the presence within our territory of large numbers of Chinese laborers, of a distinct race and religion, remaining strangers in the land, residing apart by themselves, tenaciously adhering to the customs and usages of their own country, unfamiliar with our institutions, and apparently incapable of assimilating with our people, might endanger good order, and be injurious to the public interests ... 208

Compellingly though, Justice Field, who was the architect of some sections of the Exclusion Act, voted in dissent against the Geary Act.

Geary was a U.S. Congressman from California.²⁰⁹ He was quite intemperate in following up on his legislation, and in 1893 he decided that things were not going fast enough. He met with President Cleveland demanding immediate Chinese deportation for failure to register. Congress, however, voted in the McCreary Act to extend the time for registration.²¹⁰

²⁰⁷ Id.

²⁰⁸ Id. at 717.

²⁰⁹ See Biographical Directory of the U.S. Congress available at http://www.bioguide.congress.gov/biosearch/biosearch.asp. Thomas J. Geary was "a Representative from California; born in Boston, Mass., January 18, 1854; moved with his family to San Francisco, Calif., in April 1863; attended the public schools' studies law at St. Ignatious College; was admitted to the bar in 1877 and commenced practice in Petaluma, Calif., moving to Santa Rosa, Calif., in 1882, district attorney of Sonoma County, Calif., in 1883 and 1884; resumed the practice of law, elected as a Democrat to the Fifty-first Congress to fill the vacancy caused by the resignation of John J. De Haven; reelected to the Fifty-second and Fifty-third Congresses and served from December 1890, to March 3, 1895; unsuccessful candidate for reelection in 1894 to the Fifty-fourth Congress; resumed the practice of law; moved to Nome, Alaska, in 1900, to San Francisco, Calif., in 1902, and returned to Santa Rosa, Calif., in 1903, continuing the practice of law; city attorney in 1906; retired from active pursuits in 1923; died in Santa Roas, Calif., July 6, 1929; internment in Rural Cemetery."

²¹⁰ McCrary Amendment, Act of Nov. 3, 1893, 28 Stat. 7, 7 (1893)

*The Nation*²¹¹ attacked Geary's extreme eagerness to enforce his Act after the Supreme Court ruling. His position was full of inconstancies. "When it came back from the Senate, he grieved that the 'drastic features' had been knocked out of it, and said that the Conference Committee gave away everything in the House bill. 'When then we ask,' answering Geary according to this Gearyishness, should we enforce a law which, by his own concession is certain to prove as ineffectual and useless as he admits the laws of 1882 and 1888 to have been?"

Hawley, Platt and Hoar were all participants in the passage of the McCreary amendment. Hawley tried, but failed, to change that portion of the amendment that required a Chinese person to be held without bail pending deportation. He showed sympathy for "the poor fellows who are in jail...By what authority are they kept in jail."²¹²

Hawley also inquired as to the status of the treaty negotiation between China and the United States and its relation to the amendment. No answer was forthcoming from anyone present at the debate. Hoar was also active in the debate. When Senator Gray said that he wished the McCreary bill be enacted to alleviate the possibility of pass deportation, even though there are flaws in the House-passed legislation, Hoar shot back. While Gray was an "able constitutional lawyer," how could he conceive that it was constitutional to deny bail while Chinese persons attempted habeas corpus pending deportation?

Hoar then introduced a substitute for the McCreary bill. He stated later in the debate that a missionary leader had asked him to introduce the amendment.²¹³ The amendment permitted Chinese residents to leave the United States freely and to receive any required certificates with a minimum of trouble. The "white witness" provision of the Geary Act was to be repealed. The amendment was to stay in effect until a treaty with China was concluded. (Hoar stated that he did not like the amendment's registration requirements, as he had never supported registration.) Hoar's amendment, and another similar effort by Davis of Minnesota, provoked another long recitation by the Californian on the "evils" of the Chinese. Hoar and Platt interrupted to question several of these anti-Chinese assertions. *The New York Times* reported:

²¹¹ The Nation, July 13, 1893.

²¹² 25 CONG. REC. 3111 (1893) 1893; 25 CONG. REC. 3041 (1893)

²¹³ 25 CONG. REC. 3041 (1893).

The chief speeches today with this bill as subject were delivered by Mr. Davis of Minnesota in opposition and Mr. White of California in favor of its passage. Mr. Davis took the ground that the Chinese legislation on the statutes was a disgrace to civilization. Even Morocco, in his opinion, would not resort to such harsh measures against one people of a nation which was old when the Roman Empire was at the height of its power and glory. Mr. White gave some illustrations of Chinese life in California. He favored the bill, he said, because the American. People had signified their desire to give the Chinese in the country an extension of time in which they might conform to federal law regulating registration. It would please him, however, to see the Mongolians depart, bag and baggage, from the United States.²¹⁴

Since Hoar's amendment received only four unrecorded votes, it was defeated. The bill itself was passed in concurrence with the House.²¹⁵ Hawley's comment on the McCreary Act was given in the November 3, 1893 issue of the *Courant*:

The Chinese laborers who didn't provide themselves with the "Geary Act" tag, and who could be in danger of deportation if the government had the funds with which to deport them, are to have another opportunity to comply with Mellican man's law.²¹⁶ One of these days Mellican man will be heartily ashamed of his law, as he ought to be.²¹⁷

At the time, Americans were using the slang term "mellican man" to capture the Chinese pronunciation of "American." The bitterness of the debate and Hawley's opposition became clear in this editorial. The Geary Act requirement for registration of resident

²¹⁴ N.Y. TIMES, Nov. 3, 1893.

 $^{^{215}}$ Act of Nov. 3, 1893 (28 Stat. 7) (amended act of May 5, 1892). Same note as above.

²¹⁶ "Mellican" was supposedly how the Chinese referred to the whites. *See* R. McCllellan, THE HEATHEN CHINESE (1971).

²¹⁷ HARTFORD COURANT, Nov. 3, 1892 at 4.

Chinese, as extended by the McCreary Amendment, was in effect from late 1893 onward.

By 1894, there was a new treaty with China that seemed to resolve some of the immigration issues and the entire anti-Chinese fervor died down. In 1902, however, the issue arose again because of the Californians' demand that the Act be re-enacted in the ten-year renewal cycle of 1882, 1892, and 1902. Platt was very powerful by that point, as one of the four foreign policymakers in the Senate. He single-handedly stopped an effort to pass a bill worded as California congressmen wanted.²¹⁸ Again in 1904, Platt acted to stop more demanding legislation after China rejected the 1894 treaty.²¹⁹ Hawley backed Platt with his votes and covered it all in his papers, making sure Platt received impressive headlines.²²⁰

E. The 1902 Act

In Congress, matters headed up again in 1902, just prior to the expiration of the 1892 Act. Two policies clashed with President Roosevelt's "open door" policy with China and the Congress' long-standing exclusionary doctrine. California, in 1901, had held a convention, prompted by the labor unions and those trying to win their support, which prepared a "memorial" to Congress calling for the even stricter reenactment of Chinese exclusion.

The Chinese Exclusion Convention took place at the Metropolitan Temple in San Francisco on November 21 and 22, 1901, before 3,000 delegates from state, county and municipal bodies, and civil, labor and commercial organizations. A publication of the American Federation of Labor issued at that time declared, "Some reasons for Chinese exclusion: meat vs. rice. American manhood against Asiatic Coolieism. Which shall survive?"

The Convention appointed a five-member commission to lobby for a tough bill in Washington, D.C. Among those five members were E.J. Livernash, a newspaper reporter, and Andrew Furuseth, a representative of the Sailor's Union, AFL. There were three Democrats and two Republicans.

²¹⁸ See D. MCKEE, CHINESE EXCLUSION VERSUS THE OPEN DOOR POLICY (1977).

 $^{^{219}}$ Id. at 92; Howard K. Beale, Theodore Roosevelt and the Rise of American to World Power (1956).

²²⁰ Chinese Exclusion-Senate Adopts the Platt Substitute-defeat-for the Original Drastic Bill. HARTFORD COURANT, April 17, 1902.

Other states also had interest groups in Washington. These included labor organizations from Oregon, Montana, and Idaho. These were states where the United Mine Workers Union was active. From the Eastern states were representatives of Daughters of Liberty. The Daughters were anti-Chinese and anti-immigrants and demanded stiff penalties for anarchists.

In January 1902, Roosevelt, who personally considered the Chinese a "backward race," gave his blessing to a most extreme version of the extension of the Exclusion Act, drafted by Immigration Commissioner Powderly.

In the House, Representatives Kahn and Coombs from California were successful in obtaining quick passage of this legislation. Among other things it put back the Scott Act, enacted into statute all existing treasury regulations, barred Chinese seamen from United States ports, and extended exclusion to the new insular possessions of the United States. A photo identification was also required for all resident Chinese.

In the Senate, a hearing was held by the Immigration Committee. Unlike previous presentations, there were Westerners on both sides of the issue. Essentially, Californians and labor unions called for passage of the House legislation while trade organization groups wanted a less stringent bill (which would please the Chinese government). Testifying for the labor unions was Charles H. Litchman who quoted a poem, "Unguarded Gates" by Thomas Bailey Aldrich, which compared the United States to the late Roman Emperor and the barbarians. ("Wide open and unguarded stand our gates, and through them press a wild, a This poem was to surface again repeatedly in motley throng.") immigration debates. Representative Kahn dwelled upon seventeen unsolved murders that he linked to the Chinese. Livernash also lobbied for exclusion and clashed with the Pro-Chinese groups.²²¹

Coolidge reports:

There was besides, a group of notable men presenting the claims not of California nor of trade labor alone, but of the whole country and of humanity. For the first time in the history of the Chinese question there was an organized attempt to present the broader humanitarian view, by men whose commercial and political motives could not be

²²¹ Chinese Exclusion: Testimony on S. Bill 2960 and Certain Other Bills Before the Comm. Providing For The Exclusion of Chinese Laborers, 57th Cong. 57-776 (1902) (Statement of Charles H. Litchman, member of Indus. Comm'n; Hon. Julius Kahn, Rep. in Cong. from the 4th Dist. of Cal.; and Edward J. Livernash, Comm'r of Cal.)

questioned. John W. Foster, Ex-Secretary of State, diplomatist and author, showed the manner in which earlier legislation and even the existing law and practice, violated the treaties, operating both as an insult and injustice to the Chinese people. Stephen W. Nickerson expressed the protest of New Englanders against such discrimination against a single race. But by far the broadest argument was made by Simon Wolf, Chairman of the Civil and Religious Rights Committee of the Hebrew Congregations. Mr. Wolf summed up his humane and convincing testimony briefly as follows: the exclusion laws were unjust and discriminative: objectionable because the general immigration laws might be applied to the Chinese precisely as to other nationalities; unnecessary for the protection of labor because most of the evils complained of were purely imaginary; unnecessary further because the economic conditions both in the United States and in China had wholly changed--the gold fever had passed, while the rapid development of China herself tended to keep her laboring population at home. The exclusion laws were a menace to peaceful relations between the countries, they handicapped the American missionary and the American merchant and limited trade and commerce. They were, moreover, contrary to the spirit of American institutions and to the spirit of the age, for the period of exclusiveness was past 222

Despite the division on the Committee, the California contingent (according to Coolidge) was full of animosity, and Senator Penrose of Pennsylvania managed to move the House bill out to the floor of the Senate. There:

> Senator Mitchell said, that the bill--which was reenacted at great length the most stringent provisions of the existing laws and treasury regulations--was the composite work of the Coast Commissioner's, the Far-Western Congressmen, the American Federation of Labor and representatives of the Departments of the Treasury and of Justice. But Senator Hanna in the course of the debate denied that any of the officials had been consulted. It was, indeed, known

²²² M. COOLIDGE, *supra* note 11, at 246-7.

by this time that none of the higher Government officials, except the Commissioner of Immigration, favored the incorporation of the Treasury regulations into the law and that they were all very critical of both regulations and practice. In the debate Senator Mitchell pursued his usual course of plausible argument and reckless misstatement, concluding with a threat that if the bill was not passed, the Republican party would be overthrown in the coming elections ²²³

At this point, on April 10, 1902, Senator Hoar gave one of his most memorable speeches. Unlike 1892, when Hoar was physically incapable of participating in the debate, he took an active role in the 1902 proceedings. He was advised by Maxwell Evarts, a Washington attorney for Southern Pacific who later wrote to Platt about the Chinese matters. Evarts told Hoar that Section 2 of the bill was unconstitutional. He discussed the application of the Exclusion Act to Chinese born in the Philippines. He also discussed the legality of extending the Acts to United States territories.

Hoar explained that he had always been willing to deal with Chinese immigration reasonably:

I was willing, then, that no man should come as an immigrant who could not read or write the English language, if that were desirable; that no man should come as an immigrant who did not bring his wife with him, if he were married, and his children with him, if he were a father, that no man should come as an immigrant whose moral qualities and capacity to earn his living in some respectable employment were not ascertained, that no man should come as an immigrant who did not mean to stay here and die here and be buried here and renounce all his allegiance to every other country whatever, and that no man should come as an immigrant who was not permeated with the spirit of American citizenship.²²⁴

But he could not accept this bill and these restrictions:

²²³ *Id.* at 28-9.

²²⁴ 35 CONG. REC. 3943 (1902).

But some of our friends on the Pacific coast did not care much about ideals, though I have no doubt they were as thoroughly attached in principle to the doctrines on which this Republic was founded as I was, but in their anxiety and alarm they could not wait patiently to get at this evil. So, in the first place, they broke a treaty, and in the next place they contradicted the doctrines, which the fathers had declared...But still, for all that, the thing happened, and so it is that we are going on from step to step. We could not wash out this spot with water, and so we took vinegar; and we tried a solution of cayenne pepper, and now our friends on the Pacific coast are asking us for a preparation of vitriol, which they hope will work.

For one, Mr. President, I am not going into the details of the measure. I will not bow the knee to Baal--either in dealing with the Philippine Islands or with the Chinese. I will not vote that labor as labor shall not stand on an equality with other conditions of men. I will not vote that it is a falsehood that any nation has the right to establish its own government after its own fashion. I will not worship this god that you have set up. My opposition to this policy has nothing to do with the details of the measure.²²⁵

After Hoar's speech, once again the favorable notices poured in, from Massachusetts and elsewhere. For example, *The Nation* called Hoar's speech an eloquent address.

A New Haven writer called the House bill an "injustice," as did others from Worcester.²²⁶ Albert W. Paine called the pending legislation "most inhuman." N.R. Johnston wrote, "Thanks from the bottom of my heart." Several church groups sent notes of appreciation, including one praising his stand for "weaker peoples."

There were some groups in Hoar's correspondence who do not appear in these 1882 letters. The Lithuanian Political Society protested the pending bill and asked Hoar to vote against immigration restrictions. Another writer opposed the Chinese Exclusionary Acts, but favored restriction on immigration in general. He enclosed an anti-Jesuit tract. The debate in 1902 was clearly moving beyond the legitimate presence

²²⁵ *Id. See also,* BOSTON EVENING TRANSCRIPT, April 11, 1902 (Mr. Hoar vigorously denounces bill.).

²²⁶ Letters take from Hoar papers, Massachusetts Historical Society.

of one ethnic group to the presence of any number of ethnic groups in the United States. Afterward, the debate continued on, but it was clear that "the Californians had overreached themselves--they were both too violent and too obvious..."²²⁷

On April 16, 1902, Platt offered a substitute for the House-passed bill, which would leave all existing laws in place and do no more. Platt gave his reasons for his substitute as follows:

It is bad legislation. So I make these three points. This legislation is unnecessary to continue the exclusion of Chinese laborers: It is offensive to the Government of China, with which we wish to remain on good terms; and then it is bad legislation in that no bill ought to include all Treasury regulations and decisions in it.²²⁸

However, Senator Rawlins of Wyoming fought against Platt's substitute:

Mr. President, for the three reasons that we have a right to protect our people, to legislate with reference to our interests, and exclude undesirable or criminal classes from our shores, especially when it is in harmony, with the purpose of our Government, whose purpose it is to prevent the expatriation of their own people, and that the regulations ought to be prescribed in the law itself and not be left to Treasury regulations, I shall cast my vote in favor of the bill reported by the committee and against the proposed substitute.

But Mr. President, this bill of the committee goes vastly further than that...It is unnecessary.

35 CONG. REC. 4245 (1902).

²²⁷ M. COOLIDGE at 249-50.

²²⁸ Platt, and Senator Elkins who also spoke against the House bill, had as Republicans to defend themselves from Democratic charges that they were thus abandoning the laboring man. Here is Platt's reply:

The United States is committed to the policy of the exclusion of Chinese laborers. There is no difference of opinion on that subject. Suggestions from any quarter that Senators on this side desire to break down that policy, to break down the laws existing at present on our statute books and any proper Treasury regulations so as to admit Chinese laborers into this country, are entirely gratuitous and without foundation.

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Senator Henry M. Teller of Colorado declared dramatically: "If I knew that passage of a proper exclusion bill would destroy every dollar's worth of trade between us and China, I should vote for the exclusion bill."229

Other senators brought up the status of these exclusion laws in the Philippines. It was agreed that most of the existing law would apply in the newly acquired Philippines.²³⁰

McKee summarizes the final result in the Senate:

After six days of heated Senate debate, a new climax was reached on April 10 with the sudden appearance of the Platt amendment, a major challenge to the anti-Chinese side. Distinguished as an amendment to the Mitchell bill, it really proposed to cut out the Mitchell bill entirely and continue the existing exclusion laws until December 7, 1904, or for the duration of the treaty if it were allowed to extend for an additional ten-years. In essence this proposal was the same as the earlier State Department position, which had received some support at the Senate hearings in the form of the Proctor bill. On April 16, in spite of violent opposition by the anti-Chinese side, the Platt substitution passed by a vote of 48 to 33.²³¹

After the vote was then taken on the bill with the Platt substitute, Senator Scott called for recommital. It was a "menace" to the American workingman. Hoar took another view, making another famous oration with Rawlins interrupting:

Mr. HOAR.²³² Mr. President. I think this bill and this debate indicate a great progress in sentiment. The

²²⁹ McClellan, THE HEATHEN CHINESE 191 (1971).

²³⁰ Platt was confused over one portion of his substitution. He made this amusing statement: "If the Senator from Colorado will permit me, I think one of the virtues of a Senator, when he finds he is mistaken, is to say so."

Hoar also needled Platt:

[&]quot;I desire to call attention to a rather peculiar condition in the Senate. The principal advocate of the bill does not know what is in it, and the principal advocate of the amendment does not know what is in it." 35 CONG. REC. 4248 (1902).

²³¹ MCKEE, at 63.

²³² In his memoirs, Hoar gives the following background to his 1902 speech:

sentiment of the country has passed, certainly so far as it is represented by a majority of the Senate, the stage, if it ever was in it, of a reckless [effort] seeking to accomplish the result of Chinese exclusion without regard to constitutional restraints, treaty obligations, or moral duties. There was in some quarters, as it seemed to me, in olden times, a disregard of all those restraints, certainly in the press, certainly in the harangues which were made to excited crowds in various parts of the country. Among other I can remember a visit of the apostle of Chinese exclusion to Boston and an address by him on the Boston Common which indicated that spirit.

Now, that has gone largely, and the Senate has discussed this question with a temperate desire on the part of all classes and all Senators, whatever ways of thinking they have, to do what seemed to them for the benefit of labor, the quality of the citizenship of this country in moderate and constitutional fashion.

But I cannot agree with the principle upon which this legislation or any legislation on the subject which we have had in the country since 1870 rests. I feel bound to enter a protest. I believe that everything in the way of Chinese exclusion can be accomplished by reasonable, practical and wise measures which will not involve the principle of striking at labor because it is labor, and will not involve the principle of slavery at any class of human beings merely because of race, without regard to the personal and individual worth of the man struck at. I hold that every human soul has its rights, dependent upon its individual personal worth and not dependent upon color or race, and that all races, all colors, all nationalities contain persons entitled to be recognized everywhere they go on the face of the earth as the equals of every other man.

The Statute then enacted, expired by its own immigration twenty years [sic] afterward. Meantime the prejudice against Chinese labor had modified somewhat. The public had become somewhat more considerate of their rights and, at any rate, there was a desire to maintain some show of decency in legislating in the matter. So a more moderate Statute was enacted in 1902. I was the only person who voted against it in either House. It was, of course, clear that resistance was useless. It was not worthwhile, it seemed to me, to undertake to express my objections at length.

The PRESIDENT pro tempore rapped with his gavel. Mr. RAWLINS. Mr. President, I rise to a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator from Utah will state his parliamentary inquiry.

Mr. RAWLINS. Is it in order not to move to substitute the House bill on the Calendar--

Mr. HOAR. Have I not the right to finish my remarks, if I have the floor?

The PRESIDENT pro tempore. The Senator from Massachusetts had consumed his five minutes.

Mr. HOAR. As this bill violated that principle, in my judgment, I am bound to record my protest, if I stand alone.

Mr. RAWLINS. If it be in order, I move to substitute the House bill, which is now on the Calendar, for the bill which is now before the Senate.

The PRESIDENT pro tempore. The bill has passed beyond the stage of amendment. The question is, Shall the bill pass?

Mr. PATTERSON. There is an amendment which I offered dangling somewhere in the Chamber, but I do not know where. I desire to withdraw it, so that the RECORD at least will be clear.

The PRESIDENT pro tempore. The Senator from Colorado withdraws his amendment. The Chair had forgotten that there was one pending. The question is, Shall the bill pass? The Secretary will call the roll.²³³

The Senate bill with the Platt amendment passed with 76 in favor, only Hoar opposed, and 11 not voting.

²³³ 35 CONG. REC. 4252 (1902).

Hawley was quick to give credit for the passage of the Platt Amendment to his fellow Senator. *The Courant* trumpeted: "Chinese Exclusion--Senate Adopts The Platt Substitute--Defeat For The Original Drastic Bill--." The article continued:

> Washington, April 16--The drastic Chinese exclusion bill originally framed by the senators and representatives from the Pacific coast states met defeat in the senate today, and in its place was substituted a measure offered by Mr. Platt of Connecticut, extending the provisions of the present exclusion law and also applying that exhibition to all insular territory under the jurisdiction of the United States.

> The vote by which the substitute took the place of the original bill was as if it says it. Once the substitution had been made all senators joined in support with the single exception of Mr. Hoar of Massachusetts, the substitute being passed 76 to 1. The friends of the substitute showed their strength throughout the voting on amendments that preceded final action and succeeded in preventing any material change in the features. Some minor changes were made, admitting Chinese persons connected with national expositions, and providing for certificates of identification of Chinese in our insular possession. Otherwise, however, the substitute was adopted substantially in the form that Mr. Platt presented it.

The Senate failed to substitute the enacting clause of the House bill for the Senate measure so that the bill now will go to the House as an original measure and from a parliamentary standpoint will have to be acted on and treated the same as though the House had not passed a Chinese exclusion bill already.

As Hawley noted in his editorial, the Senate bill, as much as it constituted a triumph for Platt, still had to be harmonized with the much more negative House bill. A conference committee was formed to find a compromise. Representatives Hitt, Perkins, and Clark joined Senators Platt, Dillingham and Clay "to seek a middle ground, but finding one was not easy."²³⁴ "I desire to say," reported Platt at the end, "that the conference has been in some respects a strenuous one."²³⁵

Coolidge summarized the compromise bill as follows:

[It] reenact[ed] all laws in force, extending them to insure territory in so far as not inconsistent with treaty obligations. The Secretary of the Treasury was empowered to make regulations not inconsistent with the law of the land; provision was made for admission of Exposition exhibitors and their assistants; for the certification of the Chinese in the Islands and for putting in the hands of the Philippine Commission, the regulation of the Chinese resident there.236

Although the Chinese government tried to influence Roosevelt not to sign the bill, Roosevelt approved it on April 29, 1902. According to Professor McKee, the bill as passed was a disaster for the pro-Chinese forces. It continued the Exclusionary Acts permanently, which effectively abandoned the 10-year interval approach. Of course the resident Chinese were still subject to the registration laws, and exclusion was extended to Hawaii and the Philippines. Finally, the Secretary of the Treasury had a free hand to develop restrictive regulations. The Roosevelt "open-door" policy had taken quite a hit.

McKee states that "[P]erhaps only in politics and war do the defeated cry victory and the winners shout defeat."²³⁷ The earlier triumph engineered by Platt caused scholars and statesmen of the time to fail to realize what was in the final bill. Hoar believed a more moderate bill was enacted, as did former Secretary of the State Foster and others. On the other hand, Gompers denounced the new bill as a "Bunko bill" and as a bungling job by the U.S. Congress. The exclusionists, believing or claiming that they had lost, mounted one more effort to enact an exclusionary law.

F. Developments in 1904

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²³⁴ MCKEE, *supra* note 11, at 63.

²³⁵ Id.

²³⁶ COOLIDGE, supra note 11, at 251.

²³⁷ MCKEE, supra note 11, at 65.

Hoar was in a state of decline after the death of his wife in March.²³⁸ He did not appear in the Senate to any extent before passing away in September 1904. Further, Hawley's health also restricted his activities, and he was planning to retire within the year. The last major effort on exclusion was faced by Platt alone. He tackled it with his usual efficiency.

In January 1904, the Chinese Minister at Washington denounced the immigration treaty of 1894 and the question at once arose whether, upon the expiration of this treaty and in default of a new one, the status of the Chinese would be determined by the treaty of 1880. Those in Congress opposed to the Chinese at once renewed the dying agitation, picturing the vileness and slavery of Chinese laborers and the danger of "unrestricted hordes." In the House, a bill to reenact existing legislation with certain new and extreme features was considered and passed without reference to the Committee on Foreign Affairs.²³⁹

Platt now took charge as the bill came before the Senate. As Coolidge states:

When [the bill] arrived in the Senate it encountered another atmosphere...[K]nowledge of the awakened and developing power of China, and self-interest, had combined to broaden the view of the relations of China and America. Phases of self-interest and self-preservation not represented by organized labor had united to modify legislation originally directed against a single race for benefit of a single class.²⁴⁰

Platt wrote three letters on April 5, 1904. The first was to President Roosevelt:

I heard today that you have some idea of sending a message relating to the situation of the Chinese Exclusion Act. I hope you will not do that -- certainly not until after I can have an appointment to see you and learn a little more

²³⁸ Hoar was married twice. His second wife, Ruth, stayed in Worcester while he lived in Washington. Hoar's son, Rockwood, kept his father advised as to Ruth's health. Hoar himself wrote Ruth several passionate letters during each Senate term. Hoar papers, Massachusetts Historical Society.

²³⁹ M. COOLIDGE, *supra* note 11, at 251-2. 240 *Id*.

definitely what the Attorney General thinks of the matter as it now stands.²⁴¹

Beale explains that before 1904, Roosevelt took surprisingly little active part in the Chinese Exclusion debate.²⁴² In 1904, the President concluded that an exclusionary bill was necessary so that votes would not be "lost on the slope." He would demonstrate that he would "enforce the exclusion law, treaty or no treaty."²⁴³ He announced his intentions at a cabinet meeting and Platt had word of this, even before the announcement. At the same time, Roosevelt and John Hay were, according to Beale, among those who "worried" about "indiscriminate exclusion."²⁴⁴

The second letter went to John Hay, Secretary of the State:

Do you think that the denunciation of the Chinese treaty of 1904 was created to revive either the treaty of 1880, or articles 5 and 6 of the treaty of 1868?

Please understand that I do not propose to use, or quote your reply, but simply that I desire to get your view of the matter.

The final letter was to Maxwell Evarts, attorney for the Southern Pacific Company:

The Chinese exclusion seems to be like Banquo's ghost. Now it is claimed,--

1st. That denunciation of the treaty of 1894 by China revives articles 5 and 6 of the Burlingame Treaty, and

2nd. That the law passed at the last session of Congress will be invalid, so far as it is inconsistent with articles 5 and 6 of the BurlingameTreaty.

²⁴³ *Id.* at 215.

²⁴¹ Letter from Orville Platt, United States Senator, to Theodore Roosevelt, President of the United States (Apr. 5, 1904) (on file with the Connecticut State Library).

²⁴² BEALE, *supra* note 225, at 213-215.

²⁴⁴ *Id.* at 214. *See also*, MCKEE at 126-28.

I wish you would give me, confidentially, your opinion on these two points.

I will treat whatever you may say with absolute confidence, and shall be glad of an early answer.

Hay and Evarts replied the following day. Hay stated:

It is the opinion of this Department that when the denouncement of the treaty of 1894 becomes operative, the provisions of the previous treaties will be in force, except when they conflict with each other (in which case the later treaty rules) and except in so far as both treaties, or either of them, may have been modified or superseded by subsequent legislation.

Evarts wrote:

In other words, as I understand it, the failure of the Treaty of 1894 does not affect the present Chinese Exclusion Act, inasmuch as such act does not provide that the Exclusion Acts should be extended so far as the same are not inconsistent with the present Treaty obligations and with Treaty obligations which may be hereafter in force...

Therefore, as it seems to me, articles 5 and 6 of the Burlingame Treaty, even if they were theoretically revived by the failure of the Treaty of 1894, would yet be subject to the subsequent law of 1902, and would not permit the immigration of Chinese laborers into this country.

Platt used these replies to kill one pending house bill. Senator Patterson of Colorado stated he could see Platt's point. The issue arose again, however, in the deficiency appropriation bill. (H.R. 15054). This bill was passed hurriedly as the session was ending, at a midnight session of the House, and sent to the Senate. It was buried in the Civil Supply Bill with the hope that it would pass quickly through debate.

Section five of the bill continued indefinitely the 1902 Act's exclusion provision. The sections following attempted to go beyond the

status quo. Section 6 prohibited the Chinese from working the Canal Zone.²⁴⁵

Platt acted to oppose Section 6 and the other new provisions of law.²⁴⁶ It was a "very delicate, complicated, and difficult matter." China "wants to be a friend to the United States and to have the United States as a friend of China... China is only trying to renegotiate the 1894 treaty, not to force laborers on this country, but to improve the position of the non-laborer class. The law of 1902 was a good solution to the immigration problem. This is covered in Sec. 5 of the present bill."

But as to the other legislation in this bill, Mr. President, I think we ought not to deal with it at the present session. First, it has never received the sanction by report of any committee of this body or of the House of Representatives. It was proposed as new legislation against the rules of the House upon an appropriate bill and carried through. It has not received by report at least the sanction of the Committee of Foreign Affairs of the House. It had never been introduced as a bill in the Senate.

> It was not thought of by the Senator from Colorado. It was not thought of by the peculiar representative of the antiexclusion sentiment in the House. It came at a time when the session was about to close and when no sufficient consideration could be given to it. I think these considerations of themselves, without even a reference to what is proposed to do, ought to be sufficient to exclude it from the bill.

. . .

It was never before the Immigration Committee. No bill has been introduced in the Senate; it has been before no committee in the Senate, and there has been no opportunity for a committee to consider it. I venture to say that when it

²⁴⁵ 38 CONG. REC. 5417 (1904). Yung Wing had shown an interest in this issue. His diary for October 10, 1902, contains an entry about a letter he wrote on Chinese labor in the Canal Zone.

²⁴⁶ An interesting comment was made by Platt when one of the other Senators declared that the attorney general "drew up" Section 6. Platt ridiculed that suggestion. If it came from Attorney General's Office, it probably came from some \$1200 clerk, who had been directed to prepare it. *Id.* at 5415.

came to the Senate there were not three Senators who had nay idea of what it meant. I am somewhat familiar with this matter, and I confess that I did not know what it meant. I do not know what it means entirely, but I will point out very brief some things that I think it means.

With reference to the sixth section, which is proposed to be stricken out, I can see no reason for its enactment except that it will unquestionably exclude Chinese laborers from the canal zone, I take it, therefore, that it was the object of it.247

The seventh section was also objectionable in defining "who a Chinese person or person of Chinese descent shall be."

Without reading it, it is in effect that if a person comes here from China asking to be admitted, with the certificate of the consul that he is not a laborer, he is to be excluded if he is a Chinese person or a person of Chinese descent, and that is to be determined by the rule as to whether he had a Mongolian ancestor one hundred and four years ago who was a subject of a Chinese Emperor, and if an inspector says that he believes such is the case, then the person is excluded unless he can then and there prove to the contrary. That is what section 7 is.

Whom does it exclude? A good many Japanese, all Koreans, a very large proportion of Filipinos, for they had Mongolian ancestors who were subjects of the Emperor of China one hundred years ago. So if they have one participle of Chinese blood in their veins, coming down, from an ancestor of a hundred years ago, they are to be excluded on the statement of the inspector that he believes they had such an ancestor, unless right then and there they can prove the contrary.

I submit, Mr. President, we ought not hastily to pass legislation of that sort.²⁴⁸

The eighth section attempted to repeat the portion of the McCreary Act defining the word "laborer." The substitute language

²⁴⁷ *Id.* at 5417.

²⁴⁸ Id.

made everyone a laborer initially, except for officials, teachers, students, merchants or travelers.

It seems to me, Mr. President, that there is no necessity for that. The law as it exists says that laborers, skilled and unskilled, persons engaged in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish, for home consumption or exportation, shall be considered laborers. It seems to me that we have gone as far as there is any necessity for going in that respect.²⁴⁹

Section 9 was probably unconstitutional.

It says that if a person trying to come into this country from China sets up a claim of citizenship--that is, of having been born in the United States--that may be determined by an inspector. I suppose that a person claiming to be a citizen of the United States had a right to go to the courts of the United States to determine the question whether he was a citizen or not. I think he has that right under the Constitution. I think this deprives him of a conditional right in that it makes the decisions of that question, so far as the matter of fact is concerned, to rest with an inspector appointed to administer this law.²⁵⁰

There was no necessity for section 10.

It provides that the act to regulate the immigration of aliens into the United States shall apply to alien Chinese persons permitted by the Chinese-exclusion laws to enter or remain in the United States as it does to other aliens. That is practiced all the while. If they admit persons of Chinese descent, they can be excluded today under the immigration laws. If they are diseased, or paupers, or criminals, or come within the class which are to be excluded, they are excluded. They are excluded for the disease of the eyes, tachoma, I think it is called, and for any contagious disease. So there is no necessity for that legislation.²⁵¹

Section 11 was unfair.

It makes a distinction in the right of appeal between the Government and the person seeking to enter the United States. That is not fair, under our laws or any other laws. If an appeal is to be granted, it ought to be an appeal where each party shall have the same right to appeal. It is well known that the Supreme Court very seldom grants a writ of certiorari. It is practically denying to the person seeking to enter the right to get his case before the Supreme Court of the United States when the United States has the right without limitation.²⁵²

Section 12 was unnecessary--it gave powers to the Secretary of Commerce and Labor which he was already correctly exercising under other legislation.

The last section was especially wrong:

--that it shows that the desire to keep our Chinese laborers is not so real a desire after all; because if one Chinese laborer turns informer and testifies against one who is trying to get in, the informer may be permitted to remain in the United States. It is said they have given evidence in smuggling cases; but the real point of it is to offer an inducement to the Chinaman who might be expelled from this country to get a right to remain here by testifying against another Chinaman who wants to get in. I did not think we ought to do that.

I have run hastily over this matter, Mr. President, not for the purpose of arguing it so much as to show that it is a matter we ought not to attempt to deal with at this time. There is no necessity for it. The pretense that there is a necessity for making it certain that the action of 1892 will continue in force after the expiration of the treaty is made a pretext for entering into this legislation, which is so difficult, so delicate, and so doubtful in its propriety.²⁵³

The Western Senators, and one from the South, made their usual response to Platt's remarks. Heyburn of Idaho called for banning Chinese, after completion of the canal, from settling in Panama--we don't want "a little China" in the Canal Zone.

Senator Gallinger, praising Platt's thorough address, replied to the argument that new legislation was needed. It was utterly unnecessary. Rather he sought the good will of the Chinese people:

> I was interested a few days ago, Mr. President, in noticing that Great Britain was entertaining some very distinguished citizens of the Empire of China, showing them every possible consideration and courtesy, apparently and manifestly with a view of getting their good opinion for the purpose of extending British trade into the great Empire. The United States needs that trade today and will need it in the future. I see no reasons why we should put on our statute books a single line or single word of unnecessary legislation that will lead to irritation between this country and China.

> China today is weak and helpless, but China some day will be strong and aggressive; and I hope that the relations of this country with that Empire may be such that when that day comes we shall have the good will and the sympathy and not the hatred of that great people.²⁵⁴

In the end, the Heyburn amendment was rejected and the bill passed, stripped of all but Section 5. After another contentious conference, the House backed down and favored the Senate version. It was signed April 27, 1904.

Hawley's *The Courant* carried the end of the debate, but with only brief details. It announced that two big supply bills had passed with a section on Chinese immigration. Platt was not mentioned by name. The issue was seen as "closed" by the labor movement and the pro-Chinese forces were relieved that the debate was finished.

²⁵³ *Id.* at 5418.

²⁵⁴ 38 CONG. REC. 5419 (1904).

Finally, Platt did receive Hay's recognition. "I congratulate you and the country on your effort respecting the Chinese Exclusion Amendment. You have saved us from some very discreditable legislation."²⁵⁵

VI. CONCLUSION

The Chinese Exclusion Act of 1882 has earned a special place in American history. It was the first departure from our official policy of open, laissez-faire immigration to be made on ethno-cultural grounds. Likewise, it was the nation's first seen on the pathway that led ultimately to the controversial quota legislation of the 1920s. Less obviously, the decision for exclusion sharply challenged the comfortably vague presumptions that prevailed as to the melting pot nature of American Nationality.²⁵⁶

As this article has shown, the hatred of the Chinese culminated in the Chinese Exclusion Act of 1882,²⁵⁷ which restricted Chinese immigration to the United States.²⁵⁸ There is no doubt that the Exclusion Act was racially motivated. "In 1882 only 39,579 Chinese entered the United States while 102,991 immigrants from Great Britain

²⁵⁵ L. COOLIDGE, *supra* note 51.

²⁵⁶ STUART CREIGHTON MILLER, THE UNWELCOME IMMIGRANT: THE AMERICAN IMAGE OF THE CHINESE 3 (1969). See also Frank H. Wu, Neither Black Nor White: Asian American and Affirmative Action, 15 B.C. THIRD WORLD L.J. 225, 233 (1995)("The passage of the Chinese Exclusion Act signaled the end of the ideal of open borders. When the Supreme Court subsequently upheld the constitutionality of the Act, the transformation of an insincere compliment was complete.")

²⁵⁷ Chinese Exclusion Act of 1882, Ch. 126, 22 Stat. 58 (1883)(repealed 1943). The Act suspended immigration of Chinese laborers for ten years, with the exception of hosts arriving before Nov. 17, 1880. In 1892, the Chinese Exclusion Act was renewed for another ten years. R.D. McKenzie analyzes the Act in his early work. *See also*, R.D. MCKENZIE, ORIENTAL EXCLUSION: THE EFFECT OF AMERICAN IMMIGRATION LAWS, REGULATIONS, AND JUDICIAL DECISIONS UPON THE CHINESE AND JAPANESE ON THE AMERICAN PACIFIC COAST 24-33 (1970).

²⁵⁸ See also, GYORY, supra note 6, at 258. ("[T]he Chinese Exclusion Act of 1882 remains one of the most infamous and tragic statues in American history. It must also remain one of the most ironic. No national sentiment arose to demand it, no broad effort emerged to prevent it."); John Hayakawa Torok, *Reconstruction and Racial Nativism: Chinese Immigrants and the Debates on the Thirteenth, Fourteenth, and Fifteenth Amendments and Civil Rights Laws*, 3 ASIAN L.J. 55, 97 (1996)("The 1882 Chinese Exclusion Act was the first national race-based immigration exclusion in American history and thus was a watershed event in U.S. immigration policy.").

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and 250,630 from Germany were admitted.²⁵⁹ As these historical events demonstrate, the Act became law in 1882 because the time was ripe for its passage.²⁶⁰ But to say only that derails the national contexts of racist ideology and ignores the political dimensions of the movement.

Moreover, the importance of reexamining laws within their historical and political climates, in which they were passed, has shown that the issue of race, as it was during the Chinese Exclusion era, continues to be an important topic in this country. As much as race relations has never been a literally black/white issue, the issue of the Chinese Exclusion has never been evenly divided between Chinese/non-Chinese. In fact, absent recent scholarship that has examined the laws in their social and historical contexts, common knowledge about these events would have continued to obscure the fact that there was strong opposition towards Chinese exclusion, not only by the Chinese themselves, but by non-Chinese politicians who fought hard on the Congressional floor to ensure that civil rights and equal opportunity were available to all who wanted to become part of the common membership in an American society, one that has historically regarded itself to be centered on freedom and democracy.

In the end, these observations and anecdotes give one pause, and an opportunity to ask oneself--Why did Senators Hawley, Platt, and Hoar take their strong and courageous stands against racial discrimination and in particular, the Chinese exclusion? While it may be easy to give the glib response that the three men were merely trying to protect the interests of Connecticut businesses, and ensure the continual flow of trade dollars between East and West by being pro-Chinese, their reasons were probably much more complicated. Today, since we can only review the historical and legislative records of these men, we may have no choice but to continue to speculate about their actual motivations.

Here are some of the factors as seen above that determined the actions of the three "Sons of Connecticut"--Hawley, Platt, and Hoar. First, each had a long tradition in favoring equal rights. Hawley had been a radical Republican in his earlier days and had taken part in abolitionist projects. Hoar had spoken out on civil rights issues, recently opposing the war with Spain, and making reference to the oppressed residents of the Philippines. Platt's father and mother had been anti-slavery. Second, there was the Republican-Democratic rivalry. Hawley

²⁵⁹ Shi-Shan Henry Tsai, THE CHINESE EXPERIENCE IN AMERICA 65 (1986).

²⁶⁰ See also, CHRISTIAN G. FRITZ, DUE PROCESS, TREATY RIGHTS, AND CHINESE EXCLUSION, 1882-1891, in ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA 1882-1943, 25, 30-32 (Sucheng Changed., 1991).

was pleased to endorse a more open immigration policy while the Democrats opposed it. Third, at least Hawley and Hoar were influenced by the writings of the Reverend Joseph Twichell. Hawley was Twichell's congregant and friend. Twichell was in turn influenced by Yung Wing to oppose Chinese exclusion. The three Senators had met Yung Wing and other Chinese officials. Mark Twain, one of the nation's most influential personalities, was allied with Hawley and Twichell. Finally, Hoar and Hawley were excellent orators and were not afraid to take outspoken positions. Platt was more reserved, but he was greatly respected and had vast influence in the Senate.

Their votes in the Senate had not blocked the passage of the Chinese Exclusion Acts, and indeed at the time of their deaths in 1904 and 1905, these Acts were as virulent as ever, affecting our immigration policy for years to come. But their principled opposition did eventually produce a tangible result. Through the effort of a committee chaired by Pearl Buck, Congress passed a repeal of the Acts in 1943. The Three Sons of Connecticut would have agreed wholeheartedly with President Roosevelt's statement at the ceremonial signing of the repeal: "[We should] wipe from the statute books those anachronisms in our law which forbid the immigration of the Chinese people into this country and which bar Chinese residents from American citizenship. Nations, like individuals, make mistakes. We must be big enough to acknowledge our mistakes of the past and to correct them."