Chapter XI

WHAT CHINA DEMANDS

It is a seeming paradox, much harped upon by foreigners in China, that native insistence on the abolition of one-sided foreign privilege in that country should have increased *pari passu* with accumulating indication that the Chinese are unable to form a stable national government. There is that degree of half-truth in the criticism which makes further examination imperative if the justice of the Chinese claims is to be fairly assayed.

In the first place it is a very natural human characteristic, by no means limited to Chinese, to be most sensitive about personal dignity when circumstance has placed one in an undignified position. In China this attitude, known as "saving face," is carried to lengths which to us often seem extreme. The Reverend Arthur Smith, in his charming book on "Chinese Characteristics," notes many instances of the peculiarity. It was first brought home to me by my ricksha boy in Peking, who without understanding an address given to him in English would continually dash off in the first direction that came to his mind rather than admit that he did not comprehend. "Face-saving" undoubtedly accounts for some of the Chinese sensitiveness at this period of disintegration. Incidentally, did not Poland insist on having a permanent seat on the Council of the League of Nations just before Pilsudski's revolution showed her incapable of solving domestic problems by constitutional means?

But the actual, convincing logic behind the essential Chinese demands is so strong that the influence of half-amusing, half-irritating racial characteristics may fairly be ignored entirely. Stripped of non-essential claims, put forward for the bargaining purposes so deeply rooted in all international diplomacy, China lays claim to just three reformations in the policy of the powers on her soil. Those three demands are: (1) rectification of the situation in Shanghai; (2) tariff autonomy; (3) abolition of foreign extraterritorial privileges so far as they interfere with the "fundamental principle of public law, recognized by all modern civilized States, that every sovereign political body has the exclusive right to exercise political jurisdiction within its own territories."[1] Whether or not the Chinese problem is to become increasingly more dangerous from the foreign viewpoint depends primarily on whether or not the justice of the Chinese claims in these three points of controversy is adequately apprehended abroad. Let us consider them *seriatim*, sticking to fundamentals and avoiding the mist of extraneous matter with which the issues are frequently befogged.

On the first point, the local situation in Shanghai, little need be added to what has been said in Chapter IX. The barefaced and totally illegal assumption of foreign control over the Shanghai Mixed Court would have been a clear-cut *casus belli* to any nation less pacific in its foreign relations than China. It may be said that the American Minister in Peking, and many of his colleagues, are firmly convinced of the complete justice of the Chinese claim for a surrender of consular control over this court. The steps looking toward this end which have now been taken by the Shanghai consular body are belated—all the more reason why there should be no further delay in eliminating an act of aggression which

[1] Dr. W. W. Willoughby, *op. cit.*

has done much to arouse anti-foreign feeling. Similarly, Chinese representation on the Shanghai municipal council ought to be granted forthwith, the fact that an American lawyer, Stirling Fessenden, has served two terms as chairman of that body giving us more responsibility for this essential reform.

Shanghai is not foreign territory. It is a foreign concession. There is neither justice nor reason in the present policy of making the Chinese in the International Settlement, many of them far better equipped intellectually than the bulk of their alien governors, pay taxes without a vestige of self-government. Fortunately, the Shanghai municipal council, albeit belatedly and grudgingly, is now beginning to consider giving carefully selected Chinese residents a small minority voice in local government. The Chinese are a very patient and long-suffering people. It is possible that they will be satisfied with this move by viewing it as an entering wedge.

The second major issue in Chinese minds, following the arbitrary order we have chosen, is that of tariff autonomy. Theoretically this issue was settled on November 19, 1925, when the Customs Conference convened in Peking in conformity with the decisions reached at Washington nearly four years earlier,[1] unanimously approved the following formula:

> The delegates of the Powers[2] assembled at this Conference resolve to adopt the following proposed article relating to tariff autonomy with a view to incorporating it, together with other matters, to be hereafter agreed upon, in a treaty which is to be signed at this Conference:
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> The Contracting Powers other than China hereby recognize China's right to enjoy tariff autonomy; agree to remove the tariff

[1] By the Nine Power Treaty (see p. 7). The French refusal to ratify this treaty until settlement of the Gold Franc controversy, a totally irrelevant issue, was largely responsible for the delay in calling the Customs Conference in Peking.

[2] The signatories of the Nine Power Treaty, plus Denmark, Norway, Spain, and Sweden.

restrictions which are contained in existing treaties between themselves respectively and China; and consent to the going into effect of the Chinese National Tariff Law on January 1, 1929.

The government of the Republic of China declares that likin shall be abolished simultaneously with the enforcement of the Chinese National Tariff Law; and further declares that the abolition of likin shall be effectively carried out by January 1, 1929.

On the face of it, the second paragraph of the above formula explicitly promises China, as from January 1, 1929, the same freedom in fixing customs duties which is enjoyed by every independent nation. That, certainly, is the understanding of the Chinese, in spite of the fact that no treaty giving the promise binding force has yet been written. Aside from this point, however, some foreign representatives maintain that the advent of tariff autonomy is contingent upon the abolition of likin—the tax on goods in transit inland throughout China—and that paragraph two of the formula must be taken in conjunction with paragraph three. By the Chinese the two paragraphs are taken as independent units, and it is insisted that tariff autonomy must be granted on the date set regardless of whether the abolition of likin is "effectively carried out" by that date. The argument may seem somewhat academic until the new tariff treaty is formulated and signed, but it is almost certain to raise future acrimonious controversy, for the situation at present holds out little promise that likin will actually be abolished by 1929.

Likin is not an institution of old standing. It was first imposed in 1853, in Kiangsu and Shantung Provinces, to raise special funds necessary to suppress the Taiping Rebellion. Eight years later it was extended throughout the Empire, but today only a very small proportion of the revenues collected reach the central government. Under the Tuchun system it has grown to be the most important source of provincial revenues. It

is, of course, the most haphazard and unscientific of taxes, painfully detrimental to the development of China's internal trade, and the imposition at the hundreds of collecting stations throughout the country are doubly irritating because much of the revenue derived is now wasted in supporting the various war lords. Every commercial treaty with China for a quarter of a century has sought the abolition of likin and, considering the purposes to which the tax is put at present, there is not much to be said in favor of the institution.

It does not follow therefrom that there is any justification in the effort to make the granting of tariff autonomy contingent on the abolition of likin. The device has two aspects: *first,* as a scheme for securing provincial as opposed to federal revenues; *second,* as an uneconomic tax on trade. It is this second aspect which, unfortunately, is uppermost. But if the incidence of the tax were altered along scientific lines, and its proceeds used by the provincial governments for constructive purposes, no foreigner would have the right to say a word against it. Unfortunately the criticisms of likin by many foreigners in China indicate all too plainly that one of the objections is that the Chinese actually dare to collect this tax for themselves. They do not like the contrast with the Chinese Customs Service, which is managed by British officials, the bulk of the revenues of which are deposited in British-controlled banks, and from which Peking receives only such small proportion of the total revenue as is not allocated to the payment of the Boxer indemnities and to the service of foreign loans, most of which have been contracted by utterly irresponsible officials at Peking.

Further evidence that there is something suspicious in the hue and cry about likin is the fact that it very seldom affects the foreigner's pocketbook, which is so frequently his one criterion of what is good or bad in

Chinese methods. Charles K. Moser, Assistant Chief of the Far Eastern Division of the Department of Commerce, writes as follows [1] in this connection:

> Although likin is so generally recognized as one of the serious detriments to trade development in China, as a matter of fact comparatively few foreign merchants have ever been conscious of it except from hearsay. The foreigner customarily sells his goods at the Treaty Ports and takes his profits. Or, generally he has bought them delivered there, only after he was sure he could sell again at a profit.

The Chinese merchant, Mr. Moser concludes, is the real sufferer. Yet these merchants want tariff autonomy for China, with or without likin abolition. Foreigners who would link the two together do so on the assumption that nothing must be granted China without exacting a price therefor.

By the treaty of Nanking, China undertook to establish at the five ports then opened to foreign trade "a fair and regular" tariff scale to replace the multitudinous local exactions in force at Canton, prior to 1842 the sole port at which alien shipping was permitted. This tariff was made "regular" by establishing a flat 5 per cent ad valorem rate. Whether or not the rate was "fair" the American reader, reflecting on the tariff history of our country, may decide for himself. At all events 5 per cent has been the permissible limit imposed by the powers for the past eighty-four years, and for long periods the duties received have been much less than that because of delays in revaluing schedules in accordance with price changes. The underlying motive, of course, has been to make the great Chinese market a dumping ground for foreign wares, and to make it more difficult for the Chinese to develop their own industries in competition with foreign countries.

The United States has, since 1844, been a party to this

[1] In "Commerce Reports," June 7, 1926, p. 595.

arrangement, though we seem to see no inconsistency in levying duties up to 90 per cent on Chinese products coming into this country. One graphic illustration of the unfairness of the arrangement may be cited. For a standard fifteen-cent package of American cigarettes one must pay forty cents in Canada and the equivalent of thirty cents in Japan, the difference being caused by the duties levied by these countries. In China that package of cigarettes can be bought for the equivalent of eleven cents. In other words the Chinese government is prohibited from levying a duty on a luxury of foreign origin (American tobacco) even equal to the internal revenue tax taken thereon by our own government.

Not content with this injury the Treaty Powers have added insult thereto by informing the Chinese that they should establish a stable government in Peking (competent to abolish likin, for instance) before they are given the right to levy such duties on foreign goods as they think desirable. This is merely arguing in a circle, and a very vicious one at that. The customs, at present under British administration,[1] provide the Peking government with its only really reliable source of revenue at the present time. The portion which escapes the foreign bondholders on the way to the federal treasury is pitifully small. Without an increase in this revenue, obtainable by establishing reasonable tariff rates, no central government can have stability.

There is, of course, force in the objection that any increase in revenues might be diverted to uneconomic purposes—to building bigger armies by the Tuchun temporarily in control at Peking. But after all, that is not our business, and the great powers are the last with any right to assume a virtuous attitude on military extrav-

[1] Historically, because when foreign inspectors were first appointed the English representative was the only one who spoke Chinese! See "China Year Book," 1925 edition, p. 899.

agance. What would be our attitude if China should by force take over our customs administration and limit our tariff rate to 5 per cent *ad valorem* on the argument that if we get any more revenue from imports, we would be likely to spend it on building battleships? The very absurdity of the analogy ought to bring home the scandalous situation which has come to be regarded abroad as something which China ought to stomach without question.

The Customs Conference which convened in Peking in October, 1925, has been faced with all sorts of difficulties of Chinese making. The government with which the foreign delegates started to treat was overthrown by civil war six months later, the resulting anarchy forcing adjournment of the conference *sine die*, in July 1926. Several of the officials who drafted the original Chinese proposals fled from Peking for political reasons early in the sessions. There can be no certainty that any arrangement arrived at in the capital city will be observed throughout China as a whole. The Kwangtung government, for instance, objects to any arrangement which places greater revenues in the hands of the northern militarists. Yet many of the difficulties in working out an interim schedule applicable until January 1, 1929, have been of foreign making. Jealousy between foreign interests, each fearful that some other nation may gain a slight competitive advantage, served greatly to delay progress when it was possible, and also served to show the Chinese how little unity there is now among the powers in respect to Chinese policy. Nobody would accuse Silas H. Strawn, the American delegate to the conference, of any tendency to take a hostile attitude toward the claims of foreign business to affectionate consideration. Yet Mr. Strawn cited to me the "importunity of business interests" as one of the factors complicating a solution of the customs problem. "If they would ask

themselves," he said, "how the maximum tariff rates suggested for China compare with those in force in their own countries, I think much of the foreign commercial opposition to proposed schedules would be recognized as shallow."

It may be asked why the twelve foreign powers participating in the Customs Conference should have been inclined to tug in various directions when the principle of tariff autonomy for China had already been approved. The answer is that the interim schedules which the conference sought to work out were designed to serve as the basis, if not the absolute model, for the anticipated Chinese National Tariff Law of 1929. Most of China's imports are not luxuries. A slight majority of them are either (1) necessities unobtainable in China, or (2) materials essential to develop her basic industries, or (3) products which she cannot at present manufacture economically. In addition the Chinese recognize that they are inexperienced in so technical and complicated a matter as tariff administration. It follows that any Chinese government is willing to view foreign proposals sympathetically as the basis for a permanent tariff law. But autonomy in this matter the Chinese are determined to have. Whether or not this autonomy shall be exercised on lines following foreign advice, or on lines dispensing with it, is the real issue which the delegates to the adjourned Customs Conference have to consider.

The third of the fundamental Chinese demands, that for the abolition of consular judicial jurisdiction over foreigners resident in China, is one on which much more can properly be said in opposition to native claims than in either the rectification of Shanghai illegalities or the advent of tariff autonomy. Chinese justice is not foreign justice, and Chinese codes, in spite of earnest efforts at revision, do not in practice approach the level regarded as essential in most white nations.

None the less, this issue, by action of the foreign powers themselves, has fundamentally been decided in the Chinese favor. When, as a result of the war, Germany and Austria were forced to renounce their extraterritorial privileges, and when Russia, having more nationals on Chinese soil than any other foreign country except Japan, abandoned hers, it was virtually settled that sooner or later, willingly or unwillingly, the other powers would have to follow suit. German business men in China now endeavor to settle their legal differences as much as possible through their own consulates or chambers of commerce, and that mode of evading Chinese courts will remain open to other foreigners. But what the Germans, Austrians, and Russians, to say nothing of minor powers, have yielded, Great Britain, America, France, and Italy cannot retain. To the Japanese the abolition of extraterritorial rights means relatively little. Their own system of justice, except that it is efficient and honest, is akin to the Chinese in fundamentals. Preferential tariff rates are more important in Tokyo's viewpoint.

The absurd weakness of the Peking government, which is a constant source of difficulty to the foreign commissioners trying to negotiate with it on the subject of extraterritoriality, is in this situation a source of Chinese strength. The way the tide is trending was shown dramatically at Geneva on June 1, 1926, when, according to press dispatches, Chu Chao-hsin, the Chinese Minister to Italy, responded to taunts by a British member of the League's opium advisory commission, by announcing that unless the powers themselves take revisory action "China will soon tear up the unequal treaties forced upon her."

Every foreigner in China knows in his heart that at any moment the Peking government could take this step, disclaiming responsibility for the ensuing crisis and at

the same time securing nation-wide credit and popularity by the step. With this contingency in view Chinese organizations are arguing that foreign consular jurisdiction is illegal, because the system is derogatory to the territorial and administrative integrity of China, which the Nine Power Treaty undertakes to respect. Whether or not this reasoning seems specious abroad is not important, unless the foreign governments are willing, when the issue comes to a crisis, to back their viewpoint with force. And Chinese leaders do not for a moment believe that sentiment favoring a war to force observance of the unequal treaties on China exists in any European nation, still less in the United States.

This situation explains why American officials in Peking, regardless of the morality of extraterritorial jurisdiction, believe that the only rational policy for the United States in China is to "face forward and walk backwards," which means that while this last of the three basic Chinese demands should be gracefully conceded, adequate safeguards should be placed around the extension of Chinese judicial authority over foreigners. There is little doubt that the Chinese will meet all reasonable requests in this direction. It could be arranged, for instance, that the Chinese judiciary have their salaries secured by the foreign-administered customs service in order to insure their independence from local politics. It could also be arranged that foreign assessors, or at least advisers, be allowed to sit in on trials of foreigners until a generation of Chinese magistrates familiar with western law and western ethics is established. Rational compromises of this sort are as desirable as continuation of the present embittered status is dangerous.

There is the difficulty, moreover, which those who oppose the yielding of extraterritorial privilege have to face in respect to the German and Russian precedents. Both Dr. Boyé, the German Minister, and Mr. Karakhan

the Russian Soviet Ambassador, assured me in Peking that they have little cause for complaint because of the treatment of their nationals in Chinese courts. It is indisputable that there have been cases where Russians adhering to the old régime have been badly handled, but as these unfortunates are people without a country, it is difficult to base a convincing argument on their experiences. And the admission of the Germans that, while dubious of the future, they cannot complain of their experiences under Chinese law is not countered by saying that this is no proof that abolition of the consular courts would be equally satisfactory to all. A hypothesis will not override a fact.

In closing this brief consideration of the problem of extraterritoriality, it may be useful to report a hearing by a Chinese magistrate of a case, involving American interests, which I attended in Hankow. The case was entirely typical, and in no way sensational in nature, and for that very reason may advantageously be set down in some detail.

During March of 1925 the Standard Oil Company of New York dispatched two junkloads of kerosene up the Han River from Hankow, as a routine item in the very extensive shipping operations carried on by "Socony" from this distributing center. Also as a routine matter the two junkmasters reciprocally went bond for one another on safe delivery. For some time nothing more was heard of either craft; then both of them were found wrecked and abandoned a long distance up the river. From one hulk three-quarters of the cargo had disappeared, and from the other about one-quarter, the whole loss representing a value appraised by the company at $1,250. Neither of the junkmasters was to be found, and the natural assumption was that they had intentionally wrecked their ships and disposed of the easily removable portion of the cargo to neighboring farmers.

During the autumn Chinese detectives, who seem to be quite as efficient as their American counterparts, located one of the junkmasters in Hankow and promptly arrested him. His ship was the one from which only a small portion of the cargo had been lost and he protested that the wreck was caused by a spring freshet, that he had stolen nothing, and that only fear of punishment by the foreigners had made him run away. Regardless of the argument he was clapped in jail, held there several months without a hearing, and produced for trial on the day when I happened along as an interested observer. As the case involved American interests, the United States Consul at Hankow sat with the Chinese magistrates as an assessor, his interpreter beside him in case of need. The Standard Oil Company was represented by a youthful but keen member of its local American office force, the Chinese head of its Hankow shipping department, and a very alert Chinese lawyer. There was a court stenographer and there was the man on trial, without counsel or other assistance. No witnesses of the event appeared for either side.

The affair was over in little more than half an hour, following the Chinese legal theory that an accused man is to be considered guilty until he proves innocence. The corporation presented its case, with the strong circumstantial evidence that the junkmaster had deliberately wrecked his ship and stolen part of the cargo. The accused, shabby, pale from confinement, and forlorn looking, then reiterated his story at considerable length, with an occasional searching interrogation from the magistrate, who seemed possessed of competent judicial mentality. Finally the man was sent back to prison for another month, on the understanding that if his colleague did not appear within that period he would be held responsible for the entire loss. Lacking attach-

able goods, this would probably mean a two-year jail sentence.

Now the moral of this incident, as it appeared to me, is not that the course of justice in China is particularly corrupt, or inefficient, or dilatory. It is, rather, that the foreigner, with his easily mobilized battery of technical and legal assistance, and his Consul at hand to stiffen the magistrate, is so well content with the present treaty arrangements that the very idea of change, regardless of whether other factors make it desirable, annoys him exceedingly. As Dr. Jacob Gould Schurman observed[1] in his official capacity as American Minister to China, shortly before leaving to become Ambassador at Berlin:

> The conservative tradition of the Treaty Ports is averse to modifying the present system of extraterritoriality and indeed deprecates all discussion of it. It is an extreme position and with the lapse of time will in my opinion become more and more untenable.

It is indubitable that the Chinese judicial system is still primitive beside that of the Anglo-Saxon race; that "squeeze," in the shape of unrecorded monetary transactions, is often helpful in hastening its operation; and that most of the provincial prisons would seem barbarous to hardened social workers. It is also unquestionable that present political chaos is a chief factor in delaying steps by the privileged foreign powers to abolish extraterritoriality. None the less, as much cooperation as circumstances permit in meeting this third point in the Chinese demands is desirable. The objections to the system outweigh the advantages of continuation.

[1] In an address before the Anglo-American Association, Peking, January 20, 1925.