

## CHAPTER IX

### SHANGHAI

We have examined the background of the situation at Peking, where fifteen years of effort to establish a strong central government by military force have proved utterly futile and vicious. We have critically studied the government of Kwangtung, an outstanding example of what the Chinese can accomplish when they decide to approach the problem of regeneration from a local rather than a national standpoint. Logically, the next step in gaining a reasonable conception of Chinese problems is to journey 850 miles up the China coast from Canton to Shanghai, where foreign resistance to native grievances is concentrated and crystallized.

My own first visit to Shanghai was by way of the broad Yangtze River from the interior. Much more than if arrival is by sea, one obtains in this manner a correct impression of the difference between Shanghai and China proper. The enormous volume of foreign shipping in the harbor, the majestic office buildings, banks, and clubs along the Bund, the Occidental nature of the foreign concessions with their three miles of river frontage and 8,100 acres of area—all combine to show what foreign enterprise can do in China when a free hand is given, or assumed.

In harmonizing with the life of the country in which it is situated, Shanghai is no more Chinese than Chinatown in San Francisco is American. Nor is the difference merely one of material surroundings. The 5,879 British

and 1,942 Americans listed in Shanghai by the 1925 census live for the most part completely isolated mental lives. There are hundreds of these expatriates who would not think of having any social relations with Chinese, who have lived in Shanghai from five to twenty years without attempting to learn the language, who never set foot within the encircling Chinese cities, with their population of some three million people of the yellow race. Yet in spite of his incredible isolation from and ignorance of the vital currents in Chinese life, the average white resident of the Shanghai concessions considers himself an authority on China and the Chinese and most bitterly resents any opinion favoring Chinese aspirations from, say, mission workers who have spent their lives in acquiring understanding of the real China. The situation is made worse by the fact that many of the Anglo-Saxons in Shanghai are men who would never have forged ahead at home, and who exhibit their "inferiority complex" by the most brazen insults and affronts to natives of the country which provides them with handsome livings.

There are other causes than the effrontery prevalent among Shanghai whites, and the pronounced dissipation and mental shallowness of foreign life there, which have made the city, despite its modern sanitation system, as much a plague spot as any cholera-infected native district. If we summarize, step by step, the political aggression in China which Shanghai has for three-quarters of a century taken into its own hands, we will come to realize that the fatal outbreak there on May 30, 1925, was an entirely natural occurrence.

In 1842 the Treaty of Nanking, following the so-called "Opium War" between Great Britain and China, forced the Manchu government to recognize that "British subjects shall be allowed to reside for the purpose of carrying on their mercantile pursuits, without violation or

restraint," at Canton, Amoy, Fuchow, Ningpo, and Shanghai. The same agreement gave the British government the right to appoint consular officers "to be the medium of communication between the Chinese authorities and the said merchants." Two years later the United States inaugurated our fairly consistent policy of getting as much out of China as Great Britain, while letting that nation bear the onus for methods employed. Caleb Cushing was sent by President Tyler as Minister to China with a letter to the Emperor which is a classic of American diplomatic literature. It began: "I hope your health is good. China is a great empire, extending over a great part of the world. The Chinese are numerous. You have millions and millions of subjects. The twenty-six United States are as large as China, though our people are not as numerous."<sup>1</sup> This schoolboy note is still a source of somewhat bitter amusement to the Chinese, but it obtained its end. In 1844, the United States, followed by France and other European nations, obtained treaty rights similar to the British and began concerted development of Shanghai, the most central and commercially promising of the Treaty Ports. In 1863, the British and American concessions were amalgamated, forming the basis for the present International Settlement, from which only France, with her separate large concession in Shanghai, has held aloof.

From these small and temperate beginnings, extorted from a justifiably dubious Peking government at the cannon's mouth, has developed the present anomalous situation, more pronounced than that at any other Treaty Port. For Shanghai, though nominally still Chinese territory, is in fact today a completely self-governing foreign community, resolutely opposed to giving

<sup>1</sup> Quoted by DR. H. H. GOWEN, in "Asia, A Short History." Dr. Gowen notes that "the letter has been attributed to Daniel Webster."

native leaders even a share of control, unless forced to do so, and with an attitude towards the diplomatic corps in Peking almost as contemptuous as that shown towards the Republic of China.

The steps by which Shanghai has been made into a virtual "Free City," unsupervised by the League of Nations or any other body outside its confines, have been taken gradually. It must also be said that these steps have been coincident with a material development which is truly remarkable when one visualizes what a few thousand foreigners have brought about in three-quarters of a century. As early as 1854 a municipal council was established by the white residents, without consulting Peking on whether the treaty rights made such a step legal, and eight years later was broached the first project for the complete independence of Shanghai, under the joint protection of Great Britain, the United States, France, and Russia. The diplomatic authorities vetoed the idea. But two succeeding generations of foreign business men, a fair number of them descendants of the original settlers, have now achieved much of the objective in everything but legal sanction.

In space available, the way it has been done can be chronicled only in summary form.<sup>1</sup> That controversial judicial body, the Shanghai Mixed Court, was launched in 1864. In 1869 the municipal government was strengthened by new regulations, and Chinese were excluded from participation therein. This step was presented to the Chinese government as a *fait accompli*, providing a useful precedent for further encroachments.

In 1881 further revision of the original "Land Regulations" gave the municipal council power to compel the

<sup>1</sup>The whole story is related in A. M. KOTENEV's excellent work on "Shanghai, Its Mixed Court and Municipal Council," the chief defect of which is its special pleading in behalf of foreign encroachments.

surrender of land for road construction, conferred on the police arbitrary authority in the matter of arrest and search without warrant, and organized the famous Shanghai Volunteer Corps, a formidable little army with a present strength of about 1,700 men. Two years after these regulations were adopted, they were, as a sort of afterthought, submitted to the diplomatic corps at Peking for approval. That plastic body, seeing how far the Shanghai municipal council was departing from the letter and spirit of the treaties, stiffened its attitude and forced modifications reasserting consular authority to some extent.

But foreign Shanghai generally knows how to make its will effective over the doubts of the legations. Measure after measure was quietly adopted tending to give the city the status of *de facto* independence. In 1900 it was settled that no Chinese soldier bearing arms, even as a military escort to Peking officials, could enter the International Settlement. Since then the right of expelling any Chinese viewed as undesirable has been successfully asserted, and the viewpoint that natives are only allowed in the city on sufferance constantly reiterated. Sometime, perhaps, the Chinese residents of Shanghai will take this attitude at face value, and march out of the International Settlement in a body. If they do, grass will be growing over deserted docks and streets within six months. Berate them as they will, the foreign residents of Shanghai are absolutely dependent on Chinese help for the success of every one of their activities. In spite of that, the Chinese are taxed without being allowed representation on the council, and are excluded from the parks and playgrounds which they help to support. There is even a ruling that no measure taken by the local Chinese authorities with respect to their countrymen shall be valid in the International Settlement without approval by the foreign council.

On one point only has the Chinese government been able partially to check the steady encroachments of what is not altogether jocularly called the "Shanghai Free State." Since the boundaries of the International Settlement were last extended in 1898, all efforts to increase the area of this virtual republic have been denied by Peking. From 1900 to 1925, moreover, the foreign population in Shanghai has increased from 6,774 to 29,947, while the Chinese inhabitants, exclusive of the Chinese city, have gone up in the same period from 345,276 to 1,099,540. This ratio of thirty-six Chinese to one foreigner explains much of the nervous attitude underlying, and doubtless helping to cause, the attitude of white superiority in Shanghai now. Moreover, 13,804 Japanese and 1,154 East Indians together constitute half of the total foreign population. The increase in numbers of Japanese in Shanghai has been pronounced. A quarter-century ago the Japanese residents were one-quarter as numerous as the British. Now they outnumber the British more than two to one.

The Chinese check to the expansion of territory ruled by the Shanghai municipal council is not, however, entirely successful. Month by month, year by year, the council acquires title to more and more land in unbuilt sections outside the concession boundaries. Then come well-paved streets and roads, then come foreign houses and foreign residents, then comes an incorporation into the International Settlement in all but name. Thus arises another cause for future controversy, where in case of trouble the Chinese can say the foreigners have no right where they have built, while the latter retort that their investment creates a right.

The story of the Shanghai Mixed Court, the present status of which is one of the issues like a powder mine in China now, is one which richly deserves attention. In its evolution to a condition of complete foreign

control is found further evidence of the steady tendency to detach Shanghai from all trace of Chinese sovereignty, against which the patriots of that country are quite naturally and properly in rebellion.

Originally all foreign offenders within the confines of the concessions at Shanghai were brought before their respective consuls as part of the system of extraterritoriality. In the case of Chinese lawbreakers those arrested in the settlement were sent to the nearest Chinese magistrates for trial and punishment. The enormous growth in the Chinese population of the concessions by influx of refugees during the Taiping Rebellion rendered this arrangement unsatisfactory. But in 1863 an agreement between the American Consul at Shanghai (G. E. Seward) and the Imperial Representative said plainly: "The right of jurisdiction of the Chinese authorities over their subjects resident within the Settlement (American) is acknowledged to be indefeasible, but no arrests may be made except on warrants stamped by the municipal authority (American Consul)."

The difficulty of handling criminals, particularly sailors, from nations without consular representation in Shanghai led to a request, after amalgamation of the British and American concessions, that the municipal council be given authority to deal with such offenders. This was readily granted by the Chinese officials. But, as so frequently in China's relations with foreign powers, a conciliatory attitude merely opened the way for further encroachment. In this case it was a plan for establishing a municipal police court in the settlement with power to deal with Chinese offenders. Thus was the present status of the Mixed Court foreshadowed a full half-century ago.

At the time, however, Shanghai did not dare to be as dictatorial to the diplomatic corps in Peking as it is today, and after long debate the local foreigners revised

their plan. The new suggestion was a Chinese court in the International Settlement with the foreign consuls holding a watching brief, as legal assessors, in all cases between native litigants which could be interpreted as involving foreign interests. The establishment of this court is particularly noteworthy for three things: it went beyond the system of extraterritorial jurisdiction to inject foreign supervision into a distinctively Chinese court trying only Chinese defendants; it was created at a time when the United States government was deeply absorbed in the Civil War at home; and there is scarcely any evidence available of the negotiations whereby Sir Harry Parkes, then British Consul at Shanghai, obtained Chinese permission for this far-reaching step. It is certain, moreover, that from the beginning the first British assessor, Chaloner Alabaster, interpreted his position as one approaching at least equal judicial authority with the Chinese magistrates. There is a note of pathetic bewilderment in the report to Peking of the Shanghai Imperial Representative in November, 1865. "Now," he wrote, "all Chinese are sentenced by the foreign official to hard labor and the circumstances of the cases are never reported to the city magistrates."

As the Chinese awoke to what was going on, a partially successful effort was made to restrict the power of the assessors to a watching brief in behalf of foreign interests. It will sound strange to ears accustomed to tales of the brutality of Chinese justice that other early changes in the procedure of the Mixed Court were due to native protests against the severity of sentences readily agreed to by the foreign assessors. This tendency to assert Chinese authority, perhaps coupled with the re-entry of America into the Far Eastern diplomatic field after the Civil War, helped to prevent further foreign usurpation of the Mixed Court during ensuing years. Meanwhile there were many improvements in detail and



equipment. Better premises were built, modern prisons were erected, and beyond question an administration of justice much better by western standards than anything of native origin was gradually evolved. In all the proceedings of the court Chinese and not foreign law was and is followed, to which Chinese now point as evidence that their system is not so incomprehensible to foreign minds as is frequently asserted.

A seemingly minor point which has aroused much bitterness among the Chinese was the decision, taken in 1905, to employ Sikh constables in the Mixed Court. All told, there are now nearly five hundred of these huge, bearded, savage-looking Indian police in the International Settlement, and to see them patrolling the streets with rifles slung in readiness is to realize how little Chinese good-will has to do with the continuation of foreign domination. The continued employment of these Indians after it was discovered that they dislike the Chinese and have, in the past, been easily able to intimidate them is an example of the veiled terrorization on which most of the white residents of Shanghai rely to maintain their political and economic power.

The revolution of 1911 gave Shanghai its quickly seized opportunity to secure absolute control of the Mixed Court. In that year, taking advantage of the absconding of two of the Chinese magistrates with funds deposited by litigants, and of the generally chaotic conditions, the consular body took control of the court, and has retained it to the present time. In doing so, three vital innovations were made: (1) The Mixed Court was completely separated from the Chinese judicial system, the magistrates of that race now being appointed by the consular officers. (2) Foreign assessors, as had originally been attempted, were introduced for purely Chinese civil suits, when there is a native defendant and a native plaintiff, and when foreign interests are in no

way involved. At the same time the assessors completely dropped the pretense of being in any way subordinate to the native magistrate, assuming the authority to pass sentence themselves on Chinese offenders. (3) A municipal foreign officer, the registrar, was appointed to take charge of all court receipts.

Since 1911, corporal punishment has been reinstated by the Mixed Court, the Chinese effort to establish a court of appeal from its decisions has been denied, and jurisdiction has been extended both to roads and to the rivers outside the foreign settlement boundaries. Whether or not there is any truth in the very serious accusation that some of the foreign assessors have frequently accepted bribes from Chinese litigants, I do not know. There is strong circumstantial evidence behind the charge, and an American assessor answered my question on this point enigmatically by saying that "the atmosphere is favorable to it." Personal observation of both criminal and civil cases in trial before the Mixed Court gives the impression that the general procedure is clean, efficient, and fair. But the real issue about the Mixed Court is not whether its procedure is good or bad, but whether its seizure by the Treaty Powers has any moral or legal justification.

The answer to that question is easy. The usurpation of the Mixed Court is a clear and brazen encroachment on Chinese sovereignty by the foreign community of Shanghai which all the Treaty Powers, the United States as much as any, have condoned and abetted. As Professor W. W. Willoughby has said: <sup>1</sup>

Since 1911 the Mixed Court, at Shanghai, has been absolutely controlled by the Treaty Powers. The assumption of this control was justified by no treaty right and the Chinese authorities have repeatedly, but vainly, urged that this control be surrendered.

<sup>1</sup>In a paper on "Extraterritoriality in China," read at the Conference on American Relations with China, at Baltimore, September 17-20, 1925.

The history of Shanghai is worth careful study. Much more than any Russian propaganda it has been responsible for the growth of anti-foreign, particularly anti-British, sentiment in China. To the average white man in Shanghai the success of his aggression is a subject to be joked about between drinks. To the Chinese it is a lesson, already more than half learned, that those who tear up treaties to rule by force can best understand the same methods in retaliation.

Under the circumstances, no development of foreign policy in China is of greater basic importance than the agreement reached in July, 1926, between the consular body and delegates of Marshal Sun Chuan-fang (the local generalissimo) to arrange early rendition of the Mixed Court to Chinese control. This agreement, vehemently denounced by foreign lawyers who make their living practicing before the court, awaits approval of the diplomatic body in Peking at the time of writing. It is none the less an encouraging indication that the foreign population of Shanghai is not to be allowed to carry aggressive tactics to the stage where reprisals by the Chinese become inevitable.