

A Reluctant Imperialist:

Justice Elias Finley Johnson and China's May 30th Movement

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Abstract:

The May 30th Movement of 1925 is often cited as a watershed event that marked the ascent of Chinese Nationalism. On this day in Shanghai, China, British police opened fire on a large crowd of student protesters, killing eleven. Prior to this event, foreigners in China had enjoyed many privileges established by treaties, starting in 1842 with the Treaty of Nanjing. Concessions such as extraterritoriality were a constant source of resentment for Chinese Nationals. However, in the ensuing days, Shanghai and the rest of China reacted violently, jeopardizing the foreign position in China. The judicial inquiry into the May 30th Movement included three judges: American Justice Elias Finley Johnson, British Justice Henry Gollan, and Japanese Justice Kintaro Suga. The investigation was organized with the purpose of controlling the meaning of the May 30th Movement and maintaining foreign privilege in China. This thesis focuses on Johnson and his contrarian report, attempting to resolve the paradox of why Johnson, as an imperial agent in the Philippines, had delivered a report perceived to be against foreign concessions in China. Colonial administrators were often faced with the duality of having to compromise their ideology in the face of the realist demands of maintaining an empire. However, Johnson, when faced with the choice of ideology and the maintenance of foreign interests in China, stayed true to his principles of Wilsonian Democracy. In his report, Johnson presents a story of the May 30th Movement empathetic to the Chinese people. Analyzing the nature of the disturbance within a wider causal history, Johnson hoped to hold true to his principles of Wilsonian emphasis on the sanctity of international law and national self-determination. His opinion fell outside of the scope of the official history that was required of the judicial inquiry. As such, his report provoked a highly negative response from those whose interests were at stake in China. Johnson represents a rare case of an administrator who held to his individual precepts and acted contrary to the imperial prerogative of the judicial inquiry. Still, Johnson's report was limited in that it represented United States projections of hopes and fears onto the tumultuous events of the period. Although acting mostly as an instrument in US foreign policy, he also acted out of personal conviction. His view was the composite of a belief in China's ability to adequately work within Western legal conceptions (free of foreign supervision), and his decision to focus on a broader causal story to explain the nature of the May 30th Movement.

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Introduction:

It made me vaguely uneasy, I had no intention of shooting the elephant – I had merely sent for the rifle to defend myself if necessary – and it is always unnerving to have a crowd following you... As soon as I saw the elephant I knew with perfect certainty that I ought not to shoot him... But at that moment I glanced round at the crowd that had followed me. It was an immense crowd, two thousand at the least and growing every minute... And suddenly I realized that I should have to shoot the elephant after all. The people expected it of me and I had got to do it; I could feel their two thousand wills pressing me forward, irresistibly. And it was at this moment, as I stood there with the rifle in my hands, that I first grasped the hollowness, the futility of the white man's dominion in the East. Here was I, the white man with his gun, standing in front of the unarmed native crowd- seemingly the leading actor of the piece; but in reality I was only an absurd puppet pushed to and fro by the will of those yellow faces behind.¹

In his short story *Shooting an Elephant*, George Orwell presents the moral dilemma of a British imperial agent serving in Burma. Reflecting on the imperial process the young policeman realizes that he is a powerless “puppet” incapable of doing the right thing in this situation. As a figure of authority, he paradoxically is described as lacking of agency, feeling that he must act in a predetermined way according to the desires of the natives he is supposed to be controlling.

Similarly, Justice Elias Finley Johnson is faced with a moral dilemma in his judgment on the imperial position in Shanghai, China. Johnson, an American Supreme Court Justice in the Philippines, was asked to sit on a judicial inquiry. This judicial inquiry was organized in August of 1925 to investigate and establish the cause of the May 30th Movement in Shanghai. His role was to create an official history of the account. In this way, Johnson was co-opted to reassert the precarious Western imperial enterprise. This framing of the May 30th Movement would control the meaning of the event and hopefully appease the demands of radical Chinese Nationalists. While Johnson was an imperial agent himself, serving as an Associate Supreme Court Justice in the American Empire, he was uncomfortable with his role in the apparent “whitewashing” of the event that the judicial inquiry came to represent to him.

¹ George Orwell, *Shooting an Elephant* (New York: Penguin, 2003), 55.

Justice Elias Finley Johnson delivered a dissenting opinion because of the irreconcilable differences between his report and those of the other members. Unlike the policeman who shot the elephant against his will, Johnson resisted the pressure to present a biased report and asserted his agency in delivering a contrarian report. Johnson refused to “kill the elephant” and compromise his morals as the policeman had, instead maintaining his ideological precepts in the face of realist political demands. His report on the May 30th Movement was controversial insofar as it worked against foreign privilege in Shanghai. At the time that the report was released in November of 1925, the position of foreigners was in question. In this context, the purpose of the judicial commission, consisting of a Japanese, British and American judge, was to control the meaning of the May 30th Movement and to maintain the foreign concessions in China established during the preceding century in what was known as the Unequal Treaties.

Unlike the other judges serving on the commission, Johnson chose to adopt a wider in scope in his investigation. The other two acting judges, Mr. K. Suga and Sir Henry C. Gollan, confined their analyses to the proximate causes that led to the police opening fire on the protesters. Instead, Johnson’s minority report, focused on other background causes, complicating the official history. Johnson was acting in large part as an instrument in US foreign policy, but also as a statesman, beyond his designated role as a judge in the commission. His view was the composite of a Wilsonian emphasis on the sanctity of international law, a belief in China’s ability to adequately work within Western legal conceptions (free of foreign supervision), and his decision to focus on a broader causal story to explain the May 30th Movement, including elements such as the state of the Chinese mind and the Mixed Court as causes of the disturbance.

This thesis will contribute to an understudied area of the history of the Chinese Republican period. Scholarship on the May 30th Movement mentions Johnson, but says little

regarding his motivation in delivering such a controversial report. The thesis will attempt to fill this void in the current scholarship by analyzing Johnson in terms of the United States foreign policy during the time. Johnson had his own ideological conception of the purpose of United States foreign policy. Like the man who killed the elephant, Johnson is confronted with a moral dilemma in delivering his report. He is an anomalous character caught between his position in the judicial inquiry as instrument of colonial policy and his philosophical position towards the imperial process. Unlike the man who shot the elephant however, Johnson resisted the demands of colonial administration and acted as an agent, maintaining his ideological position in contrast to the purpose of the judicial inquiry.

My evidence, comes mainly from, the American Diplomatic Records, such as the Foreign Relations of the United States (FRUS) and the "US Department of State Records Relating to the foreign relations of the United States" reels 137- 138, and discussions between various figures concerning the progress of the judicial inquiry within these sources. Much of this process was developed through diplomatic correspondence between American and other foreign ambassadors reporting to the Secretary of State of the United States at the time, Frank B. Kellogg. This assortment of diplomatic materials consisted of correspondence, reports, newspaper articles, and other miscellaneous documents relating to the American position in China. The evidence that I specifically look at appears in three different stages of the judicial inquiry process: the original formulation of the commission and selection of appropriate judges, the investigation and publication of Johnson's report, and reactions to his report which elicited a very strong response among foreigners and Chinese alike. The document around which the project centers is the "Report of the International Commission of Judges Appointed to inquire into the causes of the Disturbances at Shanghai, May 30th, 1925", written by Johnson in November of 1925. It was

this document that was considered a threat to foreign interests in China given its minority position and its broad scope. By analyzing Johnson's report, I hope to better understand the extent to which his views were consonant with those of the United States official position.

At this point I will attempt to clarify usage throughout the paper. When I refer to Johnson as operating within a Wilsonian legal viewpoint, I mean to say that there is an emphasis on the primacy of international law in resolving disputes, and of the right of national self-determination of all nations (a major underlying assumption of the Treaty of Versailles in 1919). Next, Johnson's report was a minority report insofar that it dissented from the opinion of the other two judges. The "Unequal Treaties" is a name given to the series of concessions demanded from the Chinese starting with the defeat by the British in the First Opium War and the resulting treaty of Nanking of 1842. One extremely important feature of this was the beginning of extraterritoriality and the opening up of various treaty ports including Shanghai to foreign intercourse. Extraterritoriality was used as a means to secure legal privileges for British and other foreigners who, after committing a crime in China, would be tried by their nation's specific law rather than by Chinese law. Extraterritoriality, then, represented a breach of Chinese jurisdictional authority by undermining China's right as a nation to apply its law consistently within its physical borders. I refer to Johnson's approach to the report as a causal history of the event, looking at both the proximate causes of the event along with the underlying circumstances that surrounded the entire foreign presence in China. In this way, by looking beyond the proximate, or immediate causes of the event, i.e. the actions of the police, Johnson writes a history of deeper significance. Johnson's opinion fell outside of the scope of the official history that was meant to be established by the judicial inquiry. By official history, I mean the construction and framing of the events in China in such a way as to justify the imperial projects in China.

Section I: The May 30th Movement and Unequal Treaties

Written in November of 1925, the report of Justice Finley Johnson on the May 30th Movement complicated the narrative of the event in contrast to the Japanese and British reports on the Commission of Judges. By looking beyond the proximate or immediate causes of the event, Johnson constructed a history that appeared to be against foreign privilege in China. Johnson was acting in part as an instrument of US foreign policy, but also out of personal conviction against the direction of the investigation that distorted the actual historical circumstances. Johnson attempted to depict a more accurate historical account of the event by invoking the history of the Western presence in China in his report. His report was met with extreme censure by those whose interests depended on the maintenance of foreign privileges and the imperial position. He realized the likely reaction to his betrayal of the purpose of the commission, and acted reluctantly, knowing that his report would face of strong opposition.

The background of the May 30th Movement must be seen in terms of the very beginnings of the foreign intrusion into China. China's defeat in the First Opium War at the hands of Great Britain radically changed its relationship to foreign nations. China was shaken by this and the resulting Treaty of Nanjing of 1842, the first of what were later referred to as the Unequal Treaties. The so-called Unequal Treaties left a legacy of strong resentment in the emerging Chinese national psyche. With the Treaty of Nanjing, Britain annexed Hong Kong, forced open five Treaty Ports, most notably Shanghai, and wrested the first major concession in what was later broadly referred to as legal imperialism. Legal imperialism was exemplified by the extension of extraterritorial privilege to British citizens in China. This exempted British nationals from Chinese law.² The ensuing period was termed the "Century of National Humiliation" due to

² David Scott, *China and the International System, (1840-1949)* (Albany: State University of New York Press, 2008), 27.

the inability of the once strong Chinese Empire to defend itself from the incursions of a militarily superior West. Of critical importance during the Opium War was Great Britain's superior naval technology, which allowed the relatively easy defeat of China. China felt shame because of its loss of territorial sovereignty and its capitulation to the demands of extraterritorial privileges for foreigners. This in effect granted foreigners legal jurisdiction according to their own national laws in China. Compounding this challenge to Chinese sovereignty was the Most-Favored-Nation (MFN) clause through which other weaker powers were granted privileges wrested by imperial powers such as Britain. It was in this manner that the United States quietly, without attracting much notice, gained a partial foothold in China, following the coattails of British imperial force.³

The American policy had always conceived itself as having a distinct relationship of friendship and stewardship with the Chinese. This tendency was reflected in the 1921-1922 Washington Conference. According to John Fairbank, the Washington Conference represented "a codification of the Open Door doctrine in expanded form."⁴ The Open Door Doctrine was articulated in 1899, around the same time as the United States Pacific Expansion in Hawaii, Samoa, and the Philippines. It essentially called for an "Open Door" for trade in China maintained by the "Collective influence of the trading nations."⁵ It further held as its two main tenets: "the integrity of China, and the equal treatment of all foreigners there."⁶ These apparently contradictory desires were codified during the Washington Conference, which maintained collective action in contrast to America's otherwise traditionally isolationist policies such as the

³ Michael H. Hunt, *The Making of a Special Relationship: The United States and China to 1914* (New York: Columbia University Press, 1983), 17.

⁴ John Fairbank. *The United States and China*. (Cambridge: Harvard University Press, 1971), 299.

⁵ *Ibid.*, 296.

⁶ *ibid.*, 298.

Monroe Doctrine. As originally articulated, the Monroe Doctrine demanded nonintervention from Europeans in the affairs of the American continents.

However, as Rebecca Karl notes, the Monroe Doctrine began to “leak into those areas on which the Doctrine has designs but which have not yet experienced it, and are not of the American continent and thus do not pertain to the historicity of the Doctrine’s era.”⁷ Leading up to the articulation of the Roosevelt Corollary to the Monroe Doctrine in 1904, the traditional limits on American territory became more plastic. The United States at the turn of the 20th Century began to expand its global reach into the realm of Pacific Empire. The Spanish American War in 1898 represented a shift in terms of American foreign policy that began the process of empire building in the Pacific. For Karl this represented the emergence of a new Pacific stage connected by Hawaii and the Philippines leading to China. The Monroe Doctrine had become “an abstract hemispheric measure, where there was no longer any predictability in its space of applicability.”⁸ The rhetoric of friendship with China and later of Wilsonian idealism was tempered by this aggressive expansionist program. Still, some held the illusion that the United States had a uniquely benevolent policy towards China in contrast to exploitative nature of Britain and Japan. While the Chinese hoped that United States rhetoric was sincere, they were severely disappointed when US ideology failed to apply to their situation.

For the Chinese, the experience of collective disgrace is naturally seen as the determining factor for the strong upsurge of nationalism during the early 20th Century. The term Unequal Treaties was retrospectively applied to the series of abrogations of Chinese sovereign rights at the hands of foreign imperialism. As Dong Wang argues, the imprint of the Unequal Treaties on

⁷ Rebecca E. Karl, *Staging the World: Chinese Nationalism at the Turn of the Twentieth Century* (Durham: Duke University Press, 2002), 65.

⁸ *Ibid.*

Chinese historical consciousness was fundamental to the “construction of Chinese nationalism.”⁹ The notion of a constructed nationalism is in line with the conception of Benedict Anderson, who views nationalism as an imagined community, “imagined as both inherently limited and sovereign.”¹⁰ By association, Dong and Anderson would likely agree that the emergence of the Chinese nation was connected with the feeling of shared Chinese oppression under the Unequal Treaties. This common experience under the yoke of imperialism was the glue that held together the collective national consciousness of the Chinese psyche. However, Sun Yat-sen, the symbol of emergent Chinese Nationalism, did not hold this same view. For him, awakened consciousness was not sufficient to attain Chinese national sovereignty. Instead, he argued that China needed to industrialize to build its strength and forcibly remove imperial intrusions. Lamenting the pitiable state of the Chinese Nation in 1924, Sun Yat-sen saw China as “but a sheet of loose sand”, a metaphor to demonstrate the lack of a cohesive nation.¹¹ He further believed it was the task of the people to “revive China’s lost nationalism and use the strength of our four millions” to “oppose the great powers of the world.”¹² For Sun Yat-sen, China was not a nation, but instead a colony and had to resist the incursions of its colonial oppressors to regain its status as a great nation.

Imperialism also had a new character during this time. This was reflected in the retreat of the Western imperial presence in China. The Western world was weakened after the ravages of World War I. However, a notable exception to this trend of Western retreat in China was Japan and its advancing national aspirations. With the onset of the war, Japan moved into German held

⁹ Dong Wang, “The Discourse of Unequal Treaties in Modern China”, *Pacific Affairs*, Vol. 76, No. 3. 115.

¹⁰ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso, 1991), 6.

¹¹ Theodore de Bary and Richard Lufrano eds., *Sources of Chinese Tradition* (New York: Columbia University Press), 321.

¹² *Ibid.*

Shandong. China was helpless amid the realist politics of the day, looking to the United States for assistance, but getting none. According to Robert Lansing, any action of the United States to defend Chinese territorial sovereignty in Shandong “would be quixotic in the extreme.”¹³ This was because intervention would have unnecessarily entangled the US in a problem outside of its interests. Japan’s Twenty-One Demands were declared in the spring of 1915, demanding that China accede to Japanese economic rights in southern Manchuria. Chinese Republican Leader Yuan Shikai capitulated to most of these demands, but managed to resist Japanese designs that would have allowed Japanese settlers and corporations to colonize Manchuria outright.¹⁴ This represented another great humiliation for the Chinese Nation. In fact this experience was so resonant that May 9th of 1915 was declared National Humiliation Day, a day that would be observed until 1940.¹⁵ It further revealed the weakness of China and the danger that Japan represented to its sovereignty.

Hoping to have their voice heard among other nations, the Chinese articulated their belief in the injustice of the Unequal Treaties during the 1919 Paris Peace Conference at Versailles. Here, they argued that extraterritoriality was not based on international law, but instead had been forced upon the Chinese and was only established by way of treaty. Previously, the Chinese hoped that by showing its adherence to the Western “quid pro quo” of political stability and judicial reform, China could demonstrate their readiness for the removal of the existing treaties.¹⁶ It became evident however, that attempting to work with the international system to appeal and resolve their grievances would not work. The Chinese request for consideration was largely unheard at Versailles.

¹³ Scott, *China and the International System*, 197.

¹⁴ Prasenjit Duara, *Sovereignty and Authenticity: Manchukuo and the East Asian Modern* (Lanham: Roman & Littlefield Publishers, 2003), 48.

¹⁵ *Ibid.*

¹⁶ Dong Wang. “The Discourse of Unequal Treaties,” 405.

Representing a flagrant disregard for Chinese territorial sovereignty, the Japanese were given the rights to the former German holdings in Shandong. As a result, the conference was seen as inconsistent in the application of its principles, allowing Japan to further extend its imperial dominion in China.¹⁷ Chinese students reacted furiously to the results of the Versailles Peace Treaty in what became known as the May Fourth Movement. The May Fourth Movement of 1919 highlights an important connection between foreign imperialism and Chinese Nationalism. Originally Chinese intellectuals saw the end of World War I and the Wilsonian principle of national self-determination as “a victory of universal principle (gongli) over naked force (jiangquan).”¹⁸ These hopeful Chinese intellectuals quickly became disillusioned by the failure to apply such universal principles for China’s benefit. The May Fourth Movement represented Chinese disenchantment towards insincere Western promises and outrage at the advancing designs of the ultra-nationalistic Japan. This largely student-led protest against imperialism, emphasized the need to reform culture by “stressing science and democracy” in order to build national strength and compete with other modern nations.¹⁹

While the May Fourth Movement represented a nationalist awakening in China, it is important to distinguish between two different forms of Chinese Nationalism. Nicholas Clifford identifies old nationalism as typical of the overthrow of the Manchus in favor of a restoration of native Chinese rule, the establishment a constitutional monarchy, and other reform efforts to modernize the Chinese state. Very significantly however, Clifford points out that this old form of nationalism “would not lead to an overthrow of the customary political and social institutions” of

¹⁷ Diana Lary, *China's Republic* (New York: Cambridge University Press, 2007), 55.

¹⁸ Arif Dirlik, *The Origins of Chinese Communism* (New York: Oxford University Press, 1989), 62.

¹⁹ Scott, 206.

China.²⁰ This form of nationalism, associated with the ideals of the 1911 Revolution, is contrasted with the radical nationalism that would emerge in the 1920s. This new radical nationalism sought the eradication of warlordism and imperialism together, and saw the two phenomena as interconnected: “one could not be destroyed without the other.”²¹ The radical nationalist position saw fundamental problems facing China. With the degradation of the state to warlordism and the opening up of China to further foreign exploitation, they sought to reform society at its core, across class and provincial lines. Radical nationalism turned to “socialism and communism, which imposed an ideology on the society, the nation, and representations of life.”²² This new form of nationalism manifested itself in the Kuomintang and Communist movements. Both of these parties attempted to build national institutions to accomplish the restructuring of society.

In 1922 the Guomindang and the Chinese Communist Party (CCP) had formed a first united front. Sun Yat-sen, the unifying figure of Chinese Nationalism stressed the need to overthrow imperialism and to renounce their status as a “hypo-colony”, reasserting itself as a sovereign nation-state.²³ The jurisdictional sovereignty of Chinese institutions was undermined by the imperial presence in China. Sun Yat-sen saw the Unequal treaties as the symbol of Chinese oppression and the need to repudiate them as fundamental to China’s progress as a nation.²⁴ The more radical sectors of nationalist current began to utilize the Unequal Treaties as a rallying point for the fundamental restructuring of society, calling for *qūxiao bupingdeng tiaoyue* “Cancellation of the Unequal Treaties” as a slogan used by the CCP for propagandistic

²⁰ Nicholas R. Clifford, *Shanghai, 1925: Urban Nationalism and the Defense of Foreign Privilege* (Ann Arbor: Michigan University Press, 1979), xi.

²¹ *Ibid.* xii.

²² Hung-Yok Ip, “The Plurality of Chinese Modernity: A Review of Recent Scholarship on the May Fourth Movement,” *Modern China*, Vol. 29, No. 4, 491.

²³ Bary and Lufano eds., *Sources of Chinese Tradition*, 322.

²⁴ *Ibid.*, 251.

purposes.²⁵ At the same time, a surging radical nationalism, expressing itself especially through the labor movement, began to mount a fight against western abuses in China.

It is within this context that the May 30th Movement of 1925 occurred. The weakening Western treaties still upheld the Chinese position of inferiority within the international order. Particularly within Shanghai, the Shanghai Mixed Court was a symbol of foreign domination.²⁶ The Shanghai Mixed Court was established in 1864 in the International Settlement, a sectioned off portion of the city where foreign nationals were designated to live. The Court functioned with both a Chinese Magistrate and a foreign assessor who jointly worked on cases within the settlement. The court served as an extraterritorial body that applied the law to each particular nationality; this represented a highly resented foreign privilege, because it was often manipulated to protect foreigners unfairly. This would become problematic during the May 30th Movement, and was identified by Justice Johnson as one of the primary causes of the disturbance.

In the midst of these background issues were the immediate events that led up to the disturbance on May 30th 1925. Anatol Kotenev's *Shanghai: Its Municipality and the Chinese*, describes the immediate events that led to the event. According to Kotenev, labor and student agitation such as that which led up to the major disturbance was fairly typical. It was a reality which Shanghailanders (foreign residents of Shanghai particularly British) were accustomed to dealing with. He goes on to say:

Residents and authorities of all classes in Shanghai, both foreign and Chinese, were accustomed to the constant fermentation among the Chinese extremists, students and laborers, which, as a rule, in spite of threatening appearance, ended

²⁵ *Ibid*, 409.

²⁶ Richard W. Rigby, *The May 30th Movement* (Australia: Australian National University Press, 1980), 19.

without much complication at the first sign of firmness displayed either by the foreign or the Chinese authorities.²⁷

This would suggest that the sequence of events that led to fires being shot in front of the Louza Police Station were routine occurrences. In fact, agitation and conflagrations between Chinese workers and Japanese mill operators had been ongoing throughout February of 1925. An event that would have great consequence in the build up to May 30th occurred on May 4 at a Japanese silk factory, T'ung Hsing, where a dispute led to the killing of a Chinese worker by the name of Koo Tseng-hung.²⁸ This was not particularly important at the time, since there had been high tension between labor and particularly Japanese factory owners since the beginning of the year. What was significant, however, was the Chinese perception that the Mixed Court, an instrument in Western extraterritorial justice, failed to deliver justice, as there was no inquiry into the shooting of Koo Tseng-hung. On May 30th, widespread demonstrations, largely anti-Japanese in character, were held throughout the International Settlement. Also coincidentally, the police were very understaffed on this day, unable to sufficiently deal with a radicalized group of student protesters who would gather outside of Louza Police Station that afternoon.

Kotenev cites the Annual Report of the Shanghai Municipal Council (SMC), 1925, in order to relate the immediate circumstances leading to the disturbance. At 1:55 PM that afternoon, police investigated a group of student activities. The student demonstrators refused to disperse and so the police arrested three men.²⁹ In response, a group of students followed the police who had just made the arrests to the charge room at Louza Police Station. A few minutes later Inspector Everson, who was the most senior police officer on duty at the time, was called to

²⁷ Anatol M. Kotenev, *Shanghai: Its Municipality and the Chinese* (Shanghai: North-China Daily News and Herald, 1927), 129.

²⁸ *Ibid.*

²⁹ *Ibid.*, 130.

investigate another instance of anti-Japanese protest. Another arrest occurred during this investigation, with a crowd of students following the police and the arrested student. During this event violence was used against the foreign police and six more assailants were arrested. Following these students were “many sympathizers who forced their way into the Charge Room” at Louza Police Station.³⁰ These men were forcibly ejected from the Charge Room with difficulty. This apparently electrified the scene outside of Louza Police Station, when shortly after 3:00 PM the crowd grew to over 1,500 demonstrators hardly able to be contained by the 100 or so policemen on duty at the time. As the crowd grew it was described as “a howling mob”, which pushed steadily forward shouting “Kill the foreigners!”³¹ Shortly thereafter the most senior police chief on duty, Inspector Everson, ordered a group of police to open fire on the crowd. As the Municipal Council report concludes, “the shooting had the immediate effect of dispersing the crowd and traffic became normal shortly afterwards.”³² The shots fired by the police caused the deaths of eleven Chinese protestors. A massive reaction throughout China would soon follow.

Section II: Background of the report of Justice E. Finley Johnson

As seen in the Diplomatic Correspondence preceding the investigation, great importance was ascribed to affixing meaning to the May 30th Movement of 1925. If the commission admitted that the police were to blame for the disturbance, then it would invite the Chinese to question the legitimacy of the foreign position. This in turn would weaken the bargaining power of foreign powers in future negotiations with China. The goal of the inquiry was to restrict the scope of the investigation to minimize the damage done to the Western position in China during

³⁰ *Ibid.*

³¹ *Ibid.*, 131.

³² *Ibid.*

the time. This would be achieved by maintaining a consistent narrative of the event by a joint judicial commission. Consisting of a British, Japanese, and American judge the task was to come to a suitable narrative of the event in the face of serious questions over the efficacy of Western imperial strength. Western imperialism was fading and needed to act decisively or else risk losing control of its holdings. This fear prompted the judicial inquiry.

Prior to the judicial inquiry, there was another investigation that originated in Peking called the diplomatic body. Headed by Jean Tripier and a group from the foreign legations, this diplomatic body arrived in Shanghai on June 10, 1925. This first commission consisted of an informal gathering of evidence that was not taken under oath, looking to reach a settlement of the issue between foreigners and Chinese. This proved impossible given the polarized position of both sides. As Clifford relates, the foreigners were unwilling to negotiate because they "could admit no responsibility by the Municipal Council for the shooting, for it [was] believed that Chinese respected only force, and any signs of doubt or weakness would only lead to more trouble."³³ The Tripier commission was distrusted by the Shanghailanders community, however the legations originally believed that it was an adequate investigation.

This investigation came to findings that could have been damaging to the authority of the Municipal Council in Shanghai. For example, the diplomatic body held that the "police regulations of the international Settlement were defective, and furnished one of the causes of the May 30th Incident."³⁴ Most dangerously, however, the findings concluded that "the arrangements for the students' demonstrations of May 30th had been made on Chinese soil and that the Chinese

³³ Nicholas R. Clifford, *Spoilt Children of Empire: Westerners in Shanghai and the Chinese Revolution of the 1920s* (Hanover: Middlebury College Press, 1991), 118

³⁴ Dorothy Borg, *American Policy and the Chinese Revolution (1925-1928)* (New York: American Institute of Pacific Relations, 1947), 32.

Government ought, on its part, to inflict punishment of the responsible officials.”³⁵ The diplomatic body recommended that the responsible police be tried according to Chinese law, free from extraterritorial protection. This gesture would serve as a conciliatory gesture to assuage Chinese anti-foreign hatred aroused by the incident. However, adoption of this measure would have threatened the future of extraterritorial privilege in China. In reaction, the Shanghai authorities protested the first investigation and demanded another inquiry be held claiming evidence was not properly taken.³⁶ The British Foreign Secretary Sir Austen Chamberlain was influenced by the pressure from Shanghai to order a separate judicial investigation into the disturbance. At the last minute Chamberlain decided to hold up the publication of the diplomatic body’s findings, thus repudiating its findings and giving in to Shanghai demands.³⁷

After the suppression of the findings of the original investigation, it would appear that the goal of the judicial inquiry from the British perspective was to reestablish the authority of the mainly British controlled Shanghai Municipal Council. In essence, the British hoped that the inquiry would minimize the damage done to the British position in China. The second investigation was meant to reestablish the legitimacy of the Shanghai Municipal Council and restore security to the foreign presence. The judicial commission would fix responsibility away from the police thereby vindicating the Shanghai Municipal Council.³⁸

To further illuminate the obscure figure of Justice Johnson, it is essential to understand the process leading up to his selection as a member of the Judicial Commission. This process is revealed within the body of diplomatic exchanges relating to the foreign relations of the United

³⁵ Clifford, *Spoilt Children*, 118.

³⁶ *Ibid.*, 121.

³⁷ *Ibid.*

³⁸ *Ibid.*, 122.

States appearing in 1925 (FRUS).³⁹ Some of the prominent figures frequently appearing within these exchanges are United States Secretary of State Kellogg, Consul General at Shanghai Cunningham, Chargé d'Affaires Mayer (Britain), Ambassador in Great Britain Houghton, and American Minister in China MacMurray. The papers present key insights into the formation of the judicial inquiry in which Justice Elias Finley Johnson participated, and reveal much controversy over Johnson's report. After the release of the report in late October of 1925, it becomes a point of reference discussed frequently in the various diplomatic exchanges.

Elias Finley Johnson was born on June 24, 1861 in Van Wert, Ohio. As a young man of twenty-two, Johnson served as both a politician and a lawyer. He worked in the Ohio Legislature before leaving to finish his legal education at the University of Michigan. He graduated from the Law Department in 1890 and in 1891 became a regular instructor in the department. Described as a very passionate and diligent professor, Johnson was well liked by his students.⁴⁰ Next, he moved on from his position as a professor to become an Associate Justice of the Supreme Court in the Philippines. Appointed by Theodore Roosevelt on October 3, 1903, Johnson would serve for thirty years in the Philippines in this capacity ending his career April 1, 1933.⁴¹ As a man of sixty-three Johnson arrived in Shanghai asked to serve on the judicial inquiry into the May 30th Movement.

We see Johnson's idealism in his approach to the investigation in the various diplomatic exchanges, highlighting a problem of agency. By understanding his purpose in writing this report, we can understand more fully his approach to the problem and how it reflects the

³⁹ U.S. Department of State, *Foreign Relations of the United States (FRUS): Diplomatic Papers, 1925* (Washington, DC: GPO, 1965)

⁴⁰ C. Knowlton, The Michigan Alumnus, "Faculty History Project," University of Michigan. <http://um2017.org/faculty-history/faculty/elias-finley-johnson/bio-1> (accessed April 15, 2012).

⁴¹ Supreme Court E-Library, "Memorabilia Room, Associate Justices' List," United States Judiciary. <http://elibrary.judiciary.gov.ph/index3.php?justicetype=Associate%20Justice&justiceid=a45475a11ec72b843d74957b60fd7bd64562152ad9704> (accessed April 15, 2012).

demands of his diplomatic overseers. Upon publication, his report was considered dangerous from a diplomatic perspective because of its opposition to the original purpose of the inquiry. By relating Johnson to the diplomatic forces at work around him, it can be determined to what extent Johnson reflected or rejected the prevailing attitudes of American foreign policy at the time.

The first mention of the need of a judicial inquiry is made on July 17, 1925 in a telegram sent by Ambassador Houghton (Britain) to Secretary of State Kellogg. The telegram mentions the insufficiency of the previous diplomatic inquiry conducted by the diplomatic body. There is a particularly revelatory line within this telegram that clearly outlines the purpose of the British in calling for such a second judicial inquiry:

His Majesty's Government are more than anxious to maintain the authority of the diplomatic body but consider that this will be better secured if the initiative in proposing and constituting a judicial inquiry is taken by the diplomatic body and it is explained that the diplomatic commission of inquiry is to be considered as a preliminary inquiry which was made out of a prima facie case for a further public judicial inquiry.⁴²

From this we can determine that the second investigation was to establish a definitive account of the actual events of May 30, 1925. This would suggest that the previous report of the diplomatic commission was insufficient, and that there remained questions over whether justice had been served within both the foreign and Chinese camps. Of particular interest in this part of the letter is the emphasis on the need to maintain the authority of the previous investigation, but at the same time, to produce an explanation of the event that would be sufficient to calm the unsatisfied demands that remained in response to the incident.

The form of the commission was to consist "of American, French, Japanese, and British judges having known the Far East but if possible not directly connected with Shanghai", thus

⁴² *FRUS*, 685.

including representatives of all the major imperial stakeholders in China and Shanghai during the time.⁴³ In the same July 17, 1925 telegram, Houghton goes on to mention his desire to exclude any Chinese representative from the commission. The British did not wish to include a Chinese judge in the process since the Chinese did not hold responsibility in the administration of the International Settlement where the event took place. Also informing this decision was Houghton's belief that the Chinese had "shown a persistent desire to use the Shanghai incident as an argument in a different and larger issue instead of judging it strictly on its merits."⁴⁴ Fearing that something might come out that would further incite Chinese opinion, the British wanted to exclude any Chinese voice from the framework of the prospective commission.

The British in Shanghai feared that any wayward opinion in the process could result in a drastic reaction against the foreign presence, similar to that of the Boxer Rebellion. Having occurred a short 25 years before, this was the historical event above all others that for foreigners was equated with Chinese Nationalism, occupying a vivid place in the foreign imagination. As Clifford explains, the Boxer Rebellion was seen throughout Chinese society as the birth of modern nationalism in China.⁴⁵ There still lingered fear of the possibility of such a reaction against foreigners in China. It is logical then that the British in Shanghai would want to exclude the participation of a Chinese judge.

This original British conception of the judicial inquiry had the purpose of completely clearing the controversy surrounding the May 30th Movement. It sought legitimacy by asking other nations to appoint impartial judges to investigate where responsibility for the revolt was to be assigned. However, the preconditions of this inquiry included a desire to establish the

⁴³ *Ibid.*, 686.

⁴⁴ *Ibid.*

⁴⁵ Clifford, *Spoilt Children of Empire*, 12.

responsibility of the Chinese owing to the organization of the demonstration on Chinese administered territory and should say that the inquiries made by the diplomatic body have led them to the conclusion after consultation with their Governments that a public judicial inquiry should be held to establish and make known the facts, fix the responsibilities and satisfy public opinion in China and abroad, that justice will be done and administrative reforms will be effected when required as shown by the results of the inquiry.⁴⁶

The above represented a move to frame the official history, and thus maintain authority over the situation. In contrast to the previous diplomatic commission, the judicial inquiry was meant to represent an impartial ruling on the events. This included judgment on the police, for ordering the shots to be fired on the crowd of student protestors.⁴⁷ The process of forming a new investigation was a delicate one. It was meant to balance the need to establish a restrictive narrative of the event while also appeasing the demands of the outraged Chinese. Thus, the objective of the commission was to limit the scope of the investigation of the event, in order to defend the superiority of the British position in China and to contain the situation that would allow a return to normalcy in relations with Chinese.

The Americans favored having a Chinese judge included in the proceedings. This would both appease Chinese animosity and make the process appear to be more transparent. The American Minister in China, John Van Antwerp MacMurray, wrote to Secretary of the United States Kellogg, on July 20, 1925 expressing hope that including a Chinese judge in the investigation would secure approval from the Chinese. This gesture would in turn allow for further negotiations in good faith on other issues such as the status of extraterritoriality and tariff questions.⁴⁸ MacMurray assigned great importance to the question of including a Chinese judge in the process. He believed that doing so would be seen as "a conciliatory gesture which would

⁴⁶ *FRUS*, 686.

⁴⁷ George W. Keeton, *The Development of Extraterritoriality in China* (New York: Howard Fertig, 1969), 390.

⁴⁸ *Ibid.*, 688.

favorably influence Chinese sentiment and react advantageously upon our relations.”⁴⁹ At the same time, if the commission were to go forward without a Chinese judge participating in the negotiation, then it would be looked at with distrust. MacMurray feared that the judicial inquiry would be seen as a façade meant to cover up the actual events and to authorize the foreign position unapologetically. While the British agreed to the American demand that the process include a Chinese judge, this would be of little consequence.⁵⁰ This was because the Chinese Government was set against the formation of the judicial inquiry and refused to take part.

Secretary of State Kellogg promptly responded on the 22nd of July approving MacMurray’s vision for the organization of the commission. More than anything, Kellogg agreed that the purpose of this second committee should be one of conciliation.⁵¹ This vision slightly diverges from the purpose originally articulated by the British Ambassador. The British seemed to be primarily focused on maintaining a consistent image of British prudence in dealing with the issue. By admitting any errors in the application of justice, the British were leaving the question of the legitimacy of the Shanghai Municipal Council open to question. The governing authority of the SMC in relation to Peking was always an ambiguous point. Therefore, the Shanghai authorities wanted to suppress any suggestion of wrongdoing or impropriety on the part of the Shanghai Municipal Council. It was believed by those that opposed the inception of the inquiry that it would look to cover up any responsibility for the event on the part of the foreign presence.

In an August 3rd telegram, Secretary of State Kellogg attempted to negotiate the British and American positions by synthesizing the purpose of the commission. He defines the commission as meant “to establish and make known the facts, fix the responsibilities and satisfy public opinion in China and abroad” by appointing British, French, Japanese, and American

⁴⁹ *Ibid.*, 686.

⁵⁰ *FRUS*, 690.

⁵¹ *FRUS*, 689.

judges.⁵² This new position made the purpose of the inquiry clear, merging shared British and American desires into the framework of the commission. The tension in the formation of the judicial inquiry was between a desire for appeasement of Chinese sentiments and the Shanghailander desire for retribution to those responsible for instigating these disturbances. The balance between these two positions was very delicate. If the investigation was not handled properly, then it would engender strong distrust, thereby alienating Chinese opinion completely.

In addition to Justice E. Finley Johnson, the judicial commission consisted of two other members in Mr. Kitaro Suga of Japan and Mr. Sir Henry C. Gollan of Great Britain. The reports delivered by these two men differed markedly from that of Johnson. The commission had been assembled with the intent of releasing a report with unified findings, but failed because of the irreconcilable differences of opinion between the findings of Johnson and the other two judges. The reports of both Suga and Gollan were confined to the structure which guided the investigation and evidence found therein. All three reports were to include sections on:

- (a) the origin and character of the disturbances which took place on or about May 30th; (b) the reasons, if any that existed for anticipating disorder; (c) the precaution that were or might have been adopted to prevent the same; (d) the measure taken to suppress it; and (e) the circumstances in which certain persons lost their lives and other person suffered injuries.⁵³

Although each of the three reports included these sections, each took a distinct way in representing the facts of the incident and in shaping the narrative of its progression. The result lends an undecided feel to the conclusions presented, and casts doubt over the process as a whole. Every report mentions the impossibility of presenting a unified report given certain irreconcilable differences in opinion. Suga, in the beginning of his report, singles out "one of the

⁵² *Ibid.*, 690.

⁵³ U.S. Department of State, *Report on the Disturbances which took place at Shanghai on May 30th 1925*, by Henry C. Gollan. "Records relating to the internal affairs of China, 1910-1929" (Washington, DC, 1925), Microfilm, p. 1, Microcopy 329.

members holding views entirely different from those of the others on vital points.”⁵⁴ Suga is hinting at the distinct nature of Johnson’s report that was in many ways viewed as outside of the scope of the investigation.

Each of the three reports expressed regret that no members of the Chinese community of Shanghai had participated in the proceedings. For the Chinese, this second organized inquiry was seen as unnecessary. It was believed that there had been sufficient exploration into the incident during the previously suppressed diplomatic body investigation. Further, it was thought that this secondary investigation would work to cover up the undesirable features of that previous investigation. This disingenuous investigation would be of essentially the same nature as the findings of Mixed Court and would uphold the biases previously established. The only additional area that the inquiry was addressing was the role of the police and whether there was any impropriety on their part. This was the subject around which the judicial commission centered. The Chinese attitude towards the judicial inquiry was immediately distrustful.

Given that the investigation took place over three months after the actual occurrence of the event, the commission was essentially a history making body. In the shaping of a historical narrative, by placing emphasis on certain facts and ignoring others, the meaning of an event begins to take shape. This is clear in the case of the Judicial Commission. During the process, different conclusions were reached relying on the same body of evidence. While the British and Japanese maintained a consistent narrative and conclusion, Justice Johnson damaged this consistency. His stubbornness and uncompromising position complicated the narrative ultimately delivered upsetting the foreign community considerably. By framing a distinct narrative and

⁵⁴ U.S. Department of State, *The Report of Mr. K. Suga, Japanese Member of the International Commission of Judges, for the Enquiry held in Shanghai*, by Mr. Kitaro Suga. “Records relating to the internal affairs of China, 1910-1929”. (Washington, DC, 1925), Microfilm, p. 2, Microcopy 329.

coming to a divergent conclusion, Johnson caused the Commission to submit a split decision, thus casting doubt over the process.

It is important to look at the three reports and compare the structure and narrative employed in each to determine why Johnson's report was so controversial at the time. While the Japanese and British members both absolved the police of responsibility, Johnson concluded that the police had at least partial responsibility for the disturbance. I will begin by summarizing the findings of the British and Japanese reports that came to very similar conclusions and had consistent narrative structures. Afterwards, I will examine the points of consistency between the Gollan and Suga reports before proceeding to the contents of Johnson's report.

Reports of Mr. Henry C. Gollan and Mr. Kitaro Suga

The report of Mr. Sir Henry C. Gollan of Great Britain begins by discussing some of the controversies and questions surrounding the commission and its investigation. Gollan's report begins by briefly mentioning the constitution and powers of the Municipal Council of Shanghai. It also mentions some background issues of the disturbance even though this is not central to the scope of the investigation. From here, Gollan gets to the central section of the report that constitutes about 90% of its contents: "The Origin and Character of the Disturbances."⁵⁵ At the start of this section Gollan frames the scope of his investigation, declaring:

I am of the opinion that it is essential to look beyond the occurrences on that day, and that it is necessary to distinguish between the exciting causes which produced the explosion, and the causes which created the state of mind amongst the Chinese which made the explosion possible.⁵⁶

⁵⁵ USDS. Report of Mr. Gollan. 5.

⁵⁶ *Ibid.*

Gollan writes of two classes of causes, those related to the background issues surrounding the disturbance, and those related to the immediate causes of the "explosion." Gollan very early on mentions the background issues that tended to produce

dissatisfaction and anti-foreign feeling in their minds, such as -- (1) the unsettled political state of the country, and the suffering caused by the civil war among the people; (2) the lack of representation of Chinese on the Municipal Council; (3) the question of the rendition of the Mixed Court; (4) the matter of control of roads made by the Municipal Council beyond the limits of the Settlements; (5) the question of the abolition of extraterritorial rights and the abrogation of the unequal treaties.⁵⁷

This is the only mention of such background causes in the report. Almost immediately following this is a section emphasizing the connection of such issues with "Bolshevist partisans [who] had been busily engaged in stirring up ill-feeling in the minds of the working classes."⁵⁸ In terms of narrative, the intent here is to connect the anti-foreign feeling and the demands for destruction of foreign privilege with Bolshevism. The above contextual issues were largely ignored having made this connection, as they were considered beyond the scope of the investigation. Thus, the report limits itself to the proximate causes of the event that most immediately led to the disturbance. These included firstly the problems beginning in December of 1924 arising between strikers in certain Japanese mills. Interestingly in these accounts, Gollan first emphasizes the "considerable damage to property" that was done during these demonstrations to the mills. He then goes on to mention the murder of Koo Tsung Hung who died after being fired upon during his participation in a strike on May 15, 1925. This is noted as an especially important event that had aroused the passions of many students who were involved in these demonstrations. Further, Gollan describes the arrest of student protesters after Koo Tsung Hung's memorial. The arrests provoked a violent student reaction, and on May 27th

⁵⁷ *Ibid.*, 6.

⁵⁸ *Ibid.*

thirty-two students representing different schools met at the Tun Tuh Medical School...the meeting resolved that measures should be taken to effect the release of the students arrested on 24th May, if they were not liberated by 30th May, and that assistance should be given to the strikers in Japanese Mills by means of speeches and the distribution of circulars.⁵⁹

In the above, Gollan insinuates that the disturbance was premeditated and that the student protestors had an intent to instigate trouble. Gollan's narrative is a rather uncritical recapitulation of the testimony given by the police. Confirming police testimony, he argues that there was nothing unusual about May 30th and that the large explosion on May 30th was a fluke occurrence. He notes that the message sent by the Commissioner of Police at 12:15 PM was not taken as especially consequential, but would mean to Everson that "he would have to stay in during the afternoon."⁶⁰ This unconcerned reaction was justified given the fact there were constant small labor incidents of such a nature in the past without major disorder. Gollan's narrative consistently maintains that the police acted rationally in their actions. The police version of the event is recounted by Gollan and supported in light of the circumstances.

Gollan's report next shifts away from the police to the other witnesses present during the proceedings. He begins by listing three particular witnesses who presented evidence that conflicted with the testimony provided by the police. Gollan, discredits these witnesses, who include a Mr. Anderson, a Dr. Cline, and a Mr. Covey. After discrediting these three witnesses who held dissenting viewpoints in relation to the necessity of the shooting, Gollan lists the testimony of the majority of witnesses who supported the actions of the police during the event. This majority described the crowd as a mob that if not controlled would have had dangerous repercussions. According to Gollan:

Inspector Everson was justified in coming to the conclusion that, if the crowd has not been fired upon, the lives of the police under his command would have been

⁵⁹ *Ibid.*, 8

⁶⁰ *Ibid.*, 9.

sacrificed, and the crowd would have gained possession of the Louza Police Station: with results that might have been most serious in view of the quantities of arms and ammunitions stored there.⁶¹

Gollan thus concludes his report rationalizing the decision to fire on the crowd as absolutely necessary. He is unequivocal in his tone, stressing the dire consequences that would have resulted had Everson not opened fire on the crowd. This included the possibility of the mob arming itself after taking over Louza Police Station, a detail absent from Johnson's report.

Of the three reports, that of Suga is the shortest and most direct in its rendering. In many ways, the reports of Suga and Gollan coincide in their scope and maintain the same conclusions. Suga specifies that his report is confined to the testimony heard before the commission, and that "information received and opinions expressed in private have been excluded from my consideration."⁶² This was meant to distinguish his report from that of Johnson which considered opinions not heard on the investigation. Like Gollan, Suga acknowledges the presence of anti-foreign feeling and some of its possible causes. Suga states that the Chinese believed they were not in "possession of the same rights and privileges as the other Powers" and "that she [China] is being submitted to undue sufferings in consequence of unequal treaties."⁶³ This is the extent of the discussion of the background issues, and then similar to Gollan's narrative, Suga immediately mentions how these anti-foreign sentiments were exacerbated during the mill disturbances and most purely expressed among the Communistic students. Like Gollan, Suga's narrative begins in early May, with the death of a Chinese worker. This catalyst led to violent anti-Japanese propaganda by students. Leading up to the disturbance on May 30th, the students carried on violent propaganda in various streets within the Settlement against the Japanese and other foreign nations, and the attempts on the part of the

⁶¹ *Ibid.*

⁶² USDS. Report of Mr. K. Suga. 3.

⁶³ *Ibid.*, 4

police to suppress it had the effect of turning a large crowd from a more or less normal condition to a state of frenzy in a wonderfully short space of time."⁶⁴

Suga describes the workers and students as riotous and rationalizes police action by implying the potential danger of the situation. As Gollan does in his report, Suga next focuses on the testimonies of various witnesses presented before the commission. In fact, the same three witnesses mentioned by Gollan, whose testimonies conflicted with that of the police, are dealt with by Suga. Like Gollan, Suga dismisses these divergent accounts. For example, the testimony of Mr. Covey, "a practicing solicitor from the Shanghai University and the Chinese Union had appeared for 4 students of that university at the Mixed Court on the morning of May 30th", was dismissed outright by Suga.⁶⁵ He rejects Covey's testimony on the grounds that it

contests the statement of all the other witnesses who testified to the congested condition of the street, and goes so far as to say that he saw no crowd, that the vehicles were running at the rate of about 7 miles an hour and that he heard no noise except the hum of traffic. Mr. Covey, in fact, thought the police were firing blank cartridges in order to frighten away some armed robbers, for he saw nothing that called for ball to be used.⁶⁶

Covey's account is singled out as erroneous, as it is the only account claiming the absence of a crowd and noise. Not coincidentally, like the other two exceptional witnesses, Covey questions the need for Everson to have opened fire. The other two witnesses who criticized this action were also discredited for their limited views of the disturbance. Since only these three dissenting opinions were cast in doubt, Suga's narrative also acted to legitimize the testimony of the police.

Suga next goes on to address whether there was reason to anticipate disorder, and like Gollan, he makes the case that there was not. This argument is supported by the inflammatory student protests that had occurred daily since February without any major disorder. Suga

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, 10.

⁶⁶ *Ibid.*

establishes that, around the time of the ejection of the students from the charge room, there appeared agitators on the scene. These “agitators” were credited with causing the change in temperament in the crowd, working them into a frenzy.⁶⁷ Suddenly, the crowd began advancing and the police were “violently assaulted and were forced back upon the station entrance.”⁶⁸ At this point, it became clear to Inspector Everson that any hope of containing the situation was hopeless, and that “the police would soon be overpowered, with its store of arms and ammunition fall[ing] into the hands of the mob.” Bearing this fact in mind, it was deemed necessary, “there being no other measure to take”, to open fire and contain the situation.⁶⁹

Section III: The Report of Justice E. Finley Johnson

In order to better understand Johnson’s report, it is necessary to reflect on the consistencies in the reports of Gollan and Suga. Both the British and Japanese reports took the fact that there had been minor disturbances leading up to the event as evidence that the police had no reason to anticipate the disorder. From this, both Gollan and Suga maintain the necessity of Everson opening fire on the crowd, as does Johnson. However, the tone of both Gollan and Suga are both very unambiguous in contrast to Johnson. This intangible difference between the report of Johnson and the other two is perhaps the most important in terms of the narratives that they construct. While the narratives of the two first reports are unproblematic in their exoneration of the Municipal Council, Johnson belies his skepticism in his report.

Originally intending to release a unified opinion that would establish the meaning of the event, the difference of Johnson’s opinion from those of the other two members undermined the original purpose of the commission. This is reflected in the vicious attacks against Johnson and

⁶⁷ Suga, 8.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

his report. By including various outside sources, Johnson wanted to present a more robust narrative of the event. His method complicated the history and cited many possible causal factors in its account. In contrast to the other two reports, Johnson's interpretation was not monolithic. The structure of his report allowed for contingency and multiple interpretations of the event.

It is possible that Johnson distrusted the purpose of the British and Japanese in calling this second investigation, and saw it as a means to whitewash the actual events. Johnson's perception was that this second investigation was only serving the immediate interests of those who ruled in Shanghai. He was frustrated by the structure of the investigation, uncomfortable with being limited in his deliberation to a specific scope.⁷⁰ Johnson disapproved of the findings of the judicial inquiry, which he saw as based solely on an "ex parte inquiry with biased witnesses."⁷¹ Given the partial nature of the investigation, Johnson wanted to give the silenced Chinese a voice and to include what he thought would be their opinion of the event.

During the progress of the investigation, Johnson voiced concern with his role in the inquiry to his diplomatic overseers. MacMurray reported back to Kellogg on Johnson's telegram stating that he supported Johnson's inquiry and his mission to produce an impartial report even if it meant delivering a minority report. Johnson, while concerned about the repercussions that his minority report would likely cause in upsetting political stability, still maintained that because "the present inquiry will not change public opinion" he would "endeavor to conduct an impartial inquiry into subjects submitted for investigation."⁷² This shows the difference in the American position from that of the Japanese and British, with the American position conceiving itself as sharing a distinct relationship of friendship with the Chinese.

⁷⁰ *FRUS*, 711.

⁷¹ *Ibid.*, 712.

⁷² *Ibid.*

In an October 14, 1925 telegram from MacMurray to Kellogg, Johnson is quoted voicing his doubts about the progress of the commission. He was concerned that the lack of Chinese witnesses would impair his ability to make an impartial judgment on the incident. Johnson further questions the value of a new investigation declaring:

Up to the present time, there is no reason to believe that any proof will be presented to an audience except by Municipal Council, McCuen, Everson and Martin. An ex parte inquiry with biased witnesses cannot be satisfactory. Opposition to inquiry very general, by best people of all nationalities, based upon prior investigations, and I have another solution of the difficulty more equitable and just to all concerned of which I shall be glad to give suggestion if desired. The result of the present inquiry will not change public opinion and the inquiry will be of no avail. The long delay of the present inquiry has been unfortunate. Shall insist upon having presented certified copy of the proof taken in the Mixed Court and anticipate serious objections thereto. Shall endeavor to conduct an impartial inquiry into subjects submitted for investigation.⁷³

Here Johnson is concerned over the appearance of no new information to the commission that would further inform public opinion. For Johnson then, the purpose of the inquiry is to provide new information that will elucidate the events that took place on May 30th 1925 and to come to a decision that is just for all those concerned. Both MacMurray and Kellogg in their correspondence with Johnson encourage him in his pursuit of impartiality. They give positive feedback to Johnson's search for new evidence, hoping that it would make the investigation more accurate in its conclusion. Johnson is quoted in an October 16th telegram saying:

I am gratified at your expressions of confidence. Am submitting each biased witness to severe cross-examination following the line of questioning which the Chinese would probably give. I hope to get at real facts and perhaps to develop important questions. Minority report imminent.⁷⁴

The above is particularly interesting because of Johnson's desire to act as a hypothetical Chinese judge if he were present at the inquiry. In doing this, Johnson wants to set straight what he perceives to be a judicial farce, a political show trial that he is uncomfortable in serving. By

⁷³ FRUS, 711.

⁷⁴ *Ibid.*, 712.

going beyond the scope of the inquiry and attempting to empathize with the Chinese position, he is acting according to his own investigative methods. From the beginning, the purpose of the commission was so restrictive as to not allow any real pursuit of truth. However, Johnson maintains his voice in service of the real purpose of the judicial inquiry, regretfully delivering a minority report in the service of impartiality and justice “to all concerned.”⁷⁵

The problems of agency, scope and purpose became central after the appointment of Johnson as the American representative in the judicial inquiry. Was Johnson taking orders from above, or rather acting according to his own philosophical and moral obligations? This is difficult to say, but the resulting reactions to Johnson’s report suggest that Johnson had defied the framework of the judicial inquiry with the approval of his diplomatic superiors. Before looking further at the volatile reactions to the report, it is important to look to at the contents that were so bitterly contested.

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⁷⁵ *Ibid.*, 711.

Before addressing the substantive results of the investigation, Johnson attaches a brief letter detailing the procedural process of the investigation. This served as a means of indicating the form of the judicial inquiry. The foreword was written on October 3 when Johnson had just arrived in Shanghai ready to begin the process. The tentative procedure of the investigation was outlined with a heavy emphasis on the need to "permit all persons interested, without reference to nationality, to furnish proof, to the end that the commission may arrive at a fair and just conclusion."⁷⁶ This emphasis on inclusion is meant to demonstrate the unbiased nature of the process, to give the appearance that all opinions and evidence would be considered.

The hope for procedural fairness and the actual progression of the investigation was a cause for worry to Johnson. The outline of the procedure indicated that the investigation would start by looking at the evidence of the Municipal Council of Shanghai (SMC). The outline further called for the representatives of the Municipal Council to make an opening statement of the facts it proposed to present. Afterwards, the SMC would provide proof of their established facts by calling witnesses. The witnesses were then to be subject to cross-examination, followed by a re-examination by the representatives of the Municipal Council, Mr Duncan McNeil and Mr. J. E. Badeley. After this would proceed a period during which anyone involved in the investigation

may call any witnesses they may desire to present, to give testimony upon any or all of the subjects committed to the Commission for investigation, and such persons, parties or entities may also be permitted to refute any or all of the testimony presented. Such witnesses will be subject to cross-examination and the party calling them will be entitled to re-examine.⁷⁷

The above provision specified that this open testimony was to be limited to "subjects committed to the Commission." This indicates the restrictive scope of the investigation. By

⁷⁶ U.S. Department of State, *Report of the International Commission of Judges Appointed to Inquire into the Causes of the Disturbances at Shanghai, May 30th, 1925*, by Mr. Justice E. Finley Johnson. "Records relating to the internal affairs of China, 1910-1929". (Washington, DC, 1925), Microfilm, p. 3, Microcopy 329.

⁷⁷ USDS. Report of Justice Johnson. p. 4.

limiting the scope of the investigation to prescribed subjects, Johnson felt that the other major party, the Chinese were being left out. For Johnson, there was serious doubt over whether it would be possible, given the structure of the Commission, to come up with a just conclusion.

Johnson prefaces the substantive part of his report with a section entitled "An Observation." In this brief section, he casts doubt over the entire investigation by mentioning some of the most pressing reservations that he felt towards the progress of the inquiry. First, the investigation was held too long after the actual events, so that many of the important witnesses of the case had been lost, and the facts of the case were inevitably dimmed. Secondly, there were no Chinese that took part on the Commission. Because of Chinese refusal to participate in the proceedings, the nature of the investigation was *ex parte*, representing the account of the police, but "conducted without notice to, and outside the presence of the affected parties."⁷⁸

He concludes this brief section by mentioning his belief that anti-foreignism in China was not a spontaneous phenomenon brought about by the May 30th Movement. Johnson asserts that

the anti-foreign feeling existing in China today was no more occasioned by the disturbances which took place on the 30th day of May, 1925, at Shanghai, than the killing of Archduke Francis Ferdinand, heir to the Hapsburg throne, at Serajevo on June 28, 1914, had to do with bringing on the great World War.⁷⁹

Johnson felt that the background issues of the event needed to be better understood in order to reveal the causes of the movement. This prefatory section establishes his intent to contextualize the event and broaden the scope of the investigation. For many, in relying on opinions outside of the testimony heard before the commission, Johnson defied the agreed upon purpose of the report. Further, he was viewed by many as acceding to Chinese demands.

To introduce the substantive findings of the investigation, Johnson splits the next section into two parts, (a) "The Origin of the Disturbances" and (b) "The Character of the Disturbances."

⁷⁸ USDS. Report of Justice Johnson, 7.

⁷⁹ *Ibid.*

This first section has the purpose of making known “the causes of many years standing” leading to the disturbance.⁸⁰ The points listed under this heading included numerous frustrations of the Chinese that contextualized the event. By listing these large background issues as causal factors, Johnson created an alternative historical narrative to the rest of Commission. The first point included under this heading was the unresolved status of the Mixed Court. The court was a particularly vexatious institution to the Chinese, given that it had no authority to operate within the Chinese territory according to international law. For Johnson, the Mixed Court proved to have a central role in inciting Chinese frustration.

The Mixed Court

On the day of May 30th, prior to the disturbance, the Mixed Court tried several students arrested on May 23rd and 24th. The Mixed Court concluded that the accused had begun distributing pamphlets near Louza Police Station as a way of protest against the death of a Chinese workman in a Japanese mill. Further, it was determined that the students had no intention of instigating a riot. Therefore, the court only required that the defendants sign a “personal bond to keep the peace in the future.”⁸¹ This decision was reached under the supervision the American Assessor, Mr. Jacobs. Still, many students from Fudan and Shanghai universities gathered outside of the Mixed Court building with a sense of indignation at the inconsistent application of justice. These same students would continue to defy police attempts to stop distribution of Anti-Japanese pamphlets and take part in the disturbance later that day.

Johnson’s report drew from the decision rendered by the Assessor Mr. Jacobs in the Mixed Court on May 30th. From this judgment, Johnson concluded that the crowd outside Louza Police Station did not intend to instigate violence. Johnson also cites the argument of the

⁸⁰ *Ibid.*, 8.

⁸¹ *Ibid.*, 15.

prosecution of a separate Mixed Court trial of students arrested on May 30th. This trial represented a crucial part of the evidence used by the judicial commission. The opening statement of the prosecution was given by Mr. Maitland of the Municipal Council. It reveals very strongly the nature of the foreign feeling towards the threat of labor disturbances. It further shows how violently the subsequent riots had shocked the sensibilities of foreigners living and governing in Shanghai. Maitland asserted:

I propose to show the Court that, although we are told, these riots are anti-foreign, yes, on the surface, there is no doubt that they were anti-foreign, and the Japanese mill trouble was the peg on which to hang the excuse. But I am going farther than that. I am going to prove that the students – we call them students, although a better word would be school boys – that the students or school boys, who started this trouble, all came from a Bolshevik University – the Shanghai University of Seymour Road.⁸²

In this opening statement, Mr. Maitland, the representative of the SMC shows a belief that the only correct way to characterize the event was to label it as purely Bolshevik inspired. This was meant to show the evil and premeditated nature of the forty-four students and three others who were arrested. The argument goes on to conclude that it was impossible for the police to have acted in any different way given the intent of the rioters from the very beginning to instigate violence against foreigners. Indeed this argument also included the assertion that “I propose to produce evidence to show that the police in these riots acted with the greatest leniency and the greatest reluctance to fire, and the only reason for the firing was because it was impossible for any human being to do otherwise and keep order in the Settlement.”⁸³ As argued in this case, the police were absolved of any responsibility by the prosecution. This is unsurprising given the partial nature of the investigation in the Mixed Court. The court served

⁸² *Ibid.*, 12.

⁸³ *Ibid.*, 13.

the interest of the foreigners in International Settlement of Shanghai extending extraterritorial privilege when they committed a crime. This was overseen by the Shanghai Municipal Council of which the police was an extension. For Johnson this is a very problematic and reductive analysis of the disturbance.

The frustration that the Chinese felt toward extraterritoriality and the Mixed Court is reflected in a statement given by the Ministry of Justice at Peking published in the *Peking Gazette* on August 27, 1925:

If cause be sought for the Shanghai affair, which violated the canons of humanity, and the subsequent incidents at Hankow and the Shameen it will be found that these occurrences all have their root in the evil of Consular Jurisdiction. That the slayer shall die is a principle common to Chinese and foreign ideas, but those foreign Consuls who possess judicial powers are open to corruption, and the consequence is that foreigners who kill or wound Chinese not only go unpunished but are spared in every way, which amounts to a premium being put on murder. Unless, therefore, jurisdiction over these foreigners be recovered, the situation is fraught with untold dangers.⁸⁴

It is no coincidence that Johnson placed the Mixed Court as first among the causes of the disturbance. In fact, towards the end of his report, he recommends "that those in authority, with power to act, in order to lessen the complaint of the Chinese people, should as speedily as possible bring to a close the negotiations which had been pending for some years, relating to the status and character of the Mixed Court."⁸⁵ He recognized the agitation that the court caused and that it was a strong symbol of foreign privilege. His isolation of the Mixed Court shifted the meaning of his opinion. By causally relating the Mixed Court to the May 30th Movement, Johnson was in effect challenging the authority of the Imperial administration in Shanghai and the legal jurisdiction of the court. This too was a Chinese concern, as the Mixed Court had no jurisdictional authority to operate in Shanghai according to international law. As Frederic

⁸⁴ Keeton. *The Development of Extraterritoriality*. 392.

⁸⁵ Johnson, 36.

Wakeman points out, after the 1911 revolution, the consular body took complete control over the Mixed Court in Shanghai. This meant that the Mixed Court existed independent from the Chinese judicial system and allowed “foreign superintendence of purely Chinese civil suits.”⁸⁶ In opposing the Shanghai Mixed Court, Johnson felt that its existence violated international law.

Other background causes include point b, which addresses the lack of representation of Chinese Nationals in the government of Shanghai. The next few points, c, d, e, f, and g, are all closely connected to the Mixed Court and the question of loss of sovereignty. Including these points was especially important to Johnson given the absence of any Chinese voice in the considered testimony. These included the fact that Chinese are always judged by a foreigner in cases involving a foreigner, the question of extraterritoriality, the loss of sovereignty, the projection of roads into Chinese territory, and the extension of the government of Shanghai into Chinese territory with said roads respectively.

Johnson presented the Chinese as a disenfranchised populace treated as second class citizens by foreigners within their own borders. The next point listed was one that was especially symbolic for the Chinese nation, the Unequal Treaties. The collective Chinese mindset acutely felt the lasting significance of these treaties. Very powerfully summing up the frame of the Chinese mind, Johnson ends this section by mentioning the “usurpation of legislative, judicial, administrative and police powers in Chinese territory.”⁸⁷ This was a blunt characterization of the background issues, strongly connecting them to the disturbance. The other two reports briefly mentioned these issues but gave them little or no place in the narrative of the event.

The next subsection established the immediate or proximate causes of the event. The causes listed from (a) to (y) included a diverse range of interrelated issues starting from what was

⁸⁶ Frederic Wakeman, Jr. *Policing Shanghai: (1927-1937)* (Los Angeles: University of California Press. 1995), 70.

⁸⁷ *Ibid.*

understood to be the most isolated cause, point (a), "the killing of Chinese laborers by Japanese in cotton mills."⁸⁸ Further, the justice process surrounding the killings was highlighted as crucial to fomenting the disturbances. The Japanese involved in such killings were not criminally prosecuted for killing Chinese workers. Meanwhile, the Chinese involved in "the killing of Japanese" in a labor dispute were arrested and tried in a criminal case.⁸⁹ By overseeing selective instances of justice, the Mixed Court was seen as unjust. The Chinese believed that extraterritorial privilege was abused by foreigners for their own purposes in China.

The Chinese labor movement had a great role in the disturbance, closely connected to the killings in Japanese mills. As listed in point (d) there had been "strikes in various cotton mills occurring almost daily, commencing with the 9th day of December, 1924."⁹⁰ Johnson immediately follows this with the inclusion of a cause of critical importance, establishing "the open and notorious agitation by members of Labor Unions."⁹¹ As does the following point (f), this implies the Bolshevik nature of the Labor Unions. The purpose was to discredit and label the labor movement. This same technique was employed perhaps with even greater vigor in the reports of Suga and Gollan, who both imply a close connection between the demonstration and Communist ideology. In his treatment of the labor movement, he implies the same connection between labor and Communism as the evidence suggested. However, he complicates this by including other factors in the discussion to characterize the "frame of the Chinese mind."

There is a suggestion in many of the bullet points of malfeasance and poor decision making on the part of the Shanghai Municipal Council. For example, one particular block of points mentioned include proposed by-laws that elicited a negative response. The opposition to

⁸⁸ USDS. Report of Justice Johnson, 8.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

such by-laws was based upon “the grounds that said proposed by-laws were (a) ultra vires, (b) unnecessary, (c) vexatious, (d) illegal in principle and wrong in form...”⁹² In voicing opposition to the by-laws of the Shanghai Municipal Council, Johnson is implicitly challenging the authority of the SMC. One particular by-law for example that was called into question was one that proposed to allow the Municipal Council to punish “any person who shall print or publish or cause to be printed or published any newspaper, pamphlet, circular, handbill, leaflet, placard or other paper containing public news, intelligence, or occurrences, or any remarks or observations thereof.”⁹³ Johnson recognizes the opposition to such a measure by various constituents on the basis of it being “ultra vires” or beyond the powers of the body as a governing authority.

There are also various proximate causes listed that relate to the general insensitivity of the police to the delicate situation surrounding the events leading up to the May 30th Movement. For example, point (m) notes the failure to release those students arrested prior to the disturbance as a cause for the disturbance. This suggests that these students should have been released, and that if a more conciliatory position had been taken, perhaps the tragic event could have been avoided. Also included in this type of cause is (r) the failure of the Japanese consular representative and (s) the SMC to make any apology to the Chinese Government for mistreatment of Chinese nationals. Again, the implication of this is that had an apology been made, there could have possibly been a reconciliation of the two sides.

The last proximate causes represent two apparent expressions of the foreign position. The first of the two, (x) mentions the “evil and destructive influences to good and orderly government by paid foreign emissaries of Bolshevistic and Communistic government, whose only purpose was not to assist and aid the Chinese people, but to excite and arouse a spirit of antagonism

⁹² *Ibid.*

⁹³ *Ibid.*

against all foreigners except themselves.”⁹⁴ This is clearly implying a link between labor and Communism that had “evil” consequences on the relationship between foreigners and Chinese. There was a strong Western fear of the consequences if labor were to get out of control, and possibly overtake the country by force. Furthermore, the Soviet Union was a menace in foreign relations during the time, distrusted by many for its meddling and subversive ideology.

Finally, point (y) of the proximate cause section, mentions the failure of foreigners to recognize the advancement of China in terms of civics, principles of government and “in the better understanding of individual rights under the law” as a source of resentment.⁹⁵ It is interesting that this point was included as a proximate cause. Johnson saw the failure to show proper respect to the progress of the Chinese nation as a cause for Chinese anti-foreignism. What is interesting is that this is ascribed to the collective Chinese mentality. Indeed, the rallying call of nascent nationalism in China often invoked the abusive foreign treatment of Chinese, with the Unequal Treaties as a symbol of such abuses.

The section on primary or proximate causes is ended with an addendum stating the purpose for the inclusion of such a wide number of points. He clarifies that by listing the enumerated causes he does not mean to judge their merits. Still, he suggests that including these points would clarify the relevant issues on which the question of justice hinged. Johnson’s purpose in listing all these points was to accurately reflect “the frame of mind of the Chinese on May 30th 1925.”⁹⁶ While many of the points directly deal with the feeling of the Chinese during the time, the frustrations are presented by Johnson, an American judge. This would suggest that they are tempered by the Western perception of the Chinese frame of mind. For example, the points dealing with the malignant influence of Communism represent Western fears at the time

⁹⁴ *Ibid.*, 10.

⁹⁵ *Ibid.*, 11.

⁹⁶ *Ibid.*

of this force undermining the position of foreigners. The last point concerning the progress of Chinese institutions is framed within a liberal democratic standard. In some ways then, the enumeration of causes function as a way of projecting foreign hopes and fears onto an image of the Chinese frame of mind.

Section II of Johnson's report is entitled "The Character of the Disturbances." Within this section is an attempt to sort out the proper characterization of the event whether it be mob violence, riot, or massacre. As Johnson maintains from the police testimony, "up to within a few moments of the firing, they did not believe that the so called rioters intended to do harm to person or property."⁹⁷ Unlike Johnson's report, both the reports of Gollan and Suga suggest that there was a hidden intent of the demonstrators to instigate violence. This was something that Johnson frequently denied throughout his report reminding his readers that almost every witness was in agreement that there was no intent to cause violence up until the final moments of the disturbance. While Johnson is cautious to label the disturbance as a mob scene or riotous, Gollan concludes his section on the character of the disturbance by stating that the crowd was characterized by "the inflammability of the Chinese temperament and the rapidity with which in the mass, they are capable of passing from a state of quiescence to a state of frenzy which soon gets beyond their control; second, the length to which a mob, raised to that pitch of fury, will proceed and the excesses it will commit unless the mob spirit subsides or is quelled."⁹⁸ For Johnson, by contrast, it was important to make a distinct characterization of the crowd for the narrative that he employed. Rather than malicious, the crowd was considered peaceful up until the last moments leading to the incident.

⁹⁷ *Ibid.*

⁹⁸ Gollan, 29

Next Johnson proceeds to establish the actual events prior to the firing of the police. In order to determine this, the commission on which Johnson served took many forms of evidence into account. Among the different types of evidence were 41 witnesses (mostly policemen) and hundreds of exhibits presented over the duration of the investigation from October 12 – 27th.⁹⁹ Included among the witnesses were the two central figures of Commissioner of Police McCuen and the Police Inspector Edward William Everson. It was to Johnson's great consternation that no Chinese were present (for they refused to participate) during the process. The results of this wide array of documents and witnesses were hardly conclusive. However, Johnson attempts to establish widely agreed upon facts surrounding the case. While the shooting occurred at 3:37 PM, it was disputed when the crowd threatened to act violently. For example, Commissioner of Police McCuen, who was the highest ranking policemen at Louza Police Station, while passing the station on the way to the racecourse that day, maintained that there was no cause for concern as late as 3:15 PM. However, to Johnson, McCuen was a figure of dubious merit given his absence throughout the course of the day. Still, even the highest in command serving at the time who eventually ordered the firing, Mr. Everson, admitted that up until 3:00 PM there was no reason to believe that the group outside the police station had any intention to commit violence.

The question that Johnson next attempts to answer is what exactly caused the change in temperament of the crowd from peaceful assembly to potentially violent? Johnson is puzzled by this given the variable nature of the evidence. One important fact was that four student arrests were made near Louza Police Station for making apparently anti-Japanese speeches and distributing pamphlets about one hour and a half prior to the disturbance. The four arrested students were followed by about eighteen other students who were also arrested upon request. Later that day, more students were arrested, after which around twenty students followed them

⁹⁹ Johnson, 16.

and were arrested too without having committed any actual crime. The third string of student arrests attracted a following of "70 to 100 others" to the station who entered the "charge room" to protest the unjust arrests. The students reportedly "became noisy" and were "forcibly and perhaps with some violence ejected and driven out upon Nanking Road."¹⁰⁰ The exact time of this forcible removal of the students from the charge room is not specified. Johnson speculates that the violent change in the students may have been an instance of mass psychology. As he notes there was no evidence of the intent to commit violence until after the forcible ejection of 70-100 students from the charge room. Therefore, he concludes that the "violent ejection" by foreigners aroused a "blood-thirst" among the Chinese students who soon began crying "Kill the foreigners."¹⁰¹ The crowd, unchecked by sufficient police presence, was emboldened to threaten the use of violence against police atrocities.

The question of the real cause of the shooting is also considered. While Everson held that if he had not ordered the shooting that the police station would have been destroyed, others maintained that there was no justifiable reason for the shooting to have occurred. The majority of witnesses established the unremarkable nature of the gathering at first. The nature of the student demonstration was believed by Everson to be typical of the previous industrial disputes involving Japanese mills. Therefore, the crowd was not originally seen as particularly worrisome. The story presented by Johnson is one of an overwhelmed Everson and understaffed police, who were involved in a tense situation for quite some time, and were emotionally overwhelmed by the quickly escalating situation. Johnson presents the perspective of Everson

...who very soon realized that he was short of policemen, was one moment assisting in arresting individuals at some distance from his station; at another time trying with such annoyance to report to the Commissioner of Police; then directing and assisting in ejecting, with great trouble, a large crowd from the

¹⁰⁰ *Ibid.*, 18.

¹⁰¹ *Ibid.*, 23.

charge room; rushing out upon the street to acquaint himself with conditions there, and back again to the station to close the gate, -- remembering the occurrences of 1905 and his own responsibility, and noting the increasing crowd and its change of temper, naturally and not unreasonably, became very much excited and gave the order to fire...¹⁰²

The narrative is one of an overburdened and dutiful Everson, who given the circumstances took the proper actions. The decision to order to fire was justifiable given the mental strain Everson was under. Johnson gives an account of the stress that Everson faced at the time as "sufficient to cause, under the developing conditions, the strongest man to act without delay."¹⁰³ The villain in this story is the Commissioner of Police McCuen who was unavailable during all of this, away at the racecourse while the event transpired. Given this presentation of the facts, Everson is evidently seen as a tragic figure who despite all due diligence was in an impossible situation. Everson was essentially absolved of guilt given the circumstances, leaving responsibility on his absent superior Commissioner McCuen. The next question posed in the report is whether the shooting could have been avoided. Given the circumstances, Johnson concludes that the shooting could have been avoided had a sufficiently large police force been present to control the situation. By contrast, the reports of Suga and Gollan both maintain that there existed no such possibility to anticipate the disorder or to avoid the shooting.

In contrast to the reports of Mr. Gollan and Suga, Johnson in his narrative did not mention the possibility of losing the police station, allowing the protestors to arm themselves with the munitions held there. The significance of this omission indicates the divergence in interpretations of the reports. Johnson was not nearly as apologetic to the actions of the police in the wake of the disturbance. He would have weakened his argument if he had included this fact about the possibility of losing the station and the mob becoming armed.

¹⁰² *Ibid.*, 20.

¹⁰³ *Ibid.*

Conclusion and Recommendations of Johnson's Report

At this point having established what he believes to have been the character of the disturbance, Johnson goes on to make his conclusions and the recommended actions to be taken. First, though, he lists the proof upon which these conclusions were based. In all he lists twenty three sources upon which the conclusion is based. In particular the first two listed documents are essential to the rendering of the conclusion. The first document on which the conclusion was based was the "Police Daily Report" from December 9, 1924 to May 31, 1925. Within this, Johnson points out the fact that "portions of the Chinese population were greatly excited, that anti-Japanese feeling was running high, and that the destruction of property and lives was almost daily occurring."¹⁰⁴ This led to the reasonable assumption that given the daily circumstances throughout the previous year, that there was a reason to anticipate disorder. Further, it is noted that at 12:15 PM a telephone message from C.D.I. Givens was sent from the Central Police Station stating that "students and others are planning to distribute anti-Japanese circulars and deliver anti-Japanese speeches. The Commissioner of Police gave instruction that officers in charge of stations must take special precautions to insure that these activities did not extend to the Settlement."¹⁰⁵ If there was ever any doubt of the need for increased personnel to handle potential problems, then this message indicated that there was forewarning from outside of the International Settlement. This caution was not heeded however, as it is noted that only at 2:15 PM was any measure taken to alert the need for increased police presence. Even as late as 3:25 PM, about ten minutes before the order to fire, it is noted that "there were only about six foreigners actually on duty at Louza Police Station and a few Sikhs and Chinamen, the exact

¹⁰⁴ *Ibid.*, 30.

¹⁰⁵ *Ibid.*, 27.

number not shown outside of the firing squad.”¹⁰⁶ From this it was concluded that the steps taken to increase the number of police and to assure stability were inadequate. Johnson isolates McCuen as a possible difference maker. Had he been present, he could have taken the “special precautions” necessary to prevent the disturbance. McCuen is therefore identified as negligent in the wake of the disturbance.

The next document was a summary of “labor, student, and Bolshevik activities, a diary of facts leading to the shooting incident” prepared by Thomas Patrick Givens, Inspector of the Criminal Division of Information of the Police Department in Shanghai.¹⁰⁷ As the name suggests, this emphasized the link between the movement and Bolshevism. Similar to the argument employed by the prosecution in the Mixed Court case by Mr. Maitland, this supported the reasoning that the violence was premeditated and instigated with Communist support. In many ways, Johnson attempts to find a middle ground between this dismissive connection implying intent to instigate violence and complete condemnation of the Shanghai police as many of the Chinese felt. Johnson was one of the most moderate and nuanced of voices in the midst of a highly polemicized issue. To avoid maintaining an unjust conclusion, Johnson played these two viewpoints off of each other and represented unspoken views within the process.

He was unsatisfied with the conclusion of the previous judgment of the Mixed Court. Johnson did not submit to what he saw as a biased investigation and insisted on the necessity of releasing a minority report. Hoping to go beyond the previous investigation and avoid reaching a similarly partial conclusion, Johnson hoped to shed light on the actual circumstances and their true meaning in the process. The conclusion that Johnson reached was not so radical, as it was moderate, attempting to bridge the two polarized positions. Given the reaction to Johnson’s

¹⁰⁶ *Ibid.*, 32.

¹⁰⁷ *Ibid.*, 23.

report, one would think that Johnson was openly hostile to the foreign presence. This was not the case, however; instead, he attempted to complicate the narrative to include other background issues. Johnson's disregard for the agreed upon format of the inquiry provoked much outrage.

Johnson's conclusion, like his entire report, is very long winded and self-referential. It looks back to the established facts to articulate certain recommendations on how to proceed. Johnson first concludes that there existed some reason for anticipating the disturbance on the part of the police. This is sustained in light of the fact that the police ignored an announcement four hours prior to the disturbance that "special precautions" be taken. Next it is established that the nature of the disturbance was one resulting in the death or injury of twenty-nine people. This was a figure confirmed by the other two reports as well. However, he next cites the problem of legitimacy for the Municipal Council citing the "undefined authority which it exercises" as a handicap to administration of the city.¹⁰⁸ He also establishes the lack of humanness of a "certain class of foreign policemen" in the handling of arrests and in attempting to control the crowd.¹⁰⁹ From these first few points, he suggests that the police and poor governance of the international settlement were partially responsible for the May 30th Movement.

These first few conclusions are of secondary importance to the following points listed nine - fifteen. These conclusions represent the various underlying frustrations that contributed to the disturbance. Johnson concludes that these issues must be resolved to avoid future breaches of peace. Such conclusions were avoided in the other two reports. Point nine again addresses the Mixed Court and its role as an irritant to the Chinese people. As a result, Johnson insists that those with authority to act should "as speedily as possible bring to a close the negotiations which

¹⁰⁸ *Ibid.*, 35.

¹⁰⁹ *Ibid.*, 36.

had been pending for some years, relating to the status and character of the Mixed Court.”¹¹⁰ The next few points dealt with the other questions that undermined the development of the Chinese Nation including the problem of Chinese representation, extraterritoriality, loss of sovereignty and the Unequal Treaties. Further, Johnson states in point ten, the lack of Chinese participation in the Shanghai government presented a problem that “from the standpoint of many, is intolerable and, until settled, will continue to be a source of serious grievances.”¹¹¹ Similarly, Johnson maintains that the question of extraterritoriality should be discussed and settled in a manner that would be fair to both sides. In point twelve, Johnson mentions the grievance of the Chinese people in relation to the loss of sovereignty and territory in Shanghai.

Implicit in all of these points was an acknowledgement of the fact that as the current situation stood, there was real injustice that needed to be addressed to improve foreign – Chinese relations. Further, the privileges wrested by the foreigners were at least partly the cause of Chinese resentment. After all, these concessions were secured by unjust methods. The foreigners had been deceitful as reflected in conclusion thirteen which laments that the “unjust treaties [were] negotiated with selfish and perhaps dishonest officials...”¹¹² This duplicity is further reflected in point fourteen which mentions foreign hypocrisy in its dealing with these questions:

Fourteenth. That the Foreigners in China have failed to take into account the principles of liberty and independence which they themselves have, by precept and example, spread abroad throughout China, concerning which the young and rising generation have been apt students.¹¹³

Underlying this statement is a belief in foreign misconduct in their handling of the situation in China. There is a sense that the current situation represents an exploitation of the

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*, 37.

¹¹³ *Ibid.*

process of modernizing China and that the Chinese deserve recognition for their cooperation in the civilizing process. The language that Johnson uses throughout his opinion indicates his position as an exponent of Chinese Nationalism. Throughout the work he is quick to point out the progress that China had made in terms of the formation of institutions based on the Western liberal tradition. Johnson genuinely seemed to hope for the success of the Chinese nation. He expressed a belief that once the Chinese were sufficiently prepared for proper self-rule, that the foreign presence would be unnecessary in China. As he states in point fifteen:

The Chinese people have begun to take on a new civilization; that they have begun to insist upon an honest and efficient administration of their public affairs; and that they have begun to realize that, if they are to survive as an independent nation, they must have a larger and more direct participation in the affairs of their government...¹¹⁴

In the above, Johnson expressed encouragement at Chinese advancement in terms of their institutional development. This progression seems to be more than anything one of consciousness, China not having achieved great substantive institutional change as of yet. Johnson's belief that China needed to have larger and more direct participation indicates his endorsement of Republican Government. However, Johnson is also invoking the case of the International Settlement and the absence of Chinese participation in the local government as a source of friction between Chinese and foreigners. As it stood, Chinese citizens had little or no right to self-government in most parts of their own territory either. Instead, most regions free from foreign control were subject to the rule of warlords. This reality was problematic for the development of the new nation. Only after dealing with these background problems would China be able to move forward as a unified nation.

¹¹⁴ *Ibid.*, 37.

If China was unable to overcome these forces, then it would likely be dissolved and ripped apart by the various competing interests at the time. Therefore, it was in China's best interest during the time as a nation to settle the other background questions that prevented it from achieving autonomy. His report addressed the many contextual issues that had been the source of Chinese resentment for nearly a century. For Johnson, the western presence, as exemplified by the Mixed Court and extraterritoriality, undermined China's development as a nation. Johnson sympathized with the Chinese plight and he believed the people of China deserved the right to self-determination.

After this, points sixteen and seventeen combine to establish the culpability of individual actors in the handling of the immediate circumstances leading up to the disturbance. It maintains that while Everson had acted as best he could given the circumstances, McCuen had not. McCuen in his absence acted negligently and was held responsible for his carelessness. As Johnson concludes in point seventeen, "His presence and his personal direction of his police force at Louza Police Station as late as 3:15 PM on May 30, 1925, might have saved the lives of some innocent persons."¹¹⁵ Implied in this was that the disturbance was preventable. Further, the students were "innocent" in this process, the victims of foreign police misconduct.

Finally, Johnson finishes by including his recommendations in light of the conclusion. The first recommendation is that "the powers and duties and responsibilities of the governing body of Shanghai be more definitely and precisely defined."¹¹⁶ This rather vague recommendation relates indirectly to all the questions of illegitimacy of the Shanghai Municipal Council. It hopes that by clarifying the duties of the municipal governance that it can recover its legitimacy and perhaps incorporate the unrepresented majority of Chinese into its governing

¹¹⁵ *Ibid.*, 39.

¹¹⁶ *Ibid.*

structure. Secondly, it recommends that in light of McCuen's negligence that he be replaced by someone who will more responsibly fulfill the duties of the position. The third and final recommendation is unique. It suggests that to avoid blame being placed on one nation alone in the future, that "the Commissioner of Police and the Deputy Commissioner [be] selected from among the citizens of two nations."¹¹⁷ This is the final piece of Johnson's report. It is interesting that Johnson ends with this implying that given the two police officers were English that blame for the event almost exclusively was placed on the British. This establishes that blame was put onto Britain almost exclusively even though there were many other nationalities involved in the process of foreign-Chinese relations in Shanghai.

Section IV: Reactions to Johnson's Report

On October 17th Johnson sent a confidential letter to Mr. Grover Clark expressing his apprehension with the progress of the judicial inquiry. Portions of this confidential letter appeared on December 1st in an American Newspaper, *The Peking Leader*, in anticipation of the release of the reports. In this letter Johnson expressed fear at the damage that his participation could have on America's image in China. Writing candidly, Johnson laments, "I believe that it is very unfortunate that the American Government has been drawn into the inquiry. In my opinion, it would have been much better not to have taken part, and allowed the parties most interested to find a solution for themselves."¹¹⁸ He views the commission as ill-conceived and unlikely to have a positive effect on either the situation in China or on America's diplomatic interests. Questioning the United States involvement, Johnson goes on to say

At this moment, I am satisfied that the inquiry will prove of no avail, and will have no effect upon public opinion. I feel that I am taking part in a useless inquiry

¹¹⁷ *Ibid.*, 40.

¹¹⁸ USDS, Mr. Grover Clark to Kellogg, November 29, 1925, Microfilm, Microcopy 329, 893.5045/259.

into affairs in which my Government has no direct interest. I hope to avoid any complication or entanglements between my Government and the Chinese people. The situation here is one which cannot be settled by powder and lead, nor behind prison walls. I am satisfied that the Chinese people are determined not to permit any further encroachments upon their national rights.¹¹⁹

In this reflective and frustrated appeal, Johnson presents the judicial inquiry as inherently flawed, incapable of producing a desirable outcome. However, behind this frustration is a determination to maintain purity in his report and to avoid embarrassment of America by staying complicit in this farcical commission. He makes it clear that no matter what he did, the result would be damaging to American interests. However, he would construct the report and present the event in a way that could possibly save American face. Johnson would purposefully distance himself from the Japanese and British positions. In insisting on maintaining a minority report, Johnson indirectly protests what appears to be a preconceived, *ex parte* investigation. Also, he mentions that during the process he conducted thorough cross-examinations of the witnesses in order to attempt to compensate for apparent lack of rigor of the other members involved. His extra efforts were not directed, but Johnson was given approval by those diplomats overseeing the process to try and maintain impartiality through the proceedings.

The release of the reports was delayed for a long period after the completion of the investigation. Although finished on November 8th 1925, the report was only released to the press in an abbreviated form on December 23, 1925. It would be over two months between the conclusion of the work of the commission and the production of their findings. The full reports were expected to be released soon after December 23, 1925, but even as late as January 14, 1926 the full reports had not been produced. There was much worry and speculation over the reasons for this postponement. The delay in production provided much time for suspicions to be aroused

¹¹⁹ *Ibid.*

from the foreign and Chinese communities waiting upon the results. It wasn't until January 23rd 1926 that the production of the complete findings was forthcoming.¹²⁰ For the foreigners there was anxiety and hope that the report would serve as a means to quell the tumultuous situation in China. One newspaper article entitled "Held Up" mentioned the potential harm that could be caused if the report were further delayed in its distribution. This December article mentioned "signs of renewed unrest among students and laborers; and while publication of the report may very possibly bring these to a crisis, delay to publish will certainly do nothing to assuage them."¹²¹ There was great tension across China months after the event, causing the diplomatic channels to carefully consider the implications of releasing the report.

The entire diplomatic community stalled the production of the reports. Some felt the need to assess the situation in China and how it would be affected by the release of the reports. The Japanese were concerned about the implications of releasing the reports because Johnson's report contained "strictures on Japanese which are not warranted by the facts."¹²² Consequently, the Japanese considered suppressing or tampering with Johnson's report. This was rationalized on the basis of a Japanese belief that the "judges were not in a position to know the facts in regard to Johnson's allegations of misconduct by Japanese mill owners and in any event the publication of Johnson's report in tot[al] would create they feel a very unfortunate situation which would do more harm than good."¹²³ There was a fear that production of the report in full would potentially place unjustified blame on the Japanese for the immediate causes of the event.

In a November 24, 1925 telegram from Kellogg to MacMurray, there is discussion about the potentially suppressing Johnson's report. This suggestion is dismissed however, with the

¹²⁰ *FRUS*, 721.

¹²¹ USDS, Cunningham to MacMurray, telegram, January 13, 1926, Microfilm, Microcopy 329, 893.5045/288.

¹²² USDS, Macveagh to Kellogg, telegram, December 8, 1925, Microfilm, Microcopy 329, 893.5045/268.

¹²³ *Ibid*

belief that such an action would likely cause more harm than good.¹²⁴ Secretary of State Kellogg addressed the Japanese Embassy regarding the suggestion that the reports be suppressed or censored by saying that "it is the opinion of this Government that it will be very dangerous for the Governments to tamper with those reports for it is felt certain that they will eventually reach the public textually. As you will realize, this Government has no means of enforcing the suppression of the report of Justice Johnson, even though it desires to do so."¹²⁵ This statement attempts to sympathize with Japanese hesitance at the release of the report, admitting that Johnson's report could have adverse consequences. This represented a willingness of the diplomatic community to deliberately withhold Johnson's report. It is intimated that suppression would be desirable, but Kellogg maintains that it is necessary to avoid the scandal that would result if the report were meddled with.

Reflected in this cautious approach and consideration of censorship is the fear of an explosive reaction to Johnson's report. This demonstrates the volatility of the situation in China and the desire to contain the situation at all costs. It further shows just how strong a threat that the report represented. Johnson's opinion would have likely been suppressed, if not for the likelihood of parts of the report leaking. It was regarded as a very dangerous document creating much fear and embarrassment from the American diplomatic participants.

Johnson was a headache for his diplomatic overseers. He believed that by structuring the narrative of his report in a more representative way, he would thereby distinguish the United States position from the other interested parties. While it did achieve this goal, it also created great political blowback from these same vested interests. This was because according to MacMurray, Johnson "exceeds the terms of reference giving his conclusions in seventeen

¹²⁴ *FRUS*, 719.

¹²⁵ USDS, Kellogg to Tokyo Embassy, telegram, December 12, 1925, Microfilm, Microcopy 329, 893.5045/271.

paragraphs and his recommendations in three which in the majority of cases embrace topics and offer proofs beyond the scope of the inquiry.”¹²⁶ The American diplomats overseeing the progress of the report expressed embarrassment at the apparent disregard that Johnson showed for the original purpose articulated and scope of the investigation.

Johnson felt after the conclusion of his report that his attempt at impartiality was greatly appreciated by both foreigners and Chinese alike. In a concluding letter to MacMurray he suggests that if it were not for him, “everyone connected with the [re]grettable incident of May 30th, 1925, would have been white-washed.” He goes on to talk of the “hundreds of congratulatory letters from Chinese and foreigners relating to the what they regard as the fearless effort on my part to get at the real facts, without reference to whom they might refer.”¹²⁷ Johnson felt that his actions in attempting to counteract the ex parte nature of the commission had been successful and were saving American dignity.

After the release of the report, Johnson became a subject of much deliberation. The findings were met with many different reactions, the majority of which were negative. Many of the articles listed below appeared in the diplomatic dispatches. Articles were attached to correspondence to give context to the status of proceedings in China, especially in telegrams between Kellogg and MacMurray. As a result, many of the articles are listed without authors and some do not even list the newspapers in which they appeared. Still, the articles are important due to the different perspectives they provide in reaction to Johnson’s report. The diplomatic records reveal the intensity of the debate over his opinion. Because the report went against the purpose of maintaining a consistent image of the event, it was met with severe censure.

¹²⁶ USDS, MacMurray to Kellogg, telegram, November 21, 1925, Microfilm, Microcopy 329, 893.5045/253.

¹²⁷ USDS, Johnson to Kellogg, telegram, November 14, 1925, Microfilm, Microcopy 329, 893.5045/274.

Typical of many of the articles reacting to Johnson's report, one written to the Editor of *The Shanghai Sunday Times*, by C.R.M., focused his attention on denouncing Johnson's report. The article frequently makes use of ad hominem attacks against Johnson. In one instance, the author decries Johnson's claim that foreigners failed to take into account the principles of liberty that they themselves profess. In response, the author makes the case that "Mr. Johnson who actually knows nothing of China, or how foreigners live in China, or how Chinese live in China" was unqualified to make such a sweeping statement.¹²⁸ Concluding that Johnson could not have come to find appropriate information to make such a conclusion, the author dismisses Johnson's report as outside of the scope of the investigation. The author of this article is representative of the Shanghailanders community, the British position which was vehemently opposed to any reduction in the status of foreigners in Shanghai. From this perspective, Johnson's report was seen by many to be appeasing Chinese demands. It was weak, yielding to Chinese Bolshevik interests and endangering the foreigner position in China. Many critiques argue that his conclusions are baseless given the evidence to which the investigation was meant to be confined.

Criticisms of Johnson's report were maintained by those overseeing the American diplomatic process as well. After Johnson's report was published, MacMurray sent a summary to Kellogg mentioning that it regrettably went beyond the scope of the purpose of the inquiry. This criticism echoed the negative responses from the Shanghailanders community following the investigation who argued that many of Johnson's conclusions were baseless. In a November 21st telegram, MacMurray summarizes Johnson's report, expressing disbelief that the report

exceeds the terms of reference, giving his conclusions in 17 paragraphs and his recommendations in 3 which in the majority of cases embrace topics and offer proofs obviously beyond the scope of the inquiry... It is very unfortunate that dicta

¹²⁸ C.R.M., letter to the editor, *The Shanghai Times*, December 28, 1925.

of a controversial political nature should be contained in a judicial finding intended to be published at this time.¹²⁹

For MacMurray, Johnson was seen to be attacking the authority of the Shanghai Municipal Council and the international settlement as a whole. Johnson's report was politically dangerous, not only to the legitimacy of the foreign position in China, but also to United States foreign policy interests at this time.

While the majority of foreign reactions to Johnson's report were negative, there were a few that were more neutral and some even sympathetic to Johnson. One article that appeared on January 5, 1926 entitled "The Value of Johnson's Report", gives a positive account of his findings. The author begins by noting Johnson's unique qualifications, given that he served on the Supreme Court in the Philippines since "the early days of the American occupation and has served continuously through the 'empire' down to modern days of autonomy and possible ultimate independence."¹³⁰ The author believes that Johnson's position as a receding imperialist made him perfectly suited to give an insightful opinion on the process of imperial retreat in China. The author also notes that Johnson took on a role "as a statesman in addition to being a judge," though not in a pejorative way.¹³¹ This characterization of Johnson as acting as a politician is an apt one. If true, it would suggest that Johnson went beyond his role as a judge, resisting the scope of the inquiry in order to satisfy the demands of United States principles. These principles included the United States belief in a unique friendship with China. The author next goes on to assess the impact of such an active approach to the commission and holds that it presented a truer picture of the "actual causes of misunderstanding between foreigners and

¹²⁹ *FRUS*, 713.

¹³⁰ USDS, Cunningham to MacMurray, telegram, January 13, 1926, Microfilm, Microcopy 329, 893.5045/288.

¹³¹ *Ibid.*

Chinese.”¹³² Finally, he exonerates Johnson’s approach, arguing that Johnson could not have delivered an honest report if he had not included these underlying causes. This casts doubt on the sincerity of the commission as originally designed. It further implies, that except for Johnson, who attempted to act impartially, the other judges acted dishonestly.

To give an idea of the Chinese reaction to the report, there are two brief editorials appearing in *The China Press*. The first of these appearing on January 1, 1926 characterizes the function of the judicial inquiry as inherently insincere in its pursuit of justice. The author Tsao Lien-en concludes his brief article with an impassioned and acerbic declaration that “they [foreigners] expect a prolonged judgment, an unsettled state of affairs, so that during such a time the blood-handed actors may sneak away from the scene and descend the stage. Well done, this face-saving farce!”¹³³ The tone is extremely distrustful, viewing the purpose of the inquiry as a means to maintain an image of Western legitimacy and protect those responsible for the killings.

Another equally bitter Chinese reflection by Cheng Woo-fee declares ironically that “I now realize what justice really means.”¹³⁴ This highlights the inconsistency of the British in their application of justice. It is ironic because the foreigners presume to instruct the Chinese in methods of justice, while they themselves are responsible for covering up heinous crimes. The article reminds the reader that Britain “moved heaven and earth to persuade America and China to fight for liberty and justice” in World War I. To this he responds with a rhetorical question, asking “What about Justice for May 30th?”¹³⁵ Finally, Cheng Woo-fee concludes on a nationalistic note reminding his countrymen that “Justice cannot be obtained by word of mouth,

¹³² *Ibid.*

¹³³ Tsao Lien-en, letter to the editor, *The China Press*, January 3, 1926.

¹³⁴ Cheng Woo-fee, letter to the editor, *The China Press*, January 5, 1926.

¹³⁵ *Ibid.*

but only by an army and navy. In other words, Might is Right.”¹³⁶ Reflected in this is a feeling that blame was exclusively to be found in British Imperial intrigues. The British idea of “justice” is perverse and hypocritical, a means of protecting their own nationals by the use of force. Both of these reflections on the contents of the report are highly suspicious and antagonistic. They confirm the united Chinese stance of noncompliance in reaction to the proceedings of the commission. Finally, both are characterized by a highly charged nationalist tone.

Having supported the fact that Johnson functioned beyond his role as a judge on the judicial inquiry, into the realm of a political statesman, the question of how to characterize Johnson’s ideological position arises. Johnson was a moderate amid all the disparate views and passions surrounding the May 30th Movement. He gave one of the most nuanced representations of the event in the midst of a highly problematic issue. To avoid maintaining an unjust conclusion, Johnson wanted to represent unspoken views within the process. Further, he did not submit to what he saw as a biased investigation, insisting on releasing a minority report. Given the reaction to Johnson’s report, one would think that Johnson was openly hostile to the foreign presence. This was not the case, however; instead, he complicated the narrative by including other background issues. There was outrage towards Johnson’s disregard for the agreed upon format by including these sensitive issues. Nevertheless, the conclusion that Johnson reached was not so much radical, as it was moderate, attempting to bridge two polarized positions.

Attempting to distance the Americans from the interested parties involved in the process, Johnson’s narrative included the background history surrounding the event. If not for these additional underlying causes, Johnson’s report would have constituted an *ex parte* investigation. He feared that, given the partial scope of the investigation, he would not be saying anything new. Positive reactions to Johnson also backed this contention, stating that only by presenting the

¹³⁶ *Ibid.*

underlying causes in his narrative could he present an honest report. This suggests that Johnson had to act outside of his designated role in order to deliver a truthful report. This view admits that Johnson had acted as a politician in the process in order to separate the American position from the other interested participants. Acting in a statesmanlike fashion, Johnson believed that he was saving face for America. Still, the American Diplomats who oversaw the process did not approve of this attempt to act independently in order to protect the US image.

On one hand, the United States policy had been marred by racism during the period of the Chinese Exclusion Act barring Chinese immigration from 1892 to 1902.¹³⁷ On the other hand, many Americans felt sympathetic to the plight of the Chinese Nation. Warren Cohen maintains that MacMurray in particular “failed to appreciate the significance of the intensity with which the Chinese abhorred the symbolic fetters of the unequal treaties.”¹³⁸ Further, MacMurray was deeply anti-Communist. Reflecting US policy, he described the Chinese as “whipped into a frenzy of hysterical self-assertion under the influence of Bolshevik and juvenile nationalistic influences.”¹³⁹ On the contrary, Kellogg represented the progressive view “that within the near future we would have to release China from its conventional tariffs and give up extraterritoriality.”¹⁴⁰ We see then a major conflict in America’s China policy, with Johnson representing the emerging progressive trend of the day.

Johnson can also be seen as a Wilsonian thinker insofar as he emphasized the sanctity of international law and the right of self-determination as key features in a just “international order based on Democratic forms of government.”¹⁴¹ This school of thought emphasized the building

¹³⁷ Scott, *China and the International System*, 176.

¹³⁸ Warren I. Cohen, *America’s Response to China* (New York: John Wiley & Sons, 1971), 113.

¹³⁹ Michael H. Hunt, *The Making of a Special Relationship* (New York: Columbia University, 1983), 305.

¹⁴⁰ Richard Dean Burns and Edward M. Bennett, eds., *Diplomats in Crisis* (Oxford: ABC-CLIO, 1974), 32.

¹⁴¹ Erez Manela, “Imagining Woodrow Wilson in Asia: Dreams of East-West Harmony and the Revolt against Empire in 1919,” *The American Historical Review*, Vol. 11, No. 5, December 2006, 1333.

and strengthening of institutions amenable to a Democratic system. Johnson showed excitement at the Chinese having started the process of nation building and seemed hopeful for the future of the Chinese Nation. In his report, Johnson gave evidence that the Chinese were on the right track, but perhaps had not been given enough credit for the advances they had made. By this rationale, he advocated the resolution of issues, such as the status of the Mixed Court and extraterritoriality, for the sake of the future of the Chinese nation. While Johnson was in favor of Chinese Nationalism, it is important to distinguish between the form of nationalism that Johnson favored against the radical form of nationalism during the May 30th Movement.

The radical nationalism that inspired the May 30th Movement was largely backed by Communist sympathizers. Johnson specifically mentioned within his report the “evil and destructive influences to good and orderly government by paid foreign emissaries of Bolshevistic and Communistic governments, whose only purpose was not to assist and aid the Chinese people, but to excite and arouse a spirit of antagonism against all foreigners.”¹⁴² Johnson was clearly disassociating himself from Communism, which was in line with US foreign policy of the time. Although some may have interpreted Johnson as endorsing the radical nationalist position in his minority report, he clearly was not a Communist. Instead, Johnson would have likely supported the push for national unification that the right wing of the Guomindang represented.

Wilsonian thinking had excited Chinese hopes of national self-determination and independence from foreign dominion during the period leading up to Versailles Treaty in 1919. These principles were not applied to China, resulting in disillusionment and inspiring nationalist clamor during the May 4th Movement. Johnson’s report attempted to demonstrate American exceptionalism, separating the United States narrative from that of the other powers. Similar to Treaty of Versailles rhetoric, Johnson’s ideological stance was almost drowned, just as Wilson’s

¹⁴² USDS. Report of Justice Johnson. p. 11.

fourteen points had been in the face of British and French realist demands during the negotiation of the treaty. Johnson, however, refused to “kill the elephant” and compromise his morals as the policeman in Burma had, instead maintaining his ideological precepts in the face of realist political demands.

Conclusion:

How can we explain Johnson’s contrarian opinion that worked against foreign privilege in China? As an imperial agent in the Philippines since the beginning of the United States occupation, this was particularly problematic. Johnson seemed to be a perfectly compliant choice for the inquiry given his experience working as an imperial administrator and his willingness to work within the emergent American Empire. The first potential resolution to this apparent paradox is that Johnson represented American discomfiture with direct forms of Empire. Instead, he identified with the concept of a United States “special relationship” with China. This conceived of America as distinct from the other Western powers, offering friendship in the midst of exploitative imperialism. Certainly Johnson reflects this attitude. However, Johnson acted in part as a political statesman, shocking the diplomats who oversaw the operation of this investigation. Johnson, when faced with the choice of ideology and the maintenance of the interests of United States Empire, stayed true to his principles of Wilsonian Democracy. Colonial administrators were often faced with the duality of having to compromise their ideology in the face of the realist demands of maintaining an empire. Johnson represents a rare case of an administrator who held to his individual precepts and acted contrary to the imperial prerogative of the judicial inquiry.

We see that the substantive findings of Johnson’s report and the other two justices only diverged slightly in the responsibility they placed on the Municipal Police. While Johnson held

the police partially responsible, the Japanese and British reports both exonerated the police from responsibility. The main difference, however, was in Johnson's tone throughout his narrative. Gollan and Suga are both very straightforward and unambiguous in their renderings, in contrast to Johnson. Johnson, by including background causes outside the scope of the investigation, undermined the purpose of the British in holding the judicial inquiry.

Written in November of 1925, the Report of Justice Finley Johnson on the May 30th Movement complicated the narrative of the event in contrast to the Japanese and British reports on the Commission of Judges. By looking beyond the proximate or immediate causes of the event, Johnson constructed a narrative against foreign privilege in China. Still, Johnson's report was limited in that it represented United States projections of hopes and fears onto the tumultuous events of the period. Analyzing the nature of the disturbance within a wider causal history, Johnson hoped to hold true to his principles of Wilsonian emphasis on the sanctity of international law and national self-determination. Although acting mostly as an instrument in US foreign policy, he also acted out of personal conviction, embarrassing his superiors. His view was the composite of a belief in China's ability to adequately work within Western legal conceptions (free of foreign supervision), and his decision to focus on a broader causal story to explain the nature of the May 30th Movement.

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