

*China's Foreign Relations*

1917 — 1931

ROBERT T. POLLARD

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## CHINA'S FOREIGN RELATIONS



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TO  
MY FATHER  
AND  
MY MOTHER

## PREFACE

THE well-known work of Dr. H. B. Morse on the International Relations of the Chinese Empire divided the history of China's modern contact with the Western world into three periods. Of these the first was the Period of Conflict, which lasted until 1860. It was followed by the Period of Submission, extending to 1894 and was succeeded by the Period of Subjection. A fourth period, which might be called the Period of Recovery, began in 1917. In that year China entered the World War on the side of the Allies, and Russia threw off the yoke of the Tsars. One result of China's formal participation in the war was the abrogation of her treaties with Germany and Austria-Hungary. The Russian Revolution provided the Chinese with an opportunity to terminate a second group of treaties providing for special political rights in China. Thus the foundations of the treaty régime were badly shaken, and a step was taken toward the realization of China's ambition to be mistress in her own house.

If the year 1917 marked the opening of a new era in China's foreign relations, perhaps the year 1931 marked the end of that era. On the night of September 18, 1931, an attempt was made to dynamite a section of the Japanese-owned South Manchuria Railway, just north of the city of Mukden. Careful students are not yet prepared to say whether the damage, not very great in any case, resulted from a Chinese or a Japanese plot to damage the railway. The incident marked the climax, however, of a long series of irritations produced by Japan's peculiar interests in Manchuria and the resentment of Chinese Nationalists against the political aspects of those interests. Acting swiftly, and without waiting for advice from the cabinet

in Tokyo, the Japanese military authorities seized the city of Mukden, expelled the native authorities, and launched expeditions against all Chinese forces in the vicinity who, left without leaders, could conveniently be branded as "bandits." During the next three months, Japanese armies overran the whole of Manchuria as far north as the Chinese Eastern Railway, taking over all of the principal cities and practically all of the railways with the exception of the Chinese Eastern in which Soviet Russia held a half interest. Thereafter Manchuria, including the province of Jehol, was declared to be independent of China, and a puppet government was set up dominated by Japanese advisers and dependent for support upon the Japanese army.

Japanese diplomacy since the beginning of the Nationalist movement in China has had to keep two objects in view. One was the protection of Japan's vested interests in Manchuria, whether resting on treaty sanction or not. The other was the preservation and expansion of Japan's profitable trade with China proper. Raw materials from Manchuria were vitally important to the economic life of Japan. Of equally vital importance was the Chinese market for Japanese goods. Statesmen might have foreseen the logical consequences of violent action in defence of Japan's special interests in Manchuria. Military rather than civil authorities were in control of the situation, however, and the Tokyo Foreign Office had perforce to accept the rôle of inventing high moral principles to justify non-moral conduct. The natural result of military aggression in any case was a Chinese boycott which virtually destroyed the continental market for Japanese goods. Thus while Japan's so-called vital interests in Manchuria were safe for the nonce, her trade with China, which was equally vital, was utterly ruined.

In an effort to break the Chinese boycott, and at the same time to demonstrate that Japan "would stand no nonsense" from revolutionary China, the Japanese naval commander at Shanghai landed forces on January 28, 1932, ostensibly for the purpose of protecting Japanese lives and property. The land-



ing force, anticipating apparently as little effective resistance as had been offered in Manchuria, extended the scope of its operations from the International Settlement into Chapei. There it met with determined resistance, the result being a battle of the first magnitude which, in spite of the efforts of representatives of the neutral powers to mediate, lasted for over a month and caused enormous damage to property and great loss of life.

Doubtless some sort of international conference, similar in scope perhaps to the Washington Conference, will be necessary before the situation in the Orient is finally liquidated. Even superficial observers are now convinced that the question of China's relations with Japan is bound up most intimately with the larger question of peace or war in Eastern Asia. Continued political uncertainty in the Pacific area must necessarily affect most vitally whatever prospects exist for the success of the Disarmament Conference now being held at Geneva, and may also, according to views expressed by Secretary of State Henry L. Stimson, affect the attitude of the American Government toward the naval limitation program agreed upon at the Washington Conference. Whatever may be its policy with regard to Manchuria, even the Japanese Government has tacitly acknowledged that the powers have a direct interest in the re-establishment of order in the Shanghai area.

In prosecuting the present study of a critical period in China's diplomatic history, the author has had generous aid from a number of persons to whom special thanks are due. Professor Harold Scott Quigley, of the University of Minnesota, originally suggested the study and offered numerous and valuable criticisms of the work as it progressed. To him belongs much of the credit for what is meritorious in the work without any of the blame for its shortcomings. Miss Mildred Logg, of the University of Washington, has been of great help in checking a considerable number of the references. Mr. Charles G. Gates, of the University of Minnesota, read and criticized one chapter, and came nobly to the rescue of the

*Preface*

author one critical night when there was great need of haste in completing the original manuscript. But for unintended misstatements of fact as well as errors of judgment, the author himself must be held solely responsible.

R. T. P.

Seattle, Washington.  
July 2, 1932.

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## CHAPTER I

### INTRODUCTION

CHINA at the close of the nineteenth century had lost, by successive treaties and agreements with various foreign powers, many of the distinctive attributes of a sovereign nation. Foreigners resident in the country, who were steadily increasing in number, enjoyed extraterritorial rights which removed them from the jurisdiction of Chinese courts. Over residential areas set apart for the use of foreigners, the Chinese Government had only nominal control. Chinese tariff rates, fixed in the treaties, could not be modified without the unanimous consent of the powers concerned. Foreign governments even stood at times between Christian converts and their own native officials.

When the scramble for concessions finally indicated the apparent determination of the predatory powers to partition the country, Chinese resentment took the form of violence. The Boxer Movement represented an attempt to rid China of foreign control and influence by the simple expedient of driving all foreigners into the sea. The resort to force, however, had disastrous consequences. The harsh and humiliating terms of the Final Protocol of 1901 testified to what lengths the powers would go when their interests were menaced. Violence having failed, there remained apparently only one avenue of escape from the network of treaty arrangements which crippled the government's freedom of action. The system of internal administration would have to be reformed along lines suggested if not dictated by foreign example. For such a huge and unwieldy empire, steeped in the traditions of past cen-

turies, the pathway leading to ultimate recovery promised to be very long and very thorny. Nevertheless, since it was the only pathway left open, the rulers of China set out cautiously to tread it with what courage they could muster. By grappling energetically with the vexatious problems which confronted them on every hand, the Manchus might yet save the nation and at the same time restore their rapidly waning prestige.

Three of the powers gave platonic approval to several aspects of the new reform movement. On September 5, 1902, a year after the completion of the Final Boxer Protocol, was signed the Mackay Treaty with Great Britain.<sup>1</sup> By Article VIII of this convention, the Chinese Government agreed to take steps to abolish the *likin* system of taxation on goods moving in domestic trade. In return for such reform, which was to be completed not later than January 1, 1904, Great Britain consented conditionally to certain changes in the Chinese tariff. A surtax not to exceed one and one-half times the rates leviable under the Final Protocol of 1901 might be imposed on all imports. A similar surtax on native goods exported was not to exceed seven and one-half per cent *ad valorem*. It was agreed also that the Chinese Government might recast the export tariff—the rates of which were still those of 1858—with specific duties as far as practicable on a scale not exceeding five per cent *ad valorem*. These provisions were not to be effective, however, unless all of the powers entitled to most-favored-nation treatment consented to their enforcement.

The necessary consent was forthcoming from two of the powers. Provisions substantially similar to those written into the Mackay treaty appeared in the Japanese treaty of October 8, 1903, and the American treaty signed the same day. The remaining Treaty Powers, however, were slow to follow suit. Subsequent negotiations revealed that the concessions desired by China would have to be paid for in each case by some *quid pro quo*. The negotiations thus terminated with no imme-

<sup>1</sup> J. V. A. MacMurray, *Treaties and Agreements with and concerning China, 1894-1919*. 2 vols., New York, 1921. Vol. I, p. 342.

diate prospect that the increased tariff rates promised conditionally in the British treaty would become effective.<sup>a</sup>

The British treaty set the pace also with a declaration of policy relative to consular jurisdiction. Article XII of that agreement, the substance of which was duplicated in the subsequent Japanese and American treaties, provided that

"China having expressed a strong desire to reform her judicial system and to bring it into accord with that of western nations, Great Britain agrees to give every assistance to such reform, and she will also be prepared to relinquish her extraterritorial rights when she is satisfied that the state of the Chinese laws, the arrangement for their administration, and other considerations warrant her in so doing."

The judicial and legal reforms desired by the foreign powers were radical indeed, involving not merely the drafting of new laws, but the reorganization as well of the entire political system of China. The existing legal code, the *Ta Tsing Liu Li*, dating from 1641, was in reality not much more than a criminal code, its civil provisions covering little beyond questions of marriage and succession.<sup>b</sup> Its harsh provisions relating to punishment for crime reflected none of the changes which had taken place during the nineteenth century in criminal codes of the West, although they compared not unfavorably with the laws of seventeenth century Europe which were in force when the *Ta Tsing Liu Li* was promulgated. The judicial system, unchanged for centuries, was linked inseparably with the administrative system. Justice, both civil and criminal—although little enough of the former—was meted out by the same magistrate of the *hsien* who was responsible for all of the other multifarious details of local government. The prisons were little better than pest houses, places to be avoided at any cost.

Noncommittal as was the pledge contained in the British treaty, it reflected in a general way the views of Western Powers, namely, that domestic reform must precede any recon-

<sup>a</sup> H. B. Morse, *The International Relations of the Chinese Empire*, Vol. III, pp. 370, 372.

<sup>b</sup> M. T. Z. Tyau, *China Awakened*, New York, 1922, p. 247.

sideration of existing treaty limitations. The Chinese Government did what seemed necessary under the circumstances. The year 1902 saw the creation by Imperial Mandate of a Commission on Judicial Reform. The work of the Commission was placed in charge of Dr. Wu Ting-fang, who had studied Western law in England, and Mr. Shen Chia-pen, an eminent authority on Chinese law. A partial report of the Commission was ready for submission to the Throne in the spring of 1905. It referred to extraterritoriality as an encroachment on China's territorial sovereignty, recalled the provisions of the treaties of 1902 and 1903 relative to its surrender, and proposed the mitigation of rigorous punishments prescribed by the existing criminal law. The suggested changes received Imperial approval.<sup>4</sup>

Subsequently an Imperial Law Codification Commission undertook the work of drafting new criminal and commercial codes, as well as codes of civil and criminal procedure. The work of the commissioners received a setback in 1906, however, when the Throne rejected the draft code of criminal procedure on the ostensible grounds that it failed to harmonize with Chinese traditions or meet distinctively Chinese needs. In protest against the Throne's action, Dr. Wu Ting-fang resigned from the Commission. Shen Chia-pen remained at his post, however, and under his direction laws were drawn up during the next few years relating to bankruptcy, mining, the press, associations, nationality, police offenses, and transportation.<sup>5</sup> The new laws were semi-adaptations of Japanese legislation which in turn had been patterned after German models. Of these tentative drafts, only the criminal code, completed in 1909, was actually promulgated.<sup>6</sup>

Meanwhile hopeful beginnings were being made in other directions. In 1907 appeared the Law on the Organization of the Judiciary, providing for local courts to replace the old-fashioned magistrate's tribunals, and for a hierarchy terminat-

<sup>4</sup> Meribeth Cameron, *The Reform Movement in China, 1898-1912*, Stanford University, 1931, pp. 172-3.

<sup>5</sup> *Ibid.*, p. 173.

<sup>6</sup> Tyau, *op. cit.*, pp. 247-8.

ing in a national supreme court. Provision was made for a procurator's office to be attached to each district court, each provincial high court, and the national supreme court.<sup>7</sup> About the same time a nine-year program of preparation for constitutional government was drawn up which set forth, among other things, the steps by which the various grades of courts were to be established.<sup>8</sup> Meanwhile provision was being made also for the establishment of law schools to supply technically trained judges for service in these new tribunals.<sup>9</sup> Finally, a system of modern prisons was projected, and in 1908 in Peking construction was begun on the first of the new prisons.<sup>10</sup>

While a start had thus been made in the direction of judicial, legal, and prison reform, the work rested for the most part on a paper basis when the revolution broke out in 1911. With the discredited Ta Tsing rulers out of the way, it remained to be seen how well the Chinese themselves would be able to carry forward the work begun by their predecessors. The provisional constitution of 1912<sup>11</sup> attempted to guarantee to citizens many of the personal rights which had counterparts in Western constitutional law. The rights, however, were those of citizens rather than persons, and there was no indication that they would be extended automatically to aliens resident in the country. The constitution also attempted a theoretical separation of powers among the three departments of government somewhat after the model of Montesquieu. In addition, an attempt was made to protect the judiciary against administrative and executive interference. The Manchu Court, partly owing to the shortage of technically trained judges, had been content in many instances to appoint old-style scholars to positions in the new judicial system. These half measures were now abandoned by the Republican rulers who early adopted the policy of ap-

<sup>7</sup> Cameron, *op. cit.*, p. 174.

<sup>8</sup> Pao Chao Hsieh, *The Government of China, 1644-1911*, Baltimore, 1925, pp. 355-8.

<sup>9</sup> E. T. Williams, *China Yesterday and Today*, New York, 1927, p. 452.

<sup>10</sup> Tyau, *op. cit.*, p. 253.

<sup>11</sup> Text, H. F. MacNair, *Modern Chinese History: Selected Readings*, Shanghai, 1923, pp. 729-34.



pointing only legally trained judges and procurators to posts in the modernized court system.<sup>12</sup> The Republican government decreed also that the draft criminal code, slightly amended in consequence of the destruction of the monarchy, should hereafter apply in all criminal cases. Simultaneously, a careful revision of that code was ordered.<sup>13</sup> The first revision was completed and approved toward the end of 1914. The Law Codification Commission, originally created by the Manchu government, was reorganized and its work continued by the new government. After 1914 Japanese and French advisers collaborated in the work of code drafting. Dr. Wang Ch'ung-hui, probably China's foremost modern jurist, was appointed in 1916 to be chairman of the Commission.<sup>14</sup> While the drafting of the codes proceeded, the work of extending the modern courts and of constructing modern prisons went slowly forward. All of the work of reform was seriously hampered, however, by the internal unrest which accompanied President Yuan Shih-k'ai's struggles with his enemies in Parliament and in the provinces, and by foreign complications resulting from Japan's aggressions in the years following 1914.

In 1917 China entered the World War on the side of the Allies. That fact worked a profound change in the international position of the country. In 1902 and 1903 three of the powers had expressed their readiness to forego the exercise of special privileges in China when the internal conditions which made those privileges necessary had been eliminated. The World War provided the Chinese Government with an opportunity to abolish some of these special rights without completing the work of domestic reform. The treaties with Germany and Austria-Hungary were abrogated, and for the first time the nationals of those countries became subject to Chinese laws and to the jurisdiction of Chinese courts. German and Austrian residential concessions reverted to Chinese control. Two of the great powers of Europe lost their right to be consulted with regard to Chinese tariff rates. Thus strands were cut in

<sup>12</sup> T'au, *op. cit.*, p. 261.

<sup>13</sup> *Ibid.*, p. 248.

<sup>14</sup> *Ibid.*