

Treatment of Japanese in California.
 Encls. 59-60 New York, N.Y.
 Nov. 20, 1906.
 John I. McCook.
 Encloses a letter written by
 Col. Horace N. Fisher, of Boston,
 relative to the rights of the Ja-
 panese school children in San Fran-
 cisco.
 P.B.D. (Rec'd Nov. 26, 1906.)

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Col. John I. McCook,
 120 Broadway, New York.

256 Walnut St. Brooklyn, Mass.
 Monday Evg. Nov. 5, 1906.

My dear Colonel:-

Failing to reach you by telephone last Friday, I will now tell you the object I had in view, namely: to say that, after a critical examination of our Treaty of 1894 with Japan, I had prepared a memorandum on the "Treaty Rights of Japanese School-children" in San Francisco, which will be published in the Boston Transcript after tomorrow's election leaves room for the public consideration of other than State Elections (Hearstism & Mercurism).

Whoever drew that Treaty made a jumble of the treaty-status of the citizens ^{either of} the Contracting powers within the territory of the other; in that such citizens were granted "National Treatment" (the rights of native citizens) "in all matters connected with the administration of justice", - while in "in all matters relating to rights of residence, ^{and travel} * * they shall enjoy, in the territories of the other, the same privileges, liberties and rights * * (as) "native citizens or subjects, or the citizens or subjects of the most favored nation", - that is to say "National Treatment", or "The Treatment of the most favored nation".

As these two kinds of "Treatment" are by no means either reciprocal or synonymous, the description implies an alternative choice - but by which party? By the rules of legal construction that choice would apparently rest in the beneficiary and therefore the Japanese would have the right of demanding the Treatment of the most favored nation in ^{whatever relates} ~~all matters~~ to residence and travel. In as much as citizens of European countries residing in the United States have the right of ^{their children} attending our public Schools on the same footing as our native children - without discrimination for nationality,

it would seem that the Japanese Citizens here are warranted in claiming that the San Francisco Board of Education, in excluding Japanese school children from the regular public schools & restricting them to the separate schools established for "Indian Children and for Children of Mongolian or Chinese descent,"— has debarred their children from privileges, liberties and rights assured to them by the Treaty of 1894 with Japan; and that such discrimination is an international wrong to be redressed by the United States at the earliest practical moment.

As to the San Francisco Board of Education, it was bound to obey the School Laws of California and was without authority to decide upon their constitutional authority & validity: and the exclusion of Indian & Mongolian Children from the regular public schools, where ever separate schools had been established for them, was made obligatory on the School Board by the California School Code above quoted.

Therefore the final decision of this claim must be made by the competent Courts of California or of the United States — more properly by ^{the initiative of} the U.S. district Attorney in a U.S. Court, in view of the fact that the United States Govt., as the guarantor of such Treaty Rights, should take prompt measures to assure their free exercise, so much for the two sides of the question. But there are other sides as well.

The treaty grants rights ~~to~~ "full liberty to enter, trade or reside" in any part of the territories of the other contracting party. Does ~~not~~ this open up to the Japanese the colonial dependencies of the United States, such as Porto Rico, Panama Canal zone, Hawaii + the Philippines? If so, the decision of the Courts will affect the rights of the Japanese in such Colonial dependencies as much as in California or other States of the Union.

Remembering that the Japanese Statesmen are thorough Orientals with a veneer of Western civilization and noted for astuteness and farsightedness, the question naturally arises whether they are not pressing this claim of Japanese School Children as an opening to the broader question as to their right to colonize Hawaii & the Philippines; and to obtain a judicial decision which will shut off anything savouring of Japanese Exclusion from our Colonial dependencies.

There is still another phase of practical importance, namely: the antipathy of Californians to Asiatic laborers, which led to the Chinese Exclusion legislation by Congress and the California Legislature's School act above referred to. The real core of this antipathy is the labor question as politically manipulated by the labor unions, which practically control the election of Governor & Legislature, Judges and Municipal officers. I here let me say that, according to numerous prominent men from Arizona whom I met at Los Angeles last February, the real reason why Arizona refused to enter the Union combined with New Mexico as a state, was that they preferred to remain a Territory of the United States with active and a Judiciary independent of labor Unionism control & dictation.

If then the U.S. Courts should declare the California School Act
in so far as it excludes Japanese children from the public Sch.
Constitutional and void, the California Legislature would have to s.
and Labor Unionism & Nearsism would receive a set-back in Cal.
greatly for the purification of the political life of the Pacific & Mountain
States (Idaho, Montana, Colorado & Nevada), where labor unions vie with m.
for the control of State & Municipal politics. Indeed, the possibilities of utility
this Japanese case in our international and ^{internal} state relations seem very broad.

Yours truly, Horace N. Fisher,