
The Senate and the Fight against the 1885 Chinese Immigration Act

by Christopher G. Anderson

On June 22, 2006, the Prime Minister rose in the House of Commons to “offer a full apology to Chinese Canadians for the head tax and express our deepest sorrow for the subsequent exclusion of Chinese immigrants.” After recalling the fundamental role that Chinese Canadians had played in the nation-building construction of the Canadian Pacific Railway (CPR), the Prime Minister observed how – once the line was completed – “Canada turned its back on these men” as it imposed a \$50 Head Tax on Chinese migrants in 1885, increased this to \$100 in 1900 and then to \$500 in 1905, and finally expanded the scope of its exclusionary measures in 1923 to make it all but impossible for Chinese immigrants to resettle legally in Canada through into the post-Second World War period. Although the various race-based measures instituted to exclude Chinese migrants were deemed to be legal at the time, they were, according to the Prime Minister, “inconsistent with the values that Canadians hold today.” This article argues that at the time of the 1885 legislation, and for some time after, there were voices that spoke out against these discriminatory policies. Most specifically, this sentiment dominated debates on the question in the Canadian Senate between 1885 and 1887, and it did so to such an extent that government supporters had to resort to some clever procedural maneuvers to see the law passed and amended against the will of the majority of Senators. In an important sense, then, these restrictive measures are not only “inconsistent with the values that Canadians hold today,” but also conflict with values held by Canadians in the late 19th century, values that can be traced to a set of liberal beliefs on the rights of non-citizens inherited from Britain. The debates that took place in the Senate are, therefore, both interesting and important because they provide greater depth to our understanding of the historical record of race relations in Canada. They also speak to the more general issue of the role of the Senate in Canadian politics.

Although Chinese migrants had lived in Canada since as early as 1858, it was not really until the 1880s that their numbers began to rise appreciably. Thus, while 4,383 were identified in the

1881 Canadian census, the population is then thought to have grown to around 10,550 by September 1884 as the construction of the Canadian Pacific Railway picked up steam. More generally, some 16,000 to 17,000 Chinese migrants probably came to Canada during the early 1880s to work on the rail line.¹ For economic and geographic reasons, Chinese migrants generally arrived and lived in British Columbia, and it is from there that the most persistent and vocal cries were heard for greater control from the late nineteenth century onward.

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At first, the reception of the Chinese was relatively cordial: "Colonial British Columbians were initially remarkably tolerant of the thousands of Chinese who came. British officials refused to countenance any discrimination, and whites, rather than pressing for hostile action, boasted of the British justice enjoyed by the Chinese."² Although there were certainly incidents of racism, including violence, against the Chinese, British liberalism formed the basis of the government's response to their presence in the colony. While Britain itself had had very limited experience with receiving Chinese migrants, the country's official position on the presence of non-citizens was primarily defined at this time by a recognition of the right of foreigners to enter and remain, which precluded any wholesale restriction.³ However, after British Columbia joined Confederation in 1871, local politicians (first at the provincial level and then at the federal level) began to pressure Ottawa to pass legislation to restrict the ability of the Chinese to immigrate to or – for those who had already arrived – find work in Canada.⁴

The first major effort in the House of Commons was undertaken by Arthur Bunster (Vancouver Island), who sought and failed to convince his fellow MPs in 1878 to make it illegal to hire people to work on the construction of the CPR if their hair was greater than 5.5 inches in length – an obvious attack on the Chinese, whose hair was generally worn in long queues.⁵ In words that recalled those famously used by Lord Palmerston some 20 years earlier in the defence of the rights of foreigners in Britain,⁶ Prime Minister Alexander Mackenzie stated that the motion "was one unprecedented in its character and altogether unprecedented in its spirit, and at variance with those tolerant laws which afforded employment and an asylum to all who came within our country, irrespective of colour, hair, or anything else."⁷ Mackenzie did not "think it would become us, as a British community, to legislate against any class of people who might be imported into, or might emigrate to, this country."⁸

Although calls for "repressive measures" against the Chinese – including their forced removal from the country – were made time and again in Parliament through into the 1880s, Prime Minister John A. Macdonald, while he personally opposed such immigration, appointed two separate commissions of inquiry to investigate the situation in 1879 and 1884. Once the CPR was completed, however, the government introduced changes in May 1885 to the proposed *Electoral Franchise Act* before Parliament to deny any person of Chinese origin the right to vote in federal elections.

John A. Macdonald justified this action on the grounds that the Chinese migrant "is a stranger, a sojourner in a

strange land ... he has no common interest with us ... he has no British instincts or British feelings or aspirations, and therefore ought not to have a vote."⁹ Moreover, if given the vote, he warned, the Chinese would likely elect a sufficient number of Chinese-origin MPs in British Columbia to force the rest of the country to adhere to their "eccentricities" and "immorality."¹⁰ The Prime Minister's move received strong support from a number of MPs (especially those from British Columbia), but it also sparked some vocal opposition. For example, L.H. Davies (Queen's) argued that "If a Chinaman becomes a British subject it is not right that a brand should be placed on his forehead, so that other men may avoid him."¹¹ For his part, Arthur H. Gillmor (Charlotte), while he did "not think they are a desirable class of persons," argued all the same that "as British subjects, we ought to show them fair play."¹² Despite such protests, however, the motion was carried. For reasons that are not clear, such voices became mute when the House turned to consider the government's legislation to restrict Chinese immigration two months later.

It was left to Secretary of State Joseph A. Chapleau to explain Bill 125 (later renumbered Bill 156) "to restrict and regulate Chinese Immigration into the Dominion of Canada" to the House, and he did so with such an expression of regret as to lead one MP to comment that "one would almost imagine [that he] were in opposition to the Bill rather than in favour of it."¹³ Chapleau began by declaring that he had been surprised when:

a demand was made for legislation to provide that one of the first principles which have always guided the English people in the enactment of their laws and regulations for the maintenance of the peace and prosperity of the country, should be violated in excluding from the shores of this great country, which is a part of the British Empire, members of the human family.¹⁴

Although he agreed that it was a good thing to ensure the continuance of a "white" British Columbia, he took issue with the way in which the Chinese had been demonized. As co-chair of the 1884 commission, he had found little evidence to support the uniformly negative image put forward by those who wanted to prevent their arrival; moreover, he had concluded that such migration had had a generally positive impact on the regional economy. Chapleau had come to see, however, that when it came to the Chinese people Canadians were "naturally disposed, through unconscious prejudices, to turn into defects even their virtues."¹⁵

The law would not only impose a \$50 "Head Tax" (or "Capitation Tax") on Chinese migrants before they could be landed, but would also put in place several other restrictions. For example, only one Chinese passenger was

to be allowed per each 50 tons weight of the arriving vessel (s.5), and a system of certificates was to be put in place to control those who desired to leave and return without paying the Head Tax again (s.14). Those most in favour of restriction were not wholly satisfied by these proposals but saw in them “the thin end of the edge” in the creation of a more extensive system of control.¹⁶ Indeed, amidst concerns over the administration of the legislation, the only opposition came from those who wanted to make it more restrictive, although these critics supported Bill 156 all the same as it passed easily through the House.

Subsequently, amendments were introduced to the *1885 Chinese Immigration Act* during the next two years. In 1886, the government sought to enforce compulsory registration of those already in Canada (with penalties for non-compliance), expand the scope of the law to cover trains as well as ships, and remove merchants from the list of those exempt from paying the Head Tax. Although the bill was passed in the Lower Chamber with little dissent, it was ultimately held up in the Senate by the opponents of restriction. In 1887, the government introduced new amendments that were notable for the absence of any further restrictions, save a change to allow the Chinese only three months leave from the country before having to repay the Head Tax.¹⁷ Even these proposals, however, barely made it through the Upper Chamber, and that lone restrictive feature was ultimately removed.

There was an intimation of the level of support that the Chinese might receive in the Senate during its debate on the *1885 Electoral Franchise Act*. “I cannot myself see the propriety,” Alexander Vidal commented, “of excluding the Mongolians, who have shown themselves to be patient, industrious and law-abiding, from privileges which are given to every other member of the human family in this country.”¹⁸ For his part, Lawrence G. Power did not think “the Parliament of Canada should make any distinction of race at all; that the Chinese, Negroes, Indians and Whites should be on the same footing; that no exceptions should be made in favour of one or against another race.”¹⁹ Striking a position that would be repeated by a number of his colleagues when Bill 156 arrived not long thereafter, Richard W. Scott observed that having sought to open up China to the world, Canada should not “set up a Chinese wall on our side,” for to do so would be “entirely contrary to the principles of the Empire.”²⁰ Despite such objections, however, the franchise legislation was passed. The protests that were made over denying the Chinese the right to vote paled, however, in comparison to the outrage expressed by the

many Senators who spoke against the restriction of Chinese migration.

The Senate in Defence of the Chinese (1885-87)

Early on in the debate, Alexander Vidal set the tone for the majority in the Senate when he declared: “I think it is entirely inconsistent with the very fundamental principle of the British constitution that legislation of this kind should find a place on the statute book.”²¹ To pursue such a course as that proposed in Bill 156, observed James Dever, would tarnish the reputation of the country:

We, who pride ourselves on the freedom of our institutions, and the abolition of slavery in the United States, and who fancy we are going over the world with our lamp in our hand shedding light and lustre wherever we go – that we should become slave-drivers, and prohibit strangers from coming to our hospitable shore because they are of a different colour and have a different language and habits from ourselves, in deference to the feelings of a few people from British Columbia, is a thing I cannot understand.²²

To the extent to which the law would discriminate against a particular group, concluded William Almon, it remained “contrary to the genius of the nineteenth century.”²³ Moreover, it was suggested that if the Chinese did not seem to adapt well to Canadian society, then this was in part the fault of Canadians themselves when they instituted such barriers as disenfranchisement and the prevention of family reunification. Indeed, it was observed that the Chinese became further excluded from European Canadian society by the stereotypes that the latter employed.

Although the opponents of restriction were unable to prevent the passage of the bill, the way in which it was returned to the House is worth noting, for it was only on account of some fancy procedural footwork on the part of the government side that it happened with so little disturbance. William Almon had “given notice that [he] would oppose it at the third reading, and that [he] would move that it be read the third time three months hence” – thereby making it impossible for the legislation to pass that session.²⁴ The Senator, however, apparently committed a procedural error that allowed the legislation to emerge from the committee stage unscathed and pass through Third Reading without any discussion. Not only did Almon not give notice in writing, but he also wrongly assumed that debate could not pass through two stages on the same day. As a result, his efforts to scuttle the bill were sidestepped and it was returned to the House of Commons without a word altered, despite the considerable opposition to the very principles on which it was based that had been expressed. Almon’s frustration co-

mes through quite clearly, as does his firm conviction that it was a fundamentally illiberal piece of legislation: "I think such legislation is a disgrace to humanity. I think it is rolling back civilization from the end to the beginning of the nineteenth century. The early part of this century did away with the Slave trade, with the *Test Act*, and gave Catholic emancipation and abolished slavery in the West Indies. We now enact a law which is as vile as any of those to the repeal of which I have just alluded, and I think it will impress an indelible disgrace on this House and on the Dominion."²⁵

The chances that Almon's effort might otherwise have succeeded would seem to be slim – after all, it was fairly rare for a government bill to be turned back in the Senate, especially when the same party controlled both chambers – but the fate of the government's attempt to amend the *1885 Chinese Immigration Act* by passing Bill 106 the following year makes it difficult to claim that there were none. As noted above, the proposed amendments in 1886 were mostly restrictionist in nature, but rather than simply debate these measures, opponents attacked the law itself. While much of the criticism trod upon familiar ground (e.g., "It is so repugnant to all that is English, and honourable or right that one can hardly discuss it in a proper frame of mind"),²⁶ there were important developments as well.

For example, Alexander Vidal raised the question of Canadian sovereignty and the country's right to restrict entry at its borders, and he suggested that this should not be held to be absolute but rather ought to conform to the principles on which the land had come to be settled. He began by inquiring as to the foundations of Britain's occupation of North America:

By what royal right have we and our fathers crossed the ocean and taken possession of this western continent? What right had we to come here and dispossess the Indians, native proprietors of this country, and take possession of their lands? ... [Do we] not only consider that we have a better right to it than they have, but to consider it so exclusively our own as to shut out from sharing in the advantages of this country others of God's people who have as much right to it as we have?²⁷

The land was taken not by right, he claimed, but "because we believed that where our civilization and enlightenment have been introduced we have carried with us the blessings of Christianity to the people amongst whom we have settled."²⁸ To restrict other people now from coming to live in the country on the basis of race, he concluded, was so "utterly inconsistent with our professions as Christians and with the vaunted freedom we profess to cherish as a British people" that it undermined the basis on which the land had been occupied – the superiority of "the Anglo-Saxon race."²⁹ Thus, while Senators

often still viewed the issue from a race-based and even missionary perspective, they also operated within a rights-based framework, with potentially quite important policy implications for Chinese Canadians.

Even George W. Allan, who introduced the amendments in the Senate for the government, said that he had "no special leaning towards this Chinese legislation."³⁰ Given the level of agreement against the proposals, it would be, Richard W. Scott averred, "a service to the empire if we allow this question to stand over another year."³¹ By that time, he hoped, passions in British Columbia might have calmed somewhat and a more reasonable examination of the question might be assayed. Thus, the same Senate that had seemed to sanction the *1885 Chinese Immigration Act* now let the debate on its amendment stand for six months, thereby signaling an unwillingness to allow the law to be changed in a more restrictive manner.

The government's second attempt to amend the law, Bill 54, responded to some of the criticisms that had been expressed in the Senate by removing the restrictive elements included in the previous bill. Moreover, the one aspect of the new bill that would have made it more difficult for Chinese migrants – the three-month return clause – was first extended to six months and then dropped altogether. Nonetheless, the legislation received extended criticism ("a diabolical Bill ... [that] has not a shadow of justice or right on its side"),³² out of which emerged – amidst the old complaints – other lines of argumentation. For example, Almon asked: "How will it be now if we pass [this] Act to say that there is a dividing line between Canada and the United States? ... Can we any longer point with pride to our flag and say that under that emblem all men, be they Mongolian, Circassian or Caucasian, are equally free?"³³

The Senator who sponsored the bill on the government's behalf, future Prime Minister John J.C. Abbott, agreed that the principle that lay behind the *1885 Chinese Immigration Act* was offensive to the chamber, but he argued all the same that the amendments on the floor might help to temper the harshness of the law. If too many alterations to the proposed bill were presented to the House, he cautioned, then it would reject them, with the result that the modest positive alterations that could be made would not come into effect, leaving the Chinese worse off than they might otherwise have been. This line of reasoning found some sympathy but little support, as "the sentiment of the Senate seemed to be that the Act should be wiped off the Statute Book."³⁴ Indeed, Vidal introduced Bill P to do just that, and he had such backing that Abbott himself admitted that it would likely pass on a vote. The justification for repeal was succinctly ex-

pressed by Robert Haythorne, who declared that “it is a difficult thing to amend a Bill based upon a wrong principle, and the principle upon which [the 1885 *Chinese Immigration Act* is] based is a bad and cruel one.”³⁵ Even if the House would not accept it, Vidal argued, passage of Bill P would “show that we have proper views of British freedom and the responsibilities that are attached to our professions as Christians.”³⁶

The government side, however, was once again able – through procedural means – to steer its legislation through the chamber. It argued successfully before the Speaker that since the law involved the collection of revenue – the Head Tax – the Senate could not seek to repeal it. The Speaker based his ruling on s.53 of the 1867 *BNA Act* (“Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons”) and on the 47th Rule of the Senate according to *Bourinot* (“The Senate will not proceed upon a Bill appropriating public money that shall not within the knowledge of the Senate have been recommended by the Queen’s representative”). The question of the Senate’s authority to amend money bills would long trouble Parliament and was eventually the subject of a Special Committee of the Senate in 1917. In response to this decision, Vidal argued: “I can easily understand that if we found the word ‘Chinese’ between cheese and cigars in the tariff bill that we could not touch it, but it is an extraordinary thing that we cannot amend a public Bill simply because there is a penalty attached for which the Government derives a revenue.”³⁷ Although the purpose behind the Head Tax was clearly one of policy (that is, to restrict the entry of Chinese migrants) rather than one of generating revenue, the Speaker supported the government’s line of reasoning. Thus, not only was Vidal’s initiative ruled out of order but any chance of pursuing meaningful change to the bill seemed to have been thwarted. With the wind so completely and effectively taken out of the opposition’s sails, Third Reading was speedily accomplished. It would be some years before the Senate would again exhibit such a rights-based outlook on the issue of migration control, even as the government expanded the scope of its restrictions towards Chinese migration as well as all other non-white, non-Christian, and non-British groups.

After coming into effect in January 1886, the 1885 *Chinese Immigration Act* doubtless contributed to the low levels of Chinese migration to Canada that occurred during the remainder of the 1880s. It is difficult, however, to assess the effect of the new law as there was an anticipated reduction in arrivals due to the completion of the CPR, which led many to leave the country, either to return to China or to try their fortunes in the United States. How-

ever, throughout the 1890s the number of entries recorded each year grew, if somewhat erratically, sparking a new wave of restrictive measures towards Chinese migration that culminated in the extremely effective 1923 *Chinese Immigration Act*. Indeed, according to official tallies, only eight Chinese immigrants were landed in Canada between 1924-25 and 1938-39 – less than one every two years.

Conclusions

This examination of the response in the Senate to the government’s first attempts to control Chinese immigration between 1885 and 1887 is instructive in at least two major respects. First, it uncovers an important feature of the history of Canadian state relations with Chinese migrants that has too long been overlooked. While it is certainly true that the Chinese had few friends willing to support them in Canada, they could count a large number of Senators amongst them. Thus, Senator William J. Macdonald, himself a representative of British Columbia, took note of the role that many of his colleagues were playing:

I wish to express my satisfaction at the fact that a people who have been treated so rigorously and ungenerously, who are unrepresented, and who have been hunted to the death, should have found representatives to stand up on the floor of this House and speak on their behalf.³⁸

Of course, rights-based British liberalism was not the sole motivation for opposition to the 1885 *Chinese Immigration Act*. Indeed, there were traces of distrust of organized labour, alongside a desire that business should have access to such – as one Senator would put it a few years later – “good labour-saving machines.”³⁹ Moreover, an opposition to discrimination did not necessitate admiration for the Chinese either as individuals or as a group (although it often was joined to such sentiments).⁴⁰ It also was at times connected to an opinion that “whites” were superior to the Chinese,⁴¹ and for some Senators accepting such migrants in Canada was an important means by which the Chinese might be converted to Christianity.⁴² Nonetheless, there is a clearly expressed respect for the individual rights of the Chinese that comes through in these debates, one that found widespread support amongst the opponents of restriction. Their racism, in short, did not fully displace their belief in equality, and they were able to support, as a result, radically different policy options from those that were being pursued by the government, and that would ultimately be transformed into a source of national shame.

As well as recalling an important piece of Canadian history, one that has been completely ignored or overlooked in the literature, the relevance of these Senate de-

bates today can also be seen in the extent to which members of that institution sought to institute a policy position that is much more in keeping with what we understand to be modern values held by Canadians. This not only suggests that Canadians possess a much richer and more complex political history than is often recognized, but it also underlines the potential role for the Senate in broadening our political ideas and language, of providing the sort of sober second thought that was supposed to be one of its central functions in the Canadian political system.

Notes

1. Patricia E. Roy, *A White Man's Province: British Columbia Politicians and Chinese and Japanese Immigrants, 1858-1914* (Vancouver: University of British Columbia Press, 1989), x-xi.
2. *Ibid.*, 4. See also W. Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia* [Second Edition] (Montreal and Kingston: McGill-Queen's University Press, 1990), 24-29.
3. See Colin Holmes, *John Bull's Island: Immigration and British Society, 1871-1971* (London: Macmillan Education Ltd., 1988).
4. See Bruce Ryder, "Racism and the Constitution: The Constitutional Fate of British Columbia Anti-Asian Immigration Legislation, 1884-1909," *Osgoode Hall Law Journal*, Volume 29, Number 3 (1991), 619-76.
5. Canada, House of Commons, *Debates*, March 18, 1878, p. 1207. See also James Morton, *In the Sea of Sterile Mountains: The Chinese in British Columbia* (Vancouver: J.J. Douglas Ltd., 1973), 43-44.
6. "Any foreigner, whatever his nation, whatever his political creed, whatever his political offences against his own Government may, under this Bill, as he does today, find in these realms a safe and secure asylum so long as he obeys the law of the land." Quoted in T.W.E. Roche, *The Key In The Lock: A History of Immigration Control in England from 1066 to the Present Day* (London: John Murray, 1969), 58.
7. Canada, House of Commons, *Debates*, March 18, 1878, p. 1209.
8. *Ibid.*
9. *Ibid.*, May 4, 1885, p. 1582.
10. *Ibid.*, p. 1588.
11. *Ibid.*, p. 1583.
12. *Ibid.*, p. 1585.
13. *Ibid.*, Edgar C. Baker (Victoria), July 2, 1885, p. 3013.
14. *Ibid.*, p. 3003.
15. *Ibid.*, p. 3006.
16. *Ibid.*, Noah Shakespeare (Victoria), July 2, 1885, p. 3011.
17. The new bill kept a provision to allow Chinese travelers in transit to pass through Canada without paying the Head Tax, while it added a clause to allow the Chinese wife of a white man to enter without paying the Head Tax, and another that would ensure that a portion of the Head Tax was sent to provincial coffers in Victoria.
18. Canada, Senate *Debates*, July 13, 1885, p. 1276.
19. *Ibid.*, p. 1280.
20. *Ibid.*
21. *Ibid.*, p. 1297.
22. *Ibid.*, p. 1298.
23. *Ibid.*, p. 1295.
24. *Ibid.*, July 18, 1885, p. 1411.
25. *Ibid.*
26. *Ibid.*, Richard W. Scott, January 30, 1886, p. 692.
27. *Ibid.*, May 21, 1886, p. 687.
28. *Ibid.*
29. *Ibid.*
30. *Ibid.*
31. *Ibid.*, May 26, 1886, p. 747.
32. *Ibid.*, William J. Macdonald, June 10, 1887, pp. 311-12.
33. *Ibid.*, p. 299.
34. *Ibid.*, Richard W. Scott, June 13, 1887, p. 349.
35. *Ibid.*, June 10, 1887, p. 313.
36. *Ibid.*, p. 307.
37. *Ibid.*, June 14, 1887, p. 396.
38. *Ibid.*, June 10, 1887, p. 311.
39. *Ibid.*, Henry A.N. Kaulbach, July 8, 1892, p. 497.
40. See W. Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia* [Second Edition] (Montreal and Kingston: McGill-Queen's University Press, 1990), Chapter 1.
41. According to Vidal, for example, the "superior civilization" of the "Anglo-Saxon race" meant that whites should have no fear of being overpowered by the Chinese; see Canada, Senate, *Debates*, July 13, 1885, p. 1297.
42. See *ibid.*, William Almon, p. 1296.

The Chinese Immigration Act of 1923, known also as the Chinese Exclusion Act, banned the entry of virtually all Chinese immigrants for 24 years. Although migration into Canada from most countries was controlled or restricted in some way, only Chinese people were singled out completely from entering on the basis of race. After the Second World War, the repeal of this discriminatory legislation, the gaining of the right to vote and the establishment of the Canadian Citizenship Act in 1947 were the first steps to increased and more equitable inclusion into Canadian life. The Chinese in Canada could now assume their rightful place as valued Canadian citizens. 48 & 49 Victoria, c. 71 (Canada). An Act to restrict and regulate Chinese immigration into Canada. [Assented to 20th July, 1885.] WHEREAS it is expedient to make provision for restricting the number of Chinese immigrants coming into the Dominion and to regulate such immigration; and whereas it is further expedient to provide a system of registration and control over Chinese immigrants residing in Canada: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of