

**FROM IMPORTATION OF SLAVES TO  
MIGRATION OF LABORERS: THE  
STRUGGLE TO OUTLAW AMERICAN  
PARTICIPATION IN THE CHINESE COOLIE  
TRADE AND THE SEEDS OF UNITED  
STATES IMMIGRATION LAW**

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I. THE CHINESE COOLIE TRADE—BRIEFLY .....	6
A. <i>Recruitment of Chinese Coolies</i> .....	8
II. THE COOLIE TRADE PROHIBITION ACT .....	13
A. <i>Presidential Messages</i> .....	16
1. 1856 Presidential Report to Congress.....	16
2. 1860 Bill.....	27
B. <i>1860 Presidential Message</i> .....	37
C. <i>1861 Presidential Message</i> .....	42
D. <i>1862 Bill Introduced by Eliot</i> .....	46
III. THE LEGACY OF THE COOLIE TRADE PROHIBITION ACT.....	48
A. <i>Discrimination Against Immigration and         Naturalization of Chinese Subjects</i> .....	49
B. <i>The Visa and Exclusion System</i> .....	51
C. <i>Importation to Immigration</i> .....	53
CONCLUSION .....	55

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It is often assumed that the first federal law regulating voluntary immigration into the United States was the Act of March 3, 1875 (known as the Page Law) which excluded prostitutes and convicts.<sup>1</sup> The Page Law provided that non-U.S. citizens who were serving sentences for felony convictions, other than for political offenses, could not enter the United States.<sup>2</sup> Also excluded were women seeking entry for the “purposes of prostitution.”<sup>3</sup> These were the first of many grounds for excluding foreigners.

However, the Page Law was not the first federal law to regulate immigration. It amended the Coolie Trade Prohibition Act, of February 19, 1862, which outlawed American participation in what was known as the international Chinese coolie trade.<sup>4</sup> Passed in the midst of the Civil War, the “Act to prohibit the ‘Coolie Trade’ by American citizens in American Vessels” provided that it was illegal for any citizen or resident of the United States to participate in:

[P]rocurring from China, or from any port or place therein, or from any other port or place the inhabitants or subjects of China, known as “coolies,” to be transported to any foreign country, port, or place whatever, to be disposed of, or sold, or transferred, for any term or years or for any time whatever, as servants apprentices, or to be held to service or labor.<sup>5</sup>

The Act gave the President power to order U.S. vessels to inspect ships owned or navigated by American citizens if there was reasonable cause to believe the ships had “coolies” on board.<sup>6</sup>

The Coolie Trade Prohibition Act explicitly distinguished importation of coolies from voluntary migration of Chinese subjects. It stipulated that it did not “apply to or affect any free

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<sup>1</sup> Act of Mar. 3, 1875, ch. 141, §§ 1–5, 18 Stat. 477; *see, e.g.*, STAFF REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY 179 (1981), available at <http://www.eric.ed.gov/ERICWebPortal/contentdelivery/servlet/ERICServlet?accno=ED211613> (stating that the 1882 Chinese Exclusion Act was the “first racist, restrictionist immigration law”); M. Margaret McKeown & Emily Ryo, *The Lost Sanctuary: Examining Sex Trafficking Through the Lens of United States v. Ah Sou*, 41 CORNELL INT’L L.J. 739, 747 (2008); Gerald L. Neuman, *The Lost Century of American Immigration Law*, 93 COLUM. L. REV. 1833, 1887 n.347 (1993) (stating that the Act of March 3, 1875 is usually identified as the first federal immigration statute).

<sup>2</sup> § 5, 18 Stat. at 477.

<sup>3</sup> § 3.

<sup>4</sup> Act of Feb. 19, 1862, ch. 27, 12 Stat. 340.

<sup>5</sup> *Id.*

<sup>6</sup> § 6, 12 Stat. at 341.

and voluntary emigration of any Chinese subject.”<sup>7</sup> To prove they were emigrating voluntarily, Chinese laborers travelling on a United States owned or captained ship had to obtain permits or certificates signed by the United States consul at the port from which the vessel was departing certifying that they were emigrating voluntarily.<sup>8</sup> Thus, the Act did not prohibit Chinese laborers from voluntarily migrating to the United States—or elsewhere.<sup>9</sup>

The Coolie Trade Prohibition Act has been characterized as the last slave trade law because it prohibited the transportation by American citizens and residents of coolies who, despite the indenture contracts they signed, were treated as slaves.<sup>10</sup> It was targeted at the transporters—ship owners, captains, and sailors—of coolies to South America and the Caribbean, particularly Cuba and Peru where coolies worked on plantations and mining guano.<sup>11</sup> It was not intended to exclude voluntary Chinese labor from the United States.<sup>12</sup>

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<sup>7</sup> § 4. The Act does not define the term “coolie.”

<sup>8</sup> *Id.*

<sup>9</sup> Many authors have either overlooked or mischaracterized the Coolie Trade Prohibition Act. *See, e.g.*, MOON-HO JUNG, COOLIES AND CANE: RACE, LABOR, AND SUGAR IN THE AGE OF EMANCIPATION 37 (2006) (stating that the Act required Chinese laborers to prove they were migrating voluntarily to the United States and were therefore “worthy of entry”); *see also* Kerry Abrams, *Polygamy, Prostitution and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 668 n.165 (listing examples of scholars overlooking the Act). The proponents of the Act of 1862 were focused on shutting down the slave trade, not on limiting migration to the United States. *See id.* at 668–69.

<sup>10</sup> *See* JUNG, *supra* note 9, at 37.

<sup>11</sup> The term “coolie” has been used loosely internationally and in the United States. Although there is some disagreement, generally, it is believed that most Chinese laborers who immigrated to the United States during the nineteenth century did so through the credit-ticket system whereby they paid their passage or agreed to pay back their ticket price after arriving in the United States. RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 35–36 (1998); *see also* LUCY E. SALYER, LAWS AS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW 10 n.55 (1995).

<sup>12</sup> Congressional support for entry of laborers under the credit-ticket system into the United States was reiterated two years later when it passed a law encouraging migration of contract laborers to the United States. The “Act to encourage Immigration” provided that contracts of no longer than twelve months whereby the immigrant pledges his wages to repay trip expenses were enforceable under federal and state law so long as the terms did not create relationships “of slavery or servitude.” Act of July 4, 1864, ch. 246, § 2, 13 Stat. 385, 386. The 1864 Act also created the position of commissioner of immigration

The Act was viewed by both proponents and opponents as part of the anti-slave trade campaign. First introduced in Congress in 1856 by anti-slavery northerners soon after Americans began participating in the trade, the Act was intended to close a loophole in the statutes outlawing American participation in the African slave trade.<sup>13</sup> Although some southern planters viewed the coolie trade as supporting their international competitors and sought to shut it down, southern Congressmen objected to outlawing participation in the Chinese coolie trade.<sup>14</sup> Thus, the Act was not passed by Congress or signed by President Lincoln until 1862, after the South had ceded from the union.<sup>15</sup>

However, despite the fact that the Coolie Trade Prohibition Act was aimed at the slave trade, in distinguishing between the international slave trade and transportation of voluntary migration of Chinese laborers, it played a critical early role in the developing conceptualization of federal regulation of voluntary immigration. The Act's distinction between slave and free labor demonstrates that it was not accidental that Chinese migrants were the first targets of racially-discriminatory federal immigration laws. At the time the Act was passed, they were in the unique position of migrating as both slave and free labor. Thus, the Civil War Congress had to create a system whereby

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subject to the direction of the Department of State. § 1. In March 1864, Senator Sherman and the Committee of Agriculture explained to the Senate that the Commissioner would gather information about agriculture and other opportunities, and disseminate that information throughout Europe in various languages. CONG. GLOBE, 38th Cong., 1st Sess. 55 (1864). The purpose was to encourage immigration of European labor to the Western states. *Id.* He explained that Western states had their own commissioners and that their competing interests were causing trouble in New York where the immigrants landed. *Id.* The Act also established an immigrant office in New York City to be managed by a superintendent of immigration. *Id.* The office was to assist immigrants with travelling to their destinations through provision of information and transportation arrangements. The office was to protect immigrants from "imposition and fraud." Act of July 4, 1864, § 4, 13 Stat. at 386.

<sup>13</sup> The Act of 1820 permitted American ships the right to inspect American ships suspected of carrying "any negro or mulatto . . . with [the] intent to make such negro or mulatto a slave." Act of May 15, 1820, ch. 113, § 4, 3 Stat. 600, 600 (1821). The Act did not include Chinese subjects. *See id.*

<sup>14</sup> Southern Congressmen likely opposed the Act for the same reasons they opposed any federal control over the movement of people—they saw it as a threat to their control over the movement of free blacks.

<sup>15</sup> *See* Act of Feb. 19, 1862, ch. 27, 12 Stat. 340, 341 (stating that the act was approved on February 19, 1862).

voluntary Chinese laborers would not be excluded. The Act was the first of countless discriminatory federal laws regulating the immigration and naturalization of Chinese subjects.<sup>16</sup>

The certification system created by Congress also sowed the seeds for the current U.S. immigration system whereby almost all non-United States citizens, regardless of race, must obtain a visa before seeking to enter the country. The visa certifies that the applicant has met certain qualifications for entry, including that he or she is not excludable for any number of reasons.<sup>17</sup>

Lastly, the Coolie Trade Prohibition Act was a bridge between federal recognition of the international slave trade and what eventually became exclusive federal control over immigration. It was passed during a transition period in U.S. history—slavery was on its way to being abolished and thus, the country was moving away from importation and towards immigration of human beings. In addressing the slave trade as well as voluntary immigration, the Act illustrated this transition.<sup>18</sup>

The Act's recognition that Chinese laborers could be both slave and voluntary contributed to the conceptual movement away from importation of people that led the federal government to eventually assert exclusive control over immigration. Today, it is axiomatic that the federal government has exclusive control over immigration. Before the Civil War, however, any regulation of immigration was by the states and United States diplomats who influenced migration patterns.<sup>19</sup>

This article explores the diplomatic and legislative history of the Coolie Trade Prohibition Act. It consists of three basic sections. The first section provides a brief description of the trade the Act was targeting—the Chinese coolie trade to South America and Cuba in the mid-nineteenth century. The second section—the largest—describes the diplomatic and legislative history of the Act. In 1856, 1860, and 1861, Congress requested and received reports from three Presidents on American participation in the coolie trade. The presidential messages consisted of copies of diplomatic correspondence from United States representatives to Secretaries of State, as well as between themselves and

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<sup>16</sup> See *infra* Part III.A.

<sup>17</sup> See *infra* Part III.A.

<sup>18</sup> See Mary Sarah Bilder, *The Struggle Over Immigration: Indentured Servants, Slaves and Articles of Commerce*, 61 MO. L. REV. 743, 792 (1996) (exploring the constitutional and social history of treating immigrants as “articles of commerce”).

<sup>19</sup> See *infra* notes 482–86 and accompanying text.

representatives of other governments and ship owners. The last section provides an analysis of the Act's impact on the development of federal immigration law.

### I. THE CHINESE COOLIE TRADE—BRIEFLY

Although Chinese coolies were introduced in many parts of South America and the Caribbean during the mid-nineteenth century, the vast majority were shipped to Cuba and Peru, both of which required vast amounts of labor.<sup>20</sup> In Cuba, the extremely profitable sugar industry required laborers both on plantations and in processing sugar.<sup>21</sup> Although African slaves continued to be imported to Cuba after the slave trade was officially outlawed in 1820, African slaves became prohibitively expensive.<sup>22</sup> Experiments in importing white labor as well as labor from the Yucatan did not produce the numbers needed.<sup>23</sup>

In 1847, the first ship carrying Chinese coolies landed in Havana under the auspices of the slave-trading firm Zuleta & Company of London and the Cuban Junta de Fomento, a corporation of prominent Cuban merchants and planters.<sup>24</sup> The 212 Chinese men on board had signed eight-year contracts with Zuleta agents that were sold to Cuban planters and a railroad company at 170 pesos each.<sup>25</sup> After disembarking from the ship, the men were housed in a barracoon that had been used for runaway African slaves, and divided into lots of ten.<sup>26</sup> The Cuban buyers who had subscribed in advance then chose the lots they wished to purchase.<sup>27</sup>

It is estimated that between 1847 and 1873, 124,873 to 150,000

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<sup>20</sup> ARNOLD J. MEAGHER, *THE COOLIE TRADE: THE TRAFFIC IN CHINESE LABORERS TO LATIN AMERICA 1847–1874*, at 43 (2008).

<sup>21</sup> *Id.* at 41.

<sup>22</sup> *Id.* (reporting that between 1830 and 1860, the average price of a slave in Cuba doubled to \$1,000). Between 1823 and 1841, an average of 8,500 African slaves were imported annually. *Id.* at 42. In 1845, the number dropped to 900. *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> LISA YUN, *THE COOLIE SPEAKS: CHINESE INDENTURED LABORERS AND AFRICAN SLAVES OF CUBA* 15 (2008); see MEAGHER, *supra* note 20, at 42–43.

<sup>25</sup> MEAGHER, *supra* note 20, at 201; YUN, *supra* note 24, at 16. Meagher reports that the first consignment of Chinese coolies arrived in Havana in June 1847 and numbered 571. MEAGHER, *supra* note 20, at 43.

<sup>26</sup> MEAGHER, *supra* note 20, at 201.

<sup>27</sup> *Id.*

Chinese coolies arrived in Cuba.<sup>28</sup> As Spain did not outlaw slavery in Cuba until 1886, the Chinese laborers worked with African slaves.<sup>29</sup> The Cuban contracts stipulated that the holder would work for eight years.<sup>30</sup> In 1860, the Spanish government decreed that upon completion of the initial eight-year contract, Chinese coolies had to either renew the contract or leave the island within two months.<sup>31</sup> Those that failed to do so had to work on public works until they had earned passage to the destination of their choice.<sup>32</sup> The contracts of those that survived were usually ignored.<sup>33</sup> Many believed that coolies were treated worse than African slaves because coolies were merely leased whereas slaves were owned.<sup>34</sup> In any case, fifty percent of Chinese coolies in Cuba died before the end of their eight-year contracts.<sup>35</sup>

Importation of Chinese coolies to Peru began a short time later.<sup>36</sup> In Peru, labor was needed to work on coastal plantations and to mine guano on the islands off the Peruvian coast.<sup>37</sup> The guano, created by years of bird droppings undisturbed by rainfall, was sought world-wide for use as fertilizer.<sup>38</sup> It was reported that in 1860 alone, 433 ships carried guano from the Chincha Islands.<sup>39</sup> Between 1847 and 1873, about 100,000 Chinese boarded ships bound for Peru.<sup>40</sup> Their indenture contracts were

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<sup>28</sup> YUN, *supra* note 24, at 16. The vast majority of Chinese laborers imported to Cuba and Peru were men. See MEAGHER, *supra* note 20, at 88 (reporting that the 1861 Cuban census indicated there were only fifty-seven Chinese women compared to over 34,000 Chinese men).

<sup>29</sup> YUN, *supra* note 24, at 7; see also REBECCA J. SCOTT, *SLAVE EMANCIPATION IN CUBA: THE TRANSITION TO FREE LABOR, 1860–1899*, at 29 (1985).

<sup>30</sup> YUN, *supra* note 24, at 29.

<sup>31</sup> See Arts. VII & XVIII of the Spanish Royal Decree of June 6, 1860, reprinted in MEAGHER, *supra* note 20, app. I at 320, 322.

<sup>32</sup> *Id.*

<sup>33</sup> YUN, *supra* note 24, at 29.

<sup>34</sup> See *id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 7.

<sup>37</sup> MEAGHER, *supra* note 20, at 43–44.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 222–23.

<sup>40</sup> YUN, *supra* note 24, at 7. The number of Chinese laborers trafficked into Peru is apparently unknown but appears to have been around 110,000. MEAGHER, *supra* note 20, at 222. The Peruvian government shut down the trade in 1856 admitting that it was essentially a slave trade. *Id.* However, the ban was lifted in 1861 after the United States Civil War made cotton extremely profitable. See *id.* The trade continued until 1874. *Id.*

initially five years but were later extended to eight years.<sup>41</sup> As in Cuba, upon landing in Calleo, the coolies were sold to the highest bidder.<sup>42</sup> Most died after only a few years from breathing poisonous guano dust, abusive treatment, and the harsh conditions on the islands.<sup>43</sup> It is extremely hot, it never rains and, therefore, there is no plant life.<sup>44</sup>

Thus, while contract laborers, the Chinese coolies were essentially slaves.<sup>45</sup> Almost exclusively men, they were brought in as indentured laborers but were treated and sold as slaves.<sup>46</sup> When they arrived in Cuba or Peru, they were sold as slaves and their contracts permitted their owners to resell them.<sup>47</sup> The contracts themselves were illusory. Out of a four peso salary, coolies were required to compensate their masters for their passage, their food, their clothing, sick time, and other costs.<sup>48</sup>

#### A. *Recruitment of Chinese Coolies*

In China, the coolie trade was referred to as “buying pigs”<sup>49</sup> or “pig-dealing.”<sup>50</sup> Coolies were recruited by brokers known as crimps.<sup>51</sup> Although emigration was illegal under Chinese law, during the late 1840s and early 1850s, many men from the countryside volunteered to emigrate in the face of starvation.<sup>52</sup> In exchange for food, clothing, and a small advance, men willingly went to recruitment stations and boarded the first ship, regardless of its destination.<sup>53</sup> Many were beggars or men discarded by their families.<sup>54</sup> Opium addiction also played a part.<sup>55</sup>

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<sup>41</sup> MEAGHER, *supra* note 20, at 230–31.

<sup>42</sup> *Id.* at 230.

<sup>43</sup> See YUN, *supra* note 24, at 10 (describing working conditions).

<sup>44</sup> MEAGHER, *supra* note, 20 at 224–27 (describing working conditions).

<sup>45</sup> See SCOTT, *supra* note 29, at 29–34.

<sup>46</sup> YUN, *supra* note 24, at 17, 31 (“Chinese coolies repeatedly testified to being . . . treated as slaves.”).

<sup>47</sup> *Id.* at 31.

<sup>48</sup> *Id.* at 30.

<sup>49</sup> JUNG, *supra* note 9, at 22.

<sup>50</sup> MEAGHER, *supra* note 20, at 96.

<sup>51</sup> *Id.* at 71.

<sup>52</sup> *Id.* at 72–73.

<sup>53</sup> *Id.* at 73 n.86 (noting that in 1851, twenty-five percent of the population of Amoy died of disease or starvation).

<sup>54</sup> *Id.* at 72, 74.

<sup>55</sup> See *id.* at 79.

However, as the local supply of volunteers diminished and foreign demand grew, crimps tricked men into boarding coolie ships.<sup>56</sup> Many were poor farmers lured to the city, often by kinsmen or friends, with promises of employment that never materialized. Destitute, they accepted food, clothing, and money and were tricked into emigrating as a means of paying off the debt.<sup>57</sup> Some were tricked into debt bondage through crooked gambling operations.<sup>58</sup> Villagers and men returning home from market were also lured onto small boats that delivered them to recruitment ships.<sup>59</sup> In later years, crimps resorted to kidnapping.<sup>60</sup>

Once voluntary statements of willingness to emigrate were required, they were often obtained through the use of three ships. A Chinese subject was brought to the first where the captain asked him whether he wished to emigrate; if he answered in the negative, he was taken off. He was then tortured and taken to the second ship.<sup>61</sup> If he still answered in the negative, the process continued.<sup>62</sup> Thus, by the time the consul arrived on the ship and asked coolies whether they wished to emigrate, most answered in the affirmative.<sup>63</sup>

Coolies were held in barracoons, a term borrowed from African slave trading, from where they were sold to foreign ship captains and brokers.<sup>64</sup> At least one company, Tait & Company, used a

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<sup>56</sup> *Id.* at 74–75.

<sup>57</sup> *Id.* at 75.

<sup>58</sup> *Id.* at 75–76.

<sup>59</sup> *Id.* at 80.

<sup>60</sup> *Id.* at 78–79. In 1862, Britain set up recruiting stations for emigrants to the British West Indies from where emigrants could come and go. It also actively recruited entire families from China. *Id.* at 81–82.

<sup>61</sup> MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, CHINESE COOLIE TRADE, H.R. EXEC. DOC. NO. 36-88, at 29 (1860).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> MEAGHER, *supra* note 20, at 94, 96 (quoting 1853 eyewitness account of John Bowring, Governor of Hong Kong, who observed Chinese laborers stripped naked with stamps or painting on their chests of C (California), P (Peru), or S (Sandwich)). In April 1856, Peter Parker, then U.S. Consul in China, wrote a confidential dispatch to Bowring describing an investigation he made of a barracoon in Macao. MESSAGE OF THE PRESIDENT OF THE UNITED STATES, S. EXEC. DOC. NO. 35-22, at 773–74 (1858). The door of the former hospital was locked, but Parker found his way in through a side passage. *Id.* at 773. In the first room, he found about forty boys crowded together like “dung-hill fowls in a coop at sea.” *Id.* In another room, men were gambling and smoking. *Id.* He reported that there were about 350 people in the building who, he was told, were

ship as a barracoon.<sup>65</sup> In 1859, the British began denouncing the trafficking of coolies to Cuba and forbade Spanish coolie ships from landing in the Chinese ports it controlled—Hong Kong, Amoy, and Swatow.<sup>66</sup> Thus, coolies began to be smuggled out of Macao and the Philippines on ships flying various flags.<sup>67</sup> The oldest European outpost in the Far East, Macau, became the primary point of departure for coolies destined for Cuba and Peru.<sup>68</sup> In Canton, coolies were delivered to receiving ships that brought them to barracoons in Macau.<sup>69</sup> In 1860, there were at least three American receiving ships—*Messenger*, *Pioneer*, and *Governor Morton*—anchored in Whampoa, a deepwater anchorage twelve miles downstream from Canton.<sup>70</sup>

The mortality rate on coolie ships was high—reportedly higher than on African slavers.<sup>71</sup> Between 1847 and 1874, twelve percent of those destined for Cuba died at sea from disease, efforts to escape, and suicide.<sup>72</sup> During the same period, the leaders in numbers of coolies shipped were the United States, Britain, France, Spain, the Netherlands, and Portugal<sup>73</sup>—most of the same countries that led the African slave trade.<sup>74</sup> Until their citizens were forbidden from participation, the British and Americans were the leaders in the Chinese coolie trade.<sup>75</sup>

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to be shipped to Havana where they would work for eight years. *Id.* He reported that “[n]o felon in a European Prison is more securely incarcerated than these Chinese.” *Id.* at 773–74.

<sup>65</sup> MEAGHER, *supra* note 20, at 96.

<sup>66</sup> YUN, *supra* note 24, at 21.

<sup>67</sup> *See id.*

<sup>68</sup> MEAGHER, *supra* note 20, at 116, 120.

<sup>69</sup> *Id.* at 108.

<sup>70</sup> *Id.* *Westward Ho!* was also anchored in Whampoa, but was Peruvian owned at the time.

<sup>71</sup> YUN, *supra* note 24, at 18.

<sup>72</sup> MEAGHER, *supra* note 20, at 169, 172.

<sup>73</sup> YUN, *supra* note 24, at 18. There were thirty-four American ships with a total tonnage of 40,576, and a mortality rate of 9.8%. *Id.* at 20 tbl.1.4.

<sup>74</sup> HUGH THOMAS, *THE SLAVE TRADE—THE STORY OF THE ATLANTIC SLAVE TRADE: 1440–1870*, at 804 (1997) (indicating that the six leading nations in number of African slaves shipped, in order, were: Portugal, Spain, France, Holland, Britain, and the United States).

<sup>75</sup> YUN, *supra* note 24, at 18. It is possible that some Chinese who migrated to the United States did so pursuant to indenture contracts that were later sold. The passengers on one early American voyage allegedly headed for San Francisco were forced to sign five-year indenture contracts while at sea. *See MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, SLAVE AND COOLIE TRADE*, H.R. EXEC. DOC. NO. 34-105, at 96, 136–37 (1856). In 1852, the passengers on

In 1852, the first American ship, *Ohio*, transported 300 coolies to Peru.<sup>76</sup> The following year, a second American ship, *Minna*, sailed to Peru with coolies.<sup>77</sup> The famous clipper, *Sea Witch*, entered the trade in 1854 and throughout the decade many other well-known clipper ships participated in the lucrative Latin American coolie trade.<sup>78</sup> In 1856, Peter Parker, U.S. Commissioner to China, reported that in the previous year, 3,050

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the *Robert Browne* “mutinied” and a blank indenture agreement was found. *Id.* It was between the Captain Lesley Bryson and William Bradley, U.S. Consul on one hand, and Chin Suy on the other. *Id.* It indicated that Chin Suy was “willing to serve and labor for \_\_\_\_\_, on whose account [Captain] Bryson makes this agreement, or for any party who \_\_\_\_\_ may appoint to control his affairs . . . for a term of five years.” *Id.* Chin Suy agreed to obey all orders in exchange for three dollars a month once he reached California and to repay the six dollars advanced to him by Bryson. *Id.* Bryson agreed to provide sleeping arrangements and food of the same quality as is eaten by ordinary “workmen in China.” *Id.* However, the passengers mutinied, allegedly because they believed they were being taken to the Sandwich Islands. *See id.* at 96.

<sup>76</sup> MEAGHER, *supra* note 20, at 145. When China first opened its treaty ports to trade in 1842, the larger and better-equipped American ships grabbed the emigration trade to California and Australia where gold had been discovered. *Id.* at 140. In 1851, technologically advanced American clippers took the lucrative tea trade from the British. *See id.* at 144. Therefore, from 1852 to 1854, the British led in numbers of coolies shipped. *Id.* However, in 1855, Parliament passed the Chinese Passenger Act which required British ships to obtain certifications that they were seaworthy and capable of carrying passengers safely. *Id.* Although these regulations were often not observed, this created an opening for American ships that were not operating under such restrictions. *See id.* The coolie trade to Latin America was potentially much more profitable than either the tea trade or the emigrant trade to California and Australia. *Id.* at 141–42, 144.

<sup>77</sup> *Id.* at 145.

<sup>78</sup> *Id.* Other American clippers that carried Chinese coolies included *Bald Eagle*, *Flora Temple*, *Nightingale*, and *Challenge*. *Id.* In 1856, the extreme clipper *Swordfish*, captained by Osgood, arrived in Cuba from Hong Kong with 375 coolies on board. H.R. EXEC. DOC. NO. 34-105, at 83. The clipper had been launched in New York in 1851 and sold to Crocker & Warren of New York in 1854. Sailing Ships: “Swordfish” (1851), [http://www.bruzelius.info/Nautica/Ships/Clippers/Swordfish\(1851\).html](http://www.bruzelius.info/Nautica/Ships/Clippers/Swordfish(1851).html) (last visited Jan. 8, 2010). In July 1862, it apparently drifted at the mouth of Yangtze Kiang River and was wrecked. *Id.* In the summer of 1855, the clipper *Sky Lark* “arrived in Cuba from Swartow [sic], China, with 532 Chinese, consigned to Perada, Machado & Co., having lost by disease 59 on the passage.” H.R. EXEC. DOC. NO. 34-105, at 68. *Sky Lark* was out of New York and captained by Stephen B. Dow, a native of New Hampshire. *Id.* The owners were from Boston and New York. *Id.* at 68–69. The extreme clipper *Challenge* also sailed from Swatow for Havana with coolies. REPRESENTATIVE ELIOT, COOLIE TRADE, H.R. REP. NO. 36-443, at 15 (1860). It was reported to have “put into Singapore, in distress, having infectious disease on board, and having lost many ‘passengers.’” *Id.*

coolies had sailed in five American ships, 1,938 in three British ships, 1,150 in three Peruvian ships, and 250 in one Chilean ship.<sup>79</sup> The ships had sailed from the port of Swatow which was illegal for foreigners at the time, even for legitimate trade.<sup>80</sup>

Many of the American ships were registered in New England and New York.<sup>81</sup> Some were owned by venerable shipping firms such as Howland & Aspinwall of New York and Sampson & Tappan in Boston.<sup>82</sup> Howland & Aspinwall owned the famous clipper *Sea Witch* that, on April 5, 1856, went onto the reefs fifteen to twenty miles west of Havana with 500 coolies on board.<sup>83</sup> The crew and coolies were saved by Spanish ships, but the hull was lost. Captain Lang immediately left Havana on the Spanish ship *Congresso*.<sup>84</sup>

George R. Sampson and Lewis W. Tappan (the abolitionist) owned a large clipper fleet.<sup>85</sup> In December 1855, the firm's ship *Sarah* sailed for Brazil with coolies pursuant to a contract with the Brazilian government for delivery of 2,000 Chinese coolies within two months in exchange of £2,000.<sup>86</sup> That same month, unable to secure cargo for return trips to the United States, two of the firm's clippers, *Westward Ho!* and *Winged Racer*, sailed to Peru from Swatow with 1,500 Chinese coolies.<sup>87</sup> *Westward Ho!* arrived at Callao on February 4, 1856, and *Winged Racer* arrived on March 19, 1856.<sup>88</sup>

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<sup>79</sup> H.R. EXEC. DOC. NO. 34-105, at 73.

<sup>80</sup> See generally MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, ASIATIC COOLIE TRADE, H.R. EXEC. DOC. NO. 37-16, at 22–23 (1861). Swatow was not officially opened to foreign ships until 1860. MEAGHER, *supra* note 20, at 98.

<sup>81</sup> YUN, *supra* note 24, at 23. In addition to the clippers, other ships included the *Forest Eagle*, whose owners and captain were from Rockland, Maine, that sailed from Macau to Cuba with 500 coolies in February 1861. *A Rockland Sailor of the Old School and Some of the Memorable Voyages He Made*, COURIER-GAZETTE (Rockland, Me.), May 22, 1900.

<sup>82</sup> *Id.*

<sup>83</sup> H.R. EXEC. DOC. NO. 34-105, at 83.

<sup>84</sup> See *id.* at 83–84.

<sup>85</sup> LUCY M. COHEN, CHINESE IN THE POST-CIVIL WAR SOUTH: A PEOPLE WITHOUT A HISTORY 33 (1984).

<sup>86</sup> *Id.*; see H.R. EXEC. DOC. NO. 34-105, at 74–75.

<sup>87</sup> The *Westward Ho!*, <http://www.eraoftheclipperships.com/page40web7.html> (last visited Jan. 8, 2010).

<sup>88</sup> *Id.* Reportedly, in January 1856, the firm ordered its agent in Hong Kong, C.D. Mugford, to abandon the trade. See COHEN, *supra* note 85, at 33–34. In January 1856 (although the ships had sailed), Mugford informed Peter Parker, U.S. Commissioner and Minister to China, that the ships were loaded with coolies bound for Peru and inquired whether it was illegal for Americans to

## II. THE COOLIE TRADE PROHIBITION ACT

The issue of American participation in the coolie trade was part of the protracted effort to outlaw American participation in the African slave trade. The 1807 Act was drafted to outlaw American participation in the African slave trade.<sup>89</sup> It provided that, as of January 1, 1808, it would:

not be lawful to import or bring into the United States or the territories thereof from any foreign kingdom, place, or country, any negro, mulatto, or person of colour, with intent to hold, sell, or dispose of such [person], as a slave, or to be held to service or labour.<sup>90</sup>

However, enforcement provisions were limited; only the U.S. Navy could seize vessels “having on board any negro, mulatto, or person of colour, for the purpose of selling them as slaves, or with intent to land the same, in any port or place within the jurisdiction of the United States.”<sup>91</sup>

The 1807 Act was amended several times<sup>92</sup> until, in 1820,

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transport coolies. H.R. EXEC. DOC. NO. 34-105, at 75. He explained that he personally found the trade “obnoxious.” *Id.* In response, Parker sent him a copy of his 1856 proclamation stating the United States’ position that Americans should not participate in the trade. *Id.* at 76–77. After unloading the Chinese, the clippers sailed with loads of guano for the United States—*Westward Ho!* landing in New York and *Winged Racer* landing in Baltimore. The *Westward Ho!*, *supra* note 87. *Westward Ho!* was captained by Captain Hussey, who later captained another coolie clipper *Staghound*. *Id.* In 1857, during the commercial depression, *Westward Ho!* sailed from San Francisco to Callao under a Captain Jones where she was sold to Don Juan de Ugarte of Lima, Peru who continued to use her for the coolie trade. *Id.* The clipper burned and sank in Callao in 1864. *Id.*

<sup>89</sup> Act of Mar. 2, 1807, ch. 22, 2 Stat. 426 (prohibiting the importation of slaves into any port or place within the jurisdiction of the United States).

<sup>90</sup> §1. See generally Paul Finkelman, *The American Suppression of the African Slave Trade: Lessons on Legal Change, Social Policy, and Legislation*, 42 AKRON L. REV. 431, 434–40 (2009) (describing the events leading to the 1807 Act).

<sup>91</sup> Act of Mar. 2, 1807, ch. 22, § 7, 2 Stat. at 428.

<sup>92</sup> Act of Apr. 20, 1818, ch. 91, § 8, 3 Stat. 450, 452. The Act of 1818 placed the burden of proof on the defendant. *Id.* The defendant had to “prove that the negro, mulatto, or person of colour, which he or they shall be charged with having brought into the United States, or with purchasing . . . was brought into the United States at least five years previous to the commencement of the prosecution.” *Id.* The Act of March 3, 1819 gave the President authority to cause:

armed vessels of the United States, to be employed to cruise on any of the coasts of the United States, . . . or the coast of Africa, or elsewhere, where he may judge attempts may be made to carry on the slave trade

American participation in the slave trade was finally deemed an act of piracy.<sup>93</sup> The Act of 1820 provided that a U.S. citizen or any other person who confines or detains “any negro or mulatto . . . with intent to make such negro or mulatto a slave . . . shall be adjudged a pirate.”<sup>94</sup> As piracy, slave trading became punishable by death.<sup>95</sup> However, the 1820 Act still permitted U.S. ships to stop and search other ships flying the American flag.<sup>96</sup>

In the following decades, Britain entered into treaties with most Western European nations (and Texas) that allowed British ships to stop and search foreign ships suspected of engaging in the slave trade.<sup>97</sup> The United States was the major hold out.<sup>98</sup> It continued to resist Britain’s efforts to reach an agreement granting British ships the right to search American ships suspected of slave trading until the start of the Civil War.<sup>99</sup> It was not until April 1862, two months after President Lincoln signed the February 18, 1862 Act, that the United States and Great Britain signed the Lyons-Seward Treaty, granting Britain the right to visit and search American ships suspected of slave trading, albeit in a narrowly prescribed zone.<sup>100</sup>

Congressional debate on the issue of the coolie trade spanned the terms of at least three presidents: Pierce, Buchanan, and Lincoln. American attitudes towards the trade and Chinese immigration in general fluctuated throughout this period.

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by citizens or residents of the United States . . . .

Act of Mar. 3, 1819, ch. 101, 3 Stat. 532, 532–33.

<sup>93</sup> Act of May 15, 1820, ch. 113, 3 Stat. 600.

<sup>94</sup> § 4, 3 Stat. at 600–01.

<sup>95</sup> *Id.*

<sup>96</sup> *See id.* (continuing in force the Act of March 3, 1819). *But cf.* Act of Mar. 3, 1819, ch. 77, § 2, 3 Stat. 510, 512 (allowing the President of the United States to “retake any vessel of the United States . . . which may have been unlawfully captured”).

<sup>97</sup> Renee Colette Redman, *The League of Nations and the Right to Be Free From Enslavement: The First Human Right to Be Recognized as Customary International Law*, 70 CHI.-KENT L. REV. 759, 773, 773 n.78 (1994).

<sup>98</sup> *Id.* at 774.

<sup>99</sup> *Id.* “In 1824, Richard Rush, Assistant Secretary of State to President Monroe, signed a Convention with Britain granting it the right to search American merchant vessels. However, the Senate ratified the Convention with amendments and the Convention was abandoned.” *Id.* at 774 n.85 (citation omitted).

<sup>100</sup> Treaty between the United States and Great Britain for the Suppression of the Slave Trade, U.S.-Gr. Brit., art. I, Apr. 7, 1862, 12 Stat. 1225, 1225–26. The treaty was ratified by Congress on June 7, 1862. *Id.*

Economic interests played an important role.<sup>101</sup> At times, both pro- and anti-slavery forces advocated the importation of coolies to replace African slaves. In the spring of 1852, the *New York Times* urged U.S. slaveholders to use coolies instead of African slaves, arguing that Chinese coolies were much more industrious workers and there was an endless supply due to the clipper fleet that sailed from the Pacific.<sup>102</sup> In April, the paper noted that the Chinese laborers in Cuba and the British West Indies were only slightly more expensive than slaves.<sup>103</sup> A Chinese laborer cost only four dollars a month—“[t]he cost of a slave is much greater; his labor worth much less.”<sup>104</sup>

It noted that Chinese laborers in California arrived pursuant to contracts in which they agreed to wages far below the prevailing wage, and that the laborers refused “compliance with the extortionate bargains imposed upon them at the starting.”<sup>105</sup> But it also noted that the problem would be solved once California passed legislation enforcing the contracts.<sup>106</sup> A couple of weeks later, the paper reported that California had passed legislation enforcing Chinese multiple-year labor contracts.<sup>107</sup> It welcomed the anticipated addition of Cuba to the United States and the end of African slavery. It also reported that Chinese laborers in California and Cuba contracted “for a term of years, at prices varying from forty-five to fifty dollars.”<sup>108</sup>

However by 1860, the *New York Times* was against the trade.<sup>109</sup>

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<sup>101</sup> See Moon-Ho Jung, *Outlawing “Coolies”: Race, Nation, and Empire in the Age of Emancipation* 57 AM. Q. 677, 685 (2005) [hereinafter Jung II].

<sup>102</sup> See Cotton, *Cane and the Coolies*, N.Y. TIMES, May 3, 1852, available at [http://query.nytimes.com/mem/archive-free/pdf?\\_r=1&res=9E03E1D6123EE13AA15750C0A9639C946392D7CF](http://query.nytimes.com/mem/archive-free/pdf?_r=1&res=9E03E1D6123EE13AA15750C0A9639C946392D7CF); *Labor in Cuba*, N.Y. TIMES, Dec. 10, 1852, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9E00E7D81231E13BBC4852DFB4678389649FDE>; *Orientalism in America*, N.Y. TIMES, Apr. 15, 1852, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9505E2DE1531E13BBC4D52DFB2668389649FDE>; *The Chinamen—An Opportunity*, N.Y. TIMES, June 14, 1852, available at <http://query.nytimes.com/mem/archivefree/pdf?res=9F06E2D91738E334BC4C52DFB0668389649FDE>.

<sup>103</sup> *Orientalism in America*, *supra* note 102.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Cotton, *Cane and the Coolies*, *supra* note 102.

<sup>108</sup> *Id.*

<sup>109</sup> See *The American Coolie-Trade*, N.Y. TIMES, Apr. 21, 1860, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9E06E2DE143FEE34BC4951DFB266838B679FDE>.

Anti-slavery advocates sought to shut down the trade on the grounds that it was basically slavery and immoral. They often touted coolie labor as a means to expedite emancipation.<sup>110</sup>

Some Southerners resisted regulation of the Chinese coolie trade because they either had or sought to import coolies for their plantations. Some likely opposed regulation out of concern that it would lead to erosion of their states' rights to regulate the movement of free blacks. Other slavery advocates sought to shut down the transportation of coolies to Cuba and South America as such a cheap labor force presented competition to southern planters. Some went so far as to urge the annexation of Cuba. In 1859, Senator John Slidell of Louisiana presented such a bill on behalf of the Committee on Foreign Relations.<sup>111</sup> President Buchanan also proposed acquisition of Cuba.<sup>112</sup> In March 1861, a constitutional amendment was proposed that would have preserved slavery but outlawed importation of slaves and coolies.<sup>113</sup>

#### A. *Presidential Messages*

In 1856, as Americans were leading the coolie trade, Congress requested and received a Message from President Franklin Pierce on American participation in the "Coolie Trade."<sup>114</sup> It requested and received additional messages in 1860 and 1861 from Presidents Buchanan and Lincoln.<sup>115</sup> The presidential responses consisted of copies of diplomatic correspondence. Bills outlawing American participation were offered in 1860, 1861, and 1862. They all distinguished the coolie trade from voluntary emigration of Chinese laborers to California.

##### 1. 1856 Presidential Report to Congress

On April 7, 1856, the House of Representatives requested that

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<sup>110</sup> Jung II, *supra* note 101, at 683.

<sup>111</sup> *Id.* at 693.

<sup>112</sup> *Id.* at 695.

<sup>113</sup> *Id.*

<sup>114</sup> See MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, SLAVE AND COOLIE TRADE, H.R. EXEC. DOC. NO. 34-105, at 1 (1856).

<sup>115</sup> See MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, ASIATIC COOLIE TRADE, H.R. EXEC. DOC. NO. 37-16, at 1 (1861); MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, CHINESE COOLIE TRADE, H.R. EXEC. DOC. NO. 36-88, at 1 (1860).

President Pierce provide any information he might have on Americans engaged in the slave trade or “in the transportation in American ships of coolies from China to Cuba and other countries, with the intention of placing or continuing them in a state of slavery or servitude.”<sup>116</sup> It also asked the President to give his opinion as to whether such trade fell under existing piracy treaties.<sup>117</sup> It asked that he specifically report on *Sea Witch*, the American clipper that had recently floundered off the coast of Cuba with 500 coolies on board.<sup>118</sup>

On May 16, 1856, Pierce<sup>119</sup> sent a lengthy message to the House consisting of 159 pages of diplomatic correspondence.<sup>120</sup> It does not appear that he provided an opinion as to whether the trade

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<sup>116</sup> CONG. GLOBE, 34th Cong., 1st Sess. 796 (1856).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* During this first session of the 34th Congress, the Democrats were in the majority in the Senate but opposition parties, forming a coalition, held the majority in the House. See Office of the Clerk of the U.S. House of Representatives, House History, [http://clerk.house.gov/art\\_history/house\\_history/index.html](http://clerk.house.gov/art_history/house_history/index.html) (select “34<sup>th</sup> (1855–1857)” in “Congress Overview”) (last visited Jan. 8, 2010) [hereinafter House History]; United States Senate, Party Division in the Senate: 1789–Present, [http://www.senate.gov/pagelayout/history/one\\_item\\_and\\_teasers/partydiv.htm](http://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm) (last visited Jan. 8, 2010) [hereinafter Party Division in the Senate].

<sup>119</sup> A Democrat from New Hampshire, Pierce had been elected in 1852 after the Missouri Compromise of 1850 that had appeared to settle the slavery question by banning slavery in new territories. The White House, Franklin Pierce, <http://www.whitehouse.gov/about/presidents/franklinpierce> (last visited Jan. 8, 2010) [hereinafter Franklin Pierce]. Pierce was considered sympathetic to slavery. Christopher M. Johnson, *Franklin Pierce: Courtroom Orator, in AMERICA’S LAWYER-PRESIDENTS: FROM LAW OFFICE TO OVAL OFFICE* 112, 114 (Norman Gross ed., 2009) (“involuntary servitude . . . is recognized by the Constitution [and] stands like any other admitted right”). His policy was based on his belief that slavery was protected by the Constitution. *Id.* His administration was responsible for the 1854 *Ostend Manifesto*, declaring that if Spain refused to sell Cuba to the United States, the United States would be forced to take it from Spain. Michael J. Gerhardt, *The Constitutional Significance of Forgotten Presidents*, 54 CLEV. ST. L. REV. 467, 488 (2006). Pierce’s administration also supported the Kansas-Nebraska Act that, in 1854, created the Kansas and Nebraska territories. John R. Wunder & Joann M. Ross, “An Eclipse of the Sun”: *The Nebraska-Kansas Act in Historical Perspective*, in *THE NEBRASKA-KANSAS ACT OF 1854*, at 1 (John R. Wunder & Joann M. Ross eds., 2008). Repealing the Missouri Compromise, it provided that the settlers in the new territories would decide whether to permit slavery. Franklin Pierce, *supra* note 119. It was widely viewed as favorable to slavery and led to violent unrest that continued after Pierce left office in 1856. *Id.*

<sup>120</sup> See MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, SLAVE AND COOLIE TRADE, H.R. EXEC. DOC. NO. 34-105 (1856).

fell under the piracy treaties. Secretary of State William L. Marcy provided the same information to the Senate.<sup>121</sup>

Many of the documents concerned American participation in the African slave trade that had been outlawed by Congress in 1820. They consisted of correspondence between American representatives and their British counterparts concerning cooperation in shutting down the African slave trade as well as reports from American representatives in Cuba and Rio de Janeiro to the Secretary of State.<sup>122</sup> These papers date from 1850 through 1856.<sup>123</sup> Some correspondence from the U.S. legation in Rio de Janeiro concerns the capture by a Brazilian ship of the American schooner *Mary E. Smith* out of New Orleans in 1856 with over 370 African slaves on board.<sup>124</sup>

About half of the 1856 presidential message concerned the Chinese coolie trade. Most of the documents are copies of correspondence between the Secretary of State and American representatives in Rio de Janeiro, Cuba, and China ranging from 1852 through 1856. The first is an August 18, 1852 dispatch from Secretary of State Daniel Webster to John F. Crampton acknowledging Crampton's notice of U.S. citizen James B. Endicott in "certain irregularities committed in the conveyance of coolies in the British vessel 'Susannah,' from China to Peru."<sup>125</sup> The last is a January 14, 1856 dispatch from U.S. Consul Peter Parker to Secretary of State Marcy attaching his public notification condemning the coolie trade that he had issued upon his return to China.<sup>126</sup>

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<sup>121</sup> REPORT OF THE SECRETARY OF STATE, S. EXEC. DOC. NO. 34-99, at 1 (1856). Marcy was born in Massachusetts. Office of the Historian: William Learned Marcy, <http://history.state.gov/departmenthistory/people/marcy-william-learned> (last visited Jan. 8, 2010). A lawyer by training, he served as Senator from New York and Governor of New York before being appointed as Secretary of State by President Pierce in 1853. *Id.* He served in that position during the President's entire term. *Id.* Marcy was a member of the "hunkers," a pro-slavery faction of the New York Democratic Party. *See id.*

<sup>122</sup> H.R. EXEC. DOC. NO. 34-105, at 15, 80-83.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 80-82, 157-59.

<sup>125</sup> *Id.* at 15.

<sup>126</sup> *Id.* at 155-57. Born in Framingham, Massachusetts in 1804, Peter Parker was a Yale educated physician and ordained Presbyterian minister who first travelled to China in 1834 as a medical missionary. EDWARD V. GULICK, PETER PARKER AND THE OPENING OF CHINA 1, 4, 20-21 (1973). In China, he learned Cantonese and eventually set up a hospital in Canton. *See id.* at 55. In 1844, he was one of two Chinese secretaries for Caleb Cushing, the American

The initial dispatches from Parker are encouraging reports on the migration of Chinese laborers to California. In January 1852, Parker wrote Daniel Webster:

[t]he favorable reports of those who have returned to China, having been fortunate at the gold mountain, seem to have imparted a new impetus to the tide of emigration, and it is estimated that within the twelve months ending 21st February next, not less than five thousand Chinese will have sailed for San Francisco.<sup>127</sup>

A couple of months later, he reported that at least 14,000 Chinese subjects had immigrated to California since January 1, 1851 and that nearly half of those had sailed since January 1, 1852.<sup>128</sup> He proclaimed that a fleet of fifty to sixty merchant vessels were transporting Chinese laborers to the United States, and surmised that the trade could be lucrative both commercially and politically.<sup>129</sup> Steamers could carry 350 Chinese laborers at \$75 or \$100 each, earning the ship \$26,000.<sup>130</sup> European passengers would pay more. He noted that the Chinese expected to return in three years and that they returned with “new ideas of human rights and human existence.”<sup>131</sup>

During the same period, Parker failed to distinguish the Latin American coolie trade from Chinese migration to California and, in his blindness, vigorously defended Captain Bryson of the vessel *Robert Bowne*.<sup>132</sup> *Robert Bowne*, a merchant vessel owned and captained by Lesley Bryson of Connecticut, had disembarked Chinese coolies on the Sandwich Islands (now Hawaii) and returned to Amoy.<sup>133</sup> On March 21, 1852, the ship departed Amoy reportedly for San Francisco with 410 coolies on board.<sup>134</sup> There were suggestions—supported by the fact that the passengers were forced to sign five-year indenture agreements while at sea—that the ship was actually heading for the Sandwich Islands or

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representative in China who negotiated the country’s first treaty with China that allowed entry of U.S. ships into Chinese ports. *Id.* at 114, 120. Parker played a critical role both as a negotiator and translator. *Id.* at 120. During much of this period, he acted as U.S. Commissioner in China, and in 1855, was appointed U.S. Commissioner. *Id.* at 181–82.

<sup>127</sup> H.R. EXEC. DOC. NO. 34-105, at 93.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 93–94.

<sup>130</sup> *Id.* at 94.

<sup>131</sup> *Id.*

<sup>132</sup> Jung II, *supra* note 101, at 685–86.

<sup>133</sup> *Id.* at 685; see H.R. EXEC. DOC. NO. 34-105, at 94.

<sup>134</sup> H.R. EXEC. DOC. NO. 34-105, at 94.

South America.<sup>135</sup>

A week later, on March 30, about 300 miles east of Formosa, in the words of Peter Parker:

the Chinese rose and killed the captain, first and second officers, and four seamen, took command of the vessel, and constrained the remainder of the ship's company to take the vessel to one of the 'Magicosima' group [sic] of islands, where they plundered her, and some hundreds of the Chinese landed.<sup>136</sup>

The surviving crew escaped and brought the vessel back to Amoy with twenty-three Chinese prisoners.<sup>137</sup> Parker, then-acting U.S. Consul, handed the prisoners over to the Chinese authorities.<sup>138</sup>

Before handing the seventeen Chinese survivors over to the Chinese government for prosecution, Parker held his own preliminary court of inquiry.<sup>139</sup> Two crewmen reported that the Chinese passengers had mutinied after the Captain, "in order to maintain cleanliness," cut off the pigtails of about 200 Chinese and forced them to be scrubbed with cane brooms in cold water on the deck.<sup>140</sup> He believed the surviving officers and crew, and found the coolies guilty of an "aggravated case of piracy."<sup>141</sup> He recommended to the Chinese authorities that the guilty be executed.<sup>142</sup>

Although Parker was convinced that the seventeen surviving Chinese subjects were guilty of an "aggravated case of piracy," the Chinese court refused to convict and censored Captain Bryson as "tyrannical, beyond doubt."<sup>143</sup> The court found that *Robert Bowne* had been engaged in "buying pigs"—the coolie trade.<sup>144</sup> It found that the crewmen's testimony that Bryson had cut off the tails of over 200 Chinese men because they had produced vermin was "ludicrous."<sup>145</sup> The court had never seen a Chinese man cut

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<sup>135</sup> See MEAGHER, *supra* note 20, at 136 ("Robert Irick suggests that the *Robert Browne* was secretly bound for South America.").

<sup>136</sup> H.R. EXEC. DOC. NO. 34-105, at 94-95.

<sup>137</sup> *Id.* at 95.

<sup>138</sup> *Id.*

<sup>139</sup> See *id.* at 109-10.

<sup>140</sup> *Id.* at 95-96, 116-17.

<sup>141</sup> *Id.* at 94.

<sup>142</sup> *Id.* at 136.

<sup>143</sup> *Id.* at 94, 127, 132. Reportedly, five of the original twenty-three had died and one was found to be a murderer.

<sup>144</sup> *Id.* at 132.

<sup>145</sup> *Id.*

off his tail due to insects and reminded Parker that under Chinese law, cutting off a tail was the same as cutting off a head.<sup>146</sup>

The Chinese court concluded that, after leaving port, the Americans had forced the Chinese passengers to sign written agreements.<sup>147</sup> Those who refused to sign were flogged.<sup>148</sup> The Chinese survivors reported that the Americans threw about ten Chinese who were sick into the sea or beat them to death.<sup>149</sup> The remaining passengers then raised a “great clamor and commotion,” causing the Captain to dive into the sea and the crew to climb aloft.<sup>150</sup> Nearly all seventeen Chinese survivors, five of whom were eighteen or nineteen years old, testified that they had been lured on board by an “arch swindler.”<sup>151</sup>

The extensive correspondence between Parker and others regarding prosecution of the Chinese subjects who had mutinied on the American vessel *Robert Bowne* indicate that Parker never questioned the claims of Captain Bryson and the crew. He clearly believed their version of events and accepted the assurances of Charles William Bradley, Jr., U.S. Consul in Amoy, China, that *Robert Bowne* had been headed for San Francisco and not the Sandwich Islands as rumored.<sup>152</sup>

The problem recognized by Parker was that the treaty between the United States and China did not provide for such a situation. This was a case where piracy had not been committed on board a U.S. vessel by its own crew or by another vessel, but by “certain persons, subjects of another nation, who were on board of said vessel in the quality of passengers.”<sup>153</sup> Although he claimed that the United States government had jurisdiction over this act of piracy, Parker also found it more expedient to hand the offenders over to the Chinese government.

Parker was horrified that the Chinese court found the survivors innocent and censored Captain Bryson as “tyrannical, beyond doubt.”<sup>154</sup> In a sarcastic dispatch, Parker assured the court that “the seventeen men are guilty of piracy there is not a

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 133.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 133–34.

<sup>152</sup> *Id.* at 123.

<sup>153</sup> *Id.* at 121.

<sup>154</sup> *Id.* at 127.

shadow of a doubt,” and urged the court to consider the testimony of the surviving crewmen and the “several innocent Chinese.”<sup>155</sup> He also urged Secretary of State Webster to contact the Chinese Emperor to remedy this “*breach of good faith* . . . in a case in which the lives of our countrymen have been sacrificed by subjects of China.”<sup>156</sup>

In the end, the Chinese court examined the four Chinese witnesses “under torture” and reported to Parker that the witnesses agreed that the defendants were innocent.<sup>157</sup> It also reported that it had received a petition from citizens in Amoy.<sup>158</sup> The court did not see any reason to examine the crewmen, as the four Chinese witnesses were in the employ of the United States and “if the four men are not sufficiently reliable, how then can the sailors be believed?”<sup>159</sup> The court also noted that the sailors were foreigners and would require translators.<sup>160</sup>

Incensed, Parker responded with a diatribe ending with a threat that from that point on, the United States would try and punish all acts of piracy occurring upon the high seas, and that this was going to be reported to the Emperor.<sup>161</sup> He ended with “Consider this well.”<sup>162</sup>

Humphrey Marshall, the U.S. Commissioner in 1853, sought to shut down the coolie trade out of concern that the flow of coolies to British possessions had a negative effect on southern planters.<sup>163</sup> Marshall was a Kentucky planter, a graduate of West Point, and a future Brigadier General in the Confederate Army.<sup>164</sup> He believed that importation of coolies could end slavery in the United States, and also reflected a concern of planters that the British were pushing U.S. planters out of the market through the use of cheap coolie labor in their colonies.<sup>165</sup>

Marshall did not distinguish the Latin American trade from the California trade. In a March 8, 1853 report to Everett, Marshall reported with alarm that Chinese laborers were

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<sup>155</sup> *Id.* at 136.

<sup>156</sup> *Id.* at 139.

<sup>157</sup> *Id.* at 140.

<sup>158</sup> *Id.* at 139.

<sup>159</sup> *Id.* at 147.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 149.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 150.

<sup>164</sup> Jung II, *supra* note 101, at 684.

<sup>165</sup> *Id.*

emigrating in large numbers to Sydney, Demerara (Guyana), Peru, and the British West Indies, all under the auspices of the British government.<sup>166</sup> He reported that the British had plans to populate the West India possessions and colonies on the coast of South America with Chinese laborers.<sup>167</sup>

Marshall was not concerned about the treatment of the laborers. He was concerned about the economic effect “to be produced upon the industrial interests of the planting States of the United States.”<sup>168</sup> He reported that the Chinese laborers were inspected before boarding ship, that they are “acclimated to the tropics, accustomed to hard labor and exposure, and specially versed in the culture of sugar, cotton and rice,” and that the terms of their engagement, their wages, and the estimated costs of their subsistence “prove that the experiment is designed to be seriously made, and when made that it must depress the entire planting interest of the United States.”<sup>169</sup> At a cost of about eighty dollars a year, a Chinese coolie was cheaper than an African slave.<sup>170</sup>

He therefore inquired whether President Pierce intended to prevent American participation in the trade.<sup>171</sup> He also asked that the consuls be vested with the power to refuse clearance for American vessels carrying Chinese coolies.<sup>172</sup> In light of the *Robert Browne* affair, he also requested that consuls be vested with judicial power in the cases of piracy.<sup>173</sup> The next official U.S. Minister in China, Robert M. McLane, reported in a March 20, 1854 letter from Hong Kong that Chinese immigration to California was on the rise.<sup>174</sup>

However, beginning in about 1855, the year Americans began to dominate the trade, the tenor of the dispatches changed. The correspondence suddenly began to address diplomatic efforts to

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<sup>166</sup> H.R. EXEC. DOC. No. 34-105, at 150.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 151.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 155. McLane was originally from Delaware, but settled in Maryland and graduated from West Point. FRANK F. WHITE, JR., *THE GOVERNORS OF MARYLAND: 1777–1970*, at 201 (1970). He served as Commissioner from 1853 to 1854 when he returned to the United States due to ill health. *Id.* at 202. He later became Governor of Maryland and U.S. Ambassador to France. *Id.* at 204.

end American participation in the coolie trade. American diplomats in Cuba began to report on the arrival of ships carrying Chinese coolies, and diplomats in China reported on mutinies and uprisings of Chinese coolies.<sup>175</sup> The dispatches indicate that, while U.S. diplomats in China experienced some success in thwarting the efforts of American ship captains to transport coolies to Cuba and South America, they were unable to bring the full weight of U. S. law down on the captains as there was no U.S. law making participation in the trade illegal.<sup>176</sup>

On May 1, 1855, T. H. Hyatt, U.S. Consul in Amoy, China, reported to William Marcy, Secretary of State, that American vessels were taking on Chinese coolies “from this or the adjacent Chinese ports” to be transported to Cuba, other ports in South America, and other foreign States.<sup>177</sup> The conditions were “little better . . . than the African slave trade.”<sup>178</sup> He noted that the February 22, 1847 Act limited the number of passengers carried by ships between United States and other foreign ports, and that the March 3, 1849 Act specifically addressed Pacific transport.<sup>179</sup> He explained, however, that there was no law addressing U.S. ships transporting human beings to ports outside the United States.<sup>180</sup>

Moreover, in March 1855, as acting U.S. Commissioner, Parker gave Captain Peck of the clipper *Hound* his opinion that if Peck followed Spanish law and loaded 400 Chinese coolies—and if he had to land in an American port—he would be subject to forfeiture and fines because that was more than a surveyor in New York had determined the ship could carry under the laws of the United States.<sup>181</sup> Later, in a dispatch dated July 23, 1855 to Marcy, William H. Robertson, Acting Consul in Havana, reported that *Hound* had arrived with a cargo of Chinese laborers.<sup>182</sup> Captain Peck also reported that he had 230 coolies and that there were several other cargos on their way.<sup>183</sup> A few days later,

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<sup>175</sup> H.R. EXEC. DOC. NO. 34-105, at 67–68.

<sup>176</sup> *Id.* at 67.

<sup>177</sup> *Id.* at 66–67.

<sup>178</sup> *Id.* at 67.

<sup>179</sup> *Id.* at 66–67. The February 22, 1847 and March 3, 1849 laws limited the numbers of passengers permitted on ships. *Id.*

<sup>180</sup> *Id.* at 67.

<sup>181</sup> *Id.* at 69–70. *Hound* and Captain Peck were from Stonington, Connecticut. *Id.* at 67.

<sup>182</sup> *Id.* at 68.

<sup>183</sup> *Id.*

Robertson reported that the *Hound* coolies were consigned to the Colonization Company represented by Pereda, Machado & Co.<sup>184</sup> He also reported that the “parties interested in the cargo have protested against the captain and owners, because the former refused to receive on board, at Macao, 400 Chinamen which the agent there had prepared to embark.”<sup>185</sup> The copy of the protest lodged by Pereda complains that Peck would only take 230 as he calculated that that was the permissible number under U.S. law.<sup>186</sup>

Peck showed Robertson the communication from Parker confirming to the Captain that he could not take 400 passengers without violating U.S. law.<sup>187</sup> Robertson reported that Peck said he was ashamed of participating in such trade, and also reported that after talking to the passengers about how they were obtained and how they were to be disposed on upon arrival, he considered this trade “as bad, if not worse, than anything he has read or heard of the African slave trade.”<sup>188</sup>

In the same dispatch, Robertson reported that on the 24th, another American ship, *Sky Lark*, arrived from Swatow, China with 532 Chinese coolies consigned to Pereda, having lost fifty-nine to disease.<sup>189</sup> He reported that several other vessels were expected soon.<sup>190</sup>

On November 9, 1855, H. N. Palmer, the U.S. Consul in the Philippines, reported to Marcy on *Waverly*, a ship that had been bound from Swatow to Callao, Peru with 450 Chinese coolies but landed in Manila because Captain F. O. Wellman of Boston had died.<sup>191</sup> Due to the fear of infectious disease, the ship was quarantined.<sup>192</sup> The coolies on board attempted to escape.<sup>193</sup> To prevent them, the acting Captain “fired into them” and the crew eventually forced all the coolies into the hold and locked the hatches.<sup>194</sup> About twelve hours later, the hatches were opened

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<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* at 69.

<sup>191</sup> *Id.* at 71.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

and it was discovered that 300 men had died.<sup>195</sup> Palmer reported that the coolies died from suffocation.<sup>196</sup> He noted that the Captain and crew were imprisoned for killing the coolies, but does not appear to have questioned the reasons for why the coolies had risen in the first place.<sup>197</sup>

In 1856, Robertson appears to have reported regularly to the Secretary of State on the arrival in Havana of American ships carrying Chinese coolies as well as African slaves. On April 5, 1856, he reported the grounding of the clipper *Sea Witch* with coolies on board, and noted that this was the second cargo of coolies brought under U.S. flag within a few days.<sup>198</sup> The first had arrived from Hong Kong on *Sword Fish*, with Captain Osgood and 375 coolies on board.<sup>199</sup> Two or three days later, a Spanish vessel came in with 200 more coolies.<sup>200</sup>

The Presidential Message ends with a copy of the “Public Notification” issued by Dr. Peter Parker upon his return to China as the American Commissioner and Minister in January 1856.<sup>201</sup> The notification called upon all U.S. citizens “to desist from this irregular and immoral traffic.”<sup>202</sup> The proclamation notified citizens that if they participated, they would not have the protection of the U.S. government.<sup>203</sup> It stated that the proclamation addressed only the “coolie trade,” and not voluntary Chinese emigration and labor.<sup>204</sup> It noted that regulation for furnishing Chinese labor might be the subject of future treaty stipulation.<sup>205</sup>

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<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 83. When launched in New York in 1846, *Sea Witch* was one of the world’s fastest clipper ships. See *The Sea Witch*, <http://www.eraoftheclipperships.com/seawitchcopyweb.html> (last visited Jan. 8, 2010). In March 1849, she arrived in New York with her load of China tea weeks ahead of the other tea clippers. *Id.* She had sailed from Hong Kong to New York in seventy-four days, a record for sailing ships that has yet to be bettered. *Id.* During the California Gold Rush, the clipper sailed the route between New York and San Francisco, and in the 1850s began transporting Chinese coolies to Cuba. *Id.*

<sup>199</sup> H.R. EXEC. DOC. NO. 34-105, at 83.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 156–57.

<sup>202</sup> *Id.* at 156.

<sup>203</sup> *Id.* at 157.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

In May 1855, Parker had left China, not expecting to return.<sup>206</sup> In Washington, he met with Secretary of State Marcy, Attorney General Cushing, and Robert M. McLane, the recently appointed U.S. Commissioner.<sup>207</sup> Parker reported that he was “struck with the subject [of Chinese coolies], which was considered ‘one degree worse than the slave trade,’” and that he had learned about the tragic events that took place on the *Waverly*.<sup>208</sup> He also reported that Marcy told him that “under given circumstances it would be my duty publicly to discountenance it.”<sup>209</sup>

Upon his return to China, Parker, therefore, issued his proclamation condemning the trade and began reporting on the coolie trade to Marcy.<sup>210</sup> On January 14, 1856, Parker reported that “two hundred and forty Chinese lives were sacrificed in a most inhuman manner” on the ship *Waverly*.<sup>211</sup> The next month, he reported the numbers for the coolie trade at Swatow, indicating that the majority were transported on U.S. ships.<sup>212</sup> Parker suggested that the information be given to the Washington papers so that the “public should understand the form the slave trade has assumed in the nineteenth century!”<sup>213</sup> Parker noted that China did not allow emigration, and that most of the coolies were from that country and had been tricked into signing up for five to eight years.<sup>214</sup>

## 2. 1860 Bill

James Buchanan, a Democrat, was elected President of the United States in 1856.<sup>215</sup> While the Democrats held the majority in both houses during the 35th Congress (1857–1859), anti-slavery Republicans were able to gain the majority in the House and increased their numbers in the Senate in the 36th Congress

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<sup>206</sup> See GULICK, *supra* note 126, at 181.

<sup>207</sup> *Id.*

<sup>208</sup> THOMAS DAWES ELIOT, COOLIE TRADE, H.R. REP. NO. 36-443, at 7 (1860); CONG. GLOBE, 37th Cong., 2d Sess., 351 (1862).

<sup>209</sup> H.R. REP. NO. 36-443, at 7; see CONG. GLOBE, 37th Cong., 2d Sess., 351 (1862) (internal quotations omitted).

<sup>210</sup> See H.R. EXEC. DOC. NO. 34-105, at 155, 156.

<sup>211</sup> *Id.* at 155.

<sup>212</sup> *Id.* at 73.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 75.

<sup>215</sup> ENCYCLOPEDIA AMERICANA 674 (Int'l ed. 1981).

(1859–1861).<sup>216</sup> Thus, the effort to shut down the international Chinese coolie trade was revived during the first session of the 36th Congress. In 1859, Republican Representatives Freeman Harlow Morse of Maine and Eliakim Persons Walton of Vermont called for action on the subject of American participation in the coolie trade.<sup>217</sup> A resolution was passed directing the Committee on Commerce to “inquire into the expediency of prohibiting by law all American vessels from engaging in the cooly [sic] trade, or from transporting apprentices, so called, to the West Indies or other parts of the world.”<sup>218</sup>

In July 1860, a *New York Times* editorial condemned American participation in the Chinese coolie trade to Cuba, likening it to the African slave trade.<sup>219</sup> The *Times* distinguished this trade—the transportation of Chinese slaves to work until death after a few years—from the migration of coolies, mainly from Hindostan by Britain to her West Indies colonies.<sup>220</sup> On March 7, the *New York Times* reprinted part of an 1859 letter sent by F. H. Hyatt, U.S. Consul in Amoy, to the Secretary of State.<sup>221</sup> Mr. Hyatt reported that the coolie traffic had subsided and that “[n]o American vessels have been to Amoy for Coolies during the past year.”<sup>222</sup>

On March 31, 1860, Representative Thomas Dawes Eliot of Massachusetts tried to introduce a bill (H.R. 657) accompanied by a report on the coolie trade from the Commerce Committee.<sup>223</sup> Eliot was a well-connected lawyer and staunch anti-slavery

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<sup>216</sup> See House History, *supra* note 118; Party Division in the Senate, *supra* note 118. There were 132 Democrats and ninety Republicans in the House during the 35th Congress, however, the House majority changed in the 36th Congress with a total of 116 Republicans and eighty-three Democrats. House History, *supra* note 118. Although Republicans failed to gain the majority in the Senate, they did increase their numbers from twenty during the 35th Congress to twenty-six in the 36th Congress. Party Division in the Senate, *supra* note 118.

<sup>217</sup> CONG. GLOBE, 37th Cong., 2d Sess. 350 (1862).

<sup>218</sup> *Id.*

<sup>219</sup> *The Coolie Trade*, N.Y. TIMES, July 31, 1860, available at [http://query.nytimes.com/mem/archive-free/pdf?\\_r=1&res=9D0DE1DB153FEE34BC4950DFB166838B679FDE](http://query.nytimes.com/mem/archive-free/pdf?_r=1&res=9D0DE1DB153FEE34BC4950DFB166838B679FDE).

<sup>220</sup> *Id.*

<sup>221</sup> *Our Trade with China: Letter from United States Consul at Amoy*, N.Y. TIMES, Mar. 7, 1860, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9B00E2DE1338EE3BBC4F53DFB566838B679FDE>.

<sup>222</sup> *Id.*

<sup>223</sup> CONG. GLOBE, 36th Cong., 1st Sess. 1441 (1860).

advocate, who had first served in Congress as a representative of the Whig Party from April 1854 to March 1855.<sup>224</sup> In 1854, he had made a speech against the Kansas-Nebraska Act.<sup>225</sup> He played an active role in the creation of the Republican Party in Massachusetts and was elected as a Republican to the 36th Congress where he served until 1869.<sup>226</sup>

William Barksdale of Mississippi objected.<sup>227</sup> Barksdale withdrew from Congress less than a year later in January 1861 and joined the Confederate Army.<sup>228</sup> Eliot tried to report the bill again on April 2, but was unsuccessful after Henry Burnett made a procedural objection.<sup>229</sup> Burnett was a Kentucky Democrat who was later expelled from Congress on December 31, 1860 for his support of secession.<sup>230</sup>

Finally, on April 5, Eliot agreed to postpone the bill for three weeks in exchange for permission to have the bill and report printed in the record.<sup>231</sup> Burnett objected to the printing of the bill, stating “I am opposed to the principle of the bill, and will object, unless the gentleman can get it in in the regular order.”<sup>232</sup> It was also suggested that the bill go to the Committee of the Whole on the state of the Union, but Eliot objected, noting that, “there it will rest.”<sup>233</sup>

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<sup>224</sup> Biographical Directory of the United States Congress, Eliot, Thomas Dawes, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=E000106> (last visited Jan. 8, 2010).

<sup>225</sup> Representative T. D. Eliot, Speech in the House of Representatives: Nebraska and Kansas (May 10, 1854), available at <http://www.archive.org/download/nebraskakansassp00elio/nebraskakansassp00elio.pdf>.

<sup>226</sup> See *id.* Eliot later served as Chairman of the Freedmen’s Bureau Committee. See Donald G. Nieman, *Andrew Johnson, the Freedmen’s Bureau, and the Problem of Equal Rights, 1865–1866*, 44 J. S. HIST. 399, 418 (1978). He was related to T. S. Eliot. See LYNDALL GORDON, *T. S. ELIOT: AN IMPERFECT LIFE* 13–16 (1999).

<sup>227</sup> CONG. GLOBE, 36th Cong., 1st Sess. 1441 (1860).

<sup>228</sup> Biographical Directory of the United States Congress, Barksdale, William, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=B000147> (last visited Jan. 8, 2010). Barksdale was killed during the battle at Gettysburg. *Id.*

<sup>229</sup> CONG. GLOBE, 36th Cong., 1st Sess. 1492 (1860).

<sup>230</sup> Biographical Directory of the United States Congress, Burnett, Henry Cornelius, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=B001120> (last visited Jan. 8, 2010).

<sup>231</sup> CONG. GLOBE, 36th Cong., 1st Sess. 1557 (1860).

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*; see *Interesting Report on the Coolie Trade*, N.Y. TIMES, Apr. 17, 1860, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9507E1DE133FE034BC4F52DFB266838B679FDE> (quoting some of the report).

Titled “Coolie Trade,” the Committee’s report that became part of the record urged passage of a law preventing “all American vessels from engaging in the coolie trade, or from transporting apprentices, so called, to the West Indies, or other parts of the world.”<sup>234</sup> It begins by distinguishing the coolie trade to Cuba and South America from voluntary emigration of Chinese laborers to California.<sup>235</sup> It notes that:

[l]egitimate emigration under proper instructions, when the parties seeking employment know what they want and make their own bargains, and receive the stipulated compensation, and retain and exercise the right of selecting their own employers, and of returning to their own homes at the end of their term of service, will generally regulate itself. It has not been the policy of the American government to place obstacles in the way of intelligent and voluntary emigration.<sup>236</sup>

The report assures the House that, since the settlement of California, “Chinese emigration . . . has been voluntary and profitable mutually to the contracting parties.”<sup>237</sup> It acknowledges that “[t]here may have been deception practiced,” but that it had been unable to “procure satisfactory statistical information respecting this emigration” to California.<sup>238</sup> It notes that the Acts of February 22, 1847 and March 3, 1849, limiting the numbers of passengers permitted on merchant vessels, apply to Chinese immigrating to California.<sup>239</sup> The Committee opined that the purpose of the laws was to “protect American ports from diseases which might be engendered by the arrival of passenger ships unduly crowded.”<sup>240</sup>

The report posits that the coolie trade seems to have begun at about the time the laws against the African slave trade were beginning to be enforced “with the greatest stringency.”<sup>241</sup> It also reports that some upstanding merchants along the Atlantic seaboard had been “deceived” into transporting Chinese coolies to Brazil after being told that the coolies would be given land or the option of going home after working for five years.<sup>242</sup> As examples,

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<sup>234</sup> THOMAS DAWES ELIOT, COOLIE TRADE, H.R. REP. NO. 36-443, at 1 (1860).

<sup>235</sup> *Id.* at 3–4.

<sup>236</sup> *Id.* at 3.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* at 4.

<sup>242</sup> *Id.* at 4–5.

the Committee reports that the Boston firm, Sampson & Tappan, abandoned the trade after it realized that the labor contracts were not honored.<sup>243</sup> It also recounts the reported displeasure over the conduct of Captain Peck of the clipper *Hound*.<sup>244</sup>

The Committee goes on to describe the horrors of the Chinese coolie trade. While some of its material was taken from the presidential messages, much comes from other unnamed sources. The Committee opines that in one respect, at least, the coolie trade is worse than the African slave trade because the coolies are misled and tricked into boarding ships.<sup>245</sup> The Committee not only gives Parker credit for early “remonstrance against this traffic” in 1855 when he arrived in China as commissioner, but also provides extensive excerpts from William B. Reed’s diplomatic correspondence.<sup>246</sup> Reed, from Pennsylvania, became the U.S. Consul in China after Parker in 1857.<sup>247</sup> The report quotes from Reed’s dispatch remonstrating that the Asiatic slave trade is as bad, if not worse, than the African slave trade.<sup>248</sup> Reed observes, “[t]he African may assimilate and is cared for. The Asiatic is kept isolated.”<sup>249</sup>

It also describes his efforts to frustrate the participation of American ships in the trade, including reports on *Kate Hooper*, *Challenge*, *Norway*, and *Flora Temple*, much of which are derived from news reports.<sup>250</sup> The ship *Kate Hooper*, of Baltimore, sailed from Macao to Havana on October 14, 1857 with 650 Chinese coolies.<sup>251</sup> Captain Jackson reported distress in Angier, claiming that trouble started after the coolies sighted land near Gaspar straits and mutinied.<sup>252</sup> They were driven below—the ship was three degrees south of the Equator—but they tried to break open the hatches and set fire to the ship. Five were killed, several wounded, and twenty chained.<sup>253</sup> On January 30, 1858, the *New York Times* reported that the coolies mutinied and set the ship on

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<sup>243</sup> *Id.* at 5.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.* at 5, 15.

<sup>247</sup> *See id.* at 15.

<sup>248</sup> *Id.* at 26.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.* at 15–16, 23.

<sup>251</sup> *Id.* at 15.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

fire three times before fifty were shot.<sup>254</sup>

In February 1858, on the ship *Norway*, Captain Major from New York arrived in China with a load of coal on government account.<sup>255</sup> On November 28, 1859, Gideon Nye, Jr., Vice Consul for Macao, reported that during the previous forty-eight hours, about 1,000 Chinese coolies had been boarded onto the *Norway*.<sup>256</sup> He applied to release several of the men, one of whom was “the former horse-boy of the crown solicitor of Hong Kong.”<sup>257</sup>

On November 26, 1859, the *Norway* sailed for Havana with 1,000 coolies on board.<sup>258</sup> The coolies rose five days later.<sup>259</sup> The crew tried to leave on life boats, but was stopped by the ship’s surgeon who threatened them with his pistol.<sup>260</sup> Fighting reportedly lasted for about twelve hours—from six in the evening until six the next morning—during which thirty coolies were killed and ninety were wounded.<sup>261</sup> The Captain then told the coolies that he would cut the masts, set fire to the ship and leave if they did not give up their arms.<sup>262</sup> They “soon came to terms.”<sup>263</sup> “Capt. Major had his wife[,] . . . two daughters,” and another female passenger and her child with his family, but the woman and child reportedly died from fright.<sup>264</sup>

Another example was the famous clipper *Flora Temple*, which left Macao for Havana with 850 coolies on October 8, 1858.<sup>265</sup> A few days later, while still in sight of land, the coolies tried to take over the ship.<sup>266</sup> They killed a guard but were driven below decks and confined there for the remainder of the trip.<sup>267</sup> On the following Friday, the ship hit a reef 300 miles from land.<sup>268</sup> Water

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<sup>254</sup> *Coolie Mutiny on the Ship Kate Hooper, of Baltimore*, N.Y. TIMES, Jan. 30, 1858, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9D02E5D9143CEE34BC4850DFB7668383649FDE>.

<sup>255</sup> H.R. REP. NO. 36-443, at 23.

<sup>256</sup> MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, CHINESE COOLIE TRADE, H.R. EXEC. DOC. NO. 36-88, at 27 (1860).

<sup>257</sup> *Id.*

<sup>258</sup> H.R. REP. NO. 36-443, at 27.

<sup>259</sup> *Id.*

<sup>260</sup> *Id.* at 27–28.

<sup>261</sup> *Id.* at 28.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.* at 17.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at 17–18.

rose in the hold until it reached the “between-deck” where the coolies were being held.<sup>269</sup> According to the U.S. Consul, the crew abandoned the ship in life boats without making any effort to help the coolies.<sup>270</sup> There were not enough life boats for the coolies. Only one of three boats was ever heard from again—landing two weeks later in Cochin-China.<sup>271</sup> A French ship went to the scene where the remnants of the ship were still visible, but no surviving coolies were ever found.<sup>272</sup>

Vice Consul Gideon Nye had interviewed one of the Chinese men who had been left behind because he hit his head during a typhoon and his tail was cut off in order to help heal the wound.<sup>273</sup> Nye recognized him because he had been employed at the Department of Customs.<sup>274</sup> The man told Nye that he had been captured after taking a small boat with two other people to Fatshau from Canton—he had missed the large boats of the day.<sup>275</sup> While they were sleeping, they were brought to Whampoa and held. He offered to pay a ransom but was told that he had to go on the foreign ship.<sup>276</sup> The foreigners gave the captives money to gamble and to keep the foreigners amused.<sup>277</sup> Before being shipped out, the men were told that those who were willing to go should stand on one side of a large room and those who were not should stand on the other.<sup>278</sup> Those who were unwilling were severely flogged.<sup>279</sup> Among the captives were men with property and family, and who were literate.<sup>280</sup> Some men committed suicide with opium or by hanging themselves.<sup>281</sup>

William Macy, Deputy Consul at Macao, tried to prevent the ship from sailing because he had evidence that the ship carried coolies.<sup>282</sup> However, Captain John M. Cole told Macy that he had

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<sup>269</sup> *Id.* at 18.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, CHINESE COOLIE TRADE, H.R. EXEC. DOC. NO. 36-88, at 27–28 (1860).

<sup>274</sup> *Id.* at 27.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* at 27–28.

<sup>277</sup> *Id.* at 28.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> *See* THOMAS DAWES ELIOT, COOLIE TRADE, H.R. REP. NO. 36-443, at 19–20

instructions from the owners of the ship to convey passengers to Havana and he saw nothing to justify acting otherwise.<sup>283</sup>

The Committee also recounts the tragedy of the *Wandering Jew* in some detail.<sup>284</sup> In early January 1858, the ship was in Shanghai loading coolies for Havana when Reed tried to prevent the ship from sailing.<sup>285</sup> Earlier, William Knapp Jr., the U.S. Vice Consul in Shanghai, reported that he had spoken to the Captain and found that “he has no intention to take coolies from here to Havana, but to take Chinese passengers from Woosung to Amoy!”<sup>286</sup> Eventually, Knapp said that if port clearance was not granted before a certain time, he would give the Captain his papers and allow him to proceed to sea.<sup>287</sup> Knapp was soon replaced by Albert L. Freeman.<sup>288</sup>

In late January, Freeman wrote Reed<sup>289</sup> that the Chinese authorities had granted port clearance upon a guarantee that it would be forfeited if it was found that *Wandering Jew* was shipping coolies to Havana.<sup>290</sup> Freeman could not find such a guarantee. He reported that, a day or two after receiving her clearance papers, *Wandering Jew* dropped down river about twenty miles.<sup>291</sup> He had been told that she was delayed because the Chinese authorities had intercepted 300 coolies.<sup>292</sup>

Freeman sought permission to tell the Captain that if he sailed to Havana with a load of coolies, “steps will be taken to lay the matter before the law officers of the United States government immediately on his arrival in the United States.”<sup>293</sup> When Freeman was finally allowed to visit the ship, “her sails were

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(1860).

<sup>283</sup> *Id.* at 20.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *Id.* at 20–21.

<sup>289</sup> *Id.* at 21. A lawyer from Pennsylvania, William B. Reed served as U.S. Minister in China from May 1858 to November 1858. See JUNG, *supra* note 9, at 24–26. He vigorously sought to end American transportation of Chinese coolies. *Id.* at 25. However, while Parker distinguished between coolies and immigration, Reed did not—he believed that the immigration of Chinese subjects would unfavorably change the demographics of the United States. See *id.*

<sup>290</sup> H.R. REP. NO. 36-443, at 21.

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

spread and the crew were [sic] getting her under way.”<sup>294</sup> Freeman demanded to examine the coolies and soon discovered that “illegal means had been used.”<sup>295</sup> Many said that a Chinese man employed by Andrew Connolly, consignee of the vessel, promised to give them three dollars for working on a foreign ship for a few days.<sup>296</sup> Others had been promised \$300 per day to go to Shanghai to serve as soldiers or as part of a mandarin retinue.<sup>297</sup> Out of 236 coolies, 117 were there involuntarily and were released.<sup>298</sup> The coolies that remained on board were mostly beggars, and the Captain had intended to pick up more coolies in Amoy.<sup>299</sup> As the consignee was British, Freeman contacted the British consul, who assured him that they would work together to stop the coolie traffic.<sup>300</sup> Freeman believed that *Wandering Jew* left Amoy without more coolies.<sup>301</sup>

In April 1858, Reed reported that he had obtained the cooperation of the British legation.<sup>302</sup> On July 19, he reported that the coolie trade seemed to have waned.<sup>303</sup> He did not attribute the increase to the “sudden stoppage of the passenger trade with California in consequence of the act of the legislature of that State, lately made known here, which will affect a very different description of emigrants.”<sup>304</sup> Those who paid their passage and returned to China bore “no resemblance to the wretched coolie who is decoyed and penned up in the barracoons at Macao and is stowed away between the decks of the English and American ships now engaged in the traffic.”<sup>305</sup>

The Committee notes that Reed had suggested that the coolie trade be included in the Act of 1818 or the Act of March 3, 1819, which would authorize seizure of vessels for piracy.<sup>306</sup> It also

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<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.* at 21–22.

<sup>297</sup> *Id.* at 22.

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> *Id.* at 24, 25.

<sup>303</sup> *Id.* at 25.

<sup>304</sup> *Id.* He was likely referring to the Act to prevent the further immigration of Chinese or Mongolians to this State, ch. 313, 1858 Cal. Stat. 295 (1858), passed in April 1858.

<sup>305</sup> H.R. REP. NO. 36-443, at 25.

<sup>306</sup> *Id.* at 16.

includes an opinion by Reed that the “contract for labor or service under which the coolies were shipped” violated U.S. law.<sup>307</sup> In Reed’s opinion, it did not matter whether the coolies went voluntarily or not; the fact that coolies were tricked or kidnapped merely added to the immorality of the trade.<sup>308</sup> But the Committee also quotes the March 11, 1859 opinion by Attorney General Jeremiah Sullivan Black that the coolie trade did not fall within the provisions of the act prohibiting the slave trade.<sup>309</sup> Black advised that there was no remedy under existing laws, and that only Congress could remedy the evil.<sup>310</sup>

The Committee also reports on diplomatic efforts to convince other countries to abandon the trade. It reports that the Spanish government initially agreed to help prevent the trade.<sup>311</sup> However, on September 24, 1858, Gideon Nye, Deputy Consul in Macao, reported that he had received a dispatch from the Counsel General of Spain rescinding the order for suppression of the trade of coolies to Cuba.<sup>312</sup> On November 5, 1858, Reed wrote Secretary of State Lewis Cass that a French representative had told him of his country’s intentions to ship coolies to Algiers and its West Indies colonies.<sup>313</sup>

The last event described in the report is the mutiny of coolies on *Norway* in 1858. The Committee extracted the story from newspaper accounts.<sup>314</sup> The Report also includes a report from the Chamber of Commerce in New York indicating that over 50,000 coolies had been shipped to Cuba between 1847 and 1859.<sup>315</sup> The Report ends with a description of coolies in Cuba by John S. C. Abbott who reported that they worked for eight years and then were sold for about \$400.<sup>316</sup>

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<sup>307</sup> *Id.* at 23.

<sup>308</sup> *Id.*

<sup>309</sup> *Id.* Black was from Pennsylvania and served as Attorney General from 1857 to 1860. Department of Justice, Jeremiah Sullivan Black, <http://www.justice.gov/ag/aghistpage.php?id=23> (last visited Jan. 8, 2010). He was appointed Secretary of State in 1860 and to the Supreme Court in 1861 but was never confirmed. *Id.*

<sup>310</sup> H.R. REP. NO. 36-443, at 23.

<sup>311</sup> *See id.* at 26.

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.* at 27.

<sup>315</sup> *Id.* at 28.

<sup>316</sup> *Id.* at 29–30; *Interesting Report on the Coolie Trade*, *supra* note 233. John S. C. Abbott was an abolitionist who, in 1860, wrote an anti-slavery tract describing his trip through the South and Cuba. *See* JOHN S. C. ABBOTT, *SOUTH*

The Commission's Report and bill were reported in the press.<sup>317</sup> In an editorial a few days later, the *New York Times* noted that the British Parliament was considering a similar bill.<sup>318</sup> It condemned American participation in the coolie trade noting that men are kidnapped by American agents and shipped in American clipper ships.<sup>319</sup> The *Times* took pains to distinguish this trade from voluntary Chinese emigration to California as well as "Hindoo Coolie-trade" of the British in its colonies.<sup>320</sup> Those engaged in the trade are "no more decent or scrupulous than the emigrant-runners of New-York."<sup>321</sup> It noted that Britain had outlawed its ships from participating in the trade in 1855, and that since that time, the trade had shifted to the smuggling port of Swatow, with American ships leading, and only Peru, Chili, and the North Germans as competition.<sup>322</sup>

### B. 1860 Presidential Message

A month after the Report was printed, in May 1860, the House made a second request to the President for any "information recently received respecting the Chinese Coolie-trade."<sup>323</sup> In response, President Buchanan sent a Message dated May 26, 1860 consisting of dispatches from John Elliott Ward, the United States Minister in China to Secretary of State Cass.<sup>324</sup> Ward was from Dorchester, Georgia and had served as mayor of Savannah.<sup>325</sup> His picture later appeared on Confederate ten

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& NORTH; OR, IMPRESSIONS RECEIVED DURING A TRIP TO CUBA & THE SOUTH (1860); see also John S. C. Abbott, *New Publications: South & North*, N.Y. TIMES, Mar. 13, 1860, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9A0CEEDE1338EE3BBC4B52DFB566838B679FDE>.

<sup>317</sup> See, e.g., *Interesting Report on the Coolie Trade*, supra note 233.

<sup>318</sup> *The American Coolie-Trade*, supra note 109.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *House of Representatives*, N.Y. TIMES, May 7, 1860, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9D06E1DF103BE63BBC4D53DFB366838B679FDE>. Representative Jones, of Georgia, objected to Eliot's request. *Id.*

<sup>324</sup> MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, CHINESE COOLIE TRADE, H.R. EXEC. DOC. NO. 36-88, at 1-2 (1860).

<sup>325</sup> *Death List of a Day.; John Elliott Ward Dead*, N.Y. TIMES, Dec. 1, 1902, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9A00E6D81E3DDEE32A25752C0A9649D946397D6CF>.

dollar notes.<sup>326</sup> He was Minister to China from August 1859 to December 1860.<sup>327</sup>

The forty-eight pages of dispatches all concern the American ship *Messenger* and the coolie trade in Whampoa.<sup>328</sup> The two lengthy dispatches from Ward to Lewis illustrate that American ships were involved in the coolie trade and that thousands of Chinese coolies were dying before ever reaching their destination.<sup>329</sup> The first dispatch, dated January 24, 1860, begins with Ward's lament that he had considered the conduct of several American ship captains in connection with coolie traffic and that it was "seriously affecting our relations with China."<sup>330</sup> Ward hoped Congress would pass a law regulating the trade, "putting it more under the control of the American minister or chief diplomatic agent in China."<sup>331</sup>

He considered the conduct of Captain Manton of *Messenger*, and the captains of the vessels *Kitty Simpson*, *Governor Morton*, and *Pioneer*, and concluded that it was undisputed that the Chinese coolies were taken on board the ships in Whampoa by "force or fraud."<sup>332</sup> He concluded that the examinations in the barracoons and ships are evasions: the men are told to state that they are willing to emigrate or they will be severely beaten.<sup>333</sup>

In his dispatch concerning the *Messenger*, Ward attached a letter from Captain Manton of *Messenger* and a report by Oliver H. Perry, U.S. Consul in Canton, in which they each related their version of events.<sup>334</sup> Captain Manton reported that Perry and "six mandarins of rank" and servants arrived at his ship on Monday night at about 10:00 p.m.<sup>335</sup> They had been appointed by the Governor General to examine every coolie on board to make sure that he or she was a voluntary emigrant.<sup>336</sup> As it was late, they

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<sup>326</sup> Confederate Currency—Third Issue, [http://csapostoffice.com/currency\\_third.html](http://csapostoffice.com/currency_third.html) (last visited Jan. 8, 2010).

<sup>327</sup> U.S. Department of State, China, <http://www.state.gov/r/pa/ho/po/com/10454.htm> (last visited Jan. 8, 2010).

<sup>328</sup> See H.R. EXEC. DOC. NO. 36-88.

<sup>329</sup> *Id.* at 2, 29.

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

<sup>334</sup> *Id.* at 4.

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

arranged to return the following day at 12:00 p.m.<sup>337</sup> Of the 233 coolies on board, twenty-eight changed their minds and “abandon[ed] . . . their contract[s].”<sup>338</sup> He reported that the mandarins also examined the provisions and “were highly pleased.”<sup>339</sup> They conducted similar examinations on *Governor Morton* (out of 210 emigrants, six changed their minds), and *Pioneer* (160 emigrants, fifteen changed their minds).<sup>340</sup> According to Captain Manton, the mandarins gave Vargas permission to transport the emigrants to Cuba.<sup>341</sup>

However, at the customs house in Canton the next day, he was told that the emigrants were cargo and that, therefore, he would have to pay tonnage dues.<sup>342</sup> He paid the dues, but under orders of the governor, was refused a clearance certificate.<sup>343</sup> Perry told him that the governor demanded the coolies be taken to Canton for examination.<sup>344</sup> Vargas immediately removed the coolies to Macao.<sup>345</sup> Captain Manton’s second request for a clearance was denied on the grounds that the stores on board were dutiable and that he could not export the rice.<sup>346</sup> The Captain asked that Ward obtain a clearance as he claimed he had no control over the passengers and this was costing money.<sup>347</sup>

Perry’s description of events differed. He reported being told that the Governor General was going to refuse clearance because he had reports that *Messenger* had several hundred “pigs,” or coolies, on board who had not been inspected by a Chinese officer.<sup>348</sup> He, therefore, deputized several officers to accompany him to Whampoa in order to inspect the coolies.<sup>349</sup> Captain Manton initially would not allow the mandarins to board.<sup>350</sup> He only relented after Perry informed him that without the

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<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> *Id.* at 5.

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> *Id.* at 2.

<sup>345</sup> *Id.*

<sup>346</sup> *Id.* at 5.

<sup>347</sup> *See id.* at 6.

<sup>348</sup> *Id.* at 9.

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

mandarins, Perry would leave.<sup>351</sup> The Captain also objected to the interpreter from the British Consulate and stated that he would let the coolies go.<sup>352</sup>

The next morning, Manton told Perry that he objected to the new interpreter sent by the Governor because he believed that he would do anything to preserve the coolie trade for the English and French.<sup>353</sup> They eventually agreed on an interpreter. After inspections were completed, twenty-eight coolies were taken off *Messenger*, seven were taken off *Governor Morton*, and fifteen were taken off *Pioneer*.<sup>354</sup>

The next day, the Governor instructed Perry that the remaining coolies were to be brought to Canton for inspection.<sup>355</sup> Perry urged that *Messenger* had been “collecting coolies” for some time before the law was changed and that therefore the officers should be dealt with leniently.<sup>356</sup> The Governor agreed.<sup>357</sup> Perry told Manton about the instructions and suggested that the coolies be brought up by steamship.<sup>358</sup> The next day, Manton told him that Vargas had removed the coolies and that he did not know where they were.<sup>359</sup> Perry could not find them, but noted that he had “been informed that a steamer had been seen towing boats filled with coolies.”<sup>360</sup>

Captain Manton swore that no coolies were on board *Messenger*.<sup>361</sup> Captain Montgomery swore that no coolies were on board *Pioneer*.<sup>362</sup> But the Captain of *Governor Morton* informed Perry that he had ninety-five coolies on board.<sup>363</sup>

Perry had received numerous petitions from “relatives and friends of the coolies on board” the ships, and claimed that he had always given orders to discharge anyone on an American ship who was there involuntarily.<sup>364</sup> He told Ward that “[i]t is

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<sup>351</sup> *See id.*

<sup>352</sup> *Id.* at 10.

<sup>353</sup> *Id.* at 11.

<sup>354</sup> *Id.*

<sup>355</sup> *See id.*

<sup>356</sup> *Id.* at 11–12.

<sup>357</sup> *Id.* at 12.

<sup>358</sup> *See id.*

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

<sup>361</sup> *Id.* at 13.

<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> *Id.* at 14.

impossible for your excellency to imagine how much I have been harassed and troubled since American ships commenced collecting coolies at Whampoa."<sup>365</sup> In response, Ward sent the Captain of the steam ship *Hartford* a dispatch saying that he was afraid Captain Manton would sail without permission and ordering *Hartford* to prevent that from happening.<sup>366</sup>

In his second dispatch dated February 24, 1860, Ward reported to Cass that Captain Manton had returned to the ship and that the coolies were under Chinese jurisdiction.<sup>367</sup> About 215 coolies were inspected and released after they said they did not want to emigrate, and Manton was given his papers.<sup>368</sup> He immediately went to Vargas' barracoon and loaded 300 to 400 coolies onto *Messenger* and sailed that morning for Cuba.<sup>369</sup>

Ward reported to Cass that there were about 500 coolies on board the vessel and that the charterer was Messrs. Vargas & Company.<sup>370</sup> In his opinion, the Chinese customs house had been correct in not issuing a clearance certificate and Perry had been correct under the treaty to refuse papers.<sup>371</sup> He recommended that Americans violating the laws of the port be fined, but that the ships then be granted clearances.<sup>372</sup>

Ward reported that since October, more than 1,000 lives had been lost in the trade: the ill-fated clipper *Flora Temple* sailed with 850 coolies but was lost and all died.<sup>373</sup> He also reported that *Norway* left with over 1,000 coolies who mutinied and that eighty were shot, and in Swatow, as a vessel was loading, thirty captives drowned while trying to escape.<sup>374</sup>

In August 1860, the *New York Times* reported on dispatches presented to the British Parliament that painted the same picture of American participation in the coolie traffic as the Presidential Report.<sup>375</sup> A few weeks later, the *Times* reprinted a

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<sup>365</sup> *Id.*

<sup>366</sup> *See id.* at 24–25.

<sup>367</sup> *Id.* at 29–30.

<sup>368</sup> *Id.* at 30–31. All 215 coolies were discharged after the examination. *Id.* at 30. When asked to emigrate, any answer in the negative would result in torture until the individuals answered in the positive. *Id.* at 29.

<sup>369</sup> *Id.* at 31.

<sup>370</sup> *Id.* at 2.

<sup>371</sup> *Id.*

<sup>372</sup> *Id.* at 3.

<sup>373</sup> *Id.* at 31.

<sup>374</sup> *Id.*

<sup>375</sup> *See American Ships and the Coolie Trade*, N.Y. TIMES, Aug. 4, 1860,

dispatch from the Secretary of State to the British in response to the latter's proposal that the Chinese coolie trade be regulated.<sup>376</sup> Acting Secretary Prescott explained that President Buchanan did not want any Chinese coolies to be imported into the United States.<sup>377</sup> He explained that in the South, the "heathen Chinese" would disrupt the contented slaves, and in the North, they would compete with "our own respectable and industrious laborers," foreign and domestic.<sup>378</sup> The following day, the *Times* editorialized that the United States would never need Chinese labor.<sup>379</sup>

In December 1861, Eliot again offered a bill outlawing American participation in the coolie trade, but it was referred to the Committee on Commerce.<sup>380</sup>

### C. 1861 Presidential Message

In July 1861, as the Civil War raged, the House made a third request to the President for information on the Asiatic coolie trade.<sup>381</sup> On December 23, 1861, President Lincoln forwarded a message from the Secretary of State.<sup>382</sup> The message consisted of thirty-seven pages of diplomatic dispatches from American and English diplomats in Cuba, Java, and China concerning the Chinese coolie trade.<sup>383</sup>

In February 1860, Thomas Savage, Vice Consul in Havana, reported to Secretary of State Cass that the Governor General of the island had decreed that "the importation of Chinese coolies will be tolerated from" February 10, 1860 to December 31, 1860, and that beginning on January 1, 1861, the trade would be

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available at <http://query.nytimes.com/mem/archive-free/pdf?res=9401EFD9153FEE34BC4C53DFBE66838B679FDE>.

<sup>376</sup> See *General Telegraphic News.; The Slave and Coolie Trade.; Official Correspondence With The British Government*, N.Y. TIMES, Aug. 20, 1860, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9F00EFDD1E39E43BBC4851DFBE66838B679FDE>.

<sup>377</sup> *Id.*

<sup>378</sup> *Id.*

<sup>379</sup> *The President and the Slave-Trade*, N.Y. TIMES, Aug. 21, 1860, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9807E6DF123FEE34BC4951DFBE66838B679FDE>.

<sup>380</sup> MESSAGE FROM THE PRESIDENT OF THE UNITED STATES OF AMERICA, ASIATIC COOLIE TRADE, H.R. EXEC. DOC. NO. 37-16, at 1 (1861).

<sup>381</sup> *Id.*

<sup>382</sup> *Id.*

<sup>383</sup> See *id.* at 2.

“strictly forbidden.”<sup>384</sup> This is followed by a series of dispatches from Henry Anthon, Jr., U.S. Consul in Batavia, Java, concerning the mutiny of the crew of the clipper *Staghound*.<sup>385</sup>

In April 1860, the extreme clipper *Staghound* left Swatow, China with a cargo of 400 coolies headed for Cuba.<sup>386</sup> The ship had been built in 1850 for George B. Upton and Sampson & Tappan of Boston.<sup>387</sup> At that time, it was the largest merchant ship ever built.<sup>388</sup> By 1860, the ship was owned by Isaac Taylor of Boston and captained by Samuel B. Hussey of Alexandria, Virginia.<sup>389</sup> In Java, Hussey told U.S. Consul Henry Anton that all the coolies on board knew what they had signed up for, and explained that he had rejected some 250 after they said they did not want to go.<sup>390</sup> Anton reported that he was able to examine nineteen contracts but that the rest were in “a sealed package, for which a bill of lading had been given.”<sup>391</sup> He reported that the contracts were for eight years and were signed by the coolies but not by the agent for Messrs. Fernandez, Schimper & Co.<sup>392</sup> But the place where the contract was entered into was left blank.<sup>393</sup>

Among the crew were six quartermasters armed with cutlasses whose duties were to “guard over the cargo.”<sup>394</sup> “The officers carried arms when on duty among the coolies . . . .”<sup>395</sup> When the ship reached Angier, Captain Hussey was sick and the crew mutinied.<sup>396</sup> Anton noted that, while the mutiny was investigated, about five or six coolies died and two committed suicide.<sup>397</sup> He was afraid that disease would break out given that the coolies were confined to the ship.<sup>398</sup> *Staghound* arrived in

<sup>384</sup> *Id.* at 2.

<sup>385</sup> *Id.* at 3–16.

<sup>386</sup> *Id.* at 6–7.

<sup>387</sup> Clipper Ships: “Stag Hound” (1850), [http://www.bruzelius.info/Nautica/Ships/Clippers/Staghound\(1850\).html](http://www.bruzelius.info/Nautica/Ships/Clippers/Staghound(1850).html) (last visited Jan. 8, 2010).

<sup>388</sup> Sea Serpent—Stag Hound, <http://www.eraoftheclipperships.com/page18web3.html> (last visited Jan. 8, 2010).

<sup>389</sup> H.R. EXEC. DOC. NO. 37-16, at 5, 6.

<sup>390</sup> *Id.* at 5.

<sup>391</sup> *Id.*

<sup>392</sup> *Id.*

<sup>393</sup> *See id.* at 5, 16 (reprinting a contract where the location is omitted).

<sup>394</sup> *Id.* at 12, 6.

<sup>395</sup> *Id.* at 12.

<sup>396</sup> *Id.* at 20.

<sup>397</sup> *Id.* at 14.

<sup>398</sup> *Id.*

Cuba on August 10, 1860 with 343 coolies, “fifty-seven having died on the passage.”<sup>399</sup> Captain Hussey died the morning of arrival in Havana.<sup>400</sup>

On February 26, 1861, the coolies on the American ship *Leonidas*, anchored in Canton, “rose upon the crew.”<sup>401</sup> The master and several of the crew were injured and several coolies were killed or drowned while trying to swim to shore.<sup>402</sup> United States Vice Consul Oliver H. Perry reported that the ship was carrying 289 coolies bound for Cuba.<sup>403</sup> After the uprising, about 201 were recovered.<sup>404</sup> Anton also included a copy of the China Overland Trade Report of April 14, 1860.<sup>405</sup> It reported that on her way to Cuba, the coolies rose up on *Messenger* and that about 100 were shot.<sup>406</sup> The Report notes that in that season, every American ship that had taken coolies to Havana had “been the arena for one of these tragedies” but that “every British ship that had taken Chinese to Demarara has been entirely exempt from them.”<sup>407</sup>

A July 11, 1860 dispatch from Lord John Russell to Lord Lyons of the British Foreign Office indicates that the British supported the importation of Chinese subjects into Cuba to replace African slaves.<sup>408</sup> Lord Russell acknowledged the “great abuses” that had taken place in Chinese ports but suggested that a labor system be created.<sup>409</sup> He was afraid that if the abuses continued unchecked, the European community in China would be in danger.<sup>410</sup> He also noted that the British had found it practical to convince entire Chinese families to immigrate to Demarara.<sup>411</sup>

In a dispatch of September 10, 1860, Lord Russell to Lord Lyon complained about Mr. Trescot’s note that had been reported in the *New York Times*, stating that introduction of Chinese coolies “into the United States would demoralize the peaceful, contented,

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<sup>399</sup> *Id.* at 20.

<sup>400</sup> *Id.*

<sup>401</sup> *Id.* at 23.

<sup>402</sup> *Id.*

<sup>403</sup> *Id.* at 25.

<sup>404</sup> *Id.*

<sup>405</sup> *Id.* at 16.

<sup>406</sup> *Id.*

<sup>407</sup> *Id.*

<sup>408</sup> *Id.* at 17.

<sup>409</sup> *Id.*

<sup>410</sup> *Id.*

<sup>411</sup> *Id.* at 18.

and orderly slaves in the southern States, and in the free States would bring these coolies into competition with respectable and industrious laborers.”<sup>412</sup> Lord Russell assured him that the British government “never contemplated the introduction of Chinese into the United States, nor supposed that African slaves were habitually or frequently imported into the United States.”<sup>413</sup>

On August 14, 1860, Savage reported that the Spanish government had decided to continue the importation of Chinese coolies into Cuba.<sup>414</sup> He also reported the arrival of the ship *Staghound* on August 10.<sup>415</sup> On September 6, 1860, Savage reported that James C. Jewett, of New York, and Charles Burrill, of Boston, had been granted permission, “by way of experiment,” to introduce 5,000 coolies or colonists from Polynesia “under the same regulations governing the importation of Chinese.”<sup>416</sup>

On September 27, 1860, Savage reported that *Governor Morton* out of New York, captained by J. Charles Berry and owned by Elias B. Brown and others, arrived on September 14 in 130 days from Canton.<sup>417</sup> He reported that the ship delivered 553 coolies “in perfect health” and that the four who died were “reported to have come on board in poor health.”<sup>418</sup>

On March 6, 1861, William Breck, U.S. Consul, reported that between 40,000 and 50,000 coolies had been shipped from the port of Swatow to Havana and the Chinha islands and never returned.<sup>419</sup> On March 26, 1861, C. K. Stribling reported from the U.S. Flag Ship, *Hartford*, in Hong Kong to Black that on February 24, 1861, the coolies on the American ship *Leonidas* anchored in Canton “rose upon the crew” and “badly wounded” several of the ship’s men.<sup>420</sup> The Report included a detailed description by Consul Perry with attached witness interviews. Perry reported that the allied commissioners and Chinese inspectors of emigration requested and were granted permission to investigate the cause of the disturbance.<sup>421</sup> He noted that

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<sup>412</sup> *Id.* at 20–21.

<sup>413</sup> *Id.* at 21.

<sup>414</sup> *Id.* at 19.

<sup>415</sup> *Id.* at 20.

<sup>416</sup> *Id.*

<sup>417</sup> *Id.* at 21.

<sup>418</sup> *Id.*

<sup>419</sup> *Id.* at 22.

<sup>420</sup> *Id.* at 23.

<sup>421</sup> *Id.* at 26.

*Leonidas* was then taking on coolies under their supervision.<sup>422</sup>

The notes of the interviews indicate that the coolies rose because the Captain would not let them smoke opium, the latrines only held one person at a time, the Captain would not let a barber come and shave them, and a couple cases of complaints that crewmen had stolen money belts.<sup>423</sup> The investigators found little truth in any of these allegations.<sup>424</sup> One man was rescued from the river.<sup>425</sup> He said that he jumped overboard because he thought he would be beheaded.<sup>426</sup> He had a wife and children in Canton and owned ten acres of land, the rental of which he could always manage to live on without working.<sup>427</sup> He had boarded the ship with nineteen dollars of his advance to gamble and then, if possible, get away.<sup>428</sup> He reportedly had won \$300.<sup>429</sup> Perry was convinced that the uprising was premeditated as the Captain of the vessel noticed craft approaching the ship in an organized fashion.<sup>430</sup> He advised the Captain to not remain on ship with so many “desperate coolies on board.”<sup>431</sup>

The last document is an October 1, 1861 dispatch from William Trevitt, U.S. Consul in Peru, to Secretary of State William H. Seward, explaining that Peru required the coolie trade to continue.<sup>432</sup> He noted that because the master of a slave has an interest in caring for the slave for his entire life, “slavery, here as elsewhere, proves the mildest.”<sup>433</sup>

#### *D. 1862 Bill Introduced by Eliot*

On January 15, 1862, Representative Eliot reported another bill (H.R. 109) to prohibit the coolie trade on American vessels.<sup>434</sup> His impassioned speech was printed in the record.<sup>435</sup> He first

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<sup>422</sup> *Id.*

<sup>423</sup> *See id.* at 30.

<sup>424</sup> *See id.*

<sup>425</sup> *Id.* at 31.

<sup>426</sup> *Id.*

<sup>427</sup> *Id.*

<sup>428</sup> *Id.*

<sup>429</sup> *Id.*

<sup>430</sup> *Id.* at 25.

<sup>431</sup> *Id.*

<sup>432</sup> *Id.* at 36.

<sup>433</sup> *Id.* at 37.

<sup>434</sup> CONG. GLOBE, 37th Cong., 2d Sess. 350 (1862).

<sup>435</sup> *Id.*

described the history of Congressional efforts to prohibit American participation in the coolie trade, beginning with Congressional requests for information from the President in 1856 and followed by three more requests.<sup>436</sup> He noted that when he first attempted to submit a bill and report in April 1860, the rules of the House prevented a vote.<sup>437</sup> But he heard a complaint from only one person, Representative Burnett from Kentucky, who, he noted, was then trying to bring down the government.<sup>438</sup> Eliot opined that Burnett had wanted a debate on the issue because some of his constituents had coolie labor on their plantations.<sup>439</sup> Eliot then described many of the cases from the diplomatic correspondence and noted that Parker had helped draft the bill.<sup>440</sup> The bill passed the House.<sup>441</sup>

The original bill prohibited migration of Chinese laborers “against their will and without their consent” covering only involuntary servitude.<sup>442</sup> On January 30, 1862, Senator John Conover Ten Eyck moved to expand the scope of the Act to cover voluntary servitude as well.<sup>443</sup> Ten Eyck, a New Jersey Republican, explained that the Senate committee believed that coolies “should not be transported from their homes and sold, under any circumstances; being, as is well known, an inferior race, the committee are of the opinion that these words will afford very little protection to this unfortunate class of people.”<sup>444</sup> The committee suggested that they were therefore susceptible to fraud and duress and would consent to be transported in order to be sold:

The committee would not consent that a negro should be brought from the coast of Africa to be sold with or without his consent, and they would not be in favor of transporting and selling a white man against his consent, or even with it, or under a pretense of his will having been obtained.<sup>445</sup>

Thus, as amended, the first section of the bill prohibited U.S. citizens and residents from transporting “coolies . . . to any

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<sup>436</sup> *Id.* at 350.

<sup>437</sup> *Id.*

<sup>438</sup> *Id.*

<sup>439</sup> *Id.*

<sup>440</sup> *Id.*

<sup>441</sup> *Id.* at 555.

<sup>442</sup> *Id.*

<sup>443</sup> *Id.*

<sup>444</sup> *Id.*

<sup>445</sup> *Id.* at 556.

foreign country, port, or place whatever, to be disposed of, or sold, or transferred, against their will and without their consent, for any term of years or for any time whatever, as servants or apprentices, or to be held in service or labor.”<sup>446</sup>

The Senate passed the bill as amended.<sup>447</sup> After Eliot explained that the amendment made the bill more stringent, it was accepted by the House,<sup>448</sup> and President Lincoln signed it into law a few days later on February 19, 1862.<sup>449</sup>

### III. THE LEGACY OF THE COOLIE TRADE PROHIBITION ACT

The passage of the Coolie Trade Prohibition Act, during the Civil War, was not major news—the *New York Times* did not even report its passage. Passed only a few short years before slavery was outlawed in the United States, the Act was not particularly important as a slave trade statute. It was never legally challenged and, in fact, is mentioned in only three Supreme Court cases.<sup>450</sup> In 1884, in his dissent in *Chew Heong v. United States*, Justice Steven Field opined that the Act did not prevent Chinese subjects from being brought to the United States under labor contracts that essentially rendered them “coolie slaves.”<sup>451</sup> In *Chew*, the majority (Harlan, J.), ruled in favor of the Chinese immigrant, finding that under the Chinese Exclusion Act, a certificate was not the exclusive evidence a Chinese subject returning to the United States could use to prove he was a lawful resident in the United States.<sup>452</sup>

In 1890, the Supreme Court noted that the Act did not require certificates of voluntariness for coolies transported on non-American ships.<sup>453</sup> John S. Mosby, U.S. Consul in China from February 1879 to July 1885, sued to recover money that he had received and paid into the U.S. treasury for inspecting “Chinese

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<sup>446</sup> *Id.* at 581–82.

<sup>447</sup> *Id.*

<sup>448</sup> *Id.* at 849.

<sup>449</sup> *Id.*

<sup>450</sup> The first two cases were *Chew Heong v. United States*, 112 U.S. 536 (1884) and *United States v. Mosby*, 133 U.S. 273 (1890). The third, and most recent case, was *Maul v. United States*, a forfeiture case in which the Act is cited as an example of the federal government’s forfeiture power. 274 U.S. 501, 520 n.26 (1927).

<sup>451</sup> *Chew*, 112 U.S. at 568 (Field, J., dissenting).

<sup>452</sup> *Id.* at 560 (majority opinion).

<sup>453</sup> *Mosby*, 133 U.S. at 280–81.

emigrants departing on foreign vessels for the United States.”<sup>454</sup> The Court quoted from consular regulations issued in 1874 and 1881, which provided issuance of:

a certificate to be signed by the consul of the United States residing at the port from which any vessel registered, enrolled, or licensed in the United States may take her departure, carrying a subject of China, Japan or any other Oriental country, known as a ‘coolie,’ containing his name, and setting forth the fact of his voluntary emigration from such port . . . .<sup>455</sup>

It concluded that, as the Act did not require certification of coolies on non-American ships, any money Mosby received for that service did not have to be turned into the U.S. Treasury.<sup>456</sup>

The Coolie Trade Prohibition Act’s legacy is found in federal immigration law. The Act’s influence can be seen in several respects: (1) it was the first in a long line of racially-based laws targeting Chinese immigrants; (2) its certification requirement was the precursor to the current visa and exclusion system; and (3) it bridged the conceptual shift from importation of slaves to immigration of voluntary labor that eventually lead to the establishment of the federal government’s exclusive control over immigration.

*A. Discrimination Against Immigration and Naturalization of Chinese Subjects*

The Coolie Trade Prohibition Act was the first in the long line of federal legislation singling out Chinese immigrants that extended well into the twentieth century. While that Act protected the right of Chinese laborers to migrate voluntarily, the Page Law limited that right and created special rules for Chinese immigrants. Passed during an economic depression and after slavery had been abolished in the United States, the Page Law amended the Coolie Trade Prohibition Act.<sup>457</sup> It became a crime to transport Chinese, Japanese, or other “Oriental” persons to or from the United States without their “free and voluntary consent” for “the purpose of holding them [for] a term of service.”<sup>458</sup> However, the certification requirement was amended as well. United States consuls were required to certify not only that

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<sup>454</sup> *Id.* at 274.

<sup>455</sup> *Id.* at 280.

<sup>456</sup> *Id.* at 280–81.

<sup>457</sup> See Act of Mar. 3, 1875, ch. 141, 18 Stat. 477.

<sup>458</sup> § 2.

Chinese, Japanese, or any “Oriental” persons were immigrating voluntarily to the United States, but also that they had not entered into contracts or agreements for terms of service within the United States, for “lewd and immoral purposes.”<sup>459</sup> The purpose of this provision was to prevent the immigration of single Chinese women as, under the new Fourteenth Amendment, any children they bore in the United States would be United States citizens.

The Page Law also provided that it was unlawful for any women, regardless of race, to be imported for the purposes of prostitution, and for convicts to immigrate to the United States.<sup>460</sup> Importation of women for purposes of prostitution became a crime.<sup>461</sup> A new system was created whereby ships arriving at U.S. ports could be inspected by port inspectors.<sup>462</sup> Non-U.S. citizens could contest determinations that they fell within either of these categories, and, even if found inadmissible, could be admitted for six months upon payment of a \$500 bond by the master or owner.<sup>463</sup>

Thus, although it became unlawful for any woman to be “imported for the purposes of prostitution,” only Chinese women had to procure certificates from a U.S. consul before leaving port.<sup>464</sup> Non-Chinese women were allowed to travel and were only questioned by port inspectors about their intentions once they arrived at a U.S. port. Even if they were found to be “imported for the purposes of prostitution,” they could be admitted into the United States upon payment of a bond.<sup>465</sup>

Laws targeting Chinese immigrants became increasingly restrictive into the twentieth century. In May 1882, the Chinese Exclusion Act forbade the immigration of Chinese laborers into the United States for ten years.<sup>466</sup> It also required Chinese laborers in the United States to obtain certificates of identity before leaving the country so they could prove, upon their return, that they had previously been in the United States.<sup>467</sup> In 1892,

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<sup>459</sup> § 1.

<sup>460</sup> §§ 3, 5.

<sup>461</sup> *Id.*

<sup>462</sup> § 5.

<sup>463</sup> § 5, 18 Stat. at 478.

<sup>464</sup> §§ 1, 5, 18 Stat. at 477.

<sup>465</sup> § 5, 18 Stat. at 478.

<sup>466</sup> Act of May 6, 1882, ch. 126, 22 Stat. 58, 59.

<sup>467</sup> § 4, 22 Stat. at 59–60. The legislative history of the Chinese Exclusion Act often begins with the Burlingame Treaty between the United States and China

the Geary Act extended the exclusion period until 1902 and created a registration program whereby all Chinese laborers in the United States were required to obtain certificates of residence within a year.<sup>468</sup> Any Chinese person found in the United States after the year could be deported.<sup>469</sup> An exception was available if the resident could show he had been unable to procure the certificate “by reason of accident, sickness, or other unavoidable cause” and had one “credible white witness” who could establish that he had been in the United States when the Act was passed.<sup>470</sup> Immigration of Chinese laborers was eventually suspended until 1908.<sup>471</sup> Chinese nationals were barred from naturalizing until 1943 when the Chinese Exclusion Act was finally repealed.<sup>472</sup>

### *B. The Visa and Exclusion System*

In outlawing the last vestige of American participation in the slave trade, Congress was forced to address the fact that it did not wish to impede Chinese laborers from immigrating to the United States voluntarily. It therefore had to create a federal system whereby those immigrants could be identified. This concept sounds rather obvious now. However, up until this time, there had been no need for such a system. Chinese migrants were unique at the time, as they were one of the few groups of

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in 1868. See HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 16 (2006).

<sup>468</sup> Act of May 5, 1892, ch. 60, 27 Stat. 25; MOTOMURA, *supra* note 467, at 34.

<sup>469</sup> § 6, 27 Stat. at 25–26.

<sup>470</sup> § 6, 27 Stat. at 26. The constitutionality of this provision was upheld by the Supreme Court. See *Fong Yue Ting v. United States*, 149 U.S. 698, 713–14 (1893) (upholding Congressional power to deport Chinese subjects on the basis of race).

<sup>471</sup> In 1888, the suspension period was extended twenty years and Chinese “laborers” were not permitted to return to the United States, regardless of whether they had certificates. *Chae Chan Ping v. United States*, 130 U.S. 581, 599, 609 (1889). In upholding the constitutionality of this Act, the Supreme Court ruled that the power to regulate immigration lies with the federal government and not the states. *Id.* at 609. *Chae Chan Ping* had left for China with a certificate in 1887. *Id.* at 582. The Chinese Exclusion Act was passed while he was on board a ship returning to the United States. *Id.* The Court also enunciated what has become a fundamental rule that Congress has the plenary power to exclude non-U.S. citizens for just about any reason, including race. *Id.* at 606.

<sup>472</sup> Act of Dec. 17, 1943, ch. 344, 57 Stat. 600 (repealing the Chinese Exclusion Acts).

people who could migrate as slaves and free laborers. European immigrants were assumed to be immigrating voluntarily and few, if any, Africans were voluntarily immigrating to the United States.

The system settled on by Congress required each Chinese immigrant on a U.S. ship to obtain a certificate from a U.S. consul certifying that he was voluntarily emigrating. This certification requirement was necessary to distinguish Chinese migrants who were essentially slaves from those emigrating voluntarily.

The certification requirement was a precursor to the current visa and exclusion system. Before a non-U.S. citizen can apply for entry at a U.S. border, he or she must obtain a visa from a U.S. official abroad certifying that the traveler is admissible.<sup>473</sup> This visa does not guarantee entry into the United States—a foreigner arriving at the U.S. border may still be denied entry.<sup>474</sup> However, if found inadmissible at the border, he or she will generally be placed in removal proceedings during which the applicant may contest the charge.<sup>475</sup>

The Coolie Trade Prohibition Act's certification system created a framework that paved the way for expansion of the reasons to exclude non-U.S. citizens. The Page Law's exclusion of all immigrants migrating for purposes of prostitution and convicts remains U.S. law.<sup>476</sup>

The list of grounds for exclusion continued to grow. The Act of 1882, passed a few months after the Chinese Exclusion Act, excluded lunatics, idiots, convicts, and those likely to become a public charge.<sup>477</sup> Migrants found to fall within any of those groups were to be returned to countries "from whence they came."<sup>478</sup> These continue to be grounds for excluding foreigners from the United States (the terms "lunatics" and "idiots" have been amended to allow exclusion of those whose behaviors stemming from physical or mental conditions pose a threat to

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<sup>473</sup> The visa requirement for all immigrants was part of the Johnson Act, considered the first national-origins quota law (except for Chinese subjects) that went into effect on June 30, 1921. Act of May 19, 1921, ch. 8, 42 Stat. 5.

<sup>474</sup> See Immigration & Nationality Act (INA) § 212(a)(1)(A), 8 U.S.C. § 1182(a)(1)(A) (2006).

<sup>475</sup> See INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A).

<sup>476</sup> INA § 212(a)(2), 8 U.S.C. § 1182(a)(2).

<sup>477</sup> Act of Aug. 3, 1882, ch. 376, § 2, 22 Stat. 214, 214.

<sup>478</sup> § 4.

themselves or others).<sup>479</sup> The list has grown exponentially to include people with relatively minor convictions, communicable diseases including tuberculosis, lack of immunization, membership in the Communist Party, and people who are considered to have provided “material support” to terrorists.<sup>480</sup>

### C. Importation to Immigration

The Coolie Trade Prohibition Act was also a bridge between federal regulation of the international slave trade and what eventually became exclusive federal control over voluntary immigration. It was passed during a period in which the country was moving towards a system of immigration as slavery was on its way to being outlawed. For a few years after 1862, laws continued to speak of “importing” human beings. For example, the Page Law prohibited the *importation* of women for the purposes of prostitution while forbidding the *immigration* of convicts.<sup>481</sup> However, as slavery became more distant, the country and its laws spoke only of immigration.

Prior to 1862, Congressional regulation of voluntary immigration was minimal. Ship captains were required to identify passengers and their cargo, and personal effects and trade tools were admitted duty-free.<sup>482</sup> In 1816, Congress placed limits on the numbers of passengers and regulated the conditions of ships arriving from foreign ports.<sup>483</sup> Immigration was somewhat regulated by the states and diplomatic efforts.<sup>484</sup> However, diplomatic efforts were often at odds with the laws of individual states. For example, when the Act was passed in 1862, California was restricting the entry of Chinese laborers.<sup>485</sup>

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<sup>479</sup> See INA § 212(a)(1)(A)(iii), 8 U.S.C. § 1182(a)(1)(A)(iii).

<sup>480</sup> INA § 212(a), 8 U.S.C. § 1182(a).

<sup>481</sup> Act of Mar. 3, 1875, ch. 141, §§ 3, 5, 18 Stat. 477.

<sup>482</sup> Act of Mar. 2, 1799, ch. 22, §§ 23, 30, 46, 1 Stat. 627, 644–45, 649, 661.

<sup>483</sup> See Act of July 30, 1846, ch. 74, 9 Stat. 42, 49 (extending duty-free entry to household effects of “persons or families from foreign countries”); Act of Aug. 30, 1842, ch. 270, § 9, 5 Stat. 548, 560 (continuing duty-free entry of clothing, personal effects, professional books, and trade tools of arriving passengers); Act of Apr. 27, 1816, ch. 107, § 2, 3 Stat. 310, 313.

<sup>484</sup> See Neuman, *supra* note 1, at 1837. For a detailed discussion of state laws, see *id.* at 1893.

<sup>485</sup> In April 1858, California passed a law prohibiting all Chinese laborers from entering the state. An Act to prevent the further immigration of Chinese or Mongolians to this State, ch. 313, §§ 1–4, 1858 Cal. Stat. 295, 296 (1858). Apparently the law was never enforced and in 1862, the state Supreme Court

It has been noted that federal control over immigration became possible only after slavery was abolished and because the federal government sought to limit the immigration of Chinese laborers.<sup>486</sup> The power of the states to regulate the movement of people across their borders, and correspondingly, the power of the federal government to regulate immigration were invariably tied up with the often unspoken slavery issue.<sup>487</sup> Federal regulation of the immigration of Chinese laborers began with the Coolie Trade Prohibition Act.

The march towards federal control over immigration continued soon after the Act's passage in laws addressing immigration of Chinese subjects. In 1868, Anson Burlingame negotiated, on behalf of China, a treaty encouraging immigration to the United States.<sup>488</sup> The Burlingame Treaty provided that it was the "inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of free migration and emigration of their citizens and subjects respectively from the one country to the other for purposes of curiosity, of trade or as permanent residents."<sup>489</sup> However, this was followed by a series

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reported that it had been held unconstitutional in an unreported opinion. *Lin Sing v. Washburn*, 20 Cal. 534, 538 (1862). On April 26, 1862, California passed "An Act to protect free white labor against competition with Chinese coolie labor, and discourage the immigration of the Chinese into the State of California." *Id.* at 535–36. All Chinese were to pay a tax. *Id.* at 536. A few months later, the state Supreme Court ruled that the law violated the federal government's power to regulate foreign commerce. *Id.* at 534.

<sup>486</sup> In exposing the myth that, before federal immigration legislation in 1870s and 1880s, the United States borders were open, Gerald L. Neuman points out that federal regulation of immigration was made possible by the "[t]he uncoupling of migration from slavery by the Civil War" and "the coincidence that the first new pressure for immigration restriction involved discrimination against [China] made federal regulation necessary." Neuman, *supra* note 1, at 1893. "The advocates of Chinese exclusion called upon Congress to do what the states could not." *Id.*

<sup>487</sup> Neuman has pointed out that until slavery was abolished, federal control over voluntary immigration was not possible because of the slave states' fears that federal control over voluntary immigration would diminish their power over the movement of free blacks. *Id.* at 1866.

<sup>488</sup> See Tim Wu, *Treaties' Domains*, 93 VA. L. REV. 571, 616 (2007).

<sup>489</sup> Treaty of Trade, Consuls and Emigration between China and the United States, U.S.-China, art. V, July 28, 1868, 137 Consol. T.S. 469. At the time, Chinese subjects who left China were subject to execution upon their return, and the Chinese government continued to resist the admission of foreigners into China. The United States sought access to China but also wanted unrestricted emigration of Chinese laborers to the United States. William H. Seward, *His Departure from Hong-Kong—Reception and Speech at the American Consulate*,

of laws severely restricting immigration of Chinese subjects.<sup>490</sup> In 1889, in a case involving a Chinese immigrant, the Supreme Court of the United States enunciated the still-entrenched doctrine that the federal government has inherent authority to regulate immigration.<sup>491</sup>

Two of the reasons why the Supreme Court located the power in foreign affairs were undoubtedly that immigration had traditionally been partially regulated through diplomatic efforts, and that the federal government had regulated the international slave trade.<sup>492</sup> The United States' effort to prevent American participation in the international coolie trade illustrates both efforts—its diplomats in China worked to prevent participation in the coolie trade, and the Coolie Trade Prohibition Act was the last in a long line of laws regulating American participation in the international slave trade.

#### CONCLUSION

As a slave trade statute, the Coolie Trade Prohibition Act was obsolete almost as soon as it was passed. The Civil War was underway and the institution of slavery in the United States was approaching its demise. As an immigration statute, the Act did not restrict the voluntary immigration of Chinese immigrants and therefore had little, if any, impact on such immigration. However, the Act straddled the two institutions, and, in that unique position, contributed to the development of United States immigration law.

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N.Y. TIMES, Feb. 25, 1871, available at [http://query.nytimes.com/mem/archive-free/pdf?\\_r=1&res=9505E0D6133EEE34BC4D51DFB466838A669FDE](http://query.nytimes.com/mem/archive-free/pdf?_r=1&res=9505E0D6133EEE34BC4D51DFB466838A669FDE).

<sup>490</sup> See *supra* notes 480–86 and accompanying text.

<sup>491</sup> See Sarah H. Cleveland, *Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Power Over Foreign Affairs*, 81 TEX. L. REV. 1, 106 (2002). In 1889, the Supreme Court ruled that the federal government had the inherent power to exclude Chinese subjects. *Chae Chan Ping v. United States*, 130 U.S. 581, 608 (1889).

<sup>492</sup> See Neuman, *supra* note 1, at 1866.