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THE SHANTUNG QUESTION

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THE SHANTUNG QUESTION

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This article constitutes a chapter in Dr. M. J. Bau's forthcoming book on The Foreign Relations of China
PREFACE

The Chinese Students' Alliance plans to publish a series of pamphlets before the convocation of the Washington Conference on various pertinent subjects bearing on China and the Washington Conference. The first of the series is an introduction to the general subject, China and the Washington Conference, written by T. L. Wang, prize-winner of the Wah Chang Trading Corporation Essay Contest. The second of the series is on the Shantung Question, written by M. Joshua Bau, which analyzes the problem from the point of view of history and international law. The subject is brought up to date, and includes the recent exchanges of communications between the Chinese and Japanese Governments regarding the terms of settlement. Pamphlets on Tariff Autonomy and Extraterritoriality will soon be ready for publication and distribution. Another pamphlet entitled "Problems Involved in the Washington Conference," has been prepared by C. P. Cheng, which will soon appear in the series. Other pamphlets are in preparation; and, as soon as ready, they will be distributed upon request.

MINGCHIEN JOSHUA BAU.
THE SHANTUNG QUESTION

The Shantung Question has become a world problem. Like the Alsace-Lorraine controversy, which has just been settled by the World War, it carries the potential germ of another world conflict. As the facts of this question are well-known, we shall not attempt to reiterate them, but shall confine our endeavors to an analysis of the problem with a view to reaching a solution, just and equitable to China and Japan.

To refresh the memory, we will recall that shortly after the outbreak of the World War, China declared her neutrality by a Presidential Mandate of August 6, 1914. On August 15, 1914, Japan presented an ultimatum to Germany advising unconditional surrender of the leased territory on or before September 15, "with a view to eventual restoration of the same to China," and also advising the immediate withdrawal or disarmament of all belligerent vessels within Chinese and Japanese waters, asking for a reply by noon of August 23. Failing to receive a reply at the appointed time, she declared war on Germany and proceeded to attack the German leasehold of Kiaochow. Meanwhile China did not protest against either the ultimatum or the attack, but on the contrary, intimated her intention to participate in the campaign, which, however, was not received with favor.

During the campaign, on September 3, 1914, Japan landed her troops at Lungkow, Shantung, outside the leased territory. On the same day, China proclaimed a war zone delimiting the belligerent area to approximately one hundred miles west of Tsingtao, including Kiaochow and Laichow, but excluding Weihsien and Tsinan. On September 26, 1914, the Japanese troops, marching from Lungkow to Weihsien, captured the railway station there belonging to the Tsingtao-Tsinan Railway, and on October 6, 1914, they seized the railway station at Tsinan, the capital of Shantung. Soon they

took possession of the entire line of the Tsingtao-Tsinan Railway, displacing its employees and substituting Japanese subjects. In addition they also seized the German mines adjoining the railway. Meanwhile the siege of Tsingtao proceeded and on November 7, 1914, the stronghold was captured.

Thereafter, on January 18, 1915, Japan presented the now celebrated Twenty-one Demands, among which was the provision (Group I, Article I):

"The Chinese Government engages to give full assent to all matters upon which the Japanese Government may hereafter agree with the German Government relating to the disposition of all rights, interests and concessions, which Germany, by virtue of treaties or otherwise, possesses in relation to the province of Shantung." 2

On May 7, 1915, Japan presented an ultimatum, because of which China yielded. In consequence, the treaties of May 25, 1915, were signed, consisting of two treaties, one relating to Shantung with three exchanges of notes, and the other to South Manchuria and Eastern Inner Mongolia with nine exchanges of notes.

In return, Japan pledged to restore the leased territory of Kiaochow, in an exchange of notes, May 25, 1915:

"When, after the termination of the present war, the leased territory of Kiaochow Bay is completely left to the free disposal of Japan, the Japanese Government will restore the said leased territory to China under the following conditions.

1. The whole of Kiaochow Bay to be opened as a commercial seaport.
2. A concession under the exclusive jurisdiction of Japan to be established at a place designated by the Japanese Government.
3. If the foreign powers desire it, an international concession may be established.
4. As regards the disposal to be made of the buildings and properties of Germany and the conditions and procedure

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2. 'The Chino-Japanese Negotiations, the Chinese Official Statement, 1915, p. 49.'
relating thereto, the Japanese Government and the Chinese Government shall arrange the matter by mutual agreement before the restoration.”

Then, on March 14, 1917, China severed diplomatic relations with Germany, and on August 14, 1917, declared war on Germany and Austria-Hungary, abrogating all the treaties, agreements, and conventions she had had with the Central Powers, to the effect that

“All the treaties of whatever nature between China and Germany as well as Austria-Hungary are abrogated, as also all such provisions of the Protocol of September 7, 1901, and other similar international agreements in so far as they concern China and Germany as well as Austria-Hungary.”

This was duly taken notice of by the legations addressed, including that of Japan.

On September 24, 1918, in an exchange of notes between the Chinese Minister at Tokio and the Japanese Minister for Foreign Affairs, respecting adjustment of questions concerning Shantung, it was agreed that (Art. 6) “the Kiaochow-Chinan Railway, after its ownership is definitely determined, is to be made a Chino-Japanese joint enterprise.”

At the Paris Peace Conference of 1919, both China and Japan contended for the former German rights in Shantung. On April 30, 1919, the Council of Three rendered the decision in favor of Japan, which was incorporated in Articles 156, 157, 158, of the Treaty of Peace with Germany, signed at Versailles on June 28, 1919.

The question, as stated above, turns on these issues:

1. Whether Japan has the right
   (1) To attack the leased territory of Kiaochow;

4. MacMurray. Treaties and Agreements with or Concerning China, 1917/7.
5. Questions for Readjustment, submitted by China to the Paris Peace Conference, 1919, p. 82.
(2) To land her troops at Lungkow and then march through Chinese territory; and
(3) To seize the Kiaochow-Chinan Railway and the adjoining mines.

2 Whether China’s Declaration of War abrogates all treaties, conventions and agreements with Germany and China thus recovers the German concessions in Shantung.

3 Whether Japan’s possession of German rights in Shantung is validated by
   (1) The Treaty of May 25, 1915, and
   (2) The Agreement of September 24, 1918.

As to whether Japan had the right to attack the leased territory of Kiaochow, there seems to be an honest difference of opinion. On the one hand, China claims that, inasmuch as she reserved her sovereignty over the leased territory in Article I of the Lease Convention, she can assert the neutrality of the leased territory in time of a war in which the lessee state is involved. In other words, arising from the reservation of sovereignty, she deems the leased territory as neutral, and not subject to the hostile operation of belligerents. Further, even in case an attack should have become necessary to abate a nuisance or to remove a menace, she contends that her previous consent should have been obtained before the attack could be legitimate.

On the other hand, Japan claims that, basing her action on the precedent of Port Arthur and Talienwan, which leased territories she took from Russia in the war of 1904-5, the leased territories are not neutral, but are subject to hostile operations of the belligerents. The grant of the right of fortification, she contends, and the surrender of the right of administration, during the term of the lease, all indicate that these territories are proper objects of attack. She further

maintains that, granted she had no right to attack the territory, she had notified the Chinese Government before attack, and that the Chinese Government did not make any strenuous objection, nor lodge any protest, but, on the contrary, requested participation in the attack, which, though rejected, could be taken as tantamount to tacit consent. 7

As to whether Japan had the right to land at Lungkow and march through the Chinese territory, it is quite safe to say that Japan had no such right, but, on the contrary, exceeded the limit of her rights and violated the neutrality of China. China having declared her neutrality by the Presidential Mandate of August 6, 1914,8 Japan was under obligation to respect her neutrality. She had no more right to move her troops and supplies through the neutral territory of China than Germany had in 1914 to cross the neutral territory of Belgium in order to attack France. “It is a principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral state for belligerent purposes, without the consent of the neutral Government.” 9

It has been contended by Japan that military necessity justified the violation, inasmuch as she could attack Kiaochow more easily from the rear than from the front or the side. This argument, however, does not seem to stand the test of analysis. In the first place, there was no military necessity calling for such a violation of China’s neutrality. Japan could have attacked Tsingtao by landing within the leased territory of Kiaochow, just as well as by way of Lungkow, if not better. This was witnessed by the action of the British, who, in due respect of China’s neutrality, landed at Laoshan on September 23, and because of the shorter distance from Laoshan to Tsingtao, than from Lungkow to Tsingtao, and fewer neutral obstacles in the way, they reached

the scene of action in time to participate in the first encounter with the Germans.\textsuperscript{10} This action on the part of the British clearly proved that there was no such military necessity, and this alone, in glaring contrast with Japan's action, is sufficient to establish the guilt of Japan.

Granting for argument sake, that there was the military necessity, this still did not justify Japan's violation of China's neutrality. Germany pleaded the guilt of her own violation of Belgian neutrality on the ground of military necessity. But the world did not condone German's crime on that account. If the violation of Belgian neutrality is unjustifiable, as the verdict of mankind and the late World War have held it to be so, Japan's violation of China's neutrality by landing at Lungkow is equally unjustifiable, and, more so, because of the absence of any ground of military necessity.

Perhaps it may be argued that China's proclamation of the war zone, on the same day of Japan's landing at Lungkow, following the precedent set in the Russo-Japanese War, seemed to have given her implied consent and hence justified Japan's action. It must be understood, however, that in proclaiming the war zone, China did not mean to condone Japan's action, but rather aimed simply to protect herself from any consequences resulting from the actions of belligerents within her territory, so that she could be released from any charges of negligence as a neutral. In fact, under the difficult and embarrassing situation, the proclamation of a war zone was probably the only course of action to pursue. For China to resist Japan at Lungkow, in the face of force majeure, would have meant war, which would be contrary to the spirit of the law of neutrality. On the other hand, for China to remain silent would have been equally as inexpedient, since Germany could then have claimed damage for injuries due

to the negligence on the part of China to preserve her neutrality. Hence, confronted with a dilemma, China was constrained to proclaim the war zone, not to extenuate Japan but rather to protect her own position of neutrality. It is therefore plain that notwithstanding the proclamation of the war zone, Japan’s landing at Lungkow remains a gross violation of China’s neutrality.

Respecting Japan’s right to seize the Kiaochow-Chinan Railway, and the adjoining mines, it is again evident that Japan had no such right, but, on the contrary, she did so in violation of China’s neutrality. The railway and mines in question were situated within Chinese territory outside the leased territory of Kiaochow, and hence they were under the protection of Chinese authorities. No matter whether they were the public or private property of Germans, the fact that they lay within the Chinese territory was sufficient to clothe them with the protection of China’s neutrality and to exempt them from seizure by any belligerent whatsoever.

In fact, Japan perpetrated the seizure in spite of the repeated protests of the Chinese Government and thus knowingly violated China’s neutrality. As the war zone delimited belligerent activities to the east of Weihisien or within one hundred miles west of Tsingtao, and as, on September 26, the Japanese troops proceeded to Weihisien and occupied the railway station, the Chinese Government protested on the next day, September 27, 1914:

"On the 7th day of September a despatch received from your Government stated that your Government understood, with some difficulty, what our Government meant in that declaration. This Ministry (the Chinese Foreign Office) further declared that the railroad from Weihisien to Chinan should be under Chinese protection, and through Your Excellency we requested your Government to issue an order prohibiting your troops from advancing to Weihisien, or any place west of Weihisien. But now the troops of your Government have forced their way into Weihisien and taken possession of the railway. Considering that the railway
belongs to a Sino-German corporation, that all the railway stations have also been under Chinese protection, and in none of them has there ever been any German troops, and that Weihsien is in the purely neutral territory, the acts committed by the troops of your country are manifestly contrary to the declaration and in violation of China's neutrality.” 12

Following this protest, on the next day, September 28, 1914, the Japanese Minister at Peking called at the Chinese Ministry of Foreign Affairs, and, to the surprise and indignation of the Chinese Government, informed the latter that, because of military necessity, the Japanese troops would move westward from Weihsien and occupy the whole line. In consequence of this, on September 30, 1914, the Chinese Government again protested:

“It is a settled principle that even the public property of a belligerent, while on a neutral territory, can not be attacked, or taken possession of by the other belligerent, much more so in the present case when the property in question is jointly owned by Chinese and German capitalists. . . . It has been a long while since the troops of your country have begun to attack Tsingtao, and the German troops in Tsingtao have been isolated, rendered helpless, and entirely and long ago cut off from the communication through the Kiaochow Railway. Not only our Government will never allow the Germans to make use of the line; it is actually beyond their power to make use of it. Therefore the contemplated action of your country is decidedly not a case of military necessity.” 13

In response to these repeated protests, the Japanese Government replied on October 2, 1914, that the German Kiaochow-Chinan Railway was of the same nature and character as the leased territory and that the purpose of Japan's attack was not only to eliminate the German base of Kiaochow, but to gain the control and administration of the railway in ques-

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tion. Reiterating the argument of military necessity, it contended that, lying at the rear of the leased territory, the control of the railway was essential to the safety of Japan in Kiaochow:

"Regarding the Shantung Railway, . . . it is of the same character as the leased territory. This fact is beyond dispute, in view of its origin, the special charter given by the German Government and the way in which the company draws its funds. . . .

"Moreover, a railway from its very nature positively cannot be treated one part separately from the other. Although one part of this German-owned railway is situated west of Weihsien, it can not be held as having changed its character on the ground that a part remains in neutral territory. Besides, the aim of the Imperial Government is not only to overthrow the base possessed by the enemy, but also to cause the control and administration of this indivisible railway to fall into our possession.

* * *

"Although the Chinese Government holds that under the present condition the Shantung Railway can not be utilized by the German troops in view of its severance with China, yet from the attacking troops' point of view, the railway being immediately behind Tsingtao, and in view of the present situation, it is a serious danger to the military operation to leave a railway by the enemy perfectly free."14

It can be seen, from these extracts of the official correspondence, that what China strove for was the preservation of her neutrality, and that what Japan aimed at was not only the leased territory of Kiaochow, but also the Kiaochow-Chinan Railway with the adjoining mines, though lying within Chinese neutral territory. Such facts can not but compel a reasonable and impartial mind to declare that Japan, in gaining control of the Kiaochow-Chinan Railway and the adjoining mines, evidently violated the neutrality of China.

This conclusion is all the more convincing and inescapable, when the rules governing the inviolability of neutral territory as summarized by John Bassett Moore are taken into consideration:

“... It appears (1) that the commission of hostility against another on neutral territory is a violation of the law of nations; (2) that such violation involves an offense to the neutral nation, and that reparation from the offending belligerent is due to that nation alone; (3) that, if property was captured, it is the duty of the offending belligerent to restore it on the demand of the neutral; (4) that nations have, by numerous treaties, pledged themselves as neutrals and to use 'all the means in their power' to protect or effect the restitution of property in such cases; but (5) that the manner in which this obligation must be discharged was not ascertained by any express rule or by any general understanding.”

Applying these rules to Japan's seizure of the German Kiaochow-Chinan Railway and the adjoining mines lying within the Chinese neutral territory outside the leased area, it is clear that she violated China's neutrality and that in consequence she is under obligation, upon the demand of China, to restore the same.

We next come to the issue whether China's declaration of war abrogates all the treaties of whatever nature, thus legalizing China's recovery of Germany's former concessions in Shantung. The writers on international law are not agreed as to whether war abrogates all treaties which presuppose the continuance of peace, except those made in anticipation of rupture. Like Vattel, Kent contends that "as a general rule, the obligations of treaties are dissipated by hostility, and they are extinguished and gone forever, unless revived by a subsequent treaty. But if a treaty contain any stipulations which contemplate a state of future war, and make

provisions for such an exigency, they preserve their force and obligation when the rupture takes place." 17 On the other hand, Fiore says: "The extinction of all treaties and conventions concluded between the belligerent states can not be deemed an immediate effect of war, but only the termination of those which, by their nature and object, are necessarily inconsistent with a state of war." 18 Another reasonable doctrine is that of Calvo, which states:19 "The solution of these questions depends naturally upon the particular character of the engagements contracted. Thus all are agreed in admitting the rupture of conventional ties concluded expressly with a view to a state of peace, of which special object is to promote relations of harmony between nation and nation, such as treaties of amity, of alliance, and other acts of the same nature having a political character. As to customs and postal arrangements, conventions of navigation and commerce, and agreements relative to private interests, they are generally considered as suspended till the cessation of hostilities. By necessary consequence, it is a principle that every stipulation written with reference to war, as well as all clauses described as perpetual, (qualités de perpetuelles) preserve in spite of the outbreak of hostilities their obligatory force so long as the belligerents have not, by common accord, annulled them or replaced them with others."

John Bassett Moore presented his own conclusion on the subject as follows: "It is evident that . . . there was a recognition of the principle, which is now received as fundamental, that the question whether the stipulations of a treaty are annulled by war depends upon their intrinsic character.

If they relate to a right which the outbreak of war does not annul, the treaty itself remains unannulled.”

Taking as our criterion the conclusion of Moore that the question as to whether the stipulations of a treaty are annulled by war depends upon their intrinsic character, it is evident that the treaties in question are of an intrinsic character which the war should nullify. The German lease convention of March 6, 1898, was extorted from China by the threat of the mailed fist. It further alienated from China her jurisdiction over the leased territory for ninety-nine years. In the event of war, the continuance of an alien jurisdiction on the soil of China would be inimical to her safety, and it is but natural, therefore, that she should avail herself of the opportunity of war to remove that source of danger and recovers the delegates, or rather wrested, rights of sovereignty. Further, the lease convention granted to Germany the right of fortification, which meant that Germany, in time of war, could use the leased territory as a basis of action against China. It is but plain, therefore, that such a treaty should not be allowed to persist in time of war, but should be abrogated upon the declaration of the same. As to the Tsingtao-Chinan Railway and the adjoining mines, while the agreements thereon were not intrinsically of a character as not incompatible with the status of war, their public character and their strategic and political relations to the safety of China warranted their being taken into custody by the territorial sovereign during the period of war, and pending the final settlement at the peace negotiation.

It can, therefore, be fairly concluded that, inasmuch as the declaration of war on the part of China had abrogated the lease convention of March 6, 1898, all the German rights in Shantung arising therefrom should have reverted to China.

automatically, and that Japan's possession of them from that moment on was in defiance and contravention of China's rights. It can also be affirmed that the Kiaochow-Tsingtao Railway and the adjoining mines should have come into the custody and possession of China upon her declaration of war, and that Japan's control and possession of the same was not only consummated in violation of China's neutrality, but also retained in defiance and contravention of China's rights.

We now come to the third issue whether Japan's possession of the German rights in Shantung is validated by the Treaty of May 25, 1915, and the Agreement of September 24, 1918. As regards the consent which Japan exacted from China by virtue of Article I of the Treaty of May 25, 1915, respecting Shantung, it must be observed that the assent, as provided therein, conceding for argument sake its validity, which is contested, is not applicable to the final settlement at the Paris Peace Conference. For the negotiation was not between Germany and Japan as stipulated in the provision, but between the Allied and associated Powers on the one hand and Germany on the other. Hence, inasmuch as Japan was "debarred from negotiating separately with Germany in respect to the latter's system in Shantung owing to the decision of the Conference to deal with German territories and concessions without consulting Germany," it is evident that Japan did not comply with the provision of coming to an agreement with Germany regarding the free disposal of Kiaochow and that "the article in question should be deemed inoperative." 

Granting, however, for argument's sake, that the settlement as reached at the Paris Peace Conference came within the scope of the provision, it is to be claimed that the consent was not given of China's free will, but rather was exacted under the duress of the ultimatum of May 7, 1915, and the

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demonstration of naval and military forces accompanying it. While international law recognizes the validity of treaties imposed, even under coercion, by the victorious states upon the vanquished, it is, nevertheless, not within reason to believe that international law recognizes the validity of treaties imposed by one friendly nation upon another, while in the relation of peace and amity. It is true that "coercion, while invalidating a contract produced by it, does not invalidate a treaty so produced. Thus there can be no question of the binding force of the treaty which followed the French-German War which led to the dethronement of Napoleon III, though its terms were assented to under coercion. The same may be said of the consent of France in the settlement enforced by the allies after Waterloo, and so of the treaty by which Mexico ceded California and the adjacent territory to the United States." 23 It is, nevertheless, to be noted that what is recognized by international law is the validity of treaties made in consequence of war though imposed necessarily by the victor on the vanquished under duress, and that it is not conceivable that international law, postulating as it does the fundamental principles of territorial sovereignty and the equality and independence of states, will countenance and give validity to an agreement or treaty, the consent to which was exacted from a friendly nation in time of peace, and this in consequence of the violation of the latter's neutrality. Fiore says, while admitting the validity of treaties imposed by victorious states upon defeated in consequence of war, "treaties concluded between states must be freely assented to. Assent is not valid if given by mistake, extorted by violence or obtained by fraud." 24

The official statement given out by the Chinese Government regarding the Chino-Japanese negotiations of 1915 clearly proves that China's consent relating to the disposal of the

German rights in Shantung was not freely and fully given, but was exacted under the duress of the ultimatum of May 7, 1915. The statement records that on February 2, 1915, at the first conference, while she consented in principle to Article 1 relating to the disposal of the German rights in Shantung, China nevertheless made certain counter-proposals as conditions to the grant of her consent, namely, Japan's pledge to restore Kiaochow, China's right to be represented at the negotiations between Japan and Germany when dealing with the disposal of Kiaochow, the indemnification of China's losses due to Japan's operations within the Chinese territory, the restoration of the control of the Maritime Customs, the telegraph and the post-offices in the possession of Japan, the removal of the Japanese military railway and telegraph lines and the withdrawal of Japanese troops.25

Again, China's reply of May 1, 1915, to Japan's revised demands of April 26, 1915, while giving her consent to any settlement that Japan might reach with Germany at the conclusion of the war, the Chinese Government specifically inserted two provisions calculated to preserve the sovereignty of China in Shantung and the leased territory and to act as conditions to the grant of the consent in question: 25a

"The Japanese Government declares that when the Chinese Government give their assent to the disposition of interests above referred to, Japan will restore the leased territory of Kiaochow to China; and further recognize the right of the Chinese Government to participate in the negotiations referred to above between Japan and Germany.

"The Japanese Government consent to be responsible for the indemnification of all losses occasioned by Japan's military operation around the leased territory of Kiaochow. The customs, telegraphs and postoffices within the leased territory of Kiaochow shall, prior to the restoration of the said leased territory to China, be administered as heretofore for the time being. The railways and telegraph lines

25a Ibid, p. 35.
erected by Japan for military purposes are to be removed forthwith. The Japanese troops now stationed outside the original leased territory of Kiaochow are now to be withdrawn first, those within the original leased territory are to be withdrawn on the restoration of the said leased territory to China."

Japan's ultimatum of May 7, 1915, contains a reference to these conditions as set forth by China which proves beyond doubt that, except for the duress or coercion of the ultimatum, China would not have consented to Japan's settlement with Germany regarding the disposal of the German rights in Shantung at the conclusion of the war, and that it was the duress exerted by the ultimatum that caused the Chinese Government to relinquish the proposed conditions and to accept Japan's formula for the consent without any qualification. The ultimatum ran in part as follows:26

"Furthermore, the Chinese Government not only ignored the friendly feelings of the Imperial Government in offering the restoration of Kiaochow Bay, but also in replying to the revised proposals they even demanded its unconditional restoration; and again China demanded that Japan should bear the responsibility of paying indemnity for all the unavoidable losses and damages resulting from Japan's military operations at Kiaochow; and still further in connection with the territory of Kiaochow China advanced other demands and declared that she has the right of participation at the future Peace Conference to be held between Japan and Germany. Although China is fully aware that the unconditional restoration of Kiaochow and Japan's responsibility of indemnification for the unavoidable losses and damages can never be tolerated by Japan, yet she purposely advanced these demands and declared that their reply was final and decisive."

It can therefore be safely said that, except for the duress of the ultimatum with the accompanying demonstration of force,27 China would not have given up these conditions and

that it was the coercion—and coercion applied to a friendly nation while in the relations of peace and amity,—that extorted the consent. It is also obviously in accordance with the spirit of international law to maintain that such a consent obtained under duress or coercion should invalidate Japan’s possession of the former German rights in Shantung.

Adverting to whether the agreement of September 24, 1918, validates Japan’s control over the Kiaochow-Chinan Railway, Article 6 of which provides:

“The Kiaochow-Chinan Railway, after its ownership is definitely determined, is to be made a Chino-Japanese joint enterprise,”

and Article 4 of which stipulates:

“Japanese are to be employed at the headquarters of the above mentioned police force at the principal railway stations and at the police training school,” 28

the opinion must be expressed that in view of the illegal consideration for which the agreement was made, the agreement in question can not forestall China’s claims to her own rights and validate Japan’s possession of the German rights in Shantung. While it is true that “a consideration is essential to give effect to a contract, but it is possible to conceive of a treaty which has no consideration,” 29 it is, nevertheless, reasonable to believe that international law, upholding as it does the fundamental principle of territorial sovereignty, will not be prone to countenance the validity of a treaty, which was exacted on the basis of an illegal consideration arising out of the violation of the fundamental principle of territorial sovereignty. For the Agreement of September 24, 1918, was concluded on the part of China to induce the withdrawal of Japan’s civil administration established in Shantung in violation of China’s sovereignty. It is an accepted principle that civil administration proceeds out of, and usually follows, mili-

tary occupation, but, in this particular case, the military occupation was accomplished in violation of China's neutrality and sovereignty as shown above, and hence the civil administration proceeding out of, and following, an illegal military occupation can not but be illegitimate.

The official Chinese claims at the Paris Peace Conference recorded:

"Under an imperial ordinance No. 175 of October 1, 1917, the Japanese Government established a Civil Administration at Tsingtao with branches at Fantze, Chantien, and Chinan, and of which three cities are situated along the railway outside of the leased territory, and of the fifty kilometre zone. . . . The Fantze branch of the Japanese Civil Administration has even asserted jurisdiction in lawsuits between Chinese and has levied taxes on them. . . ."

It was because of this illegal establishment of civil administration in consequence of a military occupation done in violation of China's neutrality and sovereignty, and the consequent indignation of the Chinese, especially the Shantung people, that the Chinese Government was constrained to agree with Japan for the Chino-Japanese joint administration of the Kiaochow Railway and the Japanese supervision of the railway police thereof in exchange for the withdrawal of Japan's civil administration. Hence, inasmuch as the consideration for which the agreement was made was illegal and in fact in direct violation of China's territorial sovereignty, the agreement of September 24, 1918, can not validate Japan's control over the Kiaochow-Chinan Railway. Or else Japan's violation of China's neutrality and sovereignty, instead of being discouraged by proper penalties, would be encouraged and condoned by substantial rewards which is contrary to the spirit of international law.

30. The Shantung Question, p. 42.
33. Hearings, op. cit., pp. 444-5, Mr. T. F. Millard's testimony.
It may be argued that, in connection with the agreement, on the same date, an advance of twenty million yen was made for the construction of the Chinan-Shunteh and Kaomi-Hsuchow Railways and that another advance of a similar amount was made for the construction of four railways in Manchuria and Mongolia; hence China was estopped from making any objection to the agreement of September 24, 1918, respecting the Kiachow-Chinan Railway. It is true that on the same date two other separate and independent agreements were signed for the construction of the above-mentioned railways, and it is also true that the Chinese Government received a total advance of forty million yen. As far as the two agreements are concerned regarding the construction of the railways in question, they may stand valid. It is, nevertheless, to be noted that the agreement of September 24, 1918, respecting the control of the Kiaochow Railway, was entirely separate and independent from the other two, and was made not in consideration of the two advances of twenty million yen each, nor for the consideration of Japan's construction of the two railways in Shantung and the four railways in Manchuria and Mongolia, but rather in consideration of the withdrawal of Japan's civil administration and Japanese troops along the Kiaochow-Chinan Railway (except a contingent at Chinan), which, as we have seen, was illegal. The only fact in common between this illegal agreement and the other agreements for which the two advances had been received was that they were concluded and signed on the same day of September 24, 1918. Beyond this, there was no relation between these agreements. Hence, inasmuch as the two advances of twenty million yen each were made in connection with the other agreements, that of September 24, 1918, respecting the control of the Kiaochow-Chinan Railway, still remains invalid and therefore does not

34. For the text of the agreement, see The Shantung Question, op. cit., pp. 66-70.
confer upon Japan any title or right of possession and control with respect to the Kiaochow-Chinan Railway.

Summarizing the conclusions we have so far reached relating to the issues of the Shantung question, it can be said that, while admitting the ground for an honest difference of opinion relative to her right to attack Kiaochow, Japan had no right to land her troops at Lungkow and march through Chinese neutral territory and seize the German Kiaochow-Chinan Railway and the adjoining mines, in violation of China's neutrality and sovereignty; that China's declaration of war did abrogate the lease convention of March 6, 1898, and thus automatically regained the former German concessions arising out of the convention and entitled her to the custody and possession of the Kiaochow-Chinan Railway and the adjoining mines, pending the final settlement at the Peace negotiation; and that Japan's possession of the German rights in Shantung was not validated by the consent relative to Japan's settlement with Germany as to the disposal of the German rights in Shantung as embodied in Article I of the Treaty of May 25, 1915, respecting the Province of Shantung, which consent, as we have seen, was extorted under the duress of an ultimatum; nor was it justified by the Agreement of September 24, 1918, respecting adjustment of questions concerning Shantung, which, as we recall, was contracted for an illegal consideration, that is, the withdrawal of Japanese troops from the Kiaochow-Chinan Railway and of the Japanese civil administration from Shantung, both of which were illegally established. In view of these conclusions, we can not but be constrained to reach the conclusion that Japan has held the leased territory of Kiaochow as against the rights of China since China's declaration of war on August 24, 1917, and that she has acquired the German rights in the Kiaochow-Chinan Railway and the adjoining mines in violation of China's neutrality and sovereignty and in defiance of her repeated protests. Hence, Japan is under legal and moral
obligation to return to China the leased territory of Kiaochow and to place in the custody and possession of the Chinese Government the German Kiaochow-Chinan Railway and the adjoining mines, subject possibly to proper compensation for Japan's service in the capture of the leased territory.

In view of these conclusions, we affirm that the Shantung decision as rendered at the Paris Peace Conference by the Council of Three on April 30, 1919, was unjust. The Council awarded Japan all the German rights in Shantung, and, in addition, the right to officer the railway police along the Kiaochow-Chinan Railway, and to establish a permanent concession in Tsingtao.

Articles 156, 157, 158, of the Treaty of Peace with Germany, embodying this decision, read:

“Germany renounces, in favor of Japan, all her rights, titles and privileges—particularly those concerning the territory of Kiaochow, railways, mines and submarine cables—which she acquired in virtue of the treaty concluded by her with China on March 6, 1898, and of all other arrangements relative to the Province of Shantung.

“All German rights in the Tsingtao-Tsinanfu Railway, including its branch lines together with its subsidiary property of all kinds, stations, shops, fixed and rolling stock, mines, plant and material for the exploitation of the mines, are and remain acquired by Japan, together with all rights and privileges, attaching thereto.

“The German state submarine cables from Tsingtao to Shanghai and from Tsingtao to Chefoo, with all the rights, privileges and properties attaching thereto, are similarly acquired by Japan free and clear of all charges and encumbrances. (Art. 156.)

“The movable and immovable property owned by the German state in the territory of Kiaochow, as well as all the rights which Germany might claim in consequence of the works or improvements made or of the expenses incurred by her, directly or indirectly, in connection with this territory, are and remain acquired by Japan, free and clear of all charges and encumbrances. (Art. 157.)

“Germany shall hand over to Japan within three months
from the coming into force of the present treaty the
archives, registers, plans, title deeds and documents of
every kind, wherever they may be, relating to the adminis-
tration, whether civil, military, financial, judicial or other,
of the territory of Kiaochow.

"Within the same period Germany shall give particulars to
Japan of all treaties, arrangements or agreements relating
to the rights, title or privileges referred to in the two
preceeding articles." (Art. 168.)

It will be seen that the rights conferred upon Japan were
not those belonging to Germany, but those legitimately belong-
ing to China, as we hold that the German rights had automa-
tically reverted to China upon the declaration of war on August
14, 1917. Hence, the Council of Three has awarded to
Japan the rights, not of Germany, but of China,—not of an
enemy, but of an ally or associate in the war. As the Chinese
Peace Delegation at Paris put it: "It appears clear that the
Council has been bestowing to Japan rights, not of Germany,
but of China, not of the enemy but of an ally. A more
powerful ally has reaped benefits at the expense, not of the
common enemy, but of a weaker ally." 36

What is worse, the Council of Three has awarded these
legitimate rights of China, to Japan—a state that has per-
petrated the crime of the violation of China’s neutrality and
sovereignty. Instead of requiring the offending state to re-
store the former German rights to the rightful sovereign
owner, which should be the dictates of reason and con-
science, the Council condoned and encouraged Japan’s conduct
by awarding her the German rights in Shantung. The incon-
sistency is all the more glaring, when it is seen that, in the
case of Germany, her violation of Belgian neutrality was so
severely condemned and penalized, but in the case of Japan,
for her violation of China’s neutrality, especially in view of

35. This declaration was officially presented to, and taken cogni-
zance of, by the Allied and Associated Governments—the
statement by the Chinese Peace Delegation, May 3, 1919, Mil-
36. Statement by the Chinese Peace Delegation. Ibid.
the absence of any ground of military necessity, she was not only penalized, but on the contrary, awarded the rights, not of Germany, but of China,—a friendly ally and loyal associate in the war. 37

It may, however, be contended, that, unjust as the Shantung decision might be, the Allied Powers were bound by the secret agreements of February and March, 1917, to award the German rights in Shantung to Japan. 38 It must, nevertheless, be observed that these secret agreements were made prior to the acceptance of Wilson’s peace terms as set forth in his address to the United States Congress on June 8, 1918, and in his subsequent speeches, and hence, were abrogated by the subsequent acceptance of Wilson’s principles of peace. To this effect the testimony was put on record before the Senate Committee on Foreign Relations:

"... On looking over the addresses of President Wilson and the statement made by Secretary Lansing to the German Government with regard to the bases of peace, I found this (reading):

"The unqualified acceptance by the present German Government and by a large majority of the German Reichstag of the terms laid down by the President of the United States of America in his address to the Congress of the United States on the 8th of January, 1918, and in his subsequent addresses, justifies the President in making a frank and direct statement of his decision with regard to the communications of the German Government of the 8th and 12th of October, 1918.'

"Now as to the subsequent addresses, although there is nothing directly bearing upon the question of the 14 points mentioned in the address of January 18, one of the subsequent addresses was that on the 4th of July at Washington’s Tomb at Mount Vernon in which he said:

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37. It should be further observed that inasmuch as the Kiaochow lease convention stipulated that Germany should engage not to sublet the leasehold to any other state, the Shantung decision violated the sanctity of this treaty obligation.

38. For the secret agreements, see Millard's Review supp. July 17, 1920, pp. 1-3.
"No half-way decision is conceivable. These are the ends for which the associated peoples of the world are fighting and which must be conceded them before there can be peace."

"Then he mentions, one, 'the destruction of any arbitrary power anywhere, and so on, and two is the one to which I want to call attention. (Reading:)"

"'The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship, upon the basis of the free acceptance of that settlement by the people immediately concerned, and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery.'"

"I think it was in this memorandum to the President that I mentioned this point. I can not say positively that it was in that or some other connection that I called attention to this statement and said that my understanding was that all the powers who entered into the agreement for the negotiation of peace after the armistice of November 11 practically accepted the bases of peace as laid down by the American Government and that this was one of the bases of peace, and that no exception, no reservation, had been made to this by any of the powers, by Great Britain, France, or Japan, although Great Britain did make reservations with regard to some other things, and that therefore it seemed to me that any prior arrangement such as these secret treaties between Great Britain and Japan and between France and Japan ought not to be held any longer in force because they were really abrogated by the acceptance of these bases of peace." 39

It may be further contended that the Shantung decision in favor of Japan was necessary to prevent Japan's leaving the Paris Peace Conference and thus to save the League of Nations just on the eve of formation. In fact, that was the opinion of Wilson, and probably the real reason for his decision. 40 It must, however, be considered that the fear of

39. Hearings, op. cit., pp. 622 to 623, the testimony of Professor E. T. Williams.
Japan's withdrawal from the Conference or refusal to sign the Treaty was not well founded. It is unlikely that Japan would exclude herself from the League for the loss of the former German rights in Shantung. Secretary Lansing testified before the Senate Committee on Foreign Relations that he believed Japan would have signed the Treaty even though the decision should have been against her, the main consideration being membership in the League:

“Senator Johnson of California: Would the Japanese signatures to the League of Nations have been obtained if you had not made the Shantung agreement?
“Secretary Lansing: I think so.
“Senator Johnson of California: You do?
“Secretary Lansing: I think so.
“Senator Johnson of California: So that even though Shantung had not been delivered to Japan, the League of Nations would not have been injured?
“Secretary Lansing: I do not think so.
“Senator Johnson of California: And you would have had the same signatories that you have now?
“Secretary Lansing: Yes; one more, China.
“Senator Johnson of California: One more, China. So that the result of the Shantung decision was simply to lose China's signature rather than to gain Japan's?
“Secretary Lansing: That is my personal view, but I may be wrong about it.”

Granted for argument's sake that there was real danger of Japan's leaving the Conference or refusing to become a member of the League, it is manifest that the decision was rendered on the ground of expediency rather than that of intrinsic justice. While it is admitted that expediency, when not involving questions of morality, may become a guiding principle of statesmanship, it must be maintained, nevertheless, that when moral issues are involved, expediency must be subordinated to morality. In other words, in life as well as in statesmanship, morality must reign supreme, notwithstanding considerations of expediency.

Passing from the injustice of the Shantung decision, we now come to consider Japan’s policy in relation to Shantung. In the statement of Wilson, August 6, 1919, the policy of Japan relative to Shantung was said to be as follows:

“The policy of Japan is to hand back the Shantung Peninsula in full sovereignty to China, retaining only the economic privileges granted to Germany, and the right to establish a settlement under the usual conditions at Tsintao.

“The owners of the railway will use special police only to insure security for traffic. They will be used for no other purpose.

“The police force will be composed of Chinese, and such Japanese instructors as the directors of the railway may select will be appointed by the Chinese Government.”

Taking this as the policy of Japan, it will be noticed that Japan presumed to have in her possession the sovereignty of Shantung which she had in no way acquired, and which was expressly reserved in the lease convention of March 6, 1898. Whatever sovereignty is now in her possession must have been acquired in violation of China’s neutrality and sovereignty. And yet Japan pledges to return Shantung to China in full sovereignty. That is, Japan proposes to return something to China which by right is not hers but China’s.

Probably what she meant by the sovereignty of Shantung is the leased territory of Kiaochow, which she proposed to return, and, in fact, pledged to do so. If so, then, as we have seen, inasmuch as China’s declaration of war, on August 14, 1917, abrogated the lease convention of March 6, 1898, and hence recovered to herself the rights of the leased territory, Japan is proposing to return something to China which by right belongs to China and which Japan has held, ever since the day of China’s declaration of war, in contravention of the sovereign rights of China.

It will be further noticed that the second part of Japan’s
policy is to retain all German economic concessions in Shantung, including the Kiaochow-Chinan Railway and the adjoining mines. It is needless to point out again that these economic concessions have been seized and retained by Japan in violation of China's neutrality and in defiance of China's repeated protests, and that since China's declaration of war they should have been in the custody and possession of China, pending final settlement with Germany at the Peace negotiation, and that Japan is under moral and legal obligations to restore the same to China. And yet Japan proposes to retain these ill-gotten concessions.

Again, Japan plans to establish a railway police along the Kiaochow-Chinan Railway officered by the Japanese though manned by the Chinese, basing her right to do so on the Agreement of September 24, 1918, respecting adjustment of questions concerning Shantung. As has been already shown, the agreement in question is void or voidable, because of its illegal consideration. Besides, the right of police is in excess of the former German rights in Shantung. In the agreement of March 21, 1900, respecting the Kiaochow-Chinan Railway regulations, it was specifically stipulated (Art. 16):

"If troops are needed, outside of the hundred li (50 kilometres) zone, they shall be despatched by the Governor of the Province of Shantung. No foreign troops may be employed for this purpose."

In the subsequent convention of November 28, 1905, Germany engaged to withdraw her troops from Kiaochow and Kaomi to Tsingtao (Arts. 1 and 2); and to leave the neutral zone and railway to the police of the Chinese Government. Hence, in view of the limitations of the German rights in Shantung, Japan's claim to establish railway police along the Kiaochow-Chinan Railway is in excess of the German rights and in violation of China's sovereignty.

43. The Shantung Question. pp. 50-54.
44. Ibid pp. 54-56.
The political significance of the Shantung question cannot be overestimated. This question represents the historic issue of the struggle between the Chinese nation and the foreign powers, the issue of territorial sovereignty. Ever since her opening, China was confronted with the greatest problem of all her history—that is, how to preserve her territorial integrity and political independence in the face of foreign aggression. She attempted to solve this great problem by the Boxer Uprising in 1900, which only plunged her into the depths of humiliation. Failing in this, she brought to pass the Chinese Revolution of 1911, aiming to take hold of the reins of government and thus to establish a strong and stable government for her own protection. Now this Shantung question represents foreign aggression or encroachment on the territorial sovereignty of China, which she aims to uphold under the aegis of the Republic. Hence, in resisting Japan’s aggression in Shantung, China is simply following the tradition of her historical development. To win in the Shantung question is to succeed in the assertion and maintenance of her territorial sovereignty. To fail is to acknowledge servitude. Hence, the Shantung question will become the battle cry of Chinese nationalism, and hence the Chinese people, determined as they are to preserve their territory and sovereignty, will never yield in the Shantung affair.

Again, this question represents the conflict of Japan’s policies in China and China’s policy for herself. As we recall, Japan aims to exploit the natural resources of China, and to establish her position of paramount influence. She also aims to control and dominate China—by strengthening her influence around and in Peking through her dominance in Manchuria and Shantung. On the other hand, China strives for self-preservation—for her independence and sovereignty. She aims to preserve what she has, and in addition, to recover her lost or delegated rights of sovereignty. Hence the Shantung question represents the conflict of the policies of the two nations.
Further, the Shantung question involves the sanctity of international law, the maintenance of which constituted one of the objects of the World War. It raises the question as to whether the nations are to observe the principles of international law, or are to relapse into anarchy. If they mean to uphold the sanctity of international law, they must right the wrong done in the Shantung decision. Hence, the successful and right solution of the Shantung question means the vindication of the sanctity of international law.

Finally, the Shantung question represents the moral issue of might versus right. By virtue of her military and naval forces, Japan has acquired the German rights in Shantung in evident violation of China’s neutrality and sovereignty. On the other hand, because of the insufficient backing of force, China has failed to recover the rights which should have properly belonged to her. If Japan wins eventually in the Shantung question, it means an unfortunate reaffirmation of the principle of “Might makes right.” On the other hand, if China wins, it is a successful vindication of the principle of “Right makes might.”

As to remedies for the Shantung question, there are only three. First, Japan may change her policy and thus the Shantung question may be successfully solved. But this is scarcely expected, at least in the immediate future. She will stand by the agreement of September 24, 1918, and the Treaty of May 25, 1915, or still better, the original Twenty-one Demands. She will also stand by the Shantung decision as embodied in Articles 156, 157, 158, of the Treaty of Peace with Germany, which gives a legal sanction to her position in Shantung. It is therefore reasonable to expect that, in the absence of other adequate remedies, Japan will not likely yield in the Shantung question in any substantial way, unless and until she changes her policy toward China as a whole.

The second remedy is the League of Nations, or Conference of Powers. Will the League or Conference reconsider the
question and right the wrong of the Shantung decision? That is the question which few will dare to answer. Be it as it may, it is within reason to believe, however, that the League or Washington Conference will have to take into consideration the pride and honor of Japan, for the maintenance of which Japan will do all in her power to prevent a reconsideration of the question. It is also reasonable to expect that in case of a renewal of the Anglo-Japanese Alliance, unless Great Britain is released from obligation, she will be obligated to support Japan in the Conference or in the Council and the Assembly, which means that, in the case of the League, China can not get a unanimous report or recommendation from the Council or a report or recommendation from the Assembly concurred in by all the members represented in the Council and a majority of the other members, exclusive in each case of the parties to the dispute, which is requisite to give the report or recommendation the sanction of the League, in case one party chooses to comply therewith.

The third remedy is that China should become strong herself, and thus cause Japan to respect her rights. This seems to be the shortest as well as the noblest way, to a solution of the question. For Japan's action in Shantung is based on the inability of China to uphold her rights. As soon as Japan sees that China is able to do so, rather than run the gauntlet of a conflict with her, Japan will yield. Further, Japan's policies toward China, it will be remembered, are partly founded on China's weakness. The minute China becomes strong, the raison d'être of some of Japan's policies will be eliminated, and she will surely change her attitude and policy, in consequence. Hence, in the absence of a voluntary change of policy on the part of Japan and adequate action by the League of Nations or the Washington Conference, the remedy will lie in the rise of a strong China.

The basis of solution of the Shantung question is simple. Giving due recognition to Japan's service and sacrifice in
the capture of Kiaochow, and paying due regard to the sovereignty of China, the principle of the solution should be, on the one hand, that as a recompense for her service and sacrifice, Japan should be entitled to some form of compensation; and, on the other, that, in full recognition of China's sovereignty, Japan should restore to China all German concessions in Shantung, including the Kiaochow-Chinan Railway, the adjoining mines, and the leased territory, subject, however, to the proviso that these concessions should not be mortgaged or alienated by China in any way to any other foreign power. Thus Japan would receive her due share of compensation and China would maintain her territorial sovereignty and recover her rights.

After the foregoing was written, the Shantung Question entered upon a new stage of development, which deserves our attention. On September 7, 1921, the Japanese Government submitted to the Chinese Government nine proposals as the terms of settlement for the dispute. On October 5, 1921, the

46. Copy furnished by the Chicago Daily News, dispatch by the Associated Press.

(1) The leasehold of Kiaochow and the rights originally granted to Germany with regard to the fifty kilometre zone around the Kiaochow Bay shall be restored to China.

(2) The Japanese government will abandon plans for the establishment of a Japanese exclusive settlement or of an open international settlement in Tsing Tao: Provided that China engages to open of its own accord the entire leased territory of Kiaochow as a port of trade and to permit the nationals of all foreign countries freely to reside and to carry on commerce, industry, agriculture or any other lawful pursuits within such territory, and that she further undertakes to respect the vested rights of all foreigners. China shall likewise carry out forthwith the opening of suitable cities and towns within the province of Shantung for residence and trade of the nationals of all foreign countries. Regulations for the opening of places under the foregoing clauses shall be determined by the Chinese Government upon consultation with the powers interested.

(3) The Kiaochow-Tsiananfu railway and all mines appur-
Chinese Government made the reply, in general rejecting the proposals.

In the first proposal, the leasehold of Kiaochow and the rights originally granted to Germany with regard to the tenant thereto shall be worked as a joint Sino-Japanese enterprise.

(4) Japan will renounce all preferential rights with regard to foreign assistance in persons, capital and material, stipulated in the Sino-German Treaty of March 6, 1898.

(5) Rights relating to the extensions of the Kiaochow-Tsinanfu railway, as well as options for the construction of the Yentai-Weihsien railway will be thrown open for the common activity of the International financial consortium in China.

(6) The status of the customs house at Tsingtao as forming an integral part of the general customs system of China shall be made clearer than under the German regime.

(7) Public property used for administrative purposes within the leased territory of Kiaochow will, in general, be transferred to China; it being understood that the maintenance and operation of public works and establishments shall be arranged between the Japanese and Chinese Governments.

(8) With a view to arranging detailed plans for carrying into effect the terms of settlement above indicated and for the purpose of adjusting other matters not embodied therein, the Japanese and Chinese Governments shall appoint their representative commissioners as soon as possible.

(9) The Japanese Government have on more than one occasion declared willingness to proceed to the recall of Japanese troops now stationed along the Kiaochow-Tsinanfu Railway upon organization by China of a police force to assume protection of the railway. As soon as the Chinese Government shall have organized such a police force and notified the Japanese Government to that effect, Japanese troops will be ordered to hand over to the Chinese police the charge of the railway protection, and thereupon immediately to withdraw. It is, however, to be understood that the question of the organization of a special police guarding the Kiaochow-Tsinanfu railway shall be reserved for future consideration between Japan and China.

47. Copy furnished by the Chinese Legation, Washington, D. C. With reference to the important Shantung Question which is now pending between China and Japan. China has indeed been most desirous of an early settlement for the restitution of her sovereign rights and territory. The reason why China has not until now been able to commence negotiations with Japan is because of the fact that the basis upon which Japan claims to negotiate are all of a nature either highly objectionable to the Chinese Government and the Chinese people, or such to which they have never given their recognition. Furthermore, in regard to the Shantung Question, although Japan has made many vague declarations she has
fifty kilometer zone were to be restored to China. This is simply a reiteration of the pledge of restoration made in the exchange of notes, May 25, 1915. In the eyes of the Chinese, this proposal carries no more weight than one to restore to China what by rights belongs to her. For China regards the leasehold of Kiaochow as having been abrogated by her declaration of war against Germany on August 14, 1915, and as one which should have reverted to her possession on that date. Hence the reply:

"The lease of Kiaochow expired immediately on China's declaration of war against Germany. Now that Japan is only in military occupation of the leased territory the latter

in fact had no plan which is fundamentally acceptable. Therefore the case has been pending for many years much to the unexpectation of China. On September 7 Japan submitted certain proposals for the readjustment of the Shantung Question in the form of a memorandum together with a verbal statement by the Japanese Minister to the effect that in view of the great principle of Sino-Japanese friendship Japan has decided upon this fair and just plan as her final concession, etc. After careful consideration the Chinese Government feels that much in Japan's new proposals is still incompatible with the repeated declarations of the Chinese Government, with the hopes and expectations of the entire Chinese people, and with the principles laid down in treaties between China and the foreign powers. If these proposals are to be considered the final concession on the part of Japan, they surely fall short to prove the sincerity of Japan's desire to settle the question. For instance:

(1) The lease of Kiaochow expired immediately on China's declaration of war against Germany. Now that Japan is only in military occupation of the leased territory the latter should be wholly returned to China without conditions. There can be no question of any leasehold.

(2) As to the opening of Kiaochow Bay as a commercial port for the convenience of trade and residence of the nationals of all friendly powers, China has already on previous occasions communicated her intentions to do so to the powers, and there can be no necessity for the establishment of any purely foreign settlement again. Agricultural pursuits concern the fundamental means of existence of the people of a country; and according to the usual practice of all countries, no foreigners are permitted to engage in them. The vested rights of foreigners obtained through lawful processes under the German Regime shall of course be respected but those obtained by force and compulsion during the period of Japanese military occupation and against law and treaties can in no wise be recognized. And again al-
should be wholly returned to China without conditions. There can be no question of any leasehold.”

The second proposal offered to surrender the claim to an exclusive Japanese settlement or an international concession in Tsing Tao as was stipulated in the exchange of notes, May 25, 1915. This abandonment, however, was to be made on conditions that would safeguard the economic interests of the Japanese and other foreigners. First, China was to “open of its own accord the entire leased territory of Kiaochow as a port of trade,” which was also a reiteration of a stipulation in the exchange of notes, May 25, 1915. Second, China was “to permit the nationals of all foreign countries freely to
reside and to carry on commerce, industry, agriculture or any other lawful pursuits within such territory," the pursuit of agriculture being specifically mentioned which was generally considered as an occupation, open to the citizens or natives only. Third, China undertook "to respect the vested interests and rights of all foreigners, regardless of the validity of acquisition. Fourth, she would likewise "carry out forthwith the opening of suitable cities and towns within the province of Shantung for residence and trade of the nationals of all foreign countries," which was one of the stipulations of the treaty of May 25, 1915. Fifth, regulations for the opening of places under the foregoing clauses should be

in a leased territory, and the system of administration differed slightly from others. When the leased territory is restored, the Custom House thereat should be placed under the complete control and management of the Chinese Government and should not be different from the other Custom Houses in its system of administration.

(7) The extent of public properties is too wide to be limited only to that portion used for administrative purposes. The meaning of the statement in the Japanese memorandum that such property will in principle be transferred to China, etc., rather lacks clearness. If it is the sincere wish of Japan to return all the public properties to China, she ought to hand over completely the various kinds of official, semi-official, municipal and other public properties and enterprises to China to be distributed, according to their nature and kind, to the administrations of the central and local authorities, to the municipal council and to the Chinese Customs, etc., as the case may be. Regarding this there is no necessity for any special arrangement, and

(9) The question of the withdrawal of Japanese troops from the Province of Shantung bears no connection with the restoration of the Kiaochow Leased Territory and the Chinese Government has repeatedly urged for its actual execution. It is only proper that the entire Japanese Army of Occupation should now be immediately evacuated. As to the policing of the Kiaochow-Tsinan Railway, China will immediately send a suitable force of Chinese Railway Police to take over the duties. The foregoing statement gives only the main points which are unsatisfactory and concerning which the Chinese Government feels it absolutely necessary to make a clear declaration. Further, in view of the marked difference of opinion between the two countries, and apprehending that the case might long remain unsettled, China reserves to herself the freedom of seeking a solution of the question whenever a suitable occasion presents itself.
determined by the Chinese Government with the Powers interested.

In reply, China welcomed the surrender of the claim to an exclusive settlement or an international concession and also pointed out that inasmuch as China had on previous occasions declared her intention to open Kiaochow as a commercial port for the convenience of trade and residence of the nationals of all friendly nations, there could be "no necessity for the establishment of any purely foreign settlement again." She objected particularly to the inclusion of agriculture among the pursuits allowed to foreigners.

"Agricultural pursuits concern the fundamental means of existence of the people of a country; and according to the usual practice of all countries, no foreigners are permitted to engage in them."

She declined to concede indiscriminate recognition to all vested interest and rights of foreigners, but pointed out the difference between those legitimately acquired under the German regime and those illegally possessed during the Japanese military occupation.

"The vested rights of foreigners obtained through lawful processes under the German regime shall of course be respected but those obtained by force and compulsion during the period of Japanese military occupation and against law and treaties can in no wise be recognized."

She also objected to the idea of being called upon to open cities and towns in Shantung as commercial ports and declared that "the opening of such places should nevertheless be left to China's own judgment and selection in accordance with circumstances," plainly maintaining her own full sovereignty. She further declined to enter into previous negotiations as to the regulations governing the opening of such places, thus again asserting the principle of sovereignty, although conceding that China would "undoubtedly bear in mind the object of affording facilities to international trade and formulate them according to established precedents of self-opened ports."
In the third proposal, the joint enterprise was proposed of the Kiaochow-Tsinanfu Railroad, as stipulated in the Agreement of September 24, 1918, respecting the control of the Kiaochow Railway, and also of the mines appurtenant thereto. To this China strenuously objected on the ground not only of the illegal acquisition in consequence of the violation of China’s neutrality and sovereignty, but also of the undesirability of the foreign control of railways and the necessity of unification and nationalization of the same.

“The joint operation of the Shantung railways, that is, the Kiaochow-Tsinanfu Line, by China and Japan is objected to by the entire Chinese people. It is because in all countries there ought to be a unified system for railways, and the joint operation destroys unity of railway management and impairs the rights of sovereignty; and, in view of the evils of the previous cases of joint operation and the impossibility of correcting them, China can now no longer recognize it as a matter of principle. The whole line of the Shantung railway, together with the right of control and management thereof should be completely handed over to China; and after a just valuation of its capital and properties one-half of the whole value of the line not returned shall be purchased back by China within a fixed period. As to the mines appurtenant to the Shantung railway which were already operated by the Germans, their plan of operation shall be fixed in accordance with the Chinese Mining Laws.”

The fourth proposal offered to renounce the preferential rights with regard to foreign assistance in persons, capital and material, as stipulated in the Sino-German Treaty of March 6, 1898. This would eliminate the wall of preferential claims and thus open Shantung to the enterprise of all foreigners, indicating the desire of the Japanese to maintain equality of commercial opportunities. To this favorable proposal China was not opposed, and hence she made no reply thereto. Upon a closer examination, however, this apparent renunciation is tantamount to a surrender of something which Japan has not acquired. Maintaining as we do that the Kiaochow Lease
Convention of March 6, 1898, which embodied the preferential clause, was abrogated by China's declaration of war against Germany, it is but plain that the German rights of preference were nullified upon the declaration of hostility. While Japan might claim that the treaty of peace with Germany, June 28, 1919, awarded her the German rights in Shantung, it is to be maintained that China did not sign that treaty and thus refused to recognize the validity of the award. While voluntary renunciation on the part of Japan might be commendable, her proposal did not harmonize with the fundamental conviction and principle of the Chinese.

In the fifth proposal, the extensions of the Kiaochow-Tsinanfu Railway, as provided in the agreement of May 24, 1918 (respecting the construction of the Tsinan-Shunteh and Kaomi-Shuchow Railways) and the options for the construction of the Chefoo Weihsien Railway as stipulated in the Treaty of May 25, 1915, respecting Shantung, were to be thrown open for the common activity of the international financial consortium. Inasmuch as the exchange of letters between Thomas W. Lamont and N. Kajiwara on May 11, 1920, and the Japanese entrance into the New International Banking Consortium placed these railway concessions within the scope of the New Consortium, this proposal was deemed as a mere statement of a situation already in existence. The reply was therefore made:

"With reference to the construction of the extension of the Shantung Railway, that is, the Tsinan-Shunteh and Kiao Chou-Hsuchou Lines, China will, as a matter of course, negotiate with international financial bodies."

But as the Chefoo-Weihsien Railway concession was exacted under duress by the treaty of May 25, 1915, which should be either abrogated or revised, the suggestion thereabout was deemed to be "entirely a different case" and could not "be discussed in the same category."

The sixth proposal tendered to make the status of the customs house at Tsingtao as forming an integral part of the
general customs system of China clearer than under the German regime. Inasmuch as the full control of the customs house at Tsingtao was considered as a natural consequence of the restoration of Kiaochow Leased Territory, China contended that the status of the Tsingtao customs house should be the same as that of any other Chinese customs house.

"When the leased territory is restored, the custom house thereat should be placed under the complete control and management of the Chinese Government and should not be different from the other custom houses in its system of administration."

In the seventh proposal, public property used for administrative purposes within the leased territory of Kiaochow was tendered to be transferred to China, but as to the maintenance and operation of public works and establishments, special arrangement was to be made between the Japanese and Chinese governments. This proposal volunteered the transfer of public property used for administrative purposes, but still insisted on previous negotiation or special arrangement for the disposal of public works and establishments, which constituted one of the four conditions attached to the Japanese pledges of restoration of Kiaochou as embodied in the exchange of notes, May 25, 1915. Inasmuch as all public properties, either for administrative purposes or otherwise, should be returned with the restoration of the leased territory without special arrangements, the proposal was therefore rejected:

"The extent of public properties is too wide to be limited only to that portion used for administrative purposes. If it is the sincere wish of Japan to return all the public properties to China, she ought to hand over completely the various kinds of official, semi-official, municipal and other public properties and enterprises to China to be distributed according to their nature and kind, to the administrations of the central and local authorities, to the municipal council and to the Chinese customs, etc., as the case may be. Regarding this there is no necessity for any special arrangement."
The eighth item proposed the appointment of representative commissioners by the Chinese and Japanese governments to arrange detailed plans "for carrying into effect the terms of settlement above indicated and for the purpose of adjusting other matters not embodied therein." To this suggestion China made no reply.

The ninth and last term of settlement tendered the withdrawal of Japanese troops along the Kiao Chou-Tsinanfu Railway upon the organization by China of a police force to take over the protection of the line. This offer was, however, accompanied by the reservation that the question of the organization of a special police guarding the railway should be reserved for future consideration between Japan and China. This exception signified that Japan still held on to the claim of establishing a police force trained and controlled by the Japanese, as stipulated in Article 4 of the Agreement of September 24, 1918, respecting control of the Kiao Chou-Tsinanfu Railway. As this proposal was tantamount to the original claim of a police force trained and controlled by the Japanese and as the agreement in question of September 24, 1918, was considered invalid or voidable, and since the presence of Japanese troops infringes upon her sovereignty, China could not but decline the offer.

"The question of the withdrawal of Japanese troops of Shantung province bears no connection with the restoration of the Kiao Chou Leased Territory and the Chinese Government has urged repeatedly for its actual execution. It is only proper that the entire Japanese Army of Occupation should now be immediately evacuated. As to the policing of the Kiao Chou-Tsinan Railway, China will immediately send a suitable force of Chinese railway police to take over the duties."

From the above terms of settlement as offered by Japan, it can be seen that what Japan tendered to surrender was not hers by right, but rather what she should have given up. Inasmuch as the Kiao Chou Leased Convention of March 6,
1898, is regarded as abrogated with the declaration of war, the Kiao Chou Leasehold and the German preferential rights have therewith been nullified. As the exchange of letters between Thomas W. Lamont and N. Kajiwara on May 11, 1920, placed the extensions of the Shantung Railway within the scope of the New International Banking Consortium, the railways in question should have become open to the common activities of the New Consortium. The only term of settlement that might be commended and regarded with favor is the offer to surrender the claim to an exclusive Japanese settlement or an international concession, but this is offset by a requirement to recognize all vested interests and rights acquired during the Japanese military occupation, legitimate or illegitimate.

On the other hand it is also plain that Japan did not propose to surrender any vital interests, or to meet any fundamental objection of the Chinese. She still insisted on the joint enterprise of the Kiao Chou-Tsiananfu Railway, future negotiation regarding the organization of the railway police, special arrangement for the disposal of public works and establishments, clearer definition of the status of the customs house at Tsing Tao, and the recognition of vested interests acquired by foreigners legitimately or otherwise. In short, Japan still aims to achieve economic domination in Shantung. She made no confession of her mistake or crime in landing her troops at Lungkow and then marching through the Chinese territory and seizing the Kiao Chou-Tsiananfu Railway and the adjoining mines, and thus failed to recognize and respect the fundamental principle of the sovereignty of China. She still ignored the basic contention of the Chinese that China’s declaration of war abrogated all the treaties, conventions and agreements with Germany, inclusive of the Kiao Chou Leasehold and that China thus recovered to herself all the former German concessions. She further failed to concede that her possession of German rights in Shantung was vali-
dated, neither by the treaty of May 25, 1915, which was concluded under duress, nor by the Agreement of September 24, 1918, respecting control of the Kiao-Chou-Tsinanfu Railway, which was entered upon for illegal consideration, nor by the Treaty of Peace with Germany, June 28, 1919, to which China was not a contracting party.

The Chinese government therefore prefaced the reply with a declaration of disappointment over the terms of settlement and failure of Japan to meet the fundamental contentions and objections of the Chinese:

"With reference to the important Shantung Question which is now pending between China and Japan, China has indeed been most desirous of any early settlement for the restitution of her sovereign rights and territory. The reason why China has not until now been able to commence negotiations with Japan is because of the fact that the basis upon which Japan claims to negotiate are all of a nature either highly objectionable to the Chinese Government and the Chinese people, or such to which they have never given their recognition. Furthermore, in regard to the Shantung Question, although Japan has made many vague declarations she has in fact had no plan which is fundamentally acceptable. Therefore the case has been pending for many years much to the unexpectation of China. On September 7 Japan submitted certain proposals for the readjustment of the Shantung Question in the form of a memorandum together with a verbal statement by the Japanese Minister to the effect that in view of the great principle of Sino-Japanese friendship Japan has decided upon this fair and just plan as her final concession, etc. After careful consideration the Chinese Government feels that much in Japan's new proposals is still incompatible with the repeated declarations of the Chinese Government, with the hopes and expectations of the entire Chinese people, and with the principles laid down in treaties between China and the foreign powers. If these proposals are to be considered the final concession on the part of Japan, they surely fall short to prove the sincerity of Japan's desire to settle the question."

Consequent to the rejection of the terms of settlement, and anxious to reach a solution of the Shantung Question at an
early date, the Chinese Government made the reservation at the conclusion of the reply "of seeking a solution of the question whenever a suitable occasion presents itself," apparently giving the hint that, with concurrence of the powers interested, the Shantung Question might be made a subject for discussion in the Washington Conference on Limitation of Armament and Far Eastern Problems.
Additional copies may be obtained upon request from Y. Lewis Mason, Circulation Manager, 5800 Maryland Avenue, Chicago, Illinois.