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# The Treaty With China, its Provisions Explained



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# Содержание

By Mark Twain	5
ARTICLE I	6
ARTICLE 2	8
Конец ознакомительного фрагмента.	10

# **The Treaty With China, its Provisions Explained / New York Tribune, Tuesday, August 28, 1868**

**By Mark Twain**

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Every one has read the treaty which has just been concluded between the United States and China. Everyone has read it, but in it there are expressions which not every one understands. There are clauses which seem vague, other clauses which seem almost unnecessary, and still others which bear the flavor of “surplusage,” to speak in legal phrase. The most careful reading of the document will leave these impressions – that is, unless one comprehends the past and present condition of foreign intercourse with China – in which case it will be seen at once that there is no word in the treaty without a meaning, and no clause in it but was dictated by a present need or a wise policy looking to the future. It will interest many of your readers to know why this, that, and the other provision was incorporated in the treaty; it will interest others to know in what manner and to what extent the treaty will affect our existing relations with China. Apart from its grave importance, the subject is really as entertaining as any I know of and – asking pardon for the presumption – I desire to write a few paragraphs upon it. We made a treaty with China in 1858; Mr. Burlingame’s new treaty is an addition to that one, and an amplification of its powers. The first article of this new treaty reads as follows:

## ARTICLE I

His Majesty, the Emperor of China, being of the opinion that in making concessions to the citizens or subjects of foreign Powers of the privilege of residing on certain tracts of land, or resorting to certain waters of that Empire for the purposes of trade, he has by no means relinquished his right of eminent domain or dominion over the said land and waters, hereby agrees that no such concession or grant shall be construed to give to any Power or party which may be at war with or hostile to the United States the right to attack the citizens of the United States or their property within the said lands or waters; and the United States, for themselves, hereby agree to abstain from offensively attacking the citizens or subjects of any Power or party or their property with which they may be at war on any such tract of land or waters of the said Empire; but nothing in this article shall be construed to prevent the United States from resisting an attack by any hostile Power or party upon their citizens or their property. It is further agreed that if any right or interest in any tract of land in China has been or shall hereafter be granted by the Government of China to the United States or their citizens for purposes of trade or commerce, that grant shall in no event be construed to divest the Chinese authorities of their right of jurisdiction over persons and property within said tract of land, except so far as that right may have been expressly relinquished by treaty.

In or near one or two of the cities of China the Emperor has set apart certain tracts of land for occupation by foreigners. The foreigners residing upon these tracts create courts of justice, organize police forces, and govern themselves by laws of their own framing. They levy and collect taxes, they pave their streets, they light them with gas. These communities, through liberality of China, are so independent and so unshackled that they have all the seeming of colonies – insomuch that the jurisdiction of China over them was in time lost sight of and disregarded – at least, questioned. The English communities came to be looked upon as a part of England, and the American colonies as part of America; and so, after the Trent affair, it was seriously held by many that the Confederate ships of war would be as justifiable in making attacks upon the American communities in China as they would be in attacking New York or Boston. This doctrine was really held, notwithstanding the supremacy of China over these tracts of land was recognized at regular intervals in the most substantial way, viz., by way of payment to the Government of a stipulated rental. Again, these foreign communities took it upon themselves to levy taxes upon Chinamen residing upon their so-called “concessions,” and enforce their collection. Perhaps those Chinamen were as well governed as they have been anywhere in China, perhaps it was entirely just that they should pay for good government – but the principle was wrong; it was an encroachment upon the rights of the crown, and caused the Government uneasiness; the boundary thus passed there was no telling how far the encroachment might be pushed. The municipal council which taxed these Chinamen was composed altogether of foreigners, so there was taxation without representation – a policy which we fought seven years to overthrow. The French have persistently claimed the right to exercise untrammelled jurisdiction over both natives and foreigners residing within their “concessions,” but the present Minister, Monsieur Moustier, has yielded this position in favor of the anti-concession doctrine, and thus have ignored the “eminent dominion” of the Chinese Government. Under Article 1 of the new treaty, the question of whether an enemy of America can attack an American colony in China is answered in the negative. Under it the right of the Chinese Government to regulate the governing, taxing, and trying of its subjects resident within American “concessions” is recognized – in a word, its supreme control over its own people is recognized. Also (in the final sentence) its control over scattering foreigners (of

nationalities not in treaty relations with China) not enrolled the regular concessions is “granted.” During a war between Russia and Denmark, a Prussian man-of-war captured two Danish vessels lying at harbor in a Chinese harbor or roadstead, and carried them off. Article 1 of this treaty pledges that like offenses shall not be committed in Chinese waters by American cruisers, and looks to Chinese protection of American ships against such outrages.

## ARTICLE 2

The United States of America and His Majesty the Emperor of China, believing that the safety and prosperity of commerce will thereby best be promoted, agree that any privilege or immunity in respect to trade or navigation within the Chinese dominions which may not have been stipulated for by treaty, shall be subject to the discretion of the Chinese Government, and may be regulated by it accordingly, but not in a manner or spirit incompatible with the treaty stipulations of the parties.

At a first glance, this clause would seem unnecessary – unnecessary because the granting of any privilege not stipulated in a treaty with China, must of course be a matter entirely subject to the pleasure of the Chinese Government. Yet the clause has its significance. There is in China a class of foreigners who demand privileges, concessions and immunities, instead of asking for them – a class who look upon the Chinese as degraded barbarians, and not entitled to charity – as helpless, and therefore to be trodden underfoot – a tyrannical class who say openly that the Chinese should be forced to do thus and so; that foreigners know what is best for them, better than they do themselves, and therefore it would be but a Christian kindness to take them by the throat and compel them to see their real interests as the enlightened foreigners see them. These people harass and distress the Government by constantly dictating to it and meddling with its affairs. They beget and keep alive a “distrust” of foreigners among the Chinese people. It will surprise many among us to know that the Chinese are eminently hospitable, by nature, toward strangers. It will surprise many whose notion of Chinamen is that they are a race who formerly manifested their interest in shipwrecked strangers by exhibiting them in iron cages in public, in a half-starved condition, as rare and curious monsters, to know that a few hundred years ago they welcomed adventurous Jesuit priests, who struggled to their shores, with great cordiality, and gave to them the fullest liberty in the dissemination of their doctrines. I have seen at St. Peter’s, in Rome, a picture of certain restive Chinamen barbecuing some 80 Romish priests. This was an uncalled for stretch of hospitality – if it be proposed to call it hospitality at all. But the caging and barbecuing of strangers were disagreeable attentions which were secured to those strangers by their predecessors. As I have said, the Chinese were exceedingly hospitable and kind toward the first foreigners who came among them, 200 or 300 years ago. They listened to their preachings, they joined their Church. They saw the doctrines of Christianity spreading far and wide over the land, yet nobody murmured against these things. The Jesuit priests were elevated to high offices in the Government. China’s confidence in the foreigners was not betrayed. In time, had the Jesuits been let alone, they would have completely Christianized China, no doubt; that is, they would have made of the Chinese, Christians according to their moral, physical, and intellectual strength, and then given Nature a few generations in which to shed the Pagan skin, and sap the Pagan blood, and so perfect the work. For, be it known, one Jesuit missionary is equal to an army of any other denomination where there is actual work to be done, and solid, unsentimental wisdom to be exercised. However, to pursue my narrative, some priests of the Dominican order arrived, and very shortly began to make trouble. They began to cramp the privileges of converts; they flouted the system of persuasion of the Jesuits, and adopted that of driving; they meddled in politics, they became arrogant and dictatorial, they fomented discords everywhere – in a word, they utterly destroyed Chinese confidence in foreigners, and raised up Chinese hatred and distrust against them. For these things they were driven out of the country. When strangers came, after that, the Chinese, with that calm wisdom which comes only through bitter experience, caged them, or hanged them. I spoke, a while ago, of a domineering, hectoring class of foreigners in China who are always interfering with the Government’s business, and thus keeping alive the distrust and dislike engendered by their kindred spirits, the Dominicans, an age ago. They clog progress. Article 2 of the treaty is intended to discountenance all officious intermeddling with



the Government's business by Americans, and so move a step toward the restoration of that Chinese confidence in strangers which was annihilated so long ago.

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