

The Chinese Exclusion Act

The wrong move at the right time?

by Max Thelen, Jr.

International relations between China and the U.S. and indirect and illegal campaign contributions from Asian sources are much in the public eye at this time. Part of the discussion centers around the extension to China of most favored nation status. This is not a new subject. One hundred and twenty-nine years ago most favored nation status was extended to China in the so-called Burlingame Treaty of 1868. Among other things, this treaty allowed citizens of both countries to immigrate or emigrate on a basis equivalent to citizens of other nations. Back in Gold Rush days there had been substantial Chinese migration to California; this continued to grow after 1868. This generated opposition, spear-headed by the labor movement, which led to amendments to the treaty in 1880 giving the U.S. the right to “regulate, limit or suspend” but not “entirely prohibit” the entrance of Chinese laborers. No other types of immigrants were excluded.¹

The amendment of the Burlingame Treaty in 1880 opened the door for Congress to pass the Chinese Exclusion Act in 1882 — the first significant restriction on immigration by the United States.

A brief historical review of events leading to the Burlingame Treaty, its amendments, and the Chinese Exclusion Act of 1882, is helpful in understanding the current politics of immigration and placing in focus the falsity of a major myth: that America has always “welcomed” immigrants and that immigration has always been an unmixed blessing.

Relations Between the U.S. and

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China — 1854 to 1885

The status of China mid-nineteenth century cannot be adequately described in a few words. Briefly, the central government, namely the emperor in Peking, had little de facto power outside of the Beijing area. Individual war lords had varying amounts of power in their provinces. Overall there was anarchy. The Western powers, by the use of force and the threat of force, had obtained territorial concessions and extra-territorial rights (such as Hong Kong) which, as trade and commerce developed, had substantial value. (Consider the

Opium Wars of the 1840s.) The United States had not applied force or threatened it against China, but it was most interested in obtaining trading rights and protection for its citizens in China (mostly missionaries, sailors and traders) from very real physical danger amid general anarchy.

Although hating foreign intervention, the Imperial Chinese government placed great importance on custom revenues. The stated goal of the U.S. was to have an “open door” to China and, of course, freedom of the seas. The Emperor and his court considered all Westerners to be barbarians. In the U.S. the Chinese and other Asians were viewed as infidels, non-Christians beyond the pale. Although much is made of American bias against Asians, the fact was that bias by the Japanese and Chinese against Westerners was equal or greater.²

Commencing with the Gold Rush of 1848, a significant number of Chinese, almost all from the area surrounding old Canton in southern China, had emigrated to the United States. The numbers of Chinese residents increased three-fold from 1860 when the census showed 35,565, to 104,468 in 1880.³ The greatest single increase was attributable to the demands for cheap labor by the Central Pacific Railroad, construction of which was authorized by Congress in 1862. It was completed in 1869. Business, and particularly larger

**Non-discriminatory
restrictions on
immigration 150 years ago
would have better served
America.**

employers, wanted the cheap labor, as they have ever since.⁴ This drove down the wages and working conditions for American laborers and generated strong opposition in California and the West to Chinese immigration. This apparently was given little thought on the Atlantic seaboard since the State Department was more concerned with improving relations with China and securing commercial advantages through a most favored nation treaty.

Anson Burlingame and the Treaty of 1868

The Burlingame Treaty took the form of an amendment to a treaty with China of June 1858 which had established diplomatic relations along with some fundamental rights and responsibilities. The 1868 treaty gave both countries reciprocal most favored nation status. This worked very well for the U.S. since the Western powers had obtained and enjoyed tremendous concessions over the years and obtained even more favorable ones as time passed. The parties mutually agreed that their citizens should have the privileges, immunities and exemptions enjoyed by citizens of the most favored nations. The countries recognized the inherent right of individuals to change their home and allegiance, and also the mutual advantage of the free emigration and immigration of their citizens and subjects, respectively, from one country to the other, for purposes of curiosity, of trade, or as permanent residents.

Burlingame's name became attached to the treaty in common usage because he aided the Imperial Court in deciding to send a mission to the Western Powers to enhance its prestige and obtain enlarged treaty rights. And he did this in the interests of the U.S. while being its diplomatic representative. When it was clear that China would have such a mission, Burlingame resigned as U.S. Minister to China and *one day later* announced that he would serve as China's Minister Extraordinary with Plenipotentiary Powers, and as head of the Chinese mission. What would today's U.S. Senate investigation of campaign financing, and buying access to administrative and congressional power, do with a case like Burlingame's?⁵

Anson Burlingame was born on November 14, 1820 in Berlin, New York. In 1823 he moved with his family to Ohio, and ten years later to Michigan. He

graduated from the University of Michigan in 1841 and from Harvard Law School in 1846. After settling in Massachusetts, he entered politics, serving in the local legislature and then as a representative in Congress (1855-1861). It has been said that he founded the Republican Party in Massachusetts.⁶ Defeated for reelection to Congress in November 1860, he accepted an appointment from President Lincoln to represent the United States at the Imperial Court of China. He arrived there in October 1861 during the great Taipei rebellion, in which, according to the *Encyclopædia Britannica*, 20 million people lost their lives (and which sheds some light on the Chinese penchant for order). An idealist, Burlingame became the leader of the diplomatic corps in Peking advocating a policy of cooperation among the Western powers and China. He was a man of very large personal talents, but during and after the treaty of 1868 he had severe critics who indulged in name-calling of the worst kind, attacking every

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aspect of his personal and professional life.⁷ However, on balance (and despite the premature acceptance of the Chinese commission), it is clear that he was a man of great integrity and ability, including personal and political skills. Gaining the confidence of the Emperor and his court in the brief period that he was in China was an amazing feat. His ability to obtain State Department, Presidential and Senate approval for the treaty was equally admirable.⁸

Following his appointment as head of the Chinese delegation, Burlingame led his thirty person mission to Washington via San Francisco. He had stopped in San Francisco on his way to China in 1861; now, in 1866, he cemented relations and purchased a half interest in 1,000 acres on the

San Francisco peninsula. William Ralston, a major financier, had purchased the other half. As a result of Ralston's efforts a city was founded at the center of the property named for Burlingame.⁹ In Washington he closeted himself with Secretary of State Seward and negotiated a treaty between China and the United States. These negotiations were secret and have never been revealed through oral or documentary evidence. Was Steward worried about

first substantial restriction on U.S. immigration. Then came a "gentleman's agreement" to prevent mass immigration from Japan, and then laws and regulations to deny naturalization to Asians, and generally to exclude virtually all Asians from immigration. In this and other restrictive immigration actions Congress was reflecting the public's desires.¹¹ From these events much can be learned that is of value today in making decisions about immigration reform.

"The discrimination could have been avoided in 1882 by applying the concept of restriction to all countries."

The chain of events we have described beginning with Gold Rush days has been violently attacked today as "discrimination" against Asians or people of Asian coloring. Of course these acts were discriminatory in the sense that at the time there were substantially no restrictions on mass immigration from Western Europe. By 1882

the public's support if Congress or the media picked up the subject? Burlingame and the mission moved on to Europe where he was generally welcomed, but without any new treaties resulting. The mission ended in St. Petersburg where Burlingame contracted an illness and died, February 13, 1870. He was buried there with great honors and memorialized in Boston and New York.

both political parties were on the record as favoring Chinese exclusion. There was no organized opposition. [See editor's note at end of article.]

It was said that the 1868 treaty was well-received in the U.S., and there is some truth in this if California and the West are excluded. Geographically the West was a long, long way from the Atlantic seaboard and in many respects was far from the seats of power. It was also indisputable that substantial numbers of citizens supported the treaty — basically abolitionists who had successfully fought slavery, plus some religious organizations, and of course the merchant traders, transportation businesses, and big manufacturers using large numbers of cheap immigrant labor, etc.

The discrimination could have been avoided in 1882 by applying the concept of restriction to all countries.¹² If we assume that in 1882 the principle of restriction had been applied to all the countries of the world — barring mass migration or any migration of laborers, and capping other admissions at 1,000 per country — this would have created an overall cap of less than 50,000 per year. This number would have been sufficient to give the U.S. all the scientific, economic, cultural or political talent which it might have needed. At the present time, with the proliferation of nations after World War II, the cap overall would be 190,000 at the rate of 1,000 per country. This is consistent with immigration practice during the forty years from 1925 to 1965 which averaged 171,198 yearly. Establishing caps on immigration takes political courage, but such immigration reform in 1882 would have solved today's U.S. population problem. The principle of the Chinese Exclusion Act should have been applied world wide.

The Residual Significance of Chinese Exclusion For Today

Why should we recall the Burlingame Treaty and relations with China of more than one hundred years ago? Simply stated: it is because the 1868 treaty was repealed only twelve years later (in 1880) and because of the tremendous opposition to Chinese immigration and the Chinese in California. This quick repeal paralleled the fate of the 1864 Act to Encourage Immigration which was repealed in 1868 after only four years.¹⁰ This was followed in 1882 by passage of the Chinese Exclusion Act, the

At the present time, FAIR (the Federation for American Immigration Reform), one of the leading organizations advocating major immigration reform, has policies (as do other groups) which are supportive of strictly limited legal immigration. They seek only *policy changes* in the immigration laws which admit excessive numbers of immigrants on an undifferentiated basis, unrelated to the national

interest. Unfortunately, that was not the position of Americans in the latter half of the nineteenth century.

In California, the Chinese, even though mass immigration had ended after 1880, were violently discriminated against and attacked for generations, both before and after the 1868 treaty. In other words, repeal of the Burlingame Treaty did not solve the problems of non-assimilation and discrimination which lasted for decades. Changes in a law did not alone change the “hard-wired” worldwide historical preference for members of one’s own tribe. The discriminatory treatment of Asians in the U.S. and particularly the West (70 percent of the Chinese were in California) was continuous.¹³

The problem existed from Gold Rush days onward, and the Burlingame Treaty only made the situation worse. The fact was that Chinese immigration did not work except for the railroad builders and similar large employers of cheap labor. It was not a pretty picture in California. However, this was just an intense particularization of the fact that (with the exception of our Colonial period) immigrants were generally not well received throughout the country, for reasons of economic competition and social and cultural change. This was true even though most immigrants were ultimately naturalized and unquestionably became patriotic citizens. California passed a number of laws that were blatantly aimed at the Chinese. Sooner or later most of these were found to be unconstitutional by federal courts. But neither the laws while enforced, nor the successful litigation which overturned them, made the underlying human problem disappear.

Although dismaying to idealists, it seemed that Californians of Irish extraction led the pack in attacks on the Chinese, even though the Irish for decades had been the prime target of discrimination in New England.¹⁴

The situation was that big business, for the sake of greater profits, wanted cheap foreign labor — slaves, in effect, contract workers, immigrants (legal, and later illegal) who were docile employees, who would not push for higher wages or better working

conditions nor foster unionization. After Emancipation the preference was for immigrants over blacks and native Americans. Outside the South, the middle class preferred to hire immigrants whom they treated as a servant class, who nonetheless were not admissible to equivalent social status with their employers. People might treat their own domestics with compassion, in a form of paternalism, but others’ domestics were railed against.¹⁵

Thus, it is completely inaccurate to say — as is often done today — that America always “welcomed” immigrants. Americans have been wary of foreigners — which is the way foreigners in large numbers have been received all over the world. It is true that big business wanted cheap foreign labor (and not just in the U.S.)

but after the quitting whistle blew, foreigners were passed over in job advancement, in schools, in homes, in civil society, in politics and other social institutions.

By current standards this was not a way to live; however, the preference for members of one’s own tribe over others has been the way of the world forever. As the old saw has it, “birds of a feather flock together.”

Conclusion

What can we learn from the mistakes of the Burlingame Treaty? Here are some observations based on the fiasco itself and the history of immigration in the period 1850-1900.

1. It appears to be natural to prefer members of one’s own tribe to foreigners. This is why there are more than 190 nations in the world today, and numerous ethnic wars in progress.

2. In a racially diverse nation (and the U.S. is among the most diverse) a very high level of non-discrimination and tolerance of diversity is essential for survival and the effective functioning of society and government.

3. Some diversity is good. It does not follow that more diversity is always better. It is unreasonable

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to increase problems of social division, either locally or generally, through mass immigration. One may be critical of a lack of tolerance for foreigners or for racial or ethnic minorities, and work to eliminate it, while insisting that the wise course would be to avoid compounding the problem by immigration. It is unwise to create a substantial, relatively permanent group of foreigners who can be assimilated only with difficulty. If there is something of value in the culture, social structure or politics of a foreign country, it can be learned — as Japan learns — by study, exchange of knowledgeable people, travel, temporary admissions, and so on.

4. Immigration to the U.S. should not be viewed by presidents and Congress as a no-cost solution to various national or international problems.

5. The Congress and the president should not ignore popular opinion on immigration, and then be forced to reverse actions a short time later. (We remember, however, that repeal of the Burlingame Treaty did not eliminate the damage.) The damage caused by mistakes in immigration policies or choices which increase admissions cannot be readily reversed. Deportation of large numbers of residents will not get much popular or congressional support.

6. The Eastern half of the continental railroad was built without cheap Chinese labor and the Western half could have been also.

7. The numbers of immigrants count. If the Exclusion Act of 1882 had been passed in 1868 the Chinese problem in California would have been avoided or greatly reduced. There is no evidence that the exclusion of mass immigration from Asia — or elsewhere — would have had any adverse effect on the U.S. It should be remembered that the exclusion applied only to laborers. Admission of the highly skilled, the professional, the exceptional was possible. Admission for purposes other than permanent citizenship continued so that whatever might be gained by a familiarity with a foreign culture or from exceptional foreigners was available. For example, in the two years 1911-12, Japanese admissions averaged 5,317 and from China 1,612.¹⁶

8. The Western frontier officially came to an end in 1890, as famously declared by Frederick Jackson Turner. If the 1924 law with its cap on immigration at 150,000 had been adopted in 1880, there would not be a U.S. population problem today. It is this

author's contention that by 1880 any possible need to continue mass immigration from any source had ceased, and that immigration should have been reformed with an overall cap established and quotas assigned to each country. The types of immigrants who should be admitted because of their special skills and competence should have been matched to the needs for such in our country at any given time. Singling out the Chinese was an insufficient and discriminatory response.

9. The history of the Burlingame Treaty and the repeal in 1868 of the Act to Encourage Immigration, along with the events of the last half of the 19th century through the 20th century, establish beyond a doubt the inaccuracy of the statement that America always "welcomed" immigrants and immigration. This is part of the immigration myth.

10. The total number of immigrants and the priorities of different categories should never be allowed to produce large enough numbers to adversely affect the labor market generally or in a particular part of the country, or in any job category (except in a clear emergency affecting the national interest). Immigration to benefit special, and not general, interests should not be countenanced.

11. Stimulating Chinese immigration through the Burlingame Treaty and permitting the immigration of large numbers of Chinese who would inevitably be subjected to social, economic and physical discrimination in California and the West was not a humanitarian action.¹⁷

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[Editor's note: *Readers interested in this topic of Chinese immigration and exclusion will find these earlier offerings in THE SOCIAL CONTRACT to be of value:*

Vol. VI, No. 3 (Spring 1996) — "1876 California Report on Chinese Immigration" by Wayne Lutton; "Denis Kearney and the Chinese Exclusion Acts" by Kevin Jenks; "Labor-led Immigration Restriction" by Wayne Lutton.

Vol. VI, No. 4 (Summer 1996) — "Before the Yellow Peril: American Novels of Chinese Immigration, Invasion" by Kevin Jenks.

Vol. VII, No. 2 (Winter 1996-97) — "The Overseas Chinese: Ever the Golden Venture" book review by Denis McCormack.

Vol. VII, No. 3 (Spring 1997) — “The Endless Demand for Cheap Labor” is an excerpt from a 1928 book by Edward R. Lewis.]

NOTES

¹ (The Burlingame Treaty of 1868.) Additional Articles to the Treaty Between the United States of America and the Ta-Tsing Empire of the 18th of June, 1858, 16 Stat. 39, effective March 23, 1869; Amendment signed November 17, 1880 modifying the 1858 and 1868 Treaties, 22 Stat. 826, effective July 19, 1881.

² Jenks, Jeremiah W. and Lauck, W. Jett, *The Immigration Problem*, Funk & Wagnalls Company, 1917, pp.217-218.

³ U.S. Census 1860 and 1880, U.S. Government Printing Office.

⁴ Saxton, Alexander, *The Indispensable Enemy*, University of California Press, 1995 ed., p.4.

⁵ Gumpach, Johannes, *The Burlingame Mission*, N. Teubner and Co., London, 1872.

⁶ Williams, Frederick W., *Anson Burlingame and the First Chinese Mission to Foreign Powers*, Charles Scribners and Sons, 1912, p.3 et seq., 27 and 355; Drury, Clifford M., *Anson Burlingame: China's First U.S. Ambassador, The Pacific History*, University of the Pacific, 1971, Vol. 15, p.35.

⁷ Gumpach, supra, pp.28-33 and Chapter X, p.188.

⁸ Williams, Frederick W., *Life and Letters of Samuel Wells Williams*, Putnam & Sons (1889); Anson Burlingame, Note 6, supra, Preface, p. vi et seq., pp.268-269; A Memorial to Anson Burlingame, Boston City Council (1870), Library of Congress DS 763.B7 B7; Tribute of the Chamber of Commerce of the State of New York to Memory of Anson Burlingame, March 3, 1970. New York Chamber of Commerce, Library of Congress DS 763, B7 N6.

⁹ Currall, Geoffrey A., *A History of Burlingame*, The San Mateo Times, 1934, Chapters 1 and 2.

¹⁰ Raybach, Joseph G., *A History of American Labor*, The MacMillan Company, 1959, pp.119-120. [The Act was intended to fill the need for a greater labor supply during the Civil War. The National Labor Union began to press for abolition of the practice of “contract labor” in 1867, and Congress repealed the Act in 1868]; Taft, Philip, *Organized Labor in American Industry*, Harper and Row, 1957, Chapter 23, p.304 et seq.

¹¹ Note 1, supra. Note 6, Frederick Williams, pp.269-270.

¹² Note 4, pp.273-274. Labor in 1889 began pushing for immigration restrictions and backed the literacy test (which became law in 1917) as a vehicle for restriction. “Conditions that hitherto greatly favored immigration no longer exist in their full force.” Mason, A.B., “An American View of Immigration,” *Fortnightly Review*, (1874)22:273.

¹³ Coolidge, Mary R., *Chinese Immigration*, Preface p.vii; Chapter XXIII, p.459; Saxton, Note 4, supra, Chapter 10, p.201, p.271.

¹⁴ Note 6, supra, Frederick Williams, pp.153-154; Rayback, Note 10, supra, pp.139-142. “Immigration has affected the growth and character of the working population in the United States as in no other country—” Mills, Harry A., and Montgomery, Royal E., *Labor's Progress and Some Basic Labor Problems*, McGraw Hill Book Company, 1938, p.29.

¹⁵ For an understanding of how immigration affects the economy and why business/employers favor high immigration, see Grant, Lindsey, *Juggernaut*, Seven Locks Press, 1996, pp. 184-185, 186, 243-244, 247-248, 252, 262. See also Saxton, supra, Note 4: “Nothing so provokes man’s inhumanity to his fellow men as their misfortunes. Native Americans regarded the influx of foreigners first with anxiety, then with hatred. Throughout three decades prior to the Civil War a barrage of sermons, books, newspaper articles made known to immigrants that their religion, their language, their food and dress, their very existence as willing wage earners were objects of offense and contempt.” p.12. “The unskilled labor market, during earlier years, had largely been supplied by the children of already established urban workers and by the flow of young people from the country into the city. But in the forties and fifties this market was invaded by immigrants, especially Irish, who in their desperation had no choice but to underbid any going wage level. The result was that the old stock had faced a double squeeze. If skilled, they frequently found their skills rendered obsolete by technological change; if unskilled, they were forced to compete with an ever-growing army of hungry foreigners. *Here was the economic basis of nativist hostility to the European immigrant*” (p.14, emphasis supplied).

¹⁶ *Report of the Commissioner General of Immigration*, U.S. Government Printing Office, 1917; Jenks, Note 2, supra, Appendix, Table 17.

¹⁷ Fairchild, Henry P., *Immigration: A World Movement and Its American Significance*, MacMillan Co., 1918, pp.103-104. “The conditions that have hitherto greatly favored immigration no longer exist in their full force...” Mason, A.B., “An American View of Immigration” 22:273, *Fortnightly Review* (1874), quoted in Fairchild, supra p.104.