

## The Jewish "Arbitration Court" in Shanghai

BY JOFFRE Y. LU (盧峻)

AS a result of Herr Hitler's persecution of the Jewish people, an influx into Shanghai of some eighteen thousand German Jewish refugees has recently been completed through China's hospitality. Many of them are miserable and destitute of the necessary means of living. A benevolent association called the "Committee for the Assistance of European Jewish Refugees in Shanghai" was accordingly founded for the purpose of assisting and relieving them. Among its activities the "Committee" established a few months ago the so-called Jewish "Arbitration Court" at 66, Alcock Road, and promulgated 15 Articles of the Rules Regulating Disputes of Jewish Immigrants" both in German and in English. It is reported that there are many discrepancies between the two texts and that although the English text is to be regarded as authoritative, only the German texts are distributed for use among the refugees.

Applicants for arbitration should, first of all, sign a declaration of "Submission to Arbitration" in printed form, declaring "that the court's decision, under the exclusion of legal proceedings in the ordinary courts of law otherwise having jurisdiction over the case, shall be deemed final and binding." As given in the preamble to the said "Regulations," the motive that promoted its organization was to avoid the "difficult, and costly" settlement of disputes by the state courts, which in many cases was deemed "detrimental to prestige." A certain responsible person of that "Committee," however, once remarked that in establishing the "Arbitration Court" the "Committee's sole intention was to avoid excessive, unnecessary annoyance to the Chinese courts with numerous trivial and unimportant cases, which, furthermore, usually require some technical knowledge and a thorough comprehension of the German language. The "Committee" drew up and published two lists of the names of potential arbitrators and umpires respectively. Parties submitting to arbitration shall select their arbitrators only from the said list, to the exclusion of all outsiders. As a matter of fact, it is alleged that with the exception of only the Committee's legal advisor, the arbitrators and umpires thus far selected in the lists are all business men with little or no knowledge of law at all. In a span of two months the Court has, as reported, handled more than one hundred and forty cases.

Judging from the above facts no one will possibly deny that it is, in nature, a permanent judicial tribunal—an institution of public character. Its mere existence constitutes an encroachment on the integrity of the Chinese judicial system: its functioning amounts to the exercise of non-existent extra-territorial rights. It is true that arbitration has always been employed in practice, and encouraged in Chinese law. We often find disputes amicably settled through the conciliation of respective guilds, to which the parties belong. The Chinese Nationalist Government promulgated the "Regulations of the Commerce Arbitration Office" (商事公斷處章程) whereby commercial disputes may be submitted to the local Chamber of Com-

merce for arbitration. On May 9, 1935 the Ministry of Justice promulgated the "Amended Tentative Rules Governing Civil Arbitration" (修正民事公斷暫行條例) which was translated into English and published in the 24th July, 1935, issue of *Finance and Commerce*. The Chinese Code of Civil Procedure devoted a special chapter to providing the procedure of Civil Intercession (民事調解) by which the parties may reach an amicable settlement through the good office of the court without incurring any court expenses. Any Jewish refugee, therefore, can, as he may see fit, either apply to the Chinese court for civil intercession or seek arbitration in individual cases in pursuance of the said Regulations Governing Civil Arbitration. There seems no need at all for having the "Arbitration Court," which is prejudicial to Chinese sovereign rights.

In fact, the "Arbitration Court" aims not only to avoid the proper jurisdiction of the Chinese competent courts, but also to eliminate the application of Chinese law, which should, otherwise, be applied. According to Article 6 of the present "Regulations" the court in rendering the decision shall first apply such laws as intended to be applied by the parties. The Chinese law is to be applied, only when the intention of the parties is uncertain. It is admitted that the Chinese Rules for the Application of Laws prescribes under certain circumstances the application of foreign law and that in cases relating to juristic acts giving rise to obligation, the proper law to be applied is determined by the intention of the parties. Nevertheless, a person with working legal knowledge should know that foreign law can be applied, if it is so permitted according to the Chinese rules of private international law. No foreign law can automatically have its extra-territorial effect upon the Chinese jurisdiction. Except in cases of obligation incurred by juristic act, there is no room for the application of law intended by the parties. A perusal of Articles I and 6 of the "Regulations" does not warrant us, however, to interpret that the Committee does not intend to apply such rule as stated in Article to acts-in-law other than that giving rise to obligation. The logical conclusion will be that all civil disputes of whatever nature shall be decided, first, according to the law intended by the parties; second, in the absence of intention, according to Chinese law. This actually gives the Jewish refugees legislative power of their own.

It is furthermore to be pointed out that the said Arbitration Court is intolerable not only because it infringes Chinese sovereign rights, but because it contravenes the spirit of Chinese law relating to arbitration. The Chinese Amended Tentative Rules Governing Civil Arbitration permits only such arbitrations as agreed upon by the parties voluntarily. Compulsory arbitration, application of sanctions, and execution of the award by individuals or any private organization are strictly forbidden, for they are against the public policy of the state. The jurisdiction of the Arbitration Court is said to be extended even to those Jewish refugees who are living outside the Refugees Camps

and not under the charitable care of the "Committee." They are likewise under the compulsion to submit to arbitration, for the second paragraph of Article I of the Regulations says literally, "Non-observance of the above (submission to arbitration will entail the forfeiture by the responsible party of all the privileges, facilities, support, etc., extended to such party by the Committee, besides other and further sanctions which the said Committee may see fit to apply." It has been disclosed by a certain Jewish lawyer that as regards the refugees living outside of the camps, the Committee still has ways and

means of enforcing whatever they consider right. Article II also provides that the umpire may "direct the parties to deposit with the 'Arbitration Court' the object of the dispute," and the court "may immediately deliver the said object to the winning party." Submission to arbitration precludes the parties from bringing any law-suit in competent courts. They will be subject to the same punitive measures, if they do start actions. The provisions referred to practically deprive the Jewish refugees their right of access to the Chinese court. The so-called "Arbitration Court" virtually usurps the Chinese judicial functions.

## Education for Happiness

By JOHNSON YEN (嚴蓉蓀)

MAN, at present, doubts the very existence of happiness and is inclined to speak of it as of something highly relative, elusive, something from the realm of fairy-tales. But he has never really given it any thought, never attempted to examine this infinitely complicated and infinitely simple problem. It seems perfectly natural to him to learn to read and write, or to ride horseback, or to study law, music, history, and foreign languages. But happiness must come of itself. And this is great mistake. If we regard the life of modern man objectively, we will see that he bears a heavy, almost overwhelming burden, the mental heritage of centuries long gone. Man's spiritual life, the life of modern humanity, is governed not only by numerous correct, important, and valuable ideas, but also by theories and notions which have no positive value at all, and which, on the contrary, are frequently harmful and even dangerous. Many such ideas are the product of diseased intellects, the reflection of mental and physical ailments. As a result, the education of modern man is based on vastly incorrect premises.

In approaching the problem of human happiness, one must inevitably turn to its origins. Biologically, all living matter strives to achieve harmony, and life itself is an urge for harmony and for its preservation and defence. This is equally true of the harmony of one cell and of the millions of cells that form an organism. This harmony suffers constant attacks, but every living being, whether a simple cell or a man, has the capacity for resisting such attacks and for restoring its equilibrium. That is life. But when the attacking forces win out, and deviations from harmony become more pronounced, we have before us the first symptoms of death. This is the basic, immovable, and most significant law of biology. As long as a man retains the capacity of restoring his physical and spiritual harmony, he possesses all that life can give. Otherwise he is on the way to failure, to defeat, in the final analysis, to death. And happiness is that which helps him to attain lost harmony, to attain the precarious equilibrium which exists between his physical and spiritual life. Happiness is that tremendously important and precious biological factor which, more than any other, assists man in restoring the easily impaired harmony of his body, his mind, his whole self. It is for this very reason—moved by the instinct of self-preservation—that man needs happiness so much and seeks for it so persistently. He feels—he does not know, but he senses instinctively—that the feeling of

happiness will help him to achieve the equilibrium he has lost, to calm the contradictory tendencies which rend his body and soul, and if only for a brief space, to find peace. It is in this sense, that happiness deserves to be called nature's medicine.

From the physiological point of view happiness is not an abstract term, whose actual existence may be doubted, but a concrete physiological fact, the sum total of positive tendencies, the last link in the chain of man's positive superreflexes. Life, as the sum of vital forces; life, as an urge for harmony, is represented in man by his positive tendencies and reflexes, each of which—and all of them together—strives not merely to preserve harmony, in the human organism, but also to make possible on its part a maximum of creative activity. The negative reactions, which interfere with our positive tendencies, stand in the way of the creative activity of the organism, and consequently, of human happiness.

Thus we come to the physiological and chemical dualism of human nature, a dualism which constantly finds expression in man's spiritual life as well. Gentleness, kindness, love, sympathy, pleasure, satisfaction, happiness—all these positive tendencies are closely interwoven with man's creative activity. Irritation, anger, pain, hatred, all the negative reactions, find their physiological manifestation in a sort of spasm of our nervous system, produced by certain chemical substances and resulting in the destruction of the positive tendencies. This physiological analysis of human emotions forces us to draw the paradoxical conclusion that the positive tendencies dominate human nature; that man was intended for a creative, happy life; more than that, that the normal healthy person, the "Good man" must be smiling, kind, and benevolent, for the very essence of life demands these qualities.

Generally there are two ways by which humanity may live. The small minority looks for supreme happiness. For Aristotle happiness consisted in the "free exercise of his highest faculties." The same view is expressed by Schopenhauer. "What a man has in himself is the chief element of his happiness," he told us. And again: "The first and the most essential element in our life's happiness is what we are—our personality." Indeed, many people are apt to think that a man's happiness consists in the realization of his personality and consequently, in his creative work. Thus, Thomas Edison, asked on his seventy-fifth birthday to define happiness, replied "work, work, and only