

ANTI-ASIAN DISCRIMINATION CIRCA 1852

By John S. Caragozian

The current wave of anti-Asian prejudice has long-standing antecedents in California. As but one early example, the state repeatedly resisted immigration from China by burdening Chinese immigrants with various taxes.

Before 1846, when California was part of Mexico, California's population totaled approximately 157,000, consisting of 150,000 Native Americans and 7,000 people of European or mixed ancestry, almost all from Spain and Mexico and known as "Californios."

During the Mexican era, foreign ships' crewmen occasionally became temporary residents along the California coast. They included a handful of Pacific Islanders, but virtually no Asians were in Mexican California.

In 1846, the U.S. declared war on Mexico. The U.S. eventually occupied California's major towns, namely Monterey, Los Angeles and San Diego, and the Californios surrendered.

Then, in early 1848, two major events occurred. First, gold was discovered near present-day Coloma, triggering the famed California gold rush. Second, the Treaty of Guadalupe Hidalgo formally ended the U.S.-Mexico War and ceded the American Southwest, including California, to the U.S. The Treaty included the option for Californios to remain in California, thereby becoming U.S. citizens with the same rights as other U.S. citizens, at least on paper.

As the news of the gold discovery spread, almost 100,000 new immigrants poured into California during the remainder of 1848 and 1849, mostly from the U.S., but also from around the world. Many were from Mexico and South America, which were geographically close to California. These immigrants also had superior mining skills learned from their home regions' centuries-old gold and silver mines.

In 1850, California became a state. It had extraordinary mineral wealth, but, as yet, no tax revenues to finance state and local governments.

The first session of the California Legislature imposed a tax on non-citizen miners of \$20 per month. This foreign miners' tax had a twofold purpose: (a) to provide revenue to the state, and (b) to drive out Mexican and South American immigrants from mining regions.

In *People v. Naglee*, 1 Cal. 232 (1850), the California Supreme Court upheld the validity of the foreign miners' tax. In particular, the Court opined that the tax did not encroach on the federal government's authority to regulate foreign commerce, because it was imposed only after the immigrants had entered into California and became mixed into the general population. The Court also opined that the tax did not violate the Treaty of Guadalupe Hidalgo, because the record disclosed no taxes actually collected from Californios, as opposed to collections from more recent immigrants from Mexico. Finally, the Court found no violation of the California constitution's guarantee of equal rights to foreigners who become "bona fide residents,"

because the record disclosed no taxes actually collected from such residents, as opposed to collections from temporary visitors. *See id.* at 232-51.

While *Naglee* established the tax's legality, it turned out that the tax failed to raise significant revenues. The \$20 was so high that foreign miners evaded payment or abandoned mining, with the result that few taxes were actually collected. *See, e.g.*, Karen Clay & Randall Jones, "Migrating to Riches? Evidence from the California Gold Rush," 68 *Journal of Economic History* 997, 1013-14 (2008) (based on Eldorado County data, miners in 1850 averaged less than \$20 per month after deducting food expenses from their gold earnings). Accordingly, in 1851, the legislature repealed the tax.

During this same time, increasing numbers of immigrants began to arrive from China. Fewer than 1,000 Chinese were in California through the end of 1850, but almost 3,000 arrived in 1851, and 20,000 more arrived in 1852.

The Chinese were not only increasing in number, but also were successful in mining. Chinese miners reworked white miners' abandoned claims, in some cases getting more gold than white miners got in new claims. More broadly, Chinese were industrious and were willing to accept lower wages than whites or willing to engage in work disdained by whites.

While the few Chinese in 1849 had been subject to mob violence in mining camps, their increasing numbers began to garner official attention. *See, e.g.*, Theodore H. Hittell, IV, "History of California" 98-113 (1898). In 1852, after Gov. John Bigler's repeated racist attacks, the legislature took aim at these new immigrants by enacting a new foreign miners' tax, this one at \$3 per month. In general, Chinese miners were willing to pay this more modest tax, especially if some of the revenues stayed within the counties where they were collected.

In 1853, as more Chinese continued to arrive, the legislature increased the tax to \$4 per month, provided for seizure of property for unpaid taxes, compensated tax collectors with 15 percent of actual collections, and, most important, classified all Chinese immigrants (bona fide residents or not) as miners subject to the tax, unless they were engaged in another lawful business.

In addition to its racist motives and effects, the foreign miners' tax became a significant source of state revenues in the 1850s.

By 1855, with still more immigration from China, the legislature acted again. First, the foreign miners tax on immigrants ineligible for citizenship — namely Chinese — was immediately raised to \$6 per month, with the tax increasing by an extra \$2 per month in each succeeding year. Second, the legislature acted directly to discourage immigration from China by separately taxing ships \$50 for each Chinese passenger disembarking in California.

However, the state Supreme Court struck down the \$50 tax as encroaching on the federal government's rights to regulate foreign commerce. *People v. Downer*, 7 Cal. 169, 171 (1857).

In 1858, the legislature responded with a new tax of \$2.50 per month on all Chinese in California, while keeping the pre-existing \$6 tax on miners. The California Supreme Court struck down the \$2.50 tax on the ground that, again, it encroached on the federal regulation of foreign commerce and on the additional ground that it violated the state constitution, which gave foreigners the same rights as citizens. *Lin Sing v. Washburn*, 20 Cal. 534, 539-48 (1862).

Once more, the legislature responded. In 1861, it amended the foreign miners' tax to impose it on all Chinese, whether or not actually engaged in mining. The state Supreme Court struck down the amendment on state constitutional grounds. *Ex Parte Pong*, 19 Cal. 106 (1861).

The foreign miners' tax met its eventual demise due to a confluence of political and economic pressures. Chinese immigrants began to organize themselves to lobby the legislature and to hire litigation counsel. Separately, white merchants and employers in California began to see economic advantages of trade with China and of cheap Chinese labor. The federal government then entered into the 1868 Burlingame Treaty with China; it provided that Chinese subjects residing in the U.S. were entitled to the same privileges as U.S. citizens. Finally, the federal Civil Rights Act of 1870 extended equal rights to all immigrants, not just to citizens.

Nonetheless, anti-Asian activity did not end. Mob violence — such as Los Angeles's 1871 Chinatown massacre in which a score of Chinese were murdered — continued long after the taxes ended. Later Asian immigrants from Japan, the Philippines, and elsewhere, were also ill-treated in California.

Even official government policy continued well into the 20th century. For example, as late as 1947, California law empowered local school districts to establish separate schools for students, including citizens, of Asian ancestry.

Unfortunately, this column vastly understates the violence and other discrimination against Asians in California. Still, even a limited history of taxes teaches the importance of taking steps today so that future generations will judge us better than we judge our predecessor Californians.

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