THE UNITED STATES AND CHINA IN THE NINETEENTH CENTURY: AN INCIDENT IN THE CAREER OF MINISTER CHARLES DENBY

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Professor John King Fairbank has often lamented the dearth of critical scholarship on American-East Asian relations.(1) Though recent years have seen creditable contributions to this field of study, much of course remains to be done. Take Charles Denby, for example, the well-known American envoy who served in Peking for an unprecedented thirteen years (1885-98).(2) Considering the length of his tenure and the mountain of dispatches he bequeathed to history, it is remarkable scholarship has treated him so scantily. Such American scholarship as there is is one-sided. The only full-length study of Denby does nothing to illuminate the unflattering side of the man.(3) Tyler Dennett's *Americans in Eastern Asia*, dated though not yet superceded, lauds Denby as "representing the best of contemporary life."(4)

Chinese Marxist scholarship treats Denby's aggressive policies with predictable harshness. Ch'ing Ju-chi, for exmple, repeatedly accuses Denby of "shameless lying" in his dealings with Chinese officials.(5) Yet such historians more nearly hit the mark than American scholars.

It is the purpose of this essay to give better focus to the role of Denby,

(1) See, for example, his presidential address before the AHA annual meeting, "Assignment for the '70's" (*American Historical Review*, vol. LXXIV, no. 3, Feb. '69, pp. 861-79).

(2) For a biographical sketch, see *Dictionary of American Biography*, ed. Allen Johnson and Dumas Malone (New York: Scribner's, 1958) vol. 3, pp. 233-4.

(3) John William Cassey, "The Mission of Charles Denby and International Rivalries in the Far East, 1885-1898," (Ph. D. dissertation, University of Southern California, 1959), detailed in its description but insufficiently analytical.

(4) Tyler Dennett, *Americans in Eastern Asia* (1922; reprint ed., New York: Barnes and Noble, 1941) p. 673.

(5) Ch'ing Ju-chi, *Mei-kuo ch'in-Hua shih* (History of American aggression in China; 2 vols.; Peking: San-lien shu-tien, 1952-6); see, e.g., vol. II, pp. 202-3, 263-4, 267. This is a well-documented study based squarely on the published American record as well as on Chinese materials.

both by a more critical reading of the standard U.S. archival materials and by utilizing Chinese-language materials regularly ignored by American historians in the past. My case study for this reevaluation of Minister Denby is a disputed claim for indemnification from the Chinese government for injuries sustained by an American resident in China in 1889.[6] The case is neatly illustrative of the righteous, overbearing attitude assumed by our man in Peking, of his casuistic and inconsistent arguments. Having read the corpus of Denby's dispatches, I venture to say this case is typical of the man.

The case study will also illustrate that Chinese officials, both local and metropolitan, were energetic in upholding their rights under the unequal treaties and successful diplomatically in fending off American assailants. This paints a picture of a healthier Chinese administration than either American or Chinese scholars have generally credited late Ch'ing China as possessing.

The Accident. The specific incident which produced the controversy involved a small houseboat owned by a certain Louis McCaslin, the sole American merchant residing in the treaty port of Ningpo on the southeastern China coast. On the morning of 29 April 1888 McCaslin and the Nicholas Pratt family set out for a day's pleasure excursion. Pratt, an experienced seaman employed as master of a coastal steamer of the China Merchants Steam

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(6) Note on sources. The case is reported by Denby mainly in three detailed dispatches to the secretary of state: dispatch #677 dated 27 July 1888 (to Thomas F. Bayard); dispatch #988 dated 31 Oct. 1889 and dispatch #1049 dated 9 Feb. 1890 (to James G. Blaine). The last mentioned contains 10 enclosures and numerous subenclosures. All are collected in U.S. Department of State, "Despatches from United States Ministers to China;" File microcopies of records in the National Archives, no. 92; Washington: The National Archives, 1946. (Hereafter cited as "Despatches") The American consul involved also reported in detail directly to the department of state. See Thomas F. Pettus to William F. Wharton (assistant secretary), dated 12 Feb. 1890; this is collected in Department of State: "China, Ningpo-Consular Despatch, 1853-1896;" File microcopies of records in the National Archives, no. 59; Washington: The National Archives, 1947.

The Chinese side is extensively documented in three unpublished fascicles which include dispatches, reports, testimony, etc. mostly by local officials. See "Mei-shang Lu-i Mi-k'o-ssu-ling jen Ning-po Laochiang-ch'iao pei chia-shang an san-ts'e" (Injury of the American merchant Louis McCaslin at Old River Bridge in Ningpo, 3 fascicles) in "Tsung-li ko-kuo shih-wu ya-men ch'ing-tang, Ch'ing-chi-pu, Mei-kuo-men, ti-fang chiao-she-hsiang" (Clean files of the Tsungli-yamen, late Ch'ing section, United States file, local negotiations category), manuscript archive housed at the Institute of Modern History, Academia Sinica, Taipei.

It would be cumbersome to attempt to footnote statements in this article to particular enclosures or subenclosures in the above groups of documents. The case has been pieced together as a result of reading them as a whole. Consequently no further references will be made to the abovementioned documents, and all statements which follow, unless otherwise attributed, are based on them.

Navigation Company, captained the houseboat. There was a crew of four Chinese aboard. On the out journey the houseboat, according to regulation or at least standard practice, passed under a publically operated pontoon bridge at its eastern end where a vaulted section allowed the passage of small craft.

Upon return late in the afternoon of the same day, Capt. Pratt as a convenience attempted to sail the houseboat through a central, rotatable span of the pontoon bridge which had swung open to allow passage of a large official junk, rather than sail through the eastern vaulted section. But as the houseboat neared, the bridgemen began to swing close the opened section. Pratt and some crew members tried to fend off the closing pontoons. The hubbub brought McCaslin and another crew member up from belowdecks who helped in the effort. They successfully kept the boat from capsizing or sustaining damage and made it through the opening. But McCaslin was struck by the closing pontoons and suffered permanent injuries to his thumb and jaw.

McCaslin filed a claim against the Chinese government for an amount totalling 10,357.50 taels ($15,934.61): 10,000 taels for bodily injuries and 357.50 taels for expenses. He claimed that the bridgemen maliciously closed the bridge with intent to damage the boat. Since the bridgemen were public employees, he held the Chinese government liable to indemnify him for his injuries.

The Taotai's First Decision. Chinese local authorities acted promptly. The bridgemen gave testimony on 4 May 1888 (just five days after the incident) before the Ningpo superintendent of police——Major Watson, an Englishman officially employed by the Chinese government——with U. S. consular interpreter Kleine in attendance. Watson also later took the testimony of the boatmen. The taotai,[7] Hsüeh Fu-ch'eng, also took oral testimony on two occasions, again written down by Kleine. The integrity of these formal investigations was never questioned, and Watson for his part saw no need for a further investigation conducted jointly by taotai and consul. In addition Chinese officials conducted "secret inquiries." These, according to Chinese explanation, were aimed at supplementing the formal testimony by

(7) Taotais (intendants) were important local officials placed in administrative control over various sections of the provincial government. There were several categories of taotais; those involved in this case were apparently customs intendants, charged with overseeing at a given treaty port maritime customs affairs in particular and Sino-foreign affairs generally. According to treaty, consuls enjoyed full access to local taotais and could treat with them proceedurally on terms of equality.

eliciting the bridgemen's and spectators' views by clandestine inquiry.[8] American authorities later charged, however, that the secret inquiries could have been used to pressure the witnesses to distort the truth and testify to the liking of the Chinese officials.

The Ningpo consul, Thomas F. Pettus, unable to gain the taotai's acquiescence to a joint investigation, himself took the testimony of the boatmen and of the Western witnesses. The reliabilty of the boatmen's testimony is open to question, for in places it seems to have been taken in a manner purposely to favor the Western side. For example, one of the boatmen deposed that he had been belowdecks and did not see the accident; yet he asserted that the accident was precipitated by the bridgemen's desire for revenge at the houseboat's not having paid a toll, as regulations required. Clearly, Consul Pettus did not distinguish between fact and opinion.

On the basis of the evidence taken by the Chinese side, the taotai rendered his decision. The bridgemen had no intent to harm, but rather the accident had occurred because of the helmsman's carelessness. He therefore denied McCaslin's claim for damages.

The Tsungli-yamen (the Chinese Foreign Office in Peking) fully upheld the integrity of the taotai's investigation and decision.

Demand for a Reexamination. Americans, however, rarely accepted a Chinese rebuff with good grace. Consul Pettus forwarded to Minister Denby the testimony he had taken from the boatmen, McCaslin, Pratt and a Dr. Daly, with a complaint, it may be safely assumed (the dispatch of transmittal is not archived), that his evidence represented the true facts and that the taotai had committed a miscarriage of justice.

Denby agreed. It is clear that he was convinced from the first that the American view of the case was the right one. With only McCaslin's complaint and Pettus' evidence in hand and before having heard the Chinese government's side, Denby was ready, he wrote Washington, to "most cheerfully demand the

(8) Such secret investigations were a standard component of judicial inquiry in traditional China, the object of which was simply to ascertain the full truth and to do justice. For an interesting discussion of traditional Chinese investigative techniques by a respected sinologist, see Robert H. van Gulik, trans., *Celebrated Cases of Judge Dee (Dee Goong An): An Authentic Eighteenth-Century Chinese Detective Novel* (New York: Dover, 1976), pp. x-xiii. For the administration of justice generally by local government, see T'ung-tsu Ch'ü, *Local Government in China under the Ch'ing* (Cambridge, Mass.: Harvard University Press, 1962) pp. 116-129.

payment of the *proven* damages." (Italics mine.)

Denby then argued to the Tsungli-yamen that the evidence produced by the consul "shows conclusively" that McCaslin's claim was just. To follow proper procedure, however, Denby requested a joint commission comprised of taotai and consul be formed to hear together the evidence of all relevant witnesses and to examine and cross-examine the witnesses. On the basis of the joint commission's examination, if the consul and taotai could not then come to a mutually acceptable decision, the matter could be referred to Peking for decision. In that event, both legation and Tsungli-yamen would have before them the same evidence, rather than the separate accounts as at present. Though the Tsungli-yamen offered to furnish Denby with the bridgemen's evidence, Denby did not respond; he wanted a joint commission. (9)

The Tsungli-yamen referred the mater to local authorities with the unflattering remark that Denby had "cunningly seized" upon discrepancies in the evidence, and if a joint investigation were not held, "we will be unable to bring his heart into submission." The Tsungli-yamen realized Denby would keep complaining until he finally got his way.

The Ningpo taotai, now Wu Yin-sun, went ahead and formally proposed to Consul Pettus to act together as a joint commission to hear the evidence. Even though Pettus had already been informed by Denby that the Tsungli——yamen might consent to a reopening of the case, Pettus surprisingly rejected the offer saying he could not reopen the case on his own authority.

From Pettus' report of this demarche, Denby learned for the first time that the Tsungli-yamen had indeed agreed to a rehearing - a concession, he wrote Pettus, which he felt augured well for a favorable settlement of the claim. He instructed the consul to cooperate with the taotai in a joint hearing "to make the best case you can." "With my knowledge of the Chinese character," he boasted, "I am induced to believe that you and the taotai can agree to a settlement if you willl make the necessary overtures." Denby apparently believed a favorable compromise could be reached if the consul would ask for one, and thus allow the taotai to save face by providing him (the taotai) the

(9) At this point Denby had in his hands only the testimony secured by Pettus, and the Tsungli-yamen only that secured by Hsüeh Fu-ch'eng. Several times during the course of this controversy both sides vainly offered to furnish the other side with copies of its testimony.

opportunity to appear generous.

It may be doubted whether Chinese officials were ready for facile acceptance of some face-saving formula. But in the event, Pettus made such a botch of his case the Chinese side never found it necessary to consider compromise.

Consul Pettus and Taotai Wu thus at last agreed to constitute themselves as a joint commission to rehear the case. Some little debate then ensued as to where the hearing should take place. Though tangential to the main subject of this paper, the debate nonetheless shows the astuteness of local Chinese officials. Wu argued that Article IV of the 1880 U. S. -Chinese treaty provided that when "cntroversies" arose, authorities of the defendant's nationality would try the case. (10) Clearly the taotai would therefore preside over the case, which by clear implication would be held in his yamen, or official offices. Pettus argued that the present case was not a legal suit but simply a claim for damages, and therefore the treaty article did not apply. He also claimed there was no precedent for an American to appear in a Chinese court to present his case. Wu rebutted Pettus' lame arguments. The latter finally agreed to hold the joint session in the taotai's yamen; the date was fixed at 17 May 1889.

The Joint Hearing. The two commissioners were to hear testimony and examine witnesses for the purpose of securing the true facts of the case and hopefully of arriving at a mutually acceptable decision. Facts disputed were the distance of the houseboat from the bridge when the pivot section began closing, whether the bridgemen acted from malicious intent (the closer the houseboat, the greater the presumption of maliciousness), whether the regulations and a sign directing small craft to the eastern edge of the bridge were in fact posted, the extent of McCaslin's injuries and medical substantiation of his claim for indemnification, whether or not McCaslin (and Pratt) had foolishly risked danger in trying to pass through a closing bridge.

Crucial to McCaslin's case was presentation by Consul Pettus of the foreign witnesses' testimony, especially Capt. Pratt's. Pettus particularly asked taotai Wu if he should bring his foreign witnesses to the May 17th hearing: "If you also wish that the foreign witnesses be called in again and their evidence retaken, I can have them summoned for the date decided upon." It not being within the taotai's competence to instruct the consul how he should handle

(10) China, Inspectorate General of Customs, *Treaties, Conventions, Etc. between China and Foreign States* (Miscellaneous Series, No. 30; 2 vols.; 2nd edition, Shanghai: Statistical Department of the Inspectorate General of Customs, 1917) vol. I, page 738.

his side of the case, he replied, "I beg to state you must suit yourself about the foreign witnesses." This "suit yourself" comment later became a focal point in subsequent stages of the controversy.

Wu conducted the hearing cordially and competently. He had had charts and drawings prepared to facilitate explanation of the accident. He called his witnesses. The chief bridgeman reaffirmed the testimony he had given at the police station in May the previous year: he intended no harm, he was unacquainted with the foreigners and crewmen and bore them no malice. The boatmen also gave evidence. They too reaffirmed testimony they had given earlier. They had shouted to the bridgemen to stop closing the pontoon, for it was obvious an accident might otherwise occur. The boatmen said the bridgemen were within hearing distance, but that they feigned deafness and continued swinging the pontoons closed. The taotai examined this point closely. How could the boatmen *know* a person was feigning? Wasn't it only that they supposed or imagined the bridgemen to feign deafness? One after the other, the boatmen agreed with the taotai that it was only their supposition. The taotai thus proved to his satisfaction (if not to the consul's) that Pettus' contention that the bridgemen feigned deafness rested on no factual foundation.

Now Pettus' turn came. He was unable to present the plaintiff, for McCaslin had left the area on business.(11) McCaslin had arranged for his brother to represent him, but the brother, who protested convening the hearing in Chinese court, failed to appear. As for the boatmen, Pettus did not cross-examine them, because (he told Denby) their testimony simply confirmed what they had said earlier at the police station. Nor did Pettus cross-examine the chief bridgeman. Pettus now announced to Wu that the chief bridgeman was lying, and he attempted to introduce the testimony of the foreigners previously written down at the consulate. Wu vigorously denied admission of old written testimony. It was a joint hearing at which the witnesses themselves must appear for examination and cross-examination. Nor would Wu consider going to the consulate on a subsequent day to hear the foreign witnesses in a second session of the joint hearing: the hearing had been set for this day in this place, and that Pettus had failed to bring his witnesses or even the plaintiff was his error whose consequences he must bear.

(11) He apparently had gone to Shanghai. Because he received medical attention there, he subsequently added the expense of his trip to the claim for damages.

The joint hearing thus ended. On the basis of the evidence presented, Taotai Wu ruled the bridgemen had not acted maliciously, but that McCaslin, contravening posted regulations, had acted recklessly. He found that the Chinese government, therefore, had no obligation to indemnify the victim for his injuries.

Pettus was furious at this denouement. During the following month a flurry of dispatches flew between him and Wu, in which Pettus escalated the rhetoric of Chinese culpability and Wu's duplicitous behavior. Pettus claimed he had been wilfully misled by the taotai's "suit yourself" comment, which Pettus took to mean either that the foreign witnesses' written testimony would be accepted or that a second session of the joint hearing would be held in the consulate to examine them. He also objected to Wu's questioning of the boatmen (though he had not objected at the time), which had been done in such a way as to put words in their mouths. There had also been ample opportunity, Pettus remarked to Denby, for Chinese authorities to coerce the Chinese witnesses prior to the hearing. (The similarity of the boatmen's testimony, including the very phraseology employed, does indeed suggest they may have been prompted.) Gaining no satisfaction from the taotai, Pettus alone, some three weeks after the joint hearing, again took the testimony of the foreign witnesses at the consulate. Pettus then proceeded to argue the merits of the case with Taotai Wu, claiming his evidence, particularly that of Capt. Pratt, was conclusive. He continued to insist on payment of the claim. Wu refused. Stymied, Pettus then submitted the case to Denby with the plea that justice be done McCaslin.

Taotai Wu, for his part, reported in detail to the Tsungli-yamen. He criticized Pettus' twisted logic and casuistic arguments, which he felt were inspired by a desire to please McCaslin with a view to receiving the latter's support for continued tenure of Pettus' easy consular post. Wu advised the Tsungli-yamen to be firm with Denby: "Although this a small affair, it has broad implications" and no compromise should be allowed.

What really happened at the bridge that day? My own view is that the taotai was largely correct in determining that the accident was caused because the plaintiff "contravened regulations, risked danger, coveted convenience and schemed for speed." The rule was that passage through the central pivotal pontoon section was allowed only upon payment of a toll-official ships excepted. It was nonetheless the practice for small boats to follow in the wake

of large or official craft and pass through toll free. McCaslin's houseboat tried this, doubtless not for any trifling pecuniary savings, but because it was a quicker route than going through the arched section near the east bank. Further, all accounts agree that the bridge was so crowded with pedestrians that the bridge was low in the water and the houseboat might therefore have had to dismantle its mast to make it through the vaulted section. So, Capt. Pratt understandably sought to go through the central pivot section.

I suspect Pettus too was right in asserting willfullness on the part of the bridgemen. It is easy to imagine the bridgemen were irked that the wealthy foreign devil aboard his pleasure boat was trying to sneak through the central section of the bridge without paying the toll. It seems likely (although there is nothing in the record about this) that the bridgemen received a share of the bridge tolls as a sort of supplementary nonstatutory remuneration. McCaslin's slipping through the bridge meant less change in their pockets. They would teach him a lesson this time by closing the bridge in his face. An accident might have been averted had Capt. Pratt veered away as soon as he saw the pontoon swinging shut (I suspect a certain stubbornness on his part)——although there is dispute about this possibility because of conflicting testimony, even on the Western side alone, as to his distance from the bridge. Hence, whether the bridgemen intended a malicicious accident or a harmless lesson remains an unanswerable question.

The Dispute Moves to Peking. In any event, Pettus had botched his case badly. Denby was dismayed, as he frankly told both Pettus and Secretary of State James G. Blaine. Denby found himself left "in the same difficulty from which I thought I had escaped," for despite the rehearing in joint session, each side still had separate accounts. The joint commission did not even hear medical evidence authenticating the plaintiff's injury——the very basis of his claim for indemnification. Denby told Pettus the taotai was correct in not telling him what witnesses to bring to court: "suit yourself" was an appropriate remark. Even Pettus' unilateral questioning of Capt. Pratt and Dr. Daly at the consulate was poorly handled because it merely reaffirmed earlier testimony and produced nothing new. But in any case, the taotai was not obliged to accept that *ex parte* evidence, and the reasons for the taotai's making his decision on the evidence of the bridgemen and boatmen were, Denby said, forceful. McCaslin's nonappearance led Denby to wonder whether he had not

abandoned his case because his claim was in fact bogus. "I cannot," he rebuked Pettus, "without weakening the influence of my official position, play fast and loose with the Chinese government." The implication clearly seemed to be that Denby would not pursue the case further.

Denby's reasoning here is sound. The Tsungli-yamen had already consented, as a favor to Denby, to reopen the case and allow a reexamination of the witnesses in joint session. That had occurred. Pettus bungled. Denby's appeals to the Tsungli-yamen ought now to have been exhausted, and the American side might be expected to have accepted the adverse decision with statesmanship.

Amazingly enough, however, Denby actually badgered the Tsungli-yamen to reopen the case yet again. He was apparently swayed by a lengthy and sometimes exaggerated self-defense from Pettus. Denby's new appeal to the Tsungliyamen turned on the point that the consul had been misled by the taotai's "suit yourself," even though, he had to admit, the consul had misconstrued Denby's instructions about participating in the joint commission. He protested the impropriety of the taotai's settling the dispute while refusing to consider the testimony of the foreign witnesses.

The Tsungli-yamen would have none of it. It offered cogent arguments (remarkably similar, interestingly enough, to those with which Denby had assailed Pettus) in defense of the taotai.

Denby wrote again and in a vein that must be called browbeating and casuistic. He argued both the merits of the case (according to his own *ex parte* evidence) and the procedural infelicities which had compromised justice. He argued that since this was not a suit of one individual against another individual, "the strict rules of law do not apply"——i.e., it was not necessary to follow normal procedure in presenting evidence. Further, Denby argued, Western procedure provided that cases could be reopened if they were claimed to be in error. These points were irrelevant, however, because the procedure of the defendant's nationality (Chinese) was applied in this case. Nor was there any *judicial* error involved.[12] Denby further argued that it was imma-

(12) Taotai Wu argued that Chinese and Western procedures were identical in requiring litigants and witnesses to appear in court at the time and place specified: "In adjudicating cases, it is only that the litigants wait upon the judge; the judge does not, contrariwise, wait upon the convenience of the litigants," and the case could be concluded even in the absence of one of them. Since Westerners were consistently appalled at Chinese procedure, ought not Denby have applauded in this instance the taotai's faithful adherence to a procedure identical East and West?

terial that the houseboat negligently passed through an unauthorized opening; the greater negligence and therefore the issue on which the case turned, was the bridgemen's willful intent to injure life and property. He insisted Tsungli-yamen members peruse the evidence of the foreign witnesses which would convince them that their own one-sided evidence was in error. Denby vaguely threatened that if after all this the Tsungli-yamen still refused McCaslin's claim, he would report the whole thing to Washington. He concluded with an unkind remark about America's "exceedingly liberal" indemnification of similar cases by Chinese in the United States, referring to the recent Rock Springs massacre. (13)

The Tsungli-yamen pointed out the inappropriateness of the analogy to Rock Springs. Arguing both procedurally and on the merits of the case, the Tsungli-yamen refused to alter its position.

Denby was stymied. He was apparently convinced now that Taotai Wu had cunningly misled Pettus so that the taotai could settle the case on the basis of the incomplete evidence that favored his side. He apparently sincerely felt the Chinese side was being unreasonable in not consenting to another joint commission. As his last resort, he recommended to the department in a resume of the case that McCaslin be indemnified by an appropriate deduction from any money the U.S. government might in future pay to the Chinese government to settle claims of Chinese grievants in the United States.

Denby had done a *volte-face* from the position he had earlier expressed to the consul. Yet even in his recommendation to the department, Denby still owned that Pettus got himself involved in the misunderstanding about presenting the foreign witnesses "for some reason not satisfactory to me." Withal, Denby still favored unilateral extraction of payment for damages setting aside the findings of the joint commission (even if imperfectly arrived at) and insisting on the superiority of the American witnesses' testimony. Even though it had crossed his mind that McCaslin's claim might be bogus, and even though the

(13) One need only read the dispatches from the Chinese minister in Washington to the secretary of state to realize how insensitive the U.S. Government in fact was to the numerous assaults committed against innocent Chinese, whose claims were rarely indemnified. See U.S. Department of State: "Notes from the Chinese Legation in the U.S. to the Department of State, 1868-1906," File Microcopies of Records in the National Archives: No. 98; Washington: The National Archives, 1947. For two examples, see Ch'en Lan-pin to William Evarts, 10 Nov. 80, 21 Jan. 81, and 25 Feb. 81 dealing with an outrage in Denver; and Cheng Tsao-ju to Frederick T. Frelinghuysen, 17 and 29 Oct. and 4, 5, 7, and 9 Nov. 85 dealing with an assault in Seattle.

consul had ineptly handled the case, he would take the money anyway. But deduction from some future U. S. indemnity was an uncertain conclusion. It might therefore be construed to his credit that Denby never contemplated coercive measures (gunboat diplomacy is nowhere hinted at) to compel on-the-spot compliance with his view of justice.

The department was sufficiently aroused by Denby's resume and recommendation to request the complete documentation from both Denby and Pettus. That in hand, the department concluded in two lengthy instructions that the case should not be prejudiced by the nonappearance of the foreign witnesses, because Pettus' failure to present them was entirely the fault of the taotai's misleading "suit yourself." The department also reasoned, cogently enough, that no joint investigation such as the Tsungli-yamen had agreed to and as local officials had been instructed to carry out, had in any practical sense of the word taken place. Furthermore, based on evidence from the plaintiff's side, it seemed to the department that Wu's decision was unfair. Thus the department instructed Denby vigorously to reopen the case. (14)

Denby attempted to comply, but the Tsungli-yamen stood its ground. It was now late 1890, two and one-half years after the event, when memories of distances and speeds must have been dimming. Reopening the case at such a late date might not have served justice any better than the earlier hearings. Quite aside from this consideration the Tsungli-yamen pointed out to Denby that Denby himself only shortly before had denied a Tsungli-yamen request to reopen a case dealing with Russell & Company on grounds the decision in the case had long since been made. Far from being embarrassed at this inconsistency, Denby scoffed at the Tsungli-yamen argument as merely showing "the proverbial ingenuity of the Chinese diplomatist."(15) The cases were different, to be sure, in that the McCaslin judgment had been protested from the beginning, whereas the judgment in the Russell case had stood some months before a protest was filed. But still, Denby was drawing a fine distinction here which must have seemed to the Tsungli-yamen like an exercise in pettyfoggery. Indeed, Denby quite admitted "the Chinese do not understand these nice legal

(14) Blaine to Denby, #510, 24 March 90 and Blaine to Denby, #517, 18 Apr. 90, both in U.S. Department of State, "Diplomatic Instructions of the Department of State, 1801-1906: China;" File Microcopies of Records in the National Archives: No. 77; Washington: The National Archives, 1946. Hereafter cited as "Diplomatic Instructions."

(15) Denby to Blaine, #1212, 13 Dec. 90 "Despatches."

distinctions."[16]

Denby's nice legal distinction applied in the Russell case favored the American side. The legal arguments the Chinese side advanced justifying the decision in the McCaslin case favored the Chinese side. Denby rejected the latter arguments out of what we might say was his notion of fair play. By what constant principle, then, were disputes between Chinese and Americans to be adjudicated? The answer would seem to be not so much abstract justice as American interests admixed with a warped concept of personal loyalty to one's subordinates. A remark in his final dispatch in the case confirms this judgment of Denby the diplomat. "I was anxious," he explained to Secretary Blaine, "to vindicate Mr. Pettus, who not being a trained lawyer by profession, did the best he could."[17]

In the end, the state department approved Denby's recommendation that a deduction be made from some future indemnity the United States might owe China, and thereby compensate McCaslin. (There is no record that McCaslin was in fact ever compensated.) This decision spelled a defeat for China. The defeat, however, was not of Chinese diplomacy, for the state department's unilateral decision removed the issue from the sphere of diplomacy, and China had no viable nondiplomatic recourse to cause a reversal of Washington's decision.

Conclusion. Pettus was a bungler. He was bested at every turn by Chinese officials. He was a typical product of the U.S. consular corps, especially as it revealed itself in China. Consuls were regularly called upon to perform legal functions, for example, for which they rarely had training. Although the low quality of the consular service had long been widely recognized, it was not until 1906 that a merit system based on objective examination was introduced into the mechanism of personnel selection and advancement.[18]

Denby may have been a good deal more intelligent and capable than the consul, but even so, he was inconsistent, casuistic, bullyish, and a bad loser. Denby was typical of our overbearing, petty-minded diplomatic representatives

(16) *Ibid.*, with enclosure.

(17) Denby to Blaine, #1212, 13 Dec. 90, "Despatches." Blaine to Denby, #590, 14 Feb. 91 "Diplomatic Instructions."

(18) Dennett, *Americans in Eastern Asia*, pp. 669-72; Te-kong Tong, *United States Diplomacy in China, 1844-60* (Seattle: University of Washington Press, 1964), pp. 30-5, 63-4; Warren Frederick Ilchman, *Professional Diplomacy in the United States, 1779-1939: a Study in Administrative History* (Chicago: University of Chicago Press, 1961), p. 94.

in China. Tyler Dennett's flattering comments of their character demand qualification. (19)

Taotais as a class were probably more intelligent, more rigorously educated, more refined, and more capable than the average American consular officer. They were the successful product of a long established, highly competitive civil service examination system. (20) Like consuls, taotais too were rarely trained in law, though they probably had legal aides on their staffs. Hsüeh Fu-ch'eng, the early taotai in this case, became one of late Ch'ing China's most distinguished westernizing statesmen who served as Chinese plenipotentiary in several European capitals. (21) His successor, Wu Yin-sun, though unknown to historians, certainly demonstrated his superior ability.

If consuls in China reflected the American administrative system in its worst light, Chinese foreign affairs officials may have represented a highlight of Ch'ing officialdom. By design, they seem to have been a cut or two above the majority of Chinese officials. The intelligence and vigor with which these foreign affairs officials pursued Chinese interests in disputes with foreigners, so well illustrated in this case, suggest that late Ch'ing local administration——or certainly that component of it charged with handling the foreigner——was not so moribund as normally supposed. (22)

The McCaslin case is representative of the dozens I have come across in the record of the post-Burlingame era to the end of the century indicating that the commonly accepted views of an inept Chinese government and a moralistic American China policy are inaccurate. America's generally consistent repudiation of gunboat diplomacy has fostered the notion of a nonbelligerent, and therefore beneficient, role in China. (23) The self-righteous insistence displayed

(19) Dennett, *Americans in Eastern Asia*, pp. 672-3.

(20) The Chinese civil service examination system is described in Chung-li Chang, *The Chinese Gentry: Studies on their Role in Nineteenth-Century Chinese Society* (Seattle: University of Washington Press, 1955), pp. 10-27. During the nineteenth century, however, the system began to break down; see *ibid.*, p. 203-9. See also John R. Watt: *The District Magistrate in Late Imperial China* (New York: Columbia University Press, 1972) pp. 23-32.

(21) Arthur Hummel, *Eminent Chinese of the Ch'ing Period* (1943-4; reprint ed., Taipei: Literature House, 1964), pp. 331-2.

(22) Kung-chuan Hsiao, *Rural China: Imperial Control in the Nineteenth Century* (Seattle: University of Washington Press, 1960) pp. 9-10, 503; and Mary Wright, *The Last Stand of Chinese Conservatism: The T'ung-Chih Restoration, 1862-1874* (Stanford: Stanford University Press, 1962), pp. 146-7. Both emphasize the deterioration of the late Ch'ing local administration.

(23) See John King Fairbank, "'American China Policy' to 1898: A Misconception," (*Pacific Historical Review*, Vol. 39, No. 4, November, 1970), pp. 409-420 for an insightful elaboration of this theme.

by all levels of American foreign relations personnel, however, reveal a decidedly unflattering side of American diplomacy in China.

Tsungli-yamen officials were not pusillanimous, as is often charged, but, like local foreign affairs officials, were insistent and vigorous in upholding Chinese rights when they had a sound case. Relying on Taotai Wu's arguments and often his very phraseology, the Tsungli-yamen (in this writer's opinion) had the upper hand with Denby, who had to make excuses for his consul's behavior.

The high point of nineteenth-century Chinese administration is generally considered to be the T'ung-chih Restoration of the 1860's,[24] after which general administrative decline ensued until the staging of a remarkable eleventh-hour reform attempt in the first decade of the twentieth century.[25] My reading of the record of the intervening thirty years, however, suggests that the eleventh-hour reform did not take place in a near historical vacuum, as some scholars would lead us to believe, but was the culmination of that continuum of Chinese administrative energy one point on which is the McCaslin case.

(24) This is a theme of Mary Wright's work, *The Last Stand of Chinese Conservatism.* See also, Philip A. Kuhn, *Rebellion and Its Enemies in Late Imperial China* (Cambridge, Mass.: Harvard University Press, 1970), pp. 6-8.

(25) See Mary Wright, ed., *China in Revolution: The First Phase 1900-1913* (New Haven: Yale University Press, 1968), particularly her introductory essay, pp. 1-63.