The Theories and Practices of Sovereignty in Republican China, 1911–1943



Yuan Yi Zhu
Nuffield College
University of Oxford

A thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy

July 2023

Word count: 74,287

Abstract

This thesis examines the ways in which sovereignty was wielded as a concept and acted out as a practice by Chinse political and diplomatic elites, as well as by the leaders of its Communist movement, during the Republican Era (1912–1949) within the context of the broader evolving heterarchical international legal and political order. Through a series of four detailed historical case studies and adopting an approach drawn from the English School tradition, I argue that, because of its liminal yet privileged positioning within the international system of the period, Republican China paradoxically became an important generative site for sovereignty-related practices and ideas, as its political and diplomatic elites challenged the boundaries of the international order at a time when core concepts within that order were in a state of flux and open to reinterpretation and redefinition; and show how they pushed the limits of that order through a mutually constitutive process in order to advance their policy objectives in a range of areas, from territoriality to international status, with implications both for the future of Chinese statehood and for the development of the international system. In doing so, I aim to contribute to debates about the development of the international system during the inter-war era, as well as to contribute to the literature on Republican China's foreign relations.

This thesis is dedicated to Xiao Jiaqiao (Cecilia)

No day shall erase you from the memory of time

Table of Contents

Acknowledgements 10

Note 15

Introduction 17

Theoretical context 20

Republican China and Sovereignty: The state of the literature 29

Methodology and sources 31

Outline 33

Chapter 1: From *Tianxia* to *Zhuquan*: Chinese Understandings of Sovereignty Before the Republican Era 37

'The Public Law for Ten Thousand Nations': The Introduction of International Law and 'Sovereignty' to China 39

The 'Standard of Civilization', Sovereign Equality, and the China's Place in the 'Family of Nations' 41

Chinese Reactions: How Many Reception Stories? 46

Chapter 2: Suzerainty, Semi-Sovereignty, and International Legal Hierarchies on China's Borderlands 55

Semi-Sovereignty: Exceptions, Aberrations, and Violations? 56

Suzerainty, Ancient and Modern: From Feudal to International Law 60

The (Mis)uses of Suzerainty in China 65

The Invention of Chinese Suzerainty: Mongolia, 1911-1915 70

What is Tibet? Suzerainty and the Legal Positioning of Tibet, 1914-1951 75

Conclusion 83

Chapter 3: "Can an Anarchy be a State?" China as a Non-State and the Rules of Exit from International Society 88

How Does a State Die? Theoretical Considerations 90

"Fictions Cannot Last Forever": the Manchurian Crisis 96

Between Effectiveness nor Legitimacy: The Muddle of Inter-War State Recognition and Chinese Legal Statehood 104

The Unresolved Contradictions of State Extinction 111

Chapter 4: China and the League of Nations: The Social Construction of China as a Great Power 115

A Nationalist Internationalism? China, the "Geographical Principle", and Membership of the Council of the League of Nations 118

China: A different sort of great power? 126

Conclusion 136

Chapter 5: The Chinese Soviet Republic, Or How to Think Like a State 141
Big China or Small Chinas? The Origins of CCP Views of the Territorial State 142
The Chinese Soviet Republic, Or How to Think Like a State 147
Conclusion 156
Conclusion 159
Bibliography 167

Acknowledgements

It would be fair to say that this thesis was not completed with undue haste, and I am not sure if either of my supervisors, Professor Andrew Hurrell and Professor Rana Mitter, expected their task to extend into the second decade of the twenty-first century. Nevertheless, they have provided admirable guidance, put up with my many unreasonable ideas, and perhaps even managed to make me learn a few things.

Afternoon chats with Andy in his tower (I mean this literally; his office is at the top of a tower at Balliol) are both delightful and daunting, as the conversation alternates between delightful long digressions and the feared incisive comment which lays waste to all my ideas. Rana, meanwhile, is the only academic I have ever met who speaks faster than I do, though unlike me he thinks even faster than he speaks, and unlike me also he knows about everything that he talks about, though he is far too polite to point out my vast ignorance. Whatever worthwhile ideas contained in this dissertation were pilfered from them; all the many mistakes and howlers are mine and mine alone. To them I extend my first and very sincere thanks.

My studies at Oxford were mainly underwritten by, and thanks are rightfully due to The Warden and Fellows of Nuffield College in the University of Oxford, The Chancellor, Masters and Scholars of the University of Oxford, and Her Majesty The Queen in Right of Canada through The Social Sciences and Humanities Research Council of Canada. I suppose Her Majesty, and perhaps a few of the others, have forgotten about my existence; but at any rate I hope this meagre contribution to the total sum of human knowledge will provide them with some return on their investment. I would also like to thank The Moore Charitable Foundation and Gabrielle Sacconaghi Bacon for underwriting my previous studies at Hughes Hall, Cambridge, as well as the late Richard Berg Rust, who made it possible. Thanks are also due to the Royal Historical Society, Adam Matthew Digital, the Asian Society of International Law, the Common Good Project at the Oxford Law Faculty and Professor Ryan Meade for their support.

My Montrealer-Oxonian (though not in his Marxism) fellow traveller G. A. Cohen once wrote that “to go to McGill was a widespread hope and expectation in our class”; and this is a sentiment I wholeheartedly shared. I will never know the name of the admissions officer who let me into Roddick Gates, but I am very grateful to them for that error of judgment. Of the other staff of the Royal Institution for the Advancement of Learning, I would particularly like to thank Professor Lorenz Lüthi, Professor Laura Madokoro, and Dr Charles Wesley Sharpe,

without whose encouragement and constant help I would never have gotten here; that I probably would have opted for a far more lucrative legal career instead seems immaterial, since this was the result of my own poor life choice. I would also like to particularly record the names of two other McGillians, Lieutenant Allen Oliver, MC, Canadian Field Artillery and Lieutenant Guy Melfort Drummond, Canadian Infantry (Quebec Regiment), whose posthumous legacies have enabled many to do what they were unable to do during their curtailed lives.

Historical international relations is a small field, and the English School is perhaps even smaller. It is therefore fortunate that every single person I have met from those fields, as well as from the academic world in general, has been uniformly helpful and delightful. Among my fellow travellers I would particularly like to thank Benjamin de Carvalho, Andrew Chubb, Edward Keene, Julia Costa López, George Lawson, Halvard Leira, Jeppe Mulich, Carsten-Andreas Schulz, Tomas Wallenius, and Ayşe Zarakol for their help over the years. I generally maintain a certain scepticism toward professional associations, but the Historical International Relations Section of the International Studies Association, whose membership is almost coterminous with the list above, has been of great assistance, if only through free drinks at ISA annual conventions and the moral support of knowing that there are other people working in what is a decidedly unfashionable corner of international relations.

Nuffield College, Oxford has provided a hospitable home for my dilatory labours, though having been evicted from three student offices I suppose there is a degree of official impatience as to my departure. Duncan Snidal and Ben Ansell have been excellent college supervisors, always available to help but leaving the truly embarrassing questions about my academic progress for others to ask. Thanks are also due to the porters and the college staff (with one exception) who keep the place up and running and who are unfailingly helpful, though more than one of them has expressed to me their bemusement at the academics' quotidian activities. Our founder, the late Viscount Nuffield, used to complain bitterly that the college's socialist dons were feasting off his benefaction. He was being characteristically unfair: there are plenty of Lib Dem dons as well. But I cannot help but feel affection for that extraordinary self-made man, whose name will live on long through the institutions he endowed after that of almost every one of ours is forgotten.

Despite their generally dubious reputation within the University (I was told early on that I would never visit the Department of Politics and International Relations nor mix with my fellow IR postgraduates because I would spend all my time hanging out at Nuffield with Nuffield people, a prediction which I hastily rejected at the time but subsequently proved with my own actions),

I have made many great friends among Nuffielders, though our image as neurotic self-centred academic snobs who look down on St Antony's is perhaps not entirely undeserved. Among the college's junior members (and here I include the more junior members of the Governing Body, for they are undistinguishable from one another) I would particularly like to single out Nicholas Barker, Jasmine Bhatia, Noah Carl, Jess Gliserman, Matthias Haslberger, Mobarak Hossain, Tuuli-Anna Huikuri, Christopher (Justin) Jacobi, Richard Johnson, Daniel Kalinski, Ruairí Maguire, Jacob Nyrup, Giovanni Maria Pala, Sean Phillips, Jerome Simons, Anette Stimmer, Ahmed Tohamy, Jamie Walsh, and Matthew Zelina, as well as the entire informal IR lunch group, alas killed off by the pandemic as well as attrition.

Of Oxford's many other colleges, I would like to particularly thank three. Harris Manchester College and its senior tutor Professor Lesley Smith have provided me with an endless stream of interesting students, and I am happy to be able to continue my association with them in the future. Pembroke College gave me the rather grand title of lecturer, which fooled many people into thinking I was more intelligent than I actually was, as well as many very enjoyable dinners. Finally, Oriel College, through its Middle Common Room, provided me with many good friends and a great deal of harmless, and indeed less harmless, fun.

(It is at this junction that, safe in the knowledge that acknowledgements are even more seldom read than the dissertations themselves, I record the profoundly trivial but nevertheless noteworthy and perhaps unique fact that I have been, for the past two years, simultaneously a member of a junior common room, a middle common room, and a senior common room. This entirely frivolous fact may account for some of the inordinate delays involved in the production of this thesis.)

Further afield, many have provided intellectual and moral support for this project. I do not have space to name all of them, but among others I would like to thank (in alphabetical order) Howard Anglin, Sam Ashworth-Hayes, Professor The Honourable John Bew, Dr Conor Casey, Dr Donal Coffey, Matthew Cressatti, Dr Minlib Dallh, OP, Aymen Djellal, Professor Jacob Eisler, Professor Richard Ekins, Dr Michael Foran, The Right Honourable The Lord Godson, Dr Julius Gower, Justin Hatherly, Nathan Scout Helms, Henry Hill, Connor Macdonald, Dr William Prescott, Barbara Rich, Dr Lola Salem, Mark Scott, Bluemantle Pursuivant of Arms in Ordinary, Dr Rajiv Shah, Kerry Sun, Katharin Tai, Constantine Valettas, Captain Lu Yao, Royal Canadian Dental Corps, and Boyao Zhang. And although they are far too numerous to name, I would like to thank all my mutual friends from the strange, mad website known as

Twitter, who think that my inane ramblings are insightful and have offered all manner of support over the years, making me into a micro-Internet celebrity. I will never log off.

Finally, I would like to thank my parents, Zhang Xin and Dr Zhu Zongchang, for having put up with my meandering over the years and for their acceptance that doctor of philosophy was the closest I am ever going to get to become a doctor. I once accidentally made a sort of bomb in a Chemistry laboratory class through my lack of manual skills, so it really is for the better. I wish I had not been such an absentee big brother to Alison while she was growing up, but as Apollinaire once wrote, « il faut voyager loin en aimant sa maison », and your life is only beginning. And I would like to thank Imogen, the only good thing that has come out of this pandemic.

As the descendant of long lines of public-minded provincial Chinese landlords and of not particularly effective liberal intellectuals, this dissertation was perhaps more personal than I would care to admit. So I will end here with a story about my grandfather, one of the last surviving representatives of both classes. During the Cultural Revolution, the Red Guards showed up at his house—his class background being a highly dubious one—and searched it for evidence that he was a Taiwanese spy. They turned it upside down but found nothing except a radio which they thought was a transmission station of some sort. At long last they located a beautiful pre-1949 set of the Four Classic Chinese Novels published by the famous Commercial Press. Such *ancien régime* literature was decidedly in disfavour those days, and they wanted to seize it. My grandfather, a mild-mannered accountant—though his true vocation was architecture, a career denied to him by the Communist victory—stopped them dead in their tracks. If something happens to me, he said (by which he meant arrest, or worse), you can take those books, but in the meantime they stay with me. It was a foolish thing to do, but we still have those books. Nothing I will ever write will quite match up to that.

Note

A revised version of Chapter 3 was published as Yuan Yi Zhu, “Suzerainty, Semi-Sovereignty, and International Legal Hierarchies on China's Borderlands”, *Asian Journal of International Law* 10(2) (2020), 293-320.

Introduction

"A quest for sovereignty characterizes China's modern history" is how a recent writer has characterized the relationship between modern China and sovereignty, a statement which is hard to fault.[1] China's approach to sovereignty has been variously described as being that of the "vicar of the high church of Westphalia",[2] the "last bastion of Westphalia",[3] a practitioner of "sovereignty fundamentalism",[4] its relationship with sovereignty is often described in terms of "obsession"[5] or "fetish",[6] an impression fuelled by the way in which Chinese officials speak of the concept in their public statements. The Chinese jurist Wang Tieya asserted that Chinese foreign policy's main distinguishing feature from the West's lay in China's "strict adherence to the principle of the inviolability of sovereignty" as "the basis of international relations and the cornerstone of the whole system of international law".[7] Or as Samuel S. Kim wryly put it, "Some wayward stranger from another planet…could easily take sovereignty as a quintessentially Chinese idea."[8]

Yet others have detected a streak of pragmatism in China's engagement with the concept of sovereignty, in which sovereignty "serves current Chinese national interests and historical circumstances", thus putting into question the conventional narrative about China's undiluted commitment to the idea of sovereignty in its maximalist form.[9] In particular, some have argued that China has undergone an observable shift toward a less absolutist stance, thus positioning China squarely in the middle of what has been termed the "new sovereignty" debate within international relations.[10] As early as the 1990s, Kim argued that China's attachment to

---

[1] Maria Adele Carrai, *Sovereignty in China: A Genealogy of a Concept since 1840* (Cambridge: Cambridge University Press, 2019), 1.
[2] Zhang Yongjin, "Understanding Chinese views of the emerging global order", in Wang Gungwu and Zheng Yongnian (eds.), *China and the New International Order* (Abingdon: Routledge, 2008), 149-167, 161.
[3] Ibid.
[4] Bill Hayton, *The Invention of China* (New Haven: Yale University Press, 2020), 54.
[5] M. Taylor Fravel, "China's Sovereignty Obsession: Beijing's Need to Project Strength Explains the Border Clash With India", *Foreign Affairs*, 26 June 2020, https://www.foreignaffairs.com/articles/china/2020-06-26/chinas-sovereignty-obsession
[6] Sebastian Strangio, "Bill Hayton on the Invention of the Chinese Nation", *The Diplomat*, 27 October 2020, https://thediplomat.com/2020/10/bill-hayton-on-the-invention-of-the-chinese-nation/
[7] Wang Tieya, 'International law in China: historical and contemporary perspectives', in *Recueil des cours: Collected Courses of The Hague Academy of International*, vol 221 (Dordrecht: Martinus Nijhoff Publishers, 1990), 228.
[8] Samuel S. Kim, "Sovereignty in the Chinese Image of World Order" in *Essays in Honour of Wang Tieya*, ed. Ronald St. John Macdonald (Dordrecht: Martinus Nijhoff Publishers, 1994), 425-446.
[9] Carrai, *Sovereignty in China*, 17.
[10] See Allen Carlson, *Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era* (Singapore: NUS Press, 2008).

sovereignty was coming under challenge from "competing international norms that may place contradictory constraints and pressures on state behavior".[11] A decade later, Allen Carlson memorably argued that "the Chinese position on sovereignty is not what it used to be" due to shifting cost-benefit calculations.[12] Sow Keat Tok has similarly argued that there was a sizeable gap between the rigid ideal-type of China's conception of sovereignty and its more flexible actual practice, even on sensitive issues such as territorial sovereignty.[13] Yet more recently, in view of an increasingly assertive Chinese foreign policy which many view as coercive, China's commitment to state sovereignty has been doubted by observers, some of whom view it as little more than a pragmatic posture of convenience.[14]

This thesis examines the ways in which sovereignty was wielded as a concept and acted out as a practice by Chinse political and diplomatic elites, as well as by the leaders of its Communist movement, during the Republican Era (1912–1949) within the context of the broader evolving heterarchical international legal and political order. [15] Through a series of detailed historical case studies, I argue that, because of its liminal yet privileged positioning within the international system of the period, Republican China paradoxically became an important generative site for sovereignty-related practices and ideas, as its political and diplomatic elites challenged the boundaries of the international order at a time when core concepts within that order were in a state of flux and open to reinterpretation and redefinition; and show how they pushed the limits of that order through a mutually constitutive process in order to advance their policy objectives in a range of areas, from territoriality to international status, with implications both for the future of Chinese statehood and for the development of the international system.

Of the small but growing literature on China and sovereignty emanating from international relations and cognate disciplines, few engage seriously with the Republican period, even

[11] Samuel S. Kim (ed.), *China And The World: Chinese Foreign Policy Faces The New Millennium* (Abingdon: Routledge, 1998), 21.
[12] Carlson, *Unifying China, Integrating with the World*.
[13] Sow Keat Tok, *Managing China's Sovereignty in Hong Kong and Taiwan* (Basingstoke: Palgrave Macmillan, 2013).
[14] To take one (very) recent example, China's muted reaction to Russia's invasion of Ukraine, as well as remarks by Chinese diplomats about Ukraine's sovereignty or lack thereof, seem to many to prove that its commitment to national sovereignty is rhetorical only. See Andrew Gray, Liz Lee and Michel Rose, "China says it respects sovereignty of ex-Soviet states after EU uproar", Reuters, 24 April 2023, https://www.reuters.com/world/some-eu-ministers-say-china-envoys-remarks-ukraine-sovereignty-unacceptable-2023-04-24/; Zhenze Huang, "Will China Change Its Approach to the Ukraine War?", *The Diplomat*, 8 July 2023, https://thediplomat.com/2023/07/will-china-change-its-approach-to-the-ukraine-war/
[15] The title of the thesis refers to 1911–1943 instead. The Republic of China was proclaimed on 1 January 1912, but the Xinhai Revolution broke out the previous year. 1943 was chosen as the thesis' end date because of the relinquishment of extraterritorial rights by the United Kingdom and the United States that year.

though, as an international actor, Republican China was a highly distinctive one. On the one hand, it suffered from severe weaknesses, which have been amplified by later Chinese historiography so as to become the definitive popular image of the period. It lacked stable or even defined borders and the state capacity to exert control over large swathes of its official territory. It possessed a geobody which rested on an imperial foundation of dubious basis at a time when other contemporaneous imperial successor states, most notably Turkey, were doing their best to renounce to their former identity in favour of a narrower one. And it suffered from what Ayşe Zarakol aptly described as 'stigma' through its internal instability and relative poverty.[16]

On the other hand, within the still-evolving heterarchical international system of that era, and at a time when the idea of sovereignty had been thrown in flux within the international system, China also occupied a relatively privileged, though liminal space, in which its sovereignty was recognized, though with important qualifications. As one of the few non-Western states of the period to have a secure voice in international fora, Republican China's diplomatic and political elites possessed considerable agency through which they were able to engage in attempts at creating alternative international hierarchies (**Chapters 4**), to participate in debates on the future shape of the international order (**Chapter 2, 4, and 5**), to shape concepts whose meanings had been thrown in flux through the upheavals of previous decades (**Chapter 2, 3, and 4**), to fend off challenges to its status as a legitimate international actor (**Chapter 2**), to experiment with alternative modes of sovereignty organisation (**Chapter 5**), and to perpetuate imperial power relationships on its periphery (**Chapter 3**). Most of all, these elites were engaged in a mutually constitutive process about the definition of China's own sovereignty and agency, a process which had broader implications for China but also for the international system. Indeed, and sometimes paradoxically, Republican China's liminality helped it become a generative site for sovereignty-related practices and ideas: the very instability of its position also gave its elites the impetus to challenge the boundaries of the international order and exposed ambiguities within that order.

The core of this thesis is a series of four detailed case studies of episodes in Republican China's international history—ranging from the uneasy relationship between imperial and national political orderings on China's borderlands, to the evolving nature of statehood, to debates about

[16] Ayşe Zarakol, *After Defeat: How the East Learned to Live with the West* (Cambridge: Cambridge University Press, 2010).

the nature of international status and ranking—but all of which focus on central aspects of sovereignty as conventionally understood. Through these cases, which focus particularly on the actions of China's international-facing elites, I show how they grappled with, engaged with, and made claims, theoretical and practical, about China's sovereign status and place within the wider international system of that era, as well as the impact of these claims on the broader international system.

Unlike some recent works on sovereignty and China, this thesis does not aim to present a full intellectual genealogy of Chinese views of sovereignty during the period covered, nor does it purport to be a complete history of how sovereignty was perceived, practiced, and lived during the period, a task which would be beyond the capacity of a single work to provide. Instead, I focus on the actions of a relatively small group of Chinese actors, predominantly in international-facing settings. In doing so, I mainly aim to contribute to debates about the development of the international system during the inter-war era, particularly the contribution of political entities and actors beyond the Western 'core' to the global set of sovereignty practices. In theoretical terms, the thesis is foregrounded in—but is not limited to—the English School tradition within international relations theory, in relation to which I seek to contribute to the literature challenging traditional accounts of an one-directional 'entry' into international society by non-Western actors, and instead emphasize their importance as generative and disruptive sites for the international system more broadly. As a secondary goal, the thesis aims to contribute to the literature on Republican China's foreign relations, through examining hitherto-neglected episodes and better-known ones from new angles.

In the remainder of the introduction, I will first discuss the theoretical and historiographical background against which this thesis is set. Then, I will review the literature on the topic and identify some of the gaps this thesis seeks to fill. Thirdly, I will discuss the methodology employed, as well as the sources which have been employed. Finally, I will give an overview of the substantive chapters that follow, situating them within the overall framework of the thesis.

Theoretical context

Since its emergence after the Second World War, the English School of international relations has always maintained a particularly strong interest in China. Partly, this was down to the fact that several of the founding members of the British committee on the theory of international politics maintained a serious research interest in China.[17] But crucially, as a major non-European country which was continuously in procession of international status, China was seen as an important test case for various English School theories.[18] For example, the Warring States period (475–221 BC) was one of the three key historical 'state-systems' identified by Martin Wight in *Systems of States* (1977), while the 'tributary' system has generated its share of English School theorizing as well. But though the English School's interest in China and in non-Western international systems in general was in some ways ahead of its time, it has also often been criticized for its treatment of the non-European world. In the case of China, Zhang Xiaoming, perhaps the foremost chronicler of the English School's reception in China, has gone so far as to say that "China's status in the English School's conception of international society is partly a fact and partly an intellectual invention.".[19]

Perhaps the most high-profile—and the most often problematized—example of both the enduring association between the English School and China is the use of the latter as a key test case for the so-called expansion thesis of international society. The early work of Gerrit W. Gong, both in the Hedley Bull and Adam Watson's landmark 1984 volume *The Expansion of International Society* and in his monograph-length study, *The Standard of 'Civilization' in International Society* of the same year, both employed China as a case study to buttress the ES' account of the international society as an European creation which expanded during the 19th and 20th centuries in order to become global.[20] In this account, entry to the international society was conditioned on meeting a set of objective rules known as the standard of civilization, as judged by the international society's European core. In Gong's account, China's "size, inertia, and adherence to its own standard of "civilization" made [it] slow to implement the European standard",[21] in contrast to neighbouring Japan and Siam, which proactively implemented Western standards and were rewarded with a speedier entry into the magic circle of civilized

[17] Zhang Xiaoming, "China in the conception of international society: the English School's engagements with China", *Review of International Studies* 37(2) (April 2011), 763-786, at 767.
[18] For the history of the English School's relationship and engagement with China, see Zhang Xiaoming, *国际关系英国学派 历史, 理论与中国观* [*English School of International Relations: History, Theory and View on China*] (Beijing: Renmin chubanshe, 2013).
[19] Zhang, "China in the conception of international society", at 765.
[20] Gerrit W. Gong, *The Standard of Civilization in International Society* (Oxford: Oxford University Press, 1984).
[21] Gong, *The Standard of Civilization*, 146.

nations. Non-Western agency, insofar it existed, consisted merely of a greater or lesser willingness to adopt Western norms.

Gong and the English School's view of China's 'entry' into international society mirrored developments in Western Sinology which had preceded it. To generations of Western students and scholars, the emblematic account of China's contact and relationship with the 19th century international society remained Immanuel C. Y. Hsu's *China's Entrance into the Family of Nations* (1960).[22] A disciple of John King Fairbank and an adherent to his 'impact/response' model, Hsu's account of China's entry and of Chinese agency was very similar to that of Gong, except that he dated China's 'entry' to the late Qing era instead of the Second World War. Yet later, Yongjin Zhang, another prominent English School scholar of China, adopted a similar approach to Gong and Hsu's in the 1990s, though this time he located the date of China's entry to the immediate post-First World War era.[23] For this strand of scholarship, the difference was, to a great extent, merely one of dating and not of theory.[24]

Despite numerous criticisms from both within and without the English School and Chinese historians, this narrative has become, in the words of a critic, "common sense in the historiography [at least Western] of Asia."[25] Even some recent works from international history with an explicit aim to counter Western-centric approaches implicitly adopt this narrative, though perhaps affording a greater degree of agency to the Chinese protagonists.[26] Chinese participants may be given greater prominence; but they are in the end additions to the main story, rather than the story itself—"at best as an example—or, more frequently, a counter-example—that illustrates a more central point about the history and character" of the international order.[27]

---

[22] Immanuel C. Y. Hsü, *China's Entrance into the Family of Nations: The Diplomatic Phase, 1858–1880* (Cambridge MA: Harvard University Press, 1960).

[23] Yongjin Zhang, *China in the International System, 1918-1920: The Middle Kingdom at the Periphery* (London: Macmillan/St Martin's Press, 1991). See also Yongjin Zhang, "China's Entry into International Society: Beyond the Standard of 'Civilization'", *Review of International Studies* 17(1) (January 1991), 3-16.

[24] For a more detailed discussion, see Yannis A. Stivachtis, "The Regional Dimensions of International Society", in Cornelia Navari and Daniel Green (eds.), *Guide to the English School in International Studies* (Chichester: Wiley Blackwell, 2014), 109-126.

[25] Douglas Howland, *International Law and Japanese Sovereignty: The Emerging Global Order in the 19th Century* (Basingstoke: Palgrave Macmillan, 2016), 6.

[26] See for instance Erez Manela's *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford: Oxford University Press, 2009). A good critique can be found in Shiu Cheung Alan Kwan, "Sun Yat-sen on China's Place in International Society", DPhil diss. (University of Oxford, 2020).

[27] Teemu Ruskola, "China in the Age of the World Picture", in Anne Orford, Florian Hoffmann, and Martin Clark (eds.), *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016), 138-155, 138-9. On this point, see also Peter Marcus Kristensen, "How can Emerging Powers Speak? On Theorists,

A key line of criticism has been the lack of English School acknowledgement as to the coercive, as opposed to voluntary, nature of the process of expansion and entry, as well as its neglect of imperialism as a primary institution of international society. In his parallel study of China and Japan's encounter with international society, Shogo Suzuki emphasizes to the darker, violent and coercive side of the two countries' contact with European international society: he pushes back against the standard English School account's emphasis on structure in favour of a more process-driven examination which gives due weight to the agency of actors, particularly that of the non-Western ones.[28] Going even further, after pointing out many flaws in the existing theory, including *inter alia* the importance of imperialism in relation to non-European politics and the disappearance of existing European polities in a corresponding process of exit from international society, Edward Keene, in his influential internalist critique of the expansion thesis proposes instead a relational framework of stratification of international society, where international actors can be located on at least three distinct dimensions.[29] Such a framework, drawing from the sociological literature, disrupts the inside-outside binary in favour of a more nuanced, multifaceted account of international positioning.[30]

Others, such as William A. Callahan, advanced even more radical critiques of the expansion thesis from without the English School. Using China's treatment within the international society literature as example, Callahan argues that far from challenging the Eurocentricity of existing IR theories, the English School was is in fact an offshoot of British imperial knowledge practices which perpetuates practices of exclusion and differentiation, using class and 'aristocratic' etiquette as a device for world ordering.[31] Moreover, Callahan criticizes the 'nationalisation' of international relations theory, whether it be under the guise of 'English', 'American', or 'Chinese' theory, as reinforcing state-centeredness in IR theory embedded in the discourse of state security.

Native Informants and Quasi-Officials in International Relations Discourse", *Third World Quarterly*, 36(4) (2015), 637-653; Chengxin Pan and Emilian Kavalski (eds.), *China's Rise and Rethinking International Relations Theory* (Bristol: Bristol University Press, 2022).

[28] Shogo Suzuki, *Civilization and Empire: China and Japan's Encounter with European International Society* (Abingdon: Routledge, 2009).

[29] Edward Keene, "The Standard of 'Civilisation', the Expansion Thesis and the 19th-century International Social Space", *Millennium: Journal of International Studies* 42(3) (June 2014), 651-673.

[30] Ibid.

[31] William A. Callahan, "Nationalising International Theory: Race, Class and the English School", *Global Society* 18(4) (October 2004), 305-321. Of course, the 'aristocratic' nature of the English School is what is attractive for some: see Yongjin Zhang, "The "English School" in China: A Story of How Ideas Travel and are Transplanted", Australian National University IR Working Paper 2000/4 (December 2000), https://ir.bellschool.anu.edu.au/sites/default/files/uploads/2019-07/ir_working_paper_2000-4.pdf

Yet, as these debates continue to rage, a new generation of scholarship, particularly from within the growing field of historical international relations, which both builds on ES insights while moving beyond its frameworks, has sought to beyond this debate by demonstrating that, perhaps counterintuitively, marginalization, exclusion, and liminality within the international system could be generative of international practice and contribute to the development of the international order in both significant and unexpected ways. As Dylan Loh and Jaakko Heiskanen argue in the context of sovereignty, liminality serves to problematize the dichotomies (external/internal and positive/negative) which are generally associated with the concept, thus unsettling the very ontology of modern international relations.[32] Yet, as they point out, liminal actors and their practices can never successfully remove the dividing lines of those binaries, because these actors would cease to be liminal. Thus, liminal spaces move beyond the resistance/acceptance, inside/outside binary, and are simultaneously subversive and reproductive of the prevailing practices of sovereignty.[33]

This rather abstract conceptualisation has been fleshed out further through a series of innovative thematic and regional studies of sovereignty and international legal practices during the long nineteenth century, when much of the 'expansion' took place, and illustrating the dual nature of liminal contestation. The pioneering work of Arnulf Becker Lorca, for instance, reclaims the agency of international lawyers from the global 'semi-periphery' who sought sovereign equality for their countries, employing the strictures of positivism to undermine the specifically European underpinnings of the international legal order, without however rejecting the standard of civilization, but rather in some ways reinforcing it by claiming civilizational equivalence, part of a differentiated universalisation process.[34]

Similarly, in the context of Latin America during the long nineteenth century, Tom Long and Carsten-Andreas Schulz have shown that the continent was the site of the emergence of a distinct "republican internationalist" approach to international order and set of diplomatic practices, not in spite of its exclusion, but because of it.[35] Yet these Latin American creole diplomatic and political elites, while invoking republican ideals in the international sphere in the pursuit of formal equality abroad, were simultaneously using them domestically to reinforce

[32] Dylan MH Loh and Jaakko Heiskanen, "Liminal sovereignty practices: Rethinking the inside/outside dichotomy", *Cooperation and Conflict* 55(3) (2020), 284-304.
[33] Ibid.
[34] Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842-1933* (Cambridge: Cambridge University Press, 2014).
[35] Tom Long and Carsten-Andreas Schulz, "Republican internationalism: the nineteenth-century roots of Latin American contributions to international order", *Cambridge Review of International Affairs* 35(5) (2002), 639-661.

their own positions of domination, not unlike the dual process of challenge and reinforcement described by Becker Lorca.[36] But this was not an inevitable path: by way of contrast, in post-revolutionary Haiti, the country's first generation of political and legal leaders chose to turn the standard of civilization on its head, labelling the Europeans as barbarians the Haitians as "a people, free, civilized and independent" in the Haitian declaration of independence, once against underscoring the importance of non-Western agency and the diversity of paths taken (or not taken) as a result.[37]

Going even further than the above-mentioned approaches, many in the cognate discipline of comparative political theory emphasize the importance of viewing the non-Western world not merely as a series of useful case studies, additions and elaborations on a core story; but as generative sites for original theories unconnected to the existing Western repertoire. Emblematic of this approach, through an eclectic set of approaches and topics, the contributors of the *Oxford Handbook of Comparative Political Theory* have aim to decentre political theory from its traditional Western hinterland and to create a new discursive space, moving political theory beyond its traditional comfort zone and aiming for a "mix of self-reflexivity, resistance to Eurocentrism, and creative translation across the range of space and time".[38] A notable example of this approach in the Chinse context can be found in the work of Leigh Jenco on late Qing and early Republican Chinese thinkers, in which she argues against the 'particularist' political theory approach which affirms "the inevitable embeddedness of our knowledge in cultural or historical background conditions over which we have little immediate control", and stresses that Chinese reformers aimed for "not self-reflexivity or mutual intelligibility but the production of knowledge as done in the West. For them this implied not the simple reproduction of Western ideas, technology, or practices but the more sophisticated alignment of Chinese knowledge-production with Western precedents so as to spur innovation along one line rather than another."[39]

Yet, within this spectrum of approaches, there remain questions as well as areas of potential disagreement. The first one relates to the tension between, on the one hand, the need to move

[36] Becker Lorca, *Mestizo International Law*.
[37] Liliana Obregón Tarazona, "The Civilized and the Uncivilized", in Bardo Fassbender and Anne Peters (eds.), *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012), 917-940, at 923.
[38] Leigh K. Jenco, Murad Idris, and Megan C. Thomas, "Comparison, Connectivity, and Disconnection", in Leigh K. Jenco, Murad Idris, and Megan C. Thomas (eds.), *The Oxford Handbook of Comparative Political Theory* (Oxford: Oxford University Press, 2020), 1-40, at 8.
[39] Leigh K. Jenco, *Changing Referents: Learning Across Space and Time in China and the West* (Oxford: Oxford University Press, 2015), 218.

away from simplistic Eurocentric accounts of the world order of the late nineteenth and early twentieth centuries, and on the other hand, the danger that the correction simply replaces one set of inward-looking blinkers with another; or even what Maria Adele Carrai characterized as "culturalist trap that idealizes the Chinese past as a site of morality and victimhood".[40] Or as Andrew Hurrell has argued, while "uncovering the culturally specific character of different ways of understanding the world undoubtedly encourages greater pluralism and reflexivity. But it can also lead to a cultural and regional inwardness that works to reproduce the very ethnocentricities that are being challenged."[41] In other words, the danger is that the search for a pure 'Chinese' or 'Indian' perspective on global order misses the transformative power of the global.[42] Going further, Ching-Chang Chen has argued that "most intellectual endeavors to construct non-Western [international relations theory] in Asia run the risk of inviting nativism… which do not involve a critical self-reflection and questioning of the *a priori* assumptions, procedures and values embedded in the modernization and development enterprise."[43]

The pitfalls of this phenomenon can be seen in the fractious contemporary debate about Chinese theories of international relations, notably to the idea of *tianxia*, which has generated robust and often acrimonious exchanges within international relations. Its academic proponents, such as Zhao Tingyang and Wang Hui in China and David Kang in North America, in addition to its proponents among the PRC's foreign policy apparatus, portray it as a pre-modern Chinese international system which can provide a more peaceful and stable alternative to the so-called Westphalian model of international relations in the twenty-first century—"the solution to the ills of the post-modern world".[44] Such claims (which bear a strong parallel with Republican Chinese diplomats' arguments that their country's culture was inherently peaceful and therefore a better fit for the modern world, as discussed in **Chapter 4**), which have received wide publicity and a degree of official endorsement in official PRC discourse—notably through former president Hu Jintao's rhetoric about a harmonious world—have been vigorously attacked as ahistorical, distorting the historical evidence—such through its headline claim that the *tianxia* order was quantitatively more peaceful—and being motivated by a need to justify

[40] Carrai, *Sovereignty in China*, 32.
[41] Andrew Hurrell, "Beyond Critique: How to Study Global IR?", *International Studies Review* 18(1) (March 2016), 149-151, at 150.
[42] Ibid.
[43] Ching-Chang Chen, "The absence of non-western IR theory in Asia reconsidered", *International Relations of the Asia-Pacific*, 11(1) (January 2011), 1-23, at 16.
[44] June Teufel Dreyer, "The 'Tianxia Trope': will China change the international system?" *Journal of Contemporary China* 24(96) (2015), 1015-1031, at 1015.

the PRC's vision of a Chinese hegemonic order.[45] Moreover, empirical evidence also runs contrary to the account of *tianxia* as an inherently more peaceful system, with Yuan-Kang Wang's arguing that there is little evidence that traditional Chinese ideas of international ordering constrained its aggressive international behaviour during the Song and Ming dynasties, thus putting into question the degree to which such ideas were reflected by actual practice.[46] The endeavour can thus become a form of 'colonial mimicry', which obscures far more than it enlightens, whilst justifications based on subaltern resistance ring hollow given China's current international position.[47]

If some are primarily concerned with what they view as the distorting effects of a more 'national' approach to IR theory, particularly when they relate to particular contemporary political contexts (though it is fair to note that no IR theorizing, even in the West, truly takes place in an apolitical ether), others are more concerned with the fragmentation, and possibly the threat to the 'global' both as a concept and as a cornerstone of IR as a discipline, which such culturalist moves might suggest. The issue is particularly sensitive for IR from a disciplinary point of view, it traditionally resting on assumptions about the importance of generalisability to its intellectual project. In addition, some Global South scholars express fears of being type-cast as representatives for their respective 'national' traditions as opposed to participating in the global conversation within the discipline.[48] Relatedly, some have pointed to the preponderance of traditional realism within modern Chinese international relations as a discipline to cast doubt on whether there is a genuine demand for distinct national approaches.[49]

A high-profile attempt at a solution to this dilemma has been that of Global IR, described by its leading exponents Amitav Acharya and Barry Buzan as a 'third founding' for international

[45] See e.g. Hendrik Spruyt, "Collective Imaginations and International Order: The Contemporary Context of the Chinese Tributary System", *Harvard Journal of Asiatic Studies* 77(1) (June 2017), 21-45; William A. Callahan, "Chinese Visions of World Order: Post-hegemonic or a New Hegemony?" *International Studies Review* 10(4) (2008), 749-761; and Teufel Dreyer, "The 'Tianxia Trope'". See also the range of essays, some positive, others critical, in Ben Wang (ed.), *Chinese Visions of World Order: Tianxia, Culture, and World Politics* (Durham: Duke University Press, 2017).

[46] Yuan-Kang Wang, *Harmony and War: Confucian Culture and Chinese Power Politics* (New York: Columbia University Press, 2010).

[47] For the idea of mimicry, see generally Homi K. Bhabha, *The Location of Culture* (London: Routledge, 1994). For its application to *tianxia* and as a form of resistance, see Yih-Jye Hwang, "Reappraising the Chinese School of International Relations: A postcolonial perspective", *Review of International Studies* 47(3) (July 2021), 311-330.

[48] Audrey Alejandro, *Western Dominance in International Relations? The Internationalisation of IR in Brazil and India* (Abingdon: Routledge, 2019).

[49] Daniel Lynch, "Chinese Thinking on the Future of International Relations: Realism as the *Ti*, Rationalism as the *Yong*?", *The China Quarterly* 197 (March 2009), 87-107.

relations as a discipline.[50] They argue that, while IR in its current form does not reflect the experiences "of the vast majority of the societies and states in the world", the answer is not to create counter-Western IR schools, especially ones organised along national lines, but to attempt to overcome the West/non-West dichotomy by creating "a truly inclusive discipline, recognizing its multiple and diverse foundations."[51] Such a discipline of Global IR, according to Acharya, should be characterized by a "grounding in world history, theoretical pluralism, a close nexus with the study of regions, regionalisms and area studies, avoidance of cultural exceptionalism, and recognition of multiple forms of agency, including the agency of non-Western actors."[52] The ultimate goal is to maintain IR's claim as a truly global discipline, albeit one which no longer simply extrapolates the universal from a particular and limited set of Western experiences.

The Global IR approach has not been uncontroversial. While much of Acharya's core list of desiderata is hard to find fault with, critics have accused Global IR of being insufficiently radical, of "assuming the global as an analytical category" and reifying "the idea of a truly universal body of knowledge" instead of "challenging the discipline's identity, power centres, and modes of working".[53] In other words, the critique is not so much that Global IR will not be successful at what it aims to do, but that it may be too successful in achieving its aims, thus warding off more radical disciplinary transformations. This is a charge which Global IR, by virtue of its self-positioning as an internal reformist project for IR, is by definition unable to meet without disbanding itself.

In summary, while there is broad agreement over the need to decentre narratives of international society and international relations more broadly from its Western-centric past and to put greater emphasis on the global, there remain disagreements as to how this should be done, how transformational such a project should be, as well as concerns over unintended consequences of such an approach. Some of these dilemmas are ones which, by virtue of clashing fundamental meta-assumptions and intellectual goals, are not capable of a straightforward resolution, much

[50]Amitav Acharya and Barry Buzan , *The Making of Global International Relations: Origins and Evolution of IR at its Centenary* (Cambridge: Cambridge University Press, 2019, 285.
[51] Amitav Acharya, "Global International Relations (IR) and Regional Worlds: A New Agenda for International Studies", *International Studies Review* 58(4) (December 2014), 647-659, at 647.
[52] Amitav Acharya, "Advancing Global IR: Challenges, Contentions, and Contributions", *International Studies Review* 18(1) (March 2016), 4-15, at 5.
[53] Felix Anderl and Antonia Witt, "Problematising the Global in Global IR", *Millennium: Journal of International Studies* 49(1) (September 2020), 32-57. See also Charlotte Epstein, "The Postcolonial Perspective: An Introduction", *International Theory* 6(2) (2014), 294–311 and Isaac Kamola, "IR, the Critic, and the World: From Reifying the Discipline to Decolonising the University", *Millennium: Journal of International Studies* 48(3) (June 2020), 245-270.

less of a definitive answer. This thesis will not seek to resolve them. Nevertheless, without arriving at a definite answer to these debates, the set of characteristics enumerated by Acharya provides an useful baseline from which to start, particularly in its insistence on the importance of history and recognition of the importance of regionalisms and area studies, a point also forcefully articulated by Andrew Hurrell.[54] This is, of course, if one views the "assuming the global as an analytical category" not as a defect but as a foundational feature of international relations as a viable discipline, of which I adopt the latter view.

Republican China and Sovereignty: The state of the literature

Despite William C. Kirby's assertion that "there is no point searching for some uniquely "China-centred" historical narrative for this [the Republican] period. Everything important had an international dimension"[55] and a renewal of scholarly interest in recent years, Republican China's relationship with and within the international system is still too often lost in the so-called 'Century of Humiliation'. Its international history is largely viewed through two bookended failures of the pre-war international system—the failure of meaningful Wilsonianism for non-European peoples and the failure of collective security at the League of Nations. Historical explanations for China's current international relations either looks at its antiquity (hence the popularity of the "tributary system" in the literature) or at the post-1949 era as a whole. The relative inaccessibility of relevant archives also served to dampen interest.

This is well illustrated by the state of the literature on China and sovereignty, little of which discusses Republican China. Instead, accounts of the late Qing era and of the post-1949 People's Republic of China predominate. Of the former, the works of Rune Svarverud and of Lydia Liu on the translation of international law as a political order in late Qing China are the most notable.[56] In fact, the late Qing era has proven to be one of the more stimulating areas of research in modern Chinese history, not least because of the emergence of the New Qing

[54] Andrew Hurrell, "Why International Relations and Area Studies Need Each Other", *St Antony's International Review* 16(1) (2020), 191-196.
[55]William C. Kirby, "The Internationalization of China: Foreign Relations at Home and Abroad in the Republican Era", *The China Quarterly* 150 (1997), 433-458, at 433.
[56] Rune Svarverud, *International Law as World Order in Late Imperial China: Translation, Reception and Discourse, 1847-1911* (Leiden: Brill, 2007); Lydia Liu, "Legislating the Universal: The Circulation of International Law in the Nineteenth Century", in Lydia Liu (ed.), *Tokens of Exchange: The Problem of Translation in Global Circulations* (Durham: Duke University Press, 1999), 127-164.

History school of historiography, which has led to a rethink of China's historical international relations within a wider history of empires, as well as challenging the primacy of the Han 'China proper' within histories of China.[57] Of the latter, Phil C.W. Chan's work on the contemporary nexus between China and sovereignty from a legal point of view, and Allen Carlson's account of sovereignty and Chinese foreign policy during the "reform and opening-up" era deserve special mention.[58] But the Republican Era still tends to fall into the literature gap between these two periods.

A recent and important contribution in the area is Maria Adele Carrai's *begriffsgeschichte* of Chinese approaches to sovereignty from 1840 to the present day, published as this thesis was underway, which contains an important chapter on the Republican Era.[59] But Carrai's treatment of the Republican period's political and diplomatic activities largely relies on standard secondary sources, an understandable consequence of her emphasis on the intellectual genealogy of sovereignty in China among select thinkers instead of its practices. And given the treatment of the period as merely another episode in an overall history, her treatment inevitably errs on the general side. Hence, despite a degree of inevitable topical overlap, this thesis fills an important gap in the existing literature.

Another work of note, published as this thesis was submitted is Ryan Martinez Mitchell's important conceptual history of international law in China, which takes as a key theme the "inextricable connection between modern China's international legal history and the notion of sovereignty", and which includes important discussions of the Republican Era.[60] Mitchell's approach is much closer to my own, as he predominantly focuses on a select number of Chinese lawyers and diplomats, and puts on the emphasis on their activities, particularly in international-facing fora. But Mitchell's focus is on challenging settled notions within the historiography of international law, a venture which in many ways overlaps with this thesis' aim (such as

[57] See for instance Timothy Brook, *Great State: China and the World* (London: Profile Books, 2009); Pamela Kyle Crossley, *Hammer and Anvil: Nomad Rulers at the Forge of the Modern World* (Lantham: Rowman & Littlefield, 2009); For an overview of some recent developments, see Mario Cams, "Recent Additions to the New Qing History Debate", *Contemporary Chinese Thought* 47(1) (2016), 1-4 and the special issue on New Qing History it introduces. It is fair to note that New Qing History suffers from a degree of unpopularity within official Mainland China academic discourse owing to its political implications. For a summary of some of the critique, see from the same special issue Li Zhiting, ""New Qing History": An Example of "New Imperialist" History", *Contemporary Chinese Thought* 47(1) (2016), 5-12.

[58] Phil C.W. Chan, *China, State Sovereignty and International Legal Order* (Leiden: Brill Nijhoff, 2015); Allen Carlson, *Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era* (Stanford: Stanford University Press, 2005).

[59] Carrai, *Sovereignty in China: A Genealogy of a Concept since 1840*.

[60] Ryan Martínez Mitchell, *Recentering the World: China and the Transformation of International Law* (Cambridge: Cambridge University Press, 2022).

countering the settled idea of the marginality of "peripheral" states in the shaping of international law) but which has a narrower, more legal focus than this thesis. Hence, there is a real gap in the relevant literature, which this thesis aims to partly fill.

Each of the case studies around which this thesis aims to break new ground. China and Japan's showdown at the League of Nations, for instance, is a story that has been stereotyped through repeated retellings, but Japan's legal challenge to Chinese statehood has been rarely discussed on its terms, beyond in a dissenting judgment of the International Military Tribunal for the Far East and in a few papers about the careers of Japan's chief international legal advisor. This is hardly surprising in light of Japan's aggressor status and the evidently manufactured nature of its *casus belli*; but the failure to take the Japanese challenge seriously has deprived us of a complete understanding of China's response, as well as that of the international system of that time. Others case studies will be less familiar, even to specialists of the era. The short-lived Chinese Soviet Republic discussed in **Chapter 5**, the Chinese Communist Party's first attempt at state-building, has been all but erased from Chinese historiography, discussed—if at all—as an afterthought. Yet the story of the radical yet abortive attempt at Communist state-building in China is no less part of the story of sovereignty in Republican China than the one centred around the Nanjing government.

Methodology and sources

As this discussed earlier, this thesis takes a 'history from above', top-down approach to the period, by focusing predominantly on the activities and public writings of Chinese diplomatic and political elites from the Republican period. By 'Chinese' (a term which is often employed in a way to suggest a much more homogenous entity than it is in reality) I refer mainly to two groups: the first consists of the leading figures of the Beiyang government as well as of the Nanjing government which succeeded to it—or at least to the Beiyang government's status as the internationally-recognised government of China. The second group consists of their counterparts within the Chinese Communist Party who attempted, and eventually managed to overthrow the Nanjing government at the conclusion of the Chinese Civil War. Beyond 'China proper', I also discuss Tibetan and Mongolian elites in **Chapter 3**, whose ever-shifting relationship with the Chinese government still has implications today; but I do not lump them in the broader 'Chinese' grouping, but as distinct actors of their own right with an agency of

their own. Finally, as it takes two to dance, the thesis discusses China's great power interlocutors when relevant.

I am conscious that this approach might be seen by some as rather narrow and old-fashioned, as well as a predominantly elitist one (even the CCP revolutionaries in the so-called Red Areas would qualify as such given the overall context). Moreover, given the sociology of the protagonists of this thesis as well as the sort of public posts they predominantly occupied, it is to some degree inevitable that they should represent, on the whole, the more conservative end of the relevant Chinese actors and thought of the period, as opposed to the more radical Chinese intellectuals of the period. In the case of the diplomats, largely educated in the West, prolonged postings abroad also limited, in some cases, the extent to which they were in touch with debates at home, as opposed to the largely Western world of international diplomacy in which they moved. Finally, there is also limited discussion of the Chinese public sphere, which has increasingly featured in the academic literature on Republican China.[61]

These are all important limitations; and no doubt there will be criticisms of the scope of the thesis, particularly given that the top-down, history from above approach to the writing of history has increasingly given way, indeed marginalised by other ones, which often emphasize the actions and thoughts of non-elite actors. The well-documented decline of traditional approaches such as political and diplomatic history, once mainstays within academic history, owe something to this general critique, though the focus on diplomacy and high politics is of course also a mainstay of English School literature. But even an outwardly old-fashioned history from above of this type, though it might seem narrow at first to those who are sceptical of such traditional approaches, and though it perforce excludes some perspectives, has value. As Susan Pedersen pointed out even two decades ago, 'history from above' approaches have become much more interested in the cosmology and 'thought-worlds' within which high politics take place, so that the approach is far from the desiccated Rankeanism caricature.[62] As the work of Schultz, Long, Mitchell, and others (including, I hope, this dissertation) show, close readings and studies of small political elites, especially if they belonged to peripheral states whose agency was traditionally easily overlooked, can still yield important conceptual insights.

[61] See for instance Eugenia Lean, *Public Passions: The Trial of Shi Jianqiao and the Rise of Popular Sympathy in Republican China* (Berkeley: University of California Press, 2007).
[62] See Susan Pedersen, "What is political history now?" in David Cannadine (ed.), *What Is History Now?* (London: Palgrave Macmillan, 2002), 36-56. See also David M. Craig, "'High Politics' and the New 'Political History'", *The Historical Journal* 53(2) (June 2010), 453-475.

Unusually for a work within international relations, this thesis is in large part based on archival sources, in addition to printed primary sources. This was a deliberate choice to move away from IR's traditional reliance on secondary sources when it comes to historical work, and to emphasize the importance of what was happening 'on the ground' as seriously as overarching theoretical concerns. Most of the sources have not, as far as I can ascertain, been previously employed in the context of IR research. Owing to the public health situation, I have not been able to consult some of the archives in person: in those instances, alternative means, chiefly electronic and microfilm, have been employed, and have proved satisfactory.

Among the main archives I have consulted are the Republic of China Diplomatic Archives held by the Institute of Modern History, Academia Sinica in Taipei; the British Foreign Office files held at the National Archives, Kew; the India Office files held by the British Library, London; and League of Nations archives held by the United Nations in Geneva, and the National Archives of India in New Delhi. In addition, I have also used printed collections of diplomatic documents from the major Western powers of the period. Due to limitations on access, it has not been possible to make use of some relevant archival funds held in the People's Republic of China, in particular the Second Historical Archives of China in Nanjing and the Ministry of Foreign Affairs archives in Beijing. However, indiscriminate use of printed collections of documents, as well as the presence of significant Republican archival holdings in Taiwan have satisfactorily filled all but a very few evidentiary gaps. Finally, in addition to archival sources, I have made wide use of published material, including contemporary newspapers and journals, memoirs, and similar material.

Finally, I note that as the thesis primarily speaks to an Anglophone IR audience, whenever they are available citations are to published English translations first, though I have in every case read the original Chinese source, and whenever necessary adjusted the translations quoted here.

Outline

Chapter 1 provides a historical overview of Chinese understandings and practices surrounding sovereignty up to the establishment of the Republic of China in 1911, with particular emphasis on the period after the formal introduction of the Western concept of sovereignty into the Chinese political vocabulary in 1847, which witnessed enormous changes in China's foreign relations and its exercise of sovereignty. Although antecedent to the period which will be the

focus of this dissertation, in order to contextualise and to understand the main issues surrounding sovereignty which arose later, it will be necessary to consider this period in some detail. The chapter will outline how the notion of sovereignty was introduced to China along with international law and was rendered into the Chinese language in ways which introduced ambiguities as to its meaning. This chapter will also discuss the personal backgrounds of the Chinese elites—political, legal, and intellectual—whose actions and ideas are at the centre of this thesis.

Chapter 2 examines how the very existence of China as a sovereign state was challenged as part of Japan's international diplomatic campaign to justify its invasion of Manchuria in 1931. Taking place at a time when the functionalist account of statehood was increasingly being superseded by one based on statehood as vindication of national and group rights, Japan's challenge, which was anchored in the functionalist camp and received a surprising degree of international support, ultimately failed because it occurred at a key moment in the transformation of the nature of the international system, a transformation which would have far-reaching consequences for China's future.

Chapter 3 deals with the Chinese republic's relations with Tibet and Mongolia in the aftermath of the 1911 revolution, as well as the international contestation over their legal status as semi-sovereign entitles, which has continued well into the 21st century. In modern discussions of China's relationship with its periphery, terms such as tributary, suzerain, and vassal are thrown about indiscriminately. But the antiquarian air of this vocabulary, invoking as it does a vision of a continuous Chinese tributary system throughout the ages, obscures the fundamentally modern character of such notions as well as their lack of meaning—by design. The modern Chinese territorial state—the too familiar rooster—was born as a result of competing imperial legal manoeuvring about the nature of sovereignty and political authority on China's periphery and, in particular, that of semi-sovereignty, a now-forgotten notion which flourished during the inter-war period, and which would determine the fates of the peoples of Mongolia and Tibet.

China is today uncontroversially acknowledged as a great power, but such a notion would have seemed ludicrous to most for much of the last century. Yet, during the 1920s and 1930s, just as modern China's fortunes were at its lowest ebb, Chinese diplomats at the League of Nations challenged long-established definitions of great power, made the bold argument that China was not only a great power, but a 'natural' one, entitled by its size, geography, and civilizational antiquity to be treated as such as of right, and certainly within the councils of the League. At the same time, Chinese diplomats sought support from other countries in the global periphery,

whilst simultaneously seeking to distance China from their own distinctive claims to international status. **Chapter 4** examines China's attempts at international status-seeking which foreshadows much of the PRC's post-1949 international diplomacy and self-conception as a state.

Chapter 5 examines the evolution of the Chinese Communist Party's conceptualisation and practice of sovereignty through the Chinese Soviet Republic, the CCP's thoroughly forgotten first attempt at state-building between 1931 and 1937. The CSR's constitutional setup embodied many of the radical ideas of statehood and of political authority once held by leading revolutionaries such as Mao Zedong and Chen Duxiu, who saw nothing wrong with breaking up China into dozens of statelets and independence for Tibet and Taiwan. Even the phase 'two Chinas', now *verboten* on the Mainland, had their origins from the CCP's doctrines from that era. What was the CCP's alternative vision to the China being constructed by the Republican state? And why was it supplanted by the Republican Chinese state in such short order, leaving almost no trace behind despite the complete victory of the Chinese Communist Party?

Finally, the **Conclusion** will summarize the key themes of the dissertation and discuss some of the broader themes, theoretical and historical, that it raises. It will also discuss some possible modern implications of this research, as well as outline potential future avenues of inquiry.

Chapter 1: From *Tianxia* to *Zhuquan*: Chinese Understandings of Sovereignty Before the Republican Era

In traditional Chinese political thought, the concepts of sovereignty and of sovereignty equality, with some exceptions, did not exist. Instead, China's worldview hinged on the concept of *tianxia* (天下), which loosely translates to 'under heaven'. In short, according to this worldview, all the mortals under the heaven dwelt in the *tianxia*, which encompasses all of the world. At its centre was the Chinese emperor, mandated by Heaven to rule over the *tianxia*. From him radiate a series of concentric circles. First there are the circles limited to China, in descending social order, from officials to the common people. Then there are the tributary states—usually in China's immediate vicinity—whose rulers regularly paid tributes and performed rites to the emperor in highly-formalized ceremonies. Outside of the tributaries lay the *yi* (夷),[63] who themselves were divided into two types. Those nearer China were in a different category than those further away – a category which including the West. No state was equal to China, nor was any sovereign the equal of the Chinese emperor.[64] To be sure, as modern scholarship has shown, the *tianxia*/tributary system was not always as inflexible as traditional accounts portrayed it. For example, during periods of relative weakness, the Song dynasty (960-1279 AD) had to deal successively with the Liao (Khitan) and the Jin (Jurchen) dynasties – both of them *yi* – on an equal footing, which included the payment of tributes and highly ritualised interstate diplomatic exchanges by Song envoys.[65] Indeed, China's relations with foreign countries between the tenth and thirteenth centuries have been described in terms of a 'China among equals', though it appears that Chinese officials still maintained in private the inherent superiority and uniqueness of China and rejected notions of sovereign equality.[66]

---

[63] *Yi* is traditionally translated as 'barbarians' in English. However, there is controversy as to whether this translation is accurate. In the 19th century, the British had insisted on banning *yi* from all Chinese communications with Westerners, on the grounds that it was offensive. In the 20th century, John King Fairbank did much to revive the translation of *yi* to 'barbarians'. In this dissertation, *yi* will be rendered untranslated, in the absence of another commonly-accepted translation.
For the history of *yi* and of its translations, see Song-Chuan Chen, *Merchants of War and Peace: British Knowledge of China in the Making of the Opium War* (Hong Kong: Hong Kong University Press, 2017), 82-102; Lydia H. Liu, *The Clash of Empires: The Invention of China in Modern World Making* (Cambridge MA: Harvard University Press, 2004), 70-107. In the latter, Liu argues that *yi* had become a 'super-sign', that is 'a linguistic monstrosity that thrives on the excess of its presumed meanings by virtue of being exposed to, or thrown together with, foreign etymologies and foreign languages'. Liu, 13.

[64] See generally Warren I. Cohen, *East Asia at the Center: Four Thousand Years of Engagement with the World* (New York: Columbia University Press, 2000) and Chen Shangsheng (ed.), *Zhongguo chuantong duiwai guanxi de sixiang zhidu yu zhengce* (Jinan: Shandong daxue chubanshe, 2007).

[65] Frederick W. Mote, *Imperial China: 900–1800* (Cambridge MA: Harvard University Press, 1999), 375-388.

[66] Mote, *Imperial China: 900–1800* (Cambridge MA: Harvard University Press, 1999), 378.

When China was surrounded with states willing to abide by, if only in form, to the tributary system and had limited interactions with states beyond its vicinity, the illusion of superiority offered by the *tianxia* conceit could be maintained. But increasing contact with countries beyond China's sphere began to put its worldview under strain, as theory and reality began to diverge. Even then, it took a long time for China to adjust to the changes afoot. Emperor Qianlong's rebuke to George III at the end of the Macartney Embassy in 1793, perhaps the most famous example of China's attitude of superiority vis-à-vis all comers, was written at a time when China's share of the global economy had passed its inflection point, yet there is little evidence that anything had changed in Chinese thinking in that regard since it had crystalized. Macartney's proposal that the heads of the houses of Hanover and of Aisin Gioro should be treated as equals was received with derision by their interlocutors, to whom George III was little more than a kinglet whose envoys had come to pay tribute. In Qianlong's missive, the British proposals – which included the bilateral exchange of permanent ambassadors – were dismissed as deviations to the 'usage of my Empire' which 'cannot possibly be entertained'.[67] The reply was written as a series of commands from a superior to a vassal, and it is clear from contemporary accounts that the Qing court viewed the British's claim to the equality of their respective states with genuine bafflement.[68] The Qing's splendid isolation was forcibly broken in the next century when China fought – and lost – a series of wars with Western powers, resulting in a series of treaties between China and Western powers which later came to be known as 'unequal treaties', although the expression itself is of little legal significance.[69] The treaties typically contained provisions for war reparations, as well as provisions for the liberalisation of Chinese trade, the stationing of permanent Western diplomats in China,

[67] Quoted in E. Backhouse and J. O. P. Bland, *Annals & Memoirs of the Court of Peking (From the 16th to the 20th Century)* (Boston and New York: Houghton Mifflin Company, 1914), 328.

[68] The Qing-Macartney encounter, as one of the most famous encounter between China and the West before the 19th century, has been the subject of much scholarly controversy which falls outside of the remit of this thesis. For the traditional view, see Alain Peyrefitte, *L'empire Immobile, Ou, Le Choc Des Mondes: Récit Historique* (Paris : Fayard, 1989) (published in English as Alain Peyrefitte, *The Immobile Empire* (New York: Knopf, 1992). James L. Hevia, in *Cherishing Men from Afar: Qing Guest Ritual and the Macartney Embassy of 1793* (Durham, NC: Duke University Press, 1995), argued that the traditional view of the encounter was the product of Western orientalist thinking. His view was vigorously attacked by Joseph W. Esherick, "Cherishing Sources from Afar", Modern China 24(2) (April 1998), 135-161, which in turn led to many rejoinders. None of these controversies take away from the fact that the Qing's worldview was fundamentally different from that which dominated in the West at the time.

[69] The general consensus among lawyers is that the concept of 'unequal treaties' is legally irrelevant, although treaties that were concluded as a result of coercion can be invalid (as per customary international law and articles 51 and 52 of the Vienna Convention on the Law of Treaties). See generally Ingrid Detter, "The Problem of Unequal Treaties" *International and Comparative Law Quarterly* 15 (1966), 1069–1089; Lucius Caflisch, "Unequal Treaties", German Yearbook of International Law 35 (1992), 52–81. For a survey of Chinese uses and conceptualisations of the term, see Dong Wang, *China's Unequal Treaties: Narrating National History* (Lanham: Lexington Books, 2005).

extraterritorial rights, and on occasion the cession of territory by China. Hence the stage was set for the introduction of Western notions of legal and political order.

'The Public Law for Ten Thousand Nations': The Introduction of International Law and 'Sovereignty' to China

The concept of sovereignty only made its tardy appearance in China in 1864, when the American missionary W. A. P. Martin translated parts of Henry Wheaton's *Elements of International Law* into Chinese as *Wanguo gongfa*, at the request of Prince Gong, the founder of the *Zongli Yamen*, the *de facto* Chinese foreign ministry.[70] The publication and distribution of the translation was strenuously opposed by conservatives court officials, who feared that to know foreign law was to follow it. Prince Gong ultimately managed to secure imperial *imprimatur* for its publication by reassuring the Emperor that knowledge of foreign laws would help China deal with foreign nations without China having to obey the same laws—had the Qing statutes not been translated into foreign languages without foreign nations feeling bound by them?[71] The hope that China could employ knowledge of international law solely as an argumentative technique to advance its aims without accepting its normative status or the obligations it imposed on states was a vain one. By the end of the century, as will be described later, the Chinese governing elites had not only accepted the state-centric, Western understanding of the international system, but actively sought to shape China in a way that conformed to the Western state model.

Zhuquan, the Chinese translation of 'sovereignty' coined by Martin and used ever since, is a curious term, and it is worth deconstructing its meanings in order to realise the concept's inherent ambiguity in Chinese. *Zhuquan* is comprised of two Chinese characters – *zhu* (主) and *quan* (权). *Zhu* is straightforward enough – it denotes the ruler, in its fully anthropomorphic, flesh-and-blood sense. In that it is not particularly unusual, as the embodiment of state power in the person of the sovereign was commonplace in many political systems.[72] *Quan*, on the

[70] Rune Svarverud, *International Law as a World Order in Late Imperial China: Translation, Reception and Discourse ; 1847-1911* (Leiden and Boston: Brill, 2007), 88-93.
Shin Kawashima, "China", in Bardo Fassbender and Anne Peters (eds.), *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012), 451-474, at 460-2.
[71] Quoted in Svarverud, *International Law as a World Order in Late Imperial China*, 90-91.
[72] See e.g. Ernest H. Kantorowicz, The King's Two Bodies: A Study in Medieval Political Theology (Princeton: Princeton University Press, 1957).

other hand, is much trickier. When standing alone, *quan* can be translated as 'rights' ('human rights', for instance, is rendered as '*ren* (person) *quan* in Chinese). However, *quan* also denotes power—of the arbitrary kind, strength, as well as "provisional advantage that derives from exceptional circumstances."[73] Taken as a whole, *zhuquan* means something akin to 'right of the sovereign' on its face. Indeed, *zhuquan* made its first appearance in Chinese in a 7th century BC philosophical text by the Legalist writer Guan Zhong, where it was used in precisely that sense.[74] Canvassing of uses of *quanli* between that first instance and Martin's use of it suggest that it was used in a derogatory way prior to Martin, ascribing something close to tyranny.[75]

Another expression which Martin's translation introduced to the Chinese vocabulary is *quanli*, which denotes 'rights' in the legal sense (many Chinese characters can be used to convey a concept when used alone *and* when compounded – *quan* and *quanli* can both denote rights, depending on the context). In the case of *quanli*, the linguistic confusion runs even deeper, for there are two *quanli* in Chinese, now homophones only distinguishable by the character used for *li* but once distinguishable by pronunciation as well.[76] Here again, *quanli* can denote both power and right, depending on the spelling, and has been a perennial source of confusion in Chinese legal writing. On the whole, 'power' tends to dominate over 'rights': of all the Chinese compound words beginning with *quan*, only *quanli* denotes rights; all the others denote concepts related to 'power', with the exception of *you quan*, which can mean 'have the right to' or 'have the power to', depending on the context.[77] Finally, it is worth highlighting the fact that in traditional Chinese political and legal discourse, the standalone concept of 'rights' as such did not exist: it is another concept introduced to the Chinese language in the 19th century.[78]

Of course, rights and power are, to some extent, intertwined conceptually. For a right to be exercisable, a power to enforce it must exist, or the existence of the right is little better than a fiction. Nevertheless, the lexicographical separation of these concepts in Western languages is

[73] David L. Hall and Roger T. Ames, *Thinking from the Han: Self, Truth, and Transcendence in Chinese and Western Culture* (Albany: State University of New York Press, 1998), 275-6.
[74] William A. Callahan, Contingent States: Greater China and Transnational Relations (Minneapolis: University of Minnesota Press, 2004), 76.
[75] Hungdah Chiu, "The Development of Chinese International Law Terms and the Problem of their Translation into English", in Jerome Alan Cohen (ed.), *Contemporary Chinese Law: Research Problems and Perspectives* (Oxford: Oxford University Press, 1970), 142.
[76] Deborah Cao, *Chinese Law: A Language Perspective* (London: Routledge, 2004), 74.
[77] Ibid.
[78] The concept of rights was not first introduced by Martin, as is sometimes thought, but by Lin Zexu (of the First Opium War fame) and Wei Yuan, whose translation of portions of Hugh Murray's *Encyclopædia of Geography* was first published in 1844. See Rune Svarverud, "The Formation of a Chinese Lexicon of International Law 1847-1903", in Michael Lackner and Natascha Vittinghoff (eds.) *Mapping Meanings: The Field of New Learning in Late Qing China* (Leiden: Brill, 2004), 507-536.

important in clarifying both concepts' outer limits and relationship, especially when the right is invoked against power. In contrast, in Chinese of legitimate and arbitrary power, the powers of the sovereign, and the rights that are enforceable against him are conflated conceptually. On the international plane, there is an additional potential connotation in the *quan* in *zhuquan*, a pejorative, arbitrary meaning, which is absent from 'sovereignty' in European languages. Hence, while reclaiming and protecting Chinese sovereignty has been a mainstay of Chinese political discourse since the end of the 19th century, the concept, as well as the new international order it symbolised, were treated with a degree of ambivalence. Martin, incidentally, was aware of the awkwardness of the translation: in the introduction to his edition of Wheaton, he specifically noted the difficulties that the dual meaning of *quan* and *li* could pose, but wrote that he saw no alternative way of rendering both concepts.[79] Much of the vocabulary he introduced into Chinese was later replaced by loan-words from Japan, but *quan*, and all of its ambiguities, remained to this very day.[80]

The 'Standard of Civilization', Sovereign Equality, and the China's Place in the 'Family of Nations'

Sovereignty and sovereign equality, even before the age of the United Nations and of the expansion of *jus cogens*, came with many caveats. Firstly and rather obviously, a state had to be a fully sovereign one in order to enjoy all of its benefits – colonies and other dependent territories, which by the end of the nineteenth century made up a large part of the world, were excluded from its operation (the rather curious exception being the Congo Free State, which existed between *de jure* sovereignty and *de facto* colonial status).[81] Despite the loss of some relatively trivial territory at its edges to foreign powers, China was never fully colonized, and remained a fully sovereign nation judicially throughout the period. However, even a cursory familiarity with modern Chinese history will be sufficient to know that China was not treated as an equal sovereign by Western powers and by Japan. The litany of horrors will have become

[79] Ibid.
[80] Ibid.
[81] Although no longer a question of any great import, for many years the legal position of the Congo Free State was the subject of much vigorous debate in international law circles, perhaps a reflection of a perceived need to place all polities within a recognizable category within the categories of the positivist framework of statehood. For an illustration of the tenor of the debate, see Jesse S. Reeves, "The Origin of the Congo Free State, Considered from the Standpoint of International Law", *American Journal of International Law* 3, no. 1 (January 1909), 99-118.

trite through countless Chinese retellings to both domestic and international audiences under the general heading of 'century of humiliation'.[82]

Doctrinally, two factors justified such inconsistent treatment. Firstly, although it is often assumed to be otherwise, sovereign equality was never understood to mean that states are equal in power substantially or in the treatment of weaker states by stronger ones, only that they are equal juridically, from a procedural point of view. When Vattel wrote, in his classic formulation of sovereign equality, that "power or weakness does not in this respect produce any difference",[83] he was acknowledging the reality that power differentials between states *did* exist, despite the existence of the doctrine of sovereign equality.

Secondly, in the nineteenth and twentieth centuries, the treatment of states on the international plane, especially on the legal plane, was also dictated by the concept of 'standard of civilization'. 'Civilization' is an inherent nebulous term, and it will not come as a surprise to learn that there exists no commonly agreed upon definition of what 'standard of civilization' entailed in practice: it referred to a concept whereby states who wish to enjoy full membership in the international community had to meet a certain number of *minima* requirements concerning both their interaction with other states and their internal organization.[84] Only by meeting the 'standard of civilization' could a state become a member of the 'Family of Nations', an equally vague term which denoted those sovereign states, mostly Western, which fully observed the rules of conduct of the international system, and were consequently entitled to reciprocal and equal treatment by other members of the Family. Like everything else surrounding it, the precise point at which the standard of civilization appeared remains nebulous, but it is likely an outgrowth of the positivist wave in international law and international relations in the 19th century, which displaced earlier notions of natural law, going back to Vattel, according to which all sovereigns were inherently equal as part of their inherent personality.[85]

---

[82] On Chinese historical narratives surrounding the 'century of humiliation', see Zheng Wang, *Never Forget National Humiliation: Historical Memory in Chinese Politics and Foreign Relations* (New York: Columbia University Press, 2012).

[83] Emer de Vattel, *Le droit des gens, ou Principes de la loi naturelle, appliqués à la conduite et aux affaires des Nations et des Souverains*, volume 1 (London, 1758), 11.

[84] See generally Gerrit W. Gong, *The Standard of Civilization in International Society* (Oxford: Oxford University Press, 1984).

[85] The nexus between legal positivism and the standard of civilization was influentially posited by C. H. Alexandrowicz, "Empirical and Doctrinal Positivism in International Law", British Yearbook of International Law 47 (1975), 286-289. Others have however argued that the resistance against legal positivism (and consequently the standard of civilization) among Western scholars had been stronger than is generally believed. See e.g. Andrew Fitzmaurice, "Scepticism of the Civilizing Mission in International Law", in Martti Koskenniemi, Walter Rech,

That it is a more or less objective set of criteria—something vigorously disputed by many scholars[86]—does not mean that it is necessarily a fair one: having been formulated by European powers based on their existing internal arrangements, it put non-Western states at a natural disadvantage. Moreover, at a century's remove, there is a degree of unreality to the whole concept: as Hedley Bull put it, there is "an element of absurdity in the claim that states such as China, Egypt, or Persia, which existed thousands of years before states came into being in Europe, achieved rights to full independence only when they came to pass a test devised by nineteenth-century Europeans."[87] But the separation of international comity from the 'mere' attribute of sovereignty, and the consequent degradation of the latter, served its purpose, and allowed Western powers to justify their unequal treatment of non-Western states while publicly adhering to the principle of sovereignty.

Mirroring the dual nature of sovereignty, then a relative new development—for sovereignty had been mostly conceptualised as internal until then, the standard of civilization had external and internal aspects. Externally, to meet the standard of civilization, a state had to at least participate in the international system by maintaining diplomatic exchange through the sending of regular embassies and agreeing host foreign diplomatic missions. Internally, a state had to possess a reasonably ordered bureaucratic apparatus to administer the country, to guarantee the life and chattels of foreigners, and to have an organized legal system which administered equal justice to citizens and aliens alike.[88] The vagueness of these criteria, and the impossibility of measuring them objectively is readily apparent, and the ascertaining of a state's relation to the standard of civilization always required consultation of the works of (invariably Western) publicists as well as an examination of the state's treatment by states which were undoubtedly 'civilized'. To add to the difficulties, a state could be deemed a member of the Family of Nations for some purposes only but not for others, creating a heterarchical international system in the process. At the end of the nineteenth century, China was a member of the Family of Nations for the purpose of concluding treaties and of participating in international conferences (it had been invited to major diplomatic conferences since the 1899 Hague Conference),[89] but it was not a member for the purpose of exercising control over foreigners within its territory and of

and Manuel Jiménez Fonseca (eds.), *International Law and Empire: Historical Explorations* (Oxford: Oxford University Press, 2017), 359-384.

[86] See e.g. Lorca, *Mestizo International Law*, and Introduction.

[87] Hedley Bull, "The Emergence of a Universal International Society", in Hedley Bull and Adam Watson, eds. *The Expansion of International Society* (Oxford: Oxford University Press, 1984), 117-126, at 123.

[88] See Gong, *The Standard of Civilization*, 14-23.

[89] Jerome Alan Cohen and Hungdah Chiu, People's China and International Law: A Documentary Study, Volume 2 (Princeton: Princeton University Press, 1974), 1287.

setting up its tariffs, areas which would normally fall under the municipal laws of a country but over which China was not allowed to have control.

In China's case, there existed a broad agreement among Western publicists that it did not make the cut in regards to the civilizational standard: their disagreement as to the status of China was then a matter of degree, not of kind. Thomas Erskine Holland represented the more enlightened school of thought when he described China as being at the "outer courts of the charmed circle" of sovereign states which did not, based on their international organization, fully belong to the Family of Nations or meet its civilizational criteria, but could eventually do so if it modernized its system of government.[90] On the other end of the spectrum, one finds those such as Thomas Baty who argued, even into the 1930s, that not only did China not meet the standard of civilization, but that its internal state of anarchy disqualified it from even claiming to be a state, much less a full member of the Family of Nations, though arguably its membership in the League of Nations signified a degree of acceptance by well-established members of the international community.[91]

Though positivists emphasized the Christian and Western nature of the civilizational standard, few excluded, in theory at least, the possibility of non-Western, non-Christian states meeting them, and thus of receiving equal treatment at the hands of its fellow states.[92] Japan was the often-cited example: having begun in much the same place as China in Western eyes in civilizational terms, its rapid modernization and Westernization had steadily increase its status in the eyes of Western states. In particular, publicists singled out its adherence to the laws of war in the prosecution of the First Sino-Japanese War (although awkward incidents such as the Port Arthur Massacre were glossed over).[93] In 1899, European powers collectively renounced their extraterritorial privileges in Japan, and by 1911 the last Unequal Treaties, concerning Japan's ability to set its own tariffs, were abrogated.[94]

---

[90] Thomas Erskine Holland, *Lectures on International Law*, ed. Thomas Alfred Walker and Wyndham Legh Walker (London: Sweet & Maxwell, 1933), 39-40.

[91] See Thomas Baty, "Can an Anarchy be a State?" *American Journal of International Law* 28, no. 3 (July 1934): 444-455. As the Legal Adviser to the Japanese Foreign Office at the time of Japan's invasion of Manchuria, Baty could not have been said to be a dispassionate observer. But it is important to underline that even Baty did not foreclose the possibility of China meeting, in theory, the standard of civilization.

[92] Christianity in and of itself was neither sufficient nor necessary. Abyssinia, the oldest kingdom in Christendom, never came close of meeting the 'standard of civilization' in the eyes of most publicists.

[93] Alexis Heraclides and Ada Dialla, *Humanitarian Intervention in the Long Nineteenth Century: Setting the Precedent* (Oxford: Oxford University Press, 2015), 42.

[94] Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: Cambridge University Press, 2010), 66.

Against this view, recent research has criticized the idea that the 'standard of civilization' was ever a set of objective criteria. In particular, Koskenniemi described the standard of civilization as little more than a 'language of a standard' which only 'gave the appearance of fair treatment' to those who were excluded by it.[95] Similarly, Douglas Howland has argued that the case of Japan was not proof that the standard of civilization was real, but a stark illustration of its unreality, demonstrated by the fact that there was little correlation between the time at which Japan met most of the civilizational criteria and the time at which it was admitted to the Family of Nations. In Howland's view, whether a country was said to have fulfilled the standard of civilization was a purely political decision, and 'civilized' status was only extended to Japan after the latter successfully applied political pressure on Western powers to do so.[96]

Law, as Carl Schmitt pointed out, cannot be divorced from power and politics,[97] and this is especially true on the international plane. That Japan's admission had something to do with more than simply ticking a series of boxes relating to the rule of law and bureaucratic organization is sometimes acknowledged in scholarly writing of the period. In particular, Oppenheim, who was more ready to acknowledge the limitations that politics imposed on the law than many of his fellow writers,[98] specifically referred to the fact that Japan had been accepted by the West as a Great Power after 1895 to buttress his contention that Japan had been fully admitted to the Family of Nations.[99] It does not mean, however, that the standard was a pure sham. Japan's rise as a Great Power coincided – and can be said partly to be a result – with its aggressive adoption of Western forms of government and internal organization. Moreover, had Japan not acquired the appurtenances of 'civilization', it is to be doubted whether Western powers would have felt comfortable giving up their privileges in Japan, especially as they related to their own citizens' rights.

---

[95] Martti Koskenniemi, *The Gentle Civilizer of Nations: the Rise and Fall of International Law, 1870-1960* (Cambridge: Cambridge University Press, 2002), 134-135

[96] Douglas Howland, *International Law and Japanese Sovereignty: The Emerging Global Order in the 19th Century* (Basingstoke: Palgrave Macmillan, 2016).

[97] See generally David Dyzenhaus ed., *Law as Politics: Carl Schmitt's Critique of Liberalism* (Durham: University of North Carolina Press, 1998) and Michael G. Salter, *Carl Schmitt: Law as Politics, Ideology and Strategic Myth* (Abingdon: Routledge, 2012).

[98] Perhaps not entirely coincidentally, since its first Chinese translation in 1934, Oppenheim's *International Law* has proven to be the most popular international law treatise used in China. See Dong Wang, *China's Unequal Treaties: Narrating National History* (Lanham: Lexington Books, 2005), 122.

[99] Lassa Oppenheim, Ronald F. Roxburgh (ed.), *International Law: A Treatise*, 3rd edition (London: Longmans, Green & Co., 1920), 34. ("A generation ago one might have doubted whether Japan was a real and full member of that family, but…no doubt was any longer justified…Since her war with China in 1895, she must be considered one of the Great Powers that lead the Family of Nations.")

One might note the irony of China finding itself on the wrong end of the civilization spectrum in Western eyes, when it had been accustomed to considering itself as the culturally superior nation vis-à-vis all comers. There are of course important differences between the doctrine of *tianxia* and the standard of civilization, with the former being more metaphysical-mystical than the latter, the result of the 19th century moving away from the vagueness of natural law in favour of a more scientific positivist theory of jurisprudence and of international relations. Moreover, whereas the standard of civilization was tied to the existence of a multiplicity of co-equal civilized nations, the Chinese doctrine did not allow for the possibility of any state but China reaching the highest stage of civilization. However, it is striking that both share a number of features. Both were ethno-centric systems which nevertheless allowed for the possibility of non-'core' people reaching full civilization by adoption certain cultural practices. Both classified nations on a spectrum, according to a system which was both imprecise yet based on intelligible criteria at the same time. And both were based on notions of inherent cultural superiority. As will be seen later on, after absorbing the initial shock of being classified as a 'barbaric' people, many Chinese thinkers quickly came and tied modernization efforts to the achievement of 'civilized' status according to the Western hierarchy. That acceptance of the new state of affairs had much to do with their prior familiarity with the concept of civilizational hierarchy.

Thus, China occupied an uneasy place within the international system. On the one hand, it had been fortunate in that it had not been reduced to colonial status, but retained its legal personality and sovereignty under international law, through which it had a voice at international forums and could carry out internal self-government to a considerable extent. On the other hand, not having been admitted to the 'charmed circle' of civilized nations, China was restricted in its exercise of sovereign powers, being unable to govern parts of its territory or to make laws in many areas.

Chinese Reactions: How Many Reception Stories?

In modern Chinese historiography, a stock image of the late Qing era was that of unpatriotic high officials signing away China's legal rights to Western invaders with nary a word of complaint. As striking as the *tableau* may be, it is also a misleading one. For one thing, Chinese officials did not in fact realise that the concessions contained in the Unequal Treaties could be construed as unfair to China. For instance, the grant of most favour nation status through these

treaties without reciprocal treatment for China was initially regarded as an imperial favour granted to foreign traders, and consequently not cause for alarm.[100] More remarkably, extraterritoriality, one of the subjects which would later become deeply emblematic of China's subjugation by Western powers, was not regarded by the Chinese government as problematic at all at the outset. Recent scholarship has shown that even before the conclusion of the 'Unequal Treaties', Chinese authorities were happy to let foreign governments exercise criminal jurisdiction over their own subjects in China; even more remarkably, China itself had exterritorial rights in both Japan and Korea until 1895; indeed, of the various nations which possessed extraterritorial rights in Japan, none had more of its subjects there than China.[101] Thus, Chinese officials initially saw nothing unjust in granting foreign consuls the right to try their own citizens. Similarly, as imperial fiat forbade most foreign travel to Chinese subjects, the lack of reciprocity in that regard was not regarded as problematic either.[102]

Instead, what initially bothered Chinese officials the most were certain treaty provisions which would be considered to be unexceptionable today. As Mao Haijian puts it, the Qing 'felt great indignation at things that are seen as "equal" today, but were completely unaware of what is today seen as "unequal" treatment; hence their conduct in diplomatic relations seems preposterous [today]."[103] What shocked the imperial commissioner Li Xingyuan the most in the Treaty of Nanking, for instance, was not that China was to be deprived of its sovereign rights over aliens and tariffs, but that 'a female barbarian', *pace* Queen Victoria, should be named alongside the emperor at the beginning of the Treaty.[104] The thorny issue of whether foreign diplomats should kowtow to the emperor, over which Western and Chinese officials tussled over for almost a century (the requirement was only abolished in 1873) is another example of

[100] Kawashima, "China", 459.
[101] See generally Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (New York: Oxford University Press, 2011) and Kirk W. Larsen, *Tradition, Treaties, and Trade Qing Imperialism and Chosŏn Korea, 1850–1910* (Cambridge MA: Harvard University Press, 2011).
[102] Qing subjects first gained the right to travel abroad under Article V of the 1860 Sino-British Treaty (also known as the Convention of Peking). Exceptions had been made for official travel, and imperial subjects who illegally travelled abroad were occasionally allowed to return under amnesties. See generally Chiu Hungdah, "Nationality and International Law in Chinese Perspective – With Special Reference to the Period Before 1950 and the Practice of the Administration at Taipei", in Ko Swan Sik (ed.), *Nationality and International Law in Asian Perspective* (Dordrecht: Martinus Nijoff Publishers, 1990), 29.
[103] Mao Haijian, Joseph Lawson, Craig Smith and Peter Lavelle (trans.), *The Qing Empire and the Opium War: The Collapse of the Heavenly Dynasty* (Cambridge: Cambridge University Press, 2016), 416.
[104] Li Xingyuan, *Li Xingyuan riji* [*Diary of Li Xingyuan*] (Beijing: Zhonghua sluijii, 1987), 428.

the kind of matter over which Qing conduct may '[seem] preposterous [today]', but which initially occupied the bulk of China's attentions [105]

It was not the granting of privileges to Western powers in and of itself, but the realisation that Western powers were not treating China as their own rules bade them to do, which made Chinese officials realise their country's predicament. But some had in fact long suspected that Western diplomats were not entirely straight in their dealings with China. In his memorial on behalf of Martin's translation of Wheaton, Prince Gong wrote that "we were afraid that [the foreigners] might wish to keep [*Wanguo gongfa*] confidential and not have shown it to us."[106] Gong's fear was not altogether irrational: Martin's efforts provoked no end of irritation from Western diplomats in China, who were happy for the latter to remain in ignorance of their rights and of the inequities of their relationship with the West, a fact which Qing officials had hitherto not truly understood. The year after *Wanguo gongfa*'s publication, the American *chargé d'affaires* in Peking, with considerable understatement, reported back to the State Department that "an authentic study of this work…will gradually lead them to see how greatly the principle of extraterritoriality contained in these treaties [with foreign countries] *modifies the usages in force between western and Christian powers*" (emphasis added).[107] Some were less circumspect: "Who is this man who is going to give the Chinese an insight into our European international law? Kill him—choke him off; he'll make us endless trouble", said the French *chargé*, the excitable Count Klecskowsky.[108]

Even with *Wheaton* in hand, by one recent account, it was not until around 1880 that Chinese officials realised the discrepancy between Western doctrines of sovereignty and sovereign equality on the one hand, and of the reality of Western diplomacy toward China, as well as the

[105] One does not need to go far, however, as John Hobson, who claimed that the abolition of the kowtow "constituted China's greatest humiliation". John M. Hobson, *The Eastern Origins of Western Civilisation* (Cambridge: Cambridge University Press, 2004), 262.

[106] Ssu-yu Têng and John King Fairbank (eds.), China's Response to the West A Documentary Survey, 1839-1923 (Cambridge MA: Harvard University Press, 1982), 98.

[107] Mr. Williams to Mr. Seward, November 23, 1865. Reprinted in United States. Department of State. Papers Relating to Foreign Affairs, Accompanying the Annual Message of the President to the Second Session Thirty-Ninth Congress, Part I (Washington DC: Government Printing Office, 1867), 486. That it was not judged necessary to censor this remark is telling.

It is amusing to note that Williams' superior in Peking, Anson Burlingame, had in fact encouraged Martin to translate Wheaton into Chinese and to offer it to the Qing court. However, Burlingame was something of an exception among Western diplomats in China in his Sinophilia (he was later retained by the Qing government as a Chinese plenipotentiary to the West).

[108] Reported by Martin himself, in W. A. P. Martin, *A Cycle of Cathay, or China, South and North, With Personal Reminiscences*, third edition (New York: Fleming H. Revell Co., 1900), 234.

fact that the Unequal Treaties were, in fact, unequal.[109] Resentment and bitterness soon set in. Zhang Zhidong, a prominent mandarin who regarded the study of international law as a core subject for aspiring diplomats,[110] nevertheless dismissed reliance on international law as 'stupid': "if there is an imbalance [in power] there is little room for law…there has never been such a thing as international law that controls states" [111] (a Realist slogan if there ever was one). Similarly, Li Hongzhang, the great Chinese diplomat of his generation, bitterly complained that "we were threatened and *deceived*. [Unequal Treaties] are outside the scope of international law" (emphasis added).[112] At the turn of the last century, when he was asked to contribute a preface to a new edition of Martin's translation of Wheaton, the book that began it all, he wrote, with poignant mockery, that:

> "In his preface, [Martin] states the causes of the siege but without a trace of resentment. In a note to the first chapter he speaks of the war with France; and adds that China's protection of French residents contrasted favorably with the way in which the French had treated the Germans. Proof that China had previously (to 1900) observed International Law in the spirit of peace. If this book could be hung up at our city gates and obeyed by nations beyond the seas there would be an end of strife, and all the world would be at peace; a state of things which I agree with Dr. Martin in hoping for."[113]

Resentment against Western unequal treatment did not, however, lead to wholesale rejection of the new import. As angered as they were by the dawning realisation that they were being treated unfairly, there was a degree of acceptance of the fact that international law and sovereignty functioned not only in marginalising China, but also as a 'weapon of the weak' whose logic, if properly mastered, could be turned on its head to be used against further Western encroachment. While in Europe, the Chinese envoy Xue Fucheng wrote back home in 1892 that although if China were strong "nobody would accuse us if we opposed international law", "since we are weak, if we had adhered to international law, at least we would not have suffered as badly as we have".[114] The solution, according to Xue, was to bring China back inside the bailiwick of

---

[109] Zhang Jianhua, "Ershi shiji zhongguo dui bupingdeng tiaoyue gainian de qishi" [Origins of the Concept of Unequal Treaties in Twentieth-Century China], in Niu Daoyong (ed.), *Ershi shiji de zhongguo* [*Twentieth Century China*] (Nanchang: Jiangxi renmin chubanshe, 2003).
[110] See Jinfan Zhang, *The Tradition and Modern Transition of Chinese Law* (Heidelberg: Springer, 2014), 566.
[111] Cited in Shogo Suzuki, *Civilization and Empire: China and Japan's Encounter with European International Society* (Abingdon: Routledge, 2009), 73.
[112] Li Hongzhang, "Tuochou quian zhe", in *Li Hongzhang quanji*, vol. 3 (Changchun: Shidai wenyi chubanshe, 1998), 1541. Quited in Shogo Suzuki, *Civilization and Empire: China and Japan's Encounter with European International Society* (Abingdon: Routledge, 2009), 74.
[113] Quoted in Lydia H. Liu, "Legislating the Universal: The Circulation of International Law in the Nineteenth Century", in Lydia H. Liu (ed.), *Tokens of Exchange: The Problem of Translation in Global Circulations* (Durham: Duke University Press, 1999), 158.
[114] Suzuki, *Civilization and Empire*, 74.

international law, so that it could enjoy its protection, just as weaker European states did, and to their advantage.[115] This was not a novel view: as early as in 1864, Chinese diplomats extracted an apology from Prussia when the latter seized a Danish ship in Chinese waters during the Second Schleswig War, by pointing out China's sovereignty over the waters where the seizure had occurred, an incident which left a deep impression on those involved.[116] It also did not escape their attention that Japanese diplomats had had a measure of success in using international law, and in particular the notion of sovereignty, in their negotiation with Western powers.

A few Chinese officials were even willing to go further, but such a course still entailed considerable personal peril. Gong Songtao, a prominent member of the Self-Strengthening Movement and China's envoy to Britain and France between 1877 and 1879 – the first Chinese residential envoy to the West – thought that international law gave 'precedence to fidelity and righteousness' and enabled countries to compete in 'knowledge and strength'.[117] In 1877, he attended the sixth meeting of the Conference for the Reform and Codification of International Law organised by the International Law Association, becoming the first Chinese person to attend a meeting of international lawyers. At the conference, Guo praised its work as beneficial to mankind and expressed the hope that China would eventually adopt international law. In return, he was elected honorary vice-president of the Association, his speech having evidently pleased the audience.[118] Guo was, however, unusual in that he praised Western institutions – international law, but also parliaments and political parties – as well as technical innovations such as railways (of which he was a great proponent) and telegraphs.[119] These views, relayed to a home audience through the diaries that he was required to send for publication to China, enraged the conservative faction at the court and the provincial gentry to such an extent that the emperor ordered the destruction of the wooden blocks used to print his diaries and recalled him from Europe.[120] Having returned home in disgrace, he found his house burnt and himself snubbed by Hunanese gentry.[121]

---

[115] Ibid.
[116] Svarverud, *International Law as a World Order in Late Imperial China*, 90.
[117] Guo Songtao, Liu Xihong, Chang Te-yi, J.D. Frodsham (trans.), *The First Chinese Embassy to the West: The Journals of Kuo-Sung-T'ao, Liu Hsi-Hung and Chang Te-yi* (Oxford: Clarendon Press, 1974), 72.
[118] Svarverud, *International Law as a World Order in Late Imperial China*, 144-5.
[119] Stephen R. Platt, Provincial Patriots: The Hunanese and Modern China (Cambridge MA: Harvard University Press, 2007), 46.
[120] Ibid.
[121] Ibid. Nor did Guo fare much better in his posthumous reputation. The Red Guards destroyed his grave during the Cultural Revolution, for he represented an old order that needed eradicating.

On the whole, all the while complaining about unfair treatment under it, international law was added to the curriculum of the new academies which were being set up to educate Chinese officials whose function was to deal with foreigners on their own terms. Martin was showered with decorations and given a string of academic appointments: he and his Chinese students translated a series of American and European international law treatises.[122] Another missionary, the Briton John Fryer, was retained to translate even more international law treatises.[123] Meanwhile, the Foreign Ministry dispatched students to Europe, where many studied international law and brought back further knowledge of the subject, as well as much-needed diplomatic know-how. In 1902, public international law was added to the imperial examination as part of 'World Politics', though the whole imperial examination system was scrapped two years later, part of further reforms of Chinese education.[124] Thus, by the turn of the century, Chinese officials had mostly accepted the Western framework of equal sovereign states interacting with each other within the framework of international law, *faute de mieux*, while resenting the fact that they had to accept it in the first place and the fact that they were treated as inferiors under it.

Yet not everyone in China accepted that the wholesale adoption of that Western corpus of law, though it claimed to be universal and presented advantages, was the right approach. Liang Qichao, one of the era's leading progressive intellectuals, instead advocated for an alternative system of universally applicable rules based on ancient Chines thought:

> "The Westerners, such as Grotius and Hobbes, who were all ordinary people, have written the universal laws of all nations [international law], and the whole world obeys them. The *Chunqiu* written by Confucius was also the universal law of all ages. How ridiculous for anyone to say that Confucius must not be as intelligent as Grotius or Hobbes!"[125]

Chunqiu—known in English the *Spring and Autumn Annals*, a series of terse chronicles of the happenings and occurrences of the Lu State between 722 to 481 BC. Yet the interest lies not in the clumsiness of the attempt but the fact that it was made at all. The attractiveness of such a proposition is obvious: by arguing that there was a functional equivalent to Western universalist law in Chinese thought and which could be resuscitated, nationalist-modernisers such as Liang

[122] Martin, *A Cycle of Cathay*, 235.
[123] Rune Svarverud, "The Formation of a Chinese Lexicon in International Law, 1847-1903, in Michael Lackner and Natasha Vittinghoff, *Mapping Meanings: The Field of New Learning in Late Qing China* (Leiden: Brill, 2004), 507-536, at 517.
[124] Kawashima, "China", 471
[125] Quoted in Yang Xiao, "Liang Qichao's Political and Social Philosophy", in Chung-Ying Cheng and Nicholas Bunnin (eds.), *Contemporary Chinese Philosophy* (Oxford: Blackwell Publishers, 2002), 21.

could assail Western claims of superiority, while acknowledging that the days of *tianxia* were over—indeed Liang was a vocal critic of the *tianxia* trope and a vocal supporter of the reconceptualization of China as a nation-state along modern lines.[126] It is no coincidence that alongside old warhorses such as extraterritoriality, many of the books written by the first generation of Chinese international law scholars concerned the remote happenings of the Spring and Autumn period, which was not coincidentally the era in which Confucius lived and worked.[127] By showing that China had come up with international law before the West, they were hoping to prove that China was as entitled to civilised status as the West.

To locate functional equivalencies between the Western laws of nations in ancient Chinese thought was not new: indeed it was the ever-active Martin who, in a 1881 lecture, first floated the idea that ancient China may have had something akin to international law, though he was careful to only say that the inter-state system in pre-unification China displayed analogous features to international law, not that it was actually international law. Martin's purpose was slightly different than that of his later imitators, for he did not actually believe that what existed in Chinese antiquity was comparable with European international law. By showing that there were equivalences between ancient Chinese concepts and modern international law ones, he said in the 1881 lecture, Chinese officials would be "more disposed to accept the international code of Christendom", to the general benefit of mankind.[128] In other words, while Martin was hoping to legitimate international law to China, Chinese thinkers such as Liang were trying to legitimise China to the world.

In conclusion, despite its prevalence in the legal-historical literature, there can be no single 'reception story' for international law's introduction to China. It is possible to discern three distinct strands in China's attitudes towards international law at the turn of the imperial century. At one extreme were those such as Gong who were willing to accept not only international law and political conceptions for instrumental purposes, but who fundamentally approved of their normative value and force. Others were jaded by the hypocrisy and inconsistency between

[126] Suisheng Zhao, *A Nation-state by Construction: Dynamics of Modern Chinese Nationalism* (Stanford: Stanford University Press, 2004), 45. Liang is also thought to have introduced the word *minzu* (nation) to the Chinese language.

[127] For a non-exhaustive list of such works, see Wang Tieya, "International Law in China: Historical and Contemporary Perspectives", in *Collected Courses of the Hague Academy of International Law 1990 II*, vol. 221 (Dordrecht: Martinus Nijhoff, 1990), 195-370, 207, footnote 12. Given the limited output of Chinese legal scholarship at the time, the number of works concerned with the international law of the Chinese antiquity is the more striking.

[128] W. A. P. Martin, *The Lore of Cathay; Or, the Intellect of China* (Edinburgh and London: Oliphant, Anderson & Ferrier, 1901), 449.

Western powers' words and deeds, but nevertheless favoured accepting international law on instrumentalist grounds. Finally, some sought alternatives in China's history, and hoped that the incoming onslaught of the new world-order could be resisted through the rediscovery of traditional modes of political organisation. In his proclamation on the establishment of the Republic of China in 1912, Sun Yat-Sen stated the fledging republic's aim to 'carry out the duties of a civilized nation so as to obtain the rights of a civilized state'.[129] This would set the stage for the decades of legal and political contestation concerning sovereignty between China and Western powers, but also between competing visions within its own elites.

[129] English text reprinted in H. T. Montague Bell and H. G. W. Woodhead (eds.), *The China Year Book 1913* (London: George Routledge & Sons, 1913), 470.

Chapter 2: Suzerainty, Semi-Sovereignty, and International Legal Hierarchies on China's Borderlands

In early 1944, Shen Zonglian, the Chinese government's envoy to Tibet, flew to Delhi to discuss Tibet's future status with Sir Olaf Caroe, the head of the British Indian government's External Affairs Department. Caroe told Shen that Britain only recognized Chinese suzerainty over Tibet, whereas Shen was adamant that what China had in Tibet was sovereignty, not suzerainty. The two men then argued over the difference between the two but, turning to the *Encyclopædia Britannica* for definitions, found that they could not understand the difference between the encyclopaedia's definitions of suzerainty and sovereignty, the former being defined so flexibly. Finally, Caroe said rather awkwardly that "my understanding, when a country is powerful, suzerainty can be a synonym for sovereignty. However, if a country is not powerful enough, sovereignty is a different concept".[130]

They were not alone in their puzzlement. Suzerainty, a much-misunderstood type of semi-sovereign hierarchical international relationship, constantly resisted attempts at definition, and remains the source of confusion to this day. However, suzerainty, and semi-sovereignty more broadly, played important but little-acknowledged roles within international law during the long nineteenth century, but particularly in relation to the establishment of Chinese control and (contested) sovereignty in Tibet and in Mongolia.

This chapter has a dual aim. More broadly, it aims to provide a clear account of the function of suzerainty, as a neglected type of international hierarchy, within international law and international relations during the long nineteenth century, by the same token illuminating a neglected arena of legal contestation between the Western and non-Western members of the 'Family of Nations'. Then, in relation to the main theme of this thesis, it provides a revisionist account of the legal construction of Chinese political authority over Tibet and Mongolia, by examining the negotiations over suzerainty between republican China, Britain, and Russia, focusing in particular on the mutually constitutive and fluid interrelation between actual control and international legal framing in the context of China's borderlands, with all of its attendant implications for the debate over the political status of Tibet today.

[130] Chang Jui-Te, "An Imperial Envoy: Shen Zonglian in Tibet, 1943-1946", in Hans van de Ven, Diana Lary and Stephen R. MacKinnon (eds.), *Negotiating China's Destiny in World War II* (Stanford: Stanford University Press, 2015), 56.

I first examine the neglected concept of semi-sovereignty, more specifically within the Chinese context, where the concept carries unsavoury connotations associated with colonialism. The next section examines the ways in which nineteenth century jurists attempted unsuccessfully to define suzerainty and argues that it was a legal empty vessel that could be instrumentalised for a variety of purposes, instead of a term of art with a definite, ascertainable meaning. Then, I examine suzerainty within the Chinese context during the late Qing dynasty, when China first had to define, using Western international law, its exact legal status in places such as Vietnam and Tibet. Drawing on original archival research, I will then examine the negotiation of Chinese suzerainty in relation to Mongolia and Tibet, between the nascent Chinese republic, Western powers, and the Mongolian and Tibetan governments, as well as the unexpected aftermath of these proceedings.

Semi-Sovereignty: Exceptions, Aberrations, and Violations?

Semi-sovereignty occupies an uneasy place within international relations. Although there existed (and continue to exist) a bewildering range of semi-sovereign international entities which are not fully sovereign but are not entirely lacking in sovereignty, they have been often dismissed as little more than aberrations, minor exceptions to the spread of sovereign states as the default type of international polity.[131] Moreover, the diversity and the fleeting existence of many semi-sovereigns makes their systematic study difficult. Semi-sovereignty included a wide variety of international relationships and entities, including dominions (Australia), protectorates (Egypt), vassals (Tibet), neutralised states (Switzerland), certain federal units, and mandatory territories and trusteeships, each with its own peculiarities. Such categories were, moreover, constantly in flux: for instance, dominions emerged in the middle of the nineteenth century, acquired unquestioned international personhood after the First World War, formal equality with

[131] Arthur Learoyd, "Configurations of semi-sovereignty in the long nineteenth century", in Jens Bartelson, Martin Hall and Jan Teorell (eds.), *De-Centering State Making: Comparative and International Perspectives* (Cheltenham: Edwar Elgar, 2018), 155-174, 155. On semi-sovereignty more generally, see Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002); Aimee M. Genell, "Autonomous Provinces and the Problem of 'Semi-Sovereignty' in European International Law" *Journal of Balkan and Near Eastern Studies* 18 (2016), 533-549; Jack Donnelly, "Sovereign Inequalities and Hierarchy in Anarchy: American Power and International Society", *European Journal of International Relations* 12(2) (June 2006), 139-170.

Britain in 1931 through the Statute of Westminster, and disappeared after World War II, all within the space of a century.

However, far from being a purely antiquarian exercise, the study of forms semi-sovereignty such as suzerainty has the potential of yielding important insights for our understanding of the historical development of the international order and of international law. At the most basic level, semi-sovereignty comprises some of the most explicit manifestations of hierarchy within International Relations, a subject which, after a long period of neglect, has returned to the forefront of the discipline in recent years.[132] Hence, the rise and fall of semi-sovereignty speaks directly to the changing place of hierarchy within the international order. Moreover, the persistence, and indeed growth, of semi-sovereignty (albeit in ever-evolving forms) during the nineteenth and early twentieth centuries challenges the traditional English School of International Relations' narrative surrounding the expansion of international society, according to which a "ready-made" *grundnorm* of Westphalian sovereignty, developed and perfected in Europe, was exported throughout the non-Western world, rapidly becoming the default mode of political authority to the exclusion of more "traditional" forms of authority.[133] Indeed, although semi-sovereignty tended to be superseded by sovereign nation-states within Europe during the period, European expansion into the non-Western world was in large part conducted through the extensive use of semi-sovereignty, relationships which were sometimes later converted into direct colonial (and therefore fully sovereign) rule, but which often continued in their semi-sovereign form until decolonization.

But if semi-sovereignty is treated (unfairly) as an oddity within the Western scholarly literature, most Chinese academics reject even the possibility of semi-sovereignty. Modern Chinese literature on sovereignty emphasize the indivisibility of sovereignty, which is assumed to be one of its fundamental attributes; semi-sovereignty is rarely discussed, but is sometimes

---

[132] For an overview, see generally David A. Lake, "Hierarchy and International Relations: Theory and Evidence." *Oxford Research Encyclopedia of Politics*. 26 September 2017; Accessed 19 May. 2020. https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-324; Ayşe Zarakol (ed.), *Hierarchies in World Politics* (Cambridge: Cambridge University Press, 2017).

[133] A typical example of this view is Daniel Philpott's sweeping claim that "[o]ver the ensuing three hundred years [since 1648], the history of the sovereign states system is largely the history of Westphalia's geographic extension." Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press, 2001), 33. On modern critiques of the expansion thesis, see generally Lora Anna Viola, *The Closure of the International System How Institutions Create Political Equalities and Hierarchies* (Cambridge: Cambridge University Press, 2020); Amitav Acharya, and Barry Buzan. The Making of Global International Relations: Origins and Evolution of IR at its Centenary (Cambridge: Cambridge University Press, 2019).

described as a sort of colonialist plot.[134] The Chinese emphasis on the indivisibility of sovereignty is unsurprising: modern Chinese historiography adheres to the narrative arc of the "Century of Humiliation", during which China first lost a large part of its sovereignty during the Qing dynasty to foreign powers—both through the loss of territory and the loss of certain types of authority within its remaining territory—before a gradual process of recovery of the lost sovereignty, resulting in the abrogation of the so-called "Unequal Treaties" and the restoration of China to full sovereignty.[135]

Given the centrality of this narrative to China's national self-conception, it is unsurprising that the divisibility of sovereignty, invoking as it does the central trauma of modern Chinese history, should prove to be an unpalatable idea. The PRC's continuing championing of the indivisible, maximalist understanding of sovereignty can also be understood as the result of this particular set of historical experience, which have served to elevate sovereignty to a quasi-mystical status in contemporary Chinese political thought. Finally, compounding the difficulty is the fact that semi-sovereignty has modern political and legal implications for China, which is involved in several territorial disputes where questions of historical title feature prominently. China has consistently maintained, for instance, that it has possessed full sovereignty over Tibet since antiquity, even though the claim is arguably anachronistic, involving, as it does, a notion which was not introduced to China until the nineteenth century. To acknowledge that China's title over Tibet was at any point anything less than full sovereignty would therefore pose serious problems for China's position in that regard.

This chapter will examine more particularly the struggle over the legal status of Tibet and Mongolia between China, on the one hand, and Britain and Russia on the other, during the Republican era (1911–49). In short, the dispute was whether they were under the suzerainty of China—a type of semi-sovereignty and the term favoured by the Western powers, or under its sovereignty. Modern Chinese historiography has categorically repudiated Chinese suzerainty in those territories, describing it as "the product of imperialist aggression",[136] a notion "cooked

[134] See for instance Cheng Hu, *Quanqiu hua yu guojia zhuquan: Bijiao fenxi* [*Globalization and National Sovereignty: A Comparative Analysis*] (Beijing: Tsinghua University Press, 2003), 61; Li Guangmin et al., *Guo ji fa* [*International Law*] (Beijing: Tsinghua University Press, 2006), 38. The latter's description of the nature of sovereignty (inviolable, indivisible, and inalienable) clearly has its origins in Bodin and Rousseau. Similar descriptions can be found in countless Chinese textbooks.
[135] See generally Zheng Wang, *Never Forget National Humiliation: Historical Memory in Chinese Politics and Foreign Relations* (New York: Columbia University Press, 2014).
[136] *China's Tibet: a bimonthly of Tibetan news & views* (Beijing: Minzu Press, 1990), 4.

up by old and new imperialists out of their crave to wrest Tibet [and Mongolia] from China",[137] and "the sword [used by] Western powers to try to separate Tibet and Mongolia"[138], a view which has also found favour among some Western scholars.[139]

However, I will show that suzerainty, although initially imposed upon China by Western powers for reasons of political expediency, was in fact not only accepted, but also instrumentalised by Republican China.[140] By doing so, it not only ensured the continuation of nominal Chinese title over these territories, as well as prevented their *de jure* independence, but formed the legal basis for the re-absorption of both territories later. China did so by negotiating the parameters of suzerainty with Western powers, and by using suzerainty as a tool to exclude foreign intervention in these regions. Thus, at a time when China was unable to exercise any form of effective territory over its frontier regions, it was able to secure its future sovereignty over Tibet and Mongolia by accepting legal limitations over its sovereignty over these regions, which was paradoxically more effective at maintaining Chinese sovereignty in the long run. In other words, though it was outwardly an outside imposition, semi-sovereignty in the form of suzerainty was in fact indispensable to China's legal construction of its territory, and to the maintenance of Chinese sovereignty over its borderlands. More broadly, this chapter will argue that suzerainty, despite the best efforts of international lawyers to define it, in fact had no fixed meaning, but was a legal empty vessel, which could be used to denote a range of hierarchical relationships that could range from *de facto* independence for the vassal to *de facto* political hegemony for the suzerain. That empty vessel, in turn, was often deployed to script the legal identities of non-Western entities, but could lead to unexpected results, as it did in both Tibet and Mongolia, in ways which are illuminating of the relationship between international law and imperialism during the long nineteenth century.

---

[137] Information Office of the State Council of The People's Republic of China, "Tibet— Its Ownership And Human Rights Situation" *Chinese Journal of International Law* 2(2) (January 2003), 747-789, at 758.

[138] Liu Qingtao, "Zongzhuqyan yu chuantong fanshu tixi de jieti——cong "zongfang guanxi" yicide laiyuan tanqi", *Zhongguo bianjiang shidi yanjiu* 27(1) (March 2017), 1-14, 13.

[139] See e.g. Amanda J. Cheney, "Tibet Lost in Translation: Sovereignty, Suzerainty and International Order Transformation, 1904–1906", *Journal of Contemporary China* 26(107), 769-783; Dibyesh Anand, "Strategic Hypocrisy: the British Imperial Scripting of Tibet's Geopolitical Identity" *Journal of Asian Studies* 68(1) (February 2009), 227-252; Barry Sautman, "All that Glitters is not Gold": Tibet as a Pseudo-State" *Maryland Series in Contemporary Asian Studies* 2009 (No. 3), 1-86.

[140] In relation to Tibet a similar point was also recently advanced in Marie Adele Carrai, "Learning Western Techniques of Empire: Republican China and the New Legal Framework for Managing Tibet", *Leiden Journal of International Law* 30(4) (2017), 801–824.

Suzerainty, Ancient and Modern: From Feudal to International Law

Suzerainty has its origins in French feudal law, where it denoted "the relation between the feudal lord and his vassal".[141] In a suzerain relationship, the superior lord, or suzerain, received the homage and certain feudal services of the inferior lord, or vassal, who in turn was afforded the protection of the suzerain lord.[142] The exact nature of such services varied considerably in practice, and often depended on local customs or specific legal documents creating a suzerain relationship. Though the etymological evidence is imperfect, it seems that suzerainty as a word post-dates the emergence of the feudal system and was not in widespread use until the fifteenth century, mostly in modern-day France.[143]

By the beginning of the nineteenth century, suzerainty was far down the path of obsolescence. Although feudalism had effectively ended in much of Europe by the sixteenth century, many of its institutional features remained in being, including numerous suzerain relationships. The upheavals brought by the French Revolution and the Napoleonic Wars led to a culling of suzerain relationships, as they were supplanted by sovereign ones. For instance, in the 1814 Treaty of Paris, France was made to renounce all her "suzerainty…" beyond her borders as set by the Treaty.[144] At the 1815 Congress of Vienna, Austrian suzerainty over Lusatia and the Kingdom of the Two Sicilies' suzerainty over Elba and Malta were all converted into sovereign titles. Prussia and Saxony renounced to all their feudal rights beyond their newly fixed borders in each other's territories. Even where suzerain rights were explicitly preserved (those of Prussia over Wernigerode and Two Sicilies over Piombino), they were explicitly coupled with full sovereignty, which superseded any lesser feudal title.[145] Prussia continued to claim a vague suzerainty over Neuchâtel until 1857, but when it abandoned this increasingly unreal claim via treaty, it did not mention suzerainty, only "sovereign rights".[146] Thus, after 1815 suzerainty essentially became extinct in Western Europe as a type of legal relationship.

---

[141] L. Oppenheim, *International Law: A Treatise, Volume 1: Peace*, 2nd ed. (London: Longmans, Green and Co., 1912), 141.
[142] Ibid.
[143] W. H. H. Kelke, "Feudal Suzerains and Modern Suzerainty", *Law Quarterly Review* 12 (1896): 215-227.
[144] Definitive Treaty of Peace and Amity between Austria, Great Britain, Portugal, Prussia, Russia and Sweden, and France, signed at Paris, 30 May 1814, 63 CTS 171, Article 8.
[145] Act of the Congress of Vienna, signed between Austria, France, Great Britain, Portugal, Prussia, Russia and Sweden, 9 June 1815, 64 CTS 453.
[146] Treaty between Austria, France, Great Britain, Prussia, Russia, and Switzerland relative to Neuchâtel, signed at Paris, 26 May 1857, 117 CTS 9, Article I.

Yet just as what could be described as 'traditional' suzerainty, anchored in feudal law, was disappearing from Western Europe, the concept found a new lease of life, first in what is now Eastern Europe but was then the western frontier of the decaying Ottoman Empire. In 1827, Britain, France, and Russia agreed to give to the Ottoman Porte suzerainty over Greece: the Greeks were to pay tribute to the Porte, but were to acquire internal autonomy as well.[147] To this the Porte agreed to in the 1829 Treaty of Adrianople, which extended Ottoman suzerainty to Moldova and Wallachia.[148] Thereafter there was a steady increase in the number of suzerainties around the world. Germany and Belgium concluded many treaties of suzerainty with local chiefs in Africa, while Britain used the term to define its relations with the South African Republic and the Indian princely states. In 1907 Britain and Russia acknowledged Chinese suzerainty over Tibet and in 1915 Russia and China recognized the latter's suzerainty over Outer Mongolia. All in all, it was a remarkable and unexpected revival for a concept whose use was rare even in the Middle Ages.[149]

But what exactly did suzerainty mean in the post-feudal, extra-European context? This point puzzled publicists and statesmen alike, and it was never to be resolved entirely. As Lassa Oppenheim put it, with considerable understatement, "the relations between a suzerain and its vassal state create much difficulty in the science of the Law of Nations".[150] Robert Treat Crane illustrated the situation more dramatically in 1907, when he compared no fewer than eleven definitions given by leading legal scholars, all of which were contradictory to some extent. A vassal state was alternately described as a non-sovereign, a semi-sovereign, an unacknowledged semi-sovereign, a semi-sovereign on the way of becoming fully sovereign, a synonym to a protectorate, or of a status completely unrelated to sovereignty.[151] Befitting the variegated definitions for suzerainty, vassals occupied a wide range of positions within international society. At the one extreme, entities such as Bulgaria and Egypt, in addition to internal autonomy, exercised almost all of the powers associated with external sovereignty, such as the despatch of diplomatic representatives and the conclusion of international treaties.[152] At the other end of the spectrum, the Indian Princely states had no separate international legal

[147] Treaty between France, Great Britain and Russia for the Pacification of Greece, signed at London, 6 July 1827, 77 CTS 307, Article II.
[148] Treaty of Peace between Russia and Turkey, signed at Adrianople, 14 September 1829, 80 CTS 83.
[149] Kelke, "Feudal Suzerains and Modern Suzerainty", 216.
[150] Oppenheim, *International Law*, 140.
[151] Robert Treat Crane, *The State in Constitutional and International Law* (Baltimore: Johns Hopkins Press, 1907), 13-17.
[152] Oppenheim, *International Law*, 135.

personhood at all.[153] Suzerains also differed widely in the extent of their power over the internal affairs of their vassals: in British India the suzerain could depose vassal princes at will, whereas in Mongolia the right was explicitly forbidden to China.

This wide discrepancy in vassal states' international status was justified by publicists' insistence that each suzerain relationship was *sui generis*. The way to determine the contours of each suzerain relationship, according to them, was by reference to the specific treaty that created it. The treaty specified the rights and duties of each party, and on that basis could the international status of a vassal be determined.[154] Traditional incidents of medieval suzerainty, such as tributes and protection, were not essential to the new type of suzerainty. Thus, suzerainty was in practice a sort of legal empty vessel, which would be used to denote a range of hierarchical relationships that could range from *de facto* independence for the vassal to *de facto* political hegemony for the suzerain. That empty vessel, in turn, was often deployed to script the legal identities of non-Western entities. In fact, suzerain relationships were just as often the result of external imposition as they were the result of a willing claim to authority by the suzerain power. Such scripting inevitably had the effect of weakening the political control over the vassal that the suzerain had previously heard, causing some writers to describe suzerainty, in practice, as a kind of halfway house for territories on their way to independence.[155] For instance, Ottoman suzerainty over Greece and the Danubian Principalities was the result of the Porte's defeat at the hands of Russia in the 1828-9 Russo-Turkish War: the concept had not existed in the Ottoman Empire before then.[156] The imposition of nominal suzerainty was used to deprive the Sultan of any real control over the territories in question, without however precipitating the immediate independence of these territories. This was well understood at the time: indeed, Lord Ellenborough, the British lord chancellor, described suzerainty as "anything from the palfrey

[153] John Westlake, L. Oppenheim (ed.), *The Collected Papers of John Westlake on Public International Law* (Cambridge: Cambridge University Press, 1914), 220. For the quasi-official British view on the topic, see Sir Courtenay Ilbert, *The Government of India, Being a Digest of the Statute Law Relating Thereto, with Historical Introduction and Illustrative Documents* (Oxford: The Clarendon Press, 1898), 143. See also Stephen Legg, "An International Anomaly? Sovereignty, the League of Nations and India's Princely Geographies", *Journal of Historical Geography* 12 (January 2014), 96-110.

[154] Kelke, "Feudal Suzerains and Modern Suzerainty", 226. See also James Crawford, *The Creation of States in International Law*, second edition (Oxford: Clarendon Press, 2007), 321.

[155] John Macdonell, "Suzerainty", in Hugh Chisholm (ed.), *The Encyclopædia Britannica Eleventh Edition*, vol. 26 (New York: Encyclopædia Britannica Inc., 1911), 173-5.

[156] Viorel Panaite, "The Legal and Political Status of Wallachia and Moldova in Relation to the Ottoman Porte", in Gábor Kármán, Lovro Kunčević (eds.), The European Tributary States of the Ottoman Empire in the Sixteenth and Seventeenth Centuries (Leiden: Brill, 2013), 9-42, at 19-20.

of the King of Naples up to real dominion"[157], and that Ottoman suzerainty over the Principalities was deliberately conceived of by the Western powers which had proposed the arrangement as a way to strip it of any influence over these territories.[158] A few writers, like the Scottish lawyer Sir John Macdonell, even went so far as to state that "[suzerainty's] very indefiniteness [is] its recommendation."[159]

Most, however, were unwilling to go so far: nineteenth-century international lawyers thought of their discipline in scientific terms—the "science of international law", the title of a famous lecture by Lassa Oppenheim—and necessary to this project was the aspiration of divorcing international law from politics, a project shared, but never fulfilled, by international lawyers to the present day.[160] To acknowledge the fundamentally political nature of what purported to be a legal concept, or indeed the many ways in which international law was inextricably embedded to the advance of imperialism, would have been problematic for the discipline's legitimacy.[161] Illustrative of this approach was the work of the British publicist Thomas Baty: in the midst of the Second Boer War, when the meaning of suzerainty had become a matter of public controversy, Baty assiduously but fruitlessly surveyed legal authority on suzerainty all the way to the mid-eighteenth century. Coming to no very clear conclusion, for the various authorities were largely contradictory, he nevertheless concluded that:

> "We must conclude, in spite of such arguments, that there did exist a kind of superiority which was neither equivalent to sovereignty nor merely nominal. Otherwise, not only would the system developed by such writers as Moser be out of all harmony with facts, but there would be no meaning in the creation of half-sovereign states in the present century on the analogy of such dependency."[162]

According to Baty, suzerainty *had* to have a true meaning because reality had to match theory, for otherwise Johann Jakob Moser (who was writing under very different circumstances in 1777) would be proven wrong. And suzerainty had to have a concrete meaning because the nineteenth century's new suzerain relations would be meaningless otherwise. This neatly

---

[157] It was said that the King of Naples held the city from the Holy See in exchange for the symbolic payment of a horse to the Pope each year.
[158] Edward Law, Lord Ellenborough, *A Political Diary, 1828-1830* (London: Richard Bentley & Son, 1881), 78.
[159] Macdonell, "Suzerainty".
[160] L. Oppenheim, "The Science of International Law: Its Task and Method", *American Journal of International Law* 2(2) (April 1908), 313-356.
[161] Another writer who took an approach like Macdonell's was Ernst Freud, who wrote that "Suzerainty is title without corresponding power; protectorate is power without corresponding title." See Ernst Freud, "The Control of Dependencies Through Protectorates", *Political Science Quarterly* 14(1) (March 1899), 19-38, at 28.
[162] Thomas Baty, *International Law in South Africa* (London: Steven and Haynes, 1900), 57.

encapsulated the circularity of the efforts of publicists at fixing the meaning of suzerainty: because the concept existed it must have had a meaning, even if no one could ever identify it. Hence, the cottage industry of public international law writing on suzerainty continued unabated.

This approach presented several advantages from the Western point of view. It allowed for the creation of *de facto* independent states on their peripheries, without however giving the latter full international legal personality. In this manner, the Family of Nations would not be unduly burdened with new non-Western entrants who could claim the full rights attached to international sovereignty. But treaties of suzerainty usually allowed just enough external autonomy to the vassal for it to conclude commercial treaties and the like, enabling Western countries to obtain commercial and strategic advantages in these areas. Finally, as for the suzerain power, the preservation of a nominal title through suzerainty made their loss of power more digestible, as they could still claim nominal authority over the territory in question. Indeed, the short-lived British suzerainty over the South African Republic (ZAR) between 1881 and 1884 – a rare example of a claim to suzerainty that was made willingly by the suzerain power – was established by the British government precisely to allow it to maintain the illusion of political control over the ZAR, whereas such control proved in fact to be essential non-existent.[163]

Conceptually, it might be helpful to think of suzerainty as a close relative of the protectorate, which has been the subject of much more modern academic analysis. Just as the protectorate was a legal technique which enabled "European states [to exercise] extensive control over non-European states while not officially assuming sovereignty over those states"[164], suzerainty can be thought of as a legal technique designed to achieve similar benefits, but without requiring European states to assume any responsibility, nominal or otherwise, over the targeted territory—effectively a sort of extreme indirect rule. The reluctance to establish a protectorate, or indeed to directly annex the territory concerned, could have many reasons. In the case of the Danuban Principalities it was to avoid disturbing the European balance of power; in the case of

[163] This episode, of considerable obscurity, was later said to have contributed to the outbreak of the Second Boer War. See generally D. M. Schreuder, *Gladstone and Kruger: Liberal Government & Colonial 'Home Rule' 1880-85* (London: Routledge & Kegan Paul, 1969).

[164] Anghie, *Imperialism, Sovereignty and the Making of International Law*, 87. On the use of protectorates to avoid the costs of direct rule, see also Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001), 124-125.

Tibet the British had determined it to be too costly.[165] But whatever the reason, the device of suzerainty enabled a similar result to be achieved, without the costs associated with direct or indirect rule.

In sum, although widely used in nineteenth-century international law, suzerainty was not so much a well-defined legal concept as an imperial legal technique widely employed to script the political and legal identities of territories on the periphery of non-Western imperial state systems. The result was a series of entities which existed in a sort of legal twilight zone: part sovereign, part dependency in a state which was beyond explanation within the existing frameworks of international law. The next section will explore the impact of the conception on China, and its intersection with China's attempts at defining the extent and nature of its authority over its frontier territories.

The (Mis)uses of Suzerainty in China

Suzerainty is often used to describe China's historical relationships within countries and territories within the Chinese world order, both in the scholarly literature and elsewhere.[166] Indeed, suzerainty is sometimes used synonymously with the Chinese tributary system. However, this approach, while convenient, trades nuance for clarity. As Feng Zhang puts it, such an usage "brings with it historical baggage associated with the term…that might contravene historical realities in East Asia".[167] Indeed, the notion of suzerainty had no ready equivalent within either the Chinese language or system of international relations, and there was no vocabulary for it in Chinese until the late nineteenth century. In fact, W.A.P. Martin's seminal translation of Henry Wheaton's treatise on international law, which introduced international law to East Asia for the first time, did not mention suzerainty at all.[168] The first

[165] Mark L. Hass, *The Ideological Origins of Great Power Politics*, 1789-1989 (Ithaca, NY: Cornell University Press, 2005), 78; Dawa Norbu, *China's Tibet Policy* (Richmond, Surrey: Curzon Press, 2001), 158.
[166] See for instance Martin Wight, *Systems of States* (Leicester: Leicester University Press, 1977); Stephen D. Krasner, "Organized Hypocrisy in Nineteenth-Century East Asia", *International Relations of the Asia-Pacific* 1(2) (2001), 173-197; David C. Kang, *East Asia Before the West: Five Centuries of Trade and Tribute* (New York: Columbia University Press, 2010).
[167] Feng Zhang, "International Societies in Pre-Modern East Asia: A Preliminary Framework", in Barry Buzan and Yongjin Zhang, Contesting International Society in East Asia (Cambridge: Cambridge University Press, 2014) 29-50, at 32.
[168] Liu Qingtao, "Zongzhuqyan yu chuantong fanshu tixi de jieti——cong "zongfang guanxi" yicide laiyuan tanqi", *Zhongguo bianjiang shidi yanjiu* 27(1) (March 2017), 1-14.

Chinese word for suzerainty was *shangbangzhiquan* (上邦之权), meaning roughly "the rights of the upper [country]", which was used in the 1894 Anglo-Chinese Convention on Burma.[169] By 1902 Japanese legal textbooks were introducing a new series of translations of Western legal vocabulary to China, and *shangbangzhiquan* was progressively superseded by *zongzhuquan* (宗主权), which remains in use today.[170] *Zhuquan* was the Chinese word for sovereignty, and *zongzhuquan*, taken as a whole, meant something like "ancestral sovereignty". This linguistic shift from *shangbangzhiquan* to the sovereignty-based *zongzhuquan* is suggestive of the extent to which the notion of sovereignty had by then been understood in China as the default Western mode of political authority vis-à-vis which all other forms of authority are defined.

What is generally now described as suzerainty in the Chinese context is more usually known as the Chinese tributary system, a clumsy form of words which belies the fact that the concept was of post-World War II Western coinage: there was no Chinese name for the system, and indeed it was not conceived of as a system by its practitioners. An "open access [and] inherently elastic" system, China did not generally directly administer internal affairs of its tributaries, nor did it constrain their external relations, although it reserved the right to intervene militarily in them.[171] Under the prevailing Western legal view, however, China's level of authority over those regions fit uneasily with Western understandings of sovereignty and of authority. Legally, sovereignty was inextricably tied to the notion of effective territorial control, one of the determining factors in determining whether a state had a sovereign title over a given territory. This arose from the doctrine whereby sovereign states had not only international rights, but also international obligations. A sovereign who exercised little control over a territory could not, the logic went, fulfil his international duties within that territory, notably that of protecting the rights of other states, and could therefore not claim a complete sovereign title. As Max Huber famously put it in the seminal *Island of Palmas* case:

> Territorial sovereignty…has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory. Without manifesting its territorial

[169] Cheney, "Tibet Lost in Translation", 778.
[170] Liu, "Zongzhuqyan yu chuantong".
[171] Yongjin Zhang and Barry Buzan, "The Tributary System as International Society in Theory and Practice", *Chinese Journal of International Politics* 5(1) (March 2012), 3-36.

> sovereignty in a manner corresponding to circumstances, the State cannot fulfil this duty.[172]

Hence, as Western contacts with China increased, and as it became necessary to define the boundaries between China and Asian territories under Western influence or control, suzerainty became an increasingly common way in the West to denote China's relationships with territories within its periphery during the second part of the nineteenth century. Moreover, the focus on effective territorial control had important political advantages, as many non-Western forms of political authority failed the test of effective territorial control and could be described by Western powers as non-sovereign.

The case of Tibet is illustrative in that regard. Early official British travellers to Tibet referred to China's authority there as one of sovereignty. From the 1880s onwards, however, official British documents began to define China's historical authority there in terms of suzerainty, without there having been any alteration in the material circumstances of China's presence there.[173] The British did recognize that there was a degree of incommensurability between the Chinese and Western understandings of political authority in these parts. For instance, Sir Charles Bell, the British political officer for Tibet, remarked that "It might be argued that... [Tibet] was undoubtedly under the suzerainty of China. But Asia, does not think along European lines. The Tibetan Government maintain that the Dalai Lama is the spiritual guide and the Chinese Emperor his lay supporter."[174] Nevertheless, having decided against ruling Tibet directly or to establish a protectorate over it, the British considered that an autonomous Tibet under nominal Chinese control was the best way of securing India's northern flank. Hence, it began to describe China's authority in Tibet in terms of suzerainty, and the position was maintained until 2008.[175] Such a description was not the result of dispassionate legal inquiry of the actual relationship between the two, but rather the result of political expediency. The claim that the relationship was one of suzerainty by the British, in other words, came after it was decided Tibet should be autonomous from China for strategic reasons, suzerainty being merely the legal instrument chosen to implement that objective.

The differences between the European and Chinese approaches is neatly illustrated by an exchange between French prime minister Jules Ferry and Chinese diplomat Zeng Jize over

---

[172] *United States v. the Netherlands* (1928) 2 R.I.A.A. 829.
[173] Dawa Norbu, "The Europeanization of Sino-Tibetan Relations, 1775-1907: The Genesis of Chinese "Suzerainty" and Tibetan "Autonomy"." *The Tibet Journal* 15(4) (1990), 28-74.
[174] Sir Charles Bell, *Tibet, Past & Present* (Oxford: Clarendon Press, 1924), 215.
[175] Richard Spencer, "UK recognises China's direct rule over Tibet", *The Daily Telegraph*, 5 November 2008.

China's legal position in Vietnam during the Sino-French War, the French having insisted that China merely possessed nominal suzerain rights in Vietnam at some point in the past, given that it never interfered with Vietnamese internal affairs:

> Zeng: What is the difference between being the protector and the ruler of a country?
>
> Ferry: There are big differences. If you are the ruler of a state, you are responsible for all of its political affairs and govern on its behalf. Whereas if you are the protector of some country, you are only responsible for the general affairs, but are not responsible for its administration.
>
> Zeng: When China administers dependent territories, it does not interfere in its internal affairs, just as the Americans govern their frontier. This is unlike the Western way of ruling over dependent territories through law. If there are disturbances in Vietnam, China will send troops to suppress it, before withdrawing, but will not harm that country's politics…Does France intend to protect Vietnam the way China does, or the way Britain protects Egypt?[176]

Zeng's sharp remark notwithstanding, France won the war and made China renounce to all rights in Vietnam. In relation to this episode, Lloyd Eastman notes that although the idea "that the Chinese had not comprehended in the mid-1870's that the tributary relationship had no status in Western international law" seems incredible, in Chinese officials' understanding at the time, a state could both be a tributary of China *and* independent. Indeed that was the answer Chinese officials gave to puzzled Western diplomats who queried about Korea's international status.[177] But to be independent and dependent at once, although perfectly compatible in the Chinese worldview, was hardly one that could be slotted into modern Western legal understandings of the time. Nevertheless, Chinese diplomats began to realize the importance of the precise legal vocabulary that was used to describe China's position in its frontier regions. During the Sino-French War, Zeng used *souveraineté* and *suzerainté* interchangeably in his communications with the French government.[178] But later Chinese diplomats became much more careful in their choice of words, carefully rejecting, in their conversations with Western interlocutors, suggestions that China's authority over Tibet and Mongolia was suzerain rather than sovereign. As the diplomat Tang Shaoyi wrote to his superiors in 1905:

> We must argue that we are 'zhuguo' [sovereign] and look on Tibet as if it is a province…In previous meetings [the British envoy] implies that we are

[176] *Waijiaobu* archives, 01-24-009-01-024. The French government's version is in France, Ministère des Affaires étrangères, *Documents diplomatiques : Affaires du Tonkin, deuxième partie, décembre 1882-1883* (Paris : Imprimerie nationale, 1883), 144-5.
[177] Lloyd E. Eastman, *Throne and Mandarins: China's Search for a Policy During the Sino-French Controversy, 1880-1885* (Cambridge, MA: Harvard University Press, 1967) 41-42.
[178] France, *Documents diplomatiques.*

> ‘shangguo’ [suzerain]. Already I am doing my utmost to contest this. *He insists that the authority our country exercises in Tibet is insufficient for the obligations of a ‘zhuguo’.* Therefore, we are absolutely unqualified to enjoy the rights and privileges of ‘zhuguo’.
>
> To sum up, at the core of British India’s position are these two characters, ‘shangguo’, *hollow and difficult to change*.[179] [Emphasis added].

It was within this context that in 1911, the Xinhai Revolution precipitated a reckoning on China’s periphery. Taking advantage of the chaos in China, Mongolia and Tibet both declared their independence towards the end of 1911, expelled the Chinese *ambans* (residents) and garrisons, and established independent governments. Both Mongolia and Tibet justified their independence on the grounds that the territories’ attachment to China was a personal one between the Manchu emperors and the territory, and that the territories were not part of China proper. With the dissolution of the Qing dynasty, so did the personal union between them and China.[180] Both governments sent out requests for recognition of their statehood to the Great Powers, requests that were not acceded to. *Faute de mieux*, Mongolia and Tibet concluded a mutual treaty in early 1913 in which they acknowledged each other’s independence.[181]

Meanwhile, the new Chinese government took the opposite position: not only did it contend that both Mongolia and Tibet continued to be part of China, it also proclaimed that they were integral parts of the national territory that should be politically undifferentiated from the rest of the country. The 1912 provisional constitution of China declared that “[t]he territory of the Chinese Republic consists of twenty-two provinces, Inner and Outer Mongolia, Tibet and Qinghai”,[182] laying the legal framework for China’s territorial claims (as well as indicating, through their absence, which of its traditional territorial claims it had forfeited for the time being). It was no longer considered adequate to declare tautologically that “the Great Qing Emperor rules over the Great Qing Empire”, as the 1908 draft Qing constitution did.[183] And to underline the new status of Tibet and Mongolia, Yuan Shikai, the new Chinese president, decreed that they would henceforth be treated in the same manner as the 内地 (*neidi*, interior) provinces, and expressions such as *lifan* (vassal) and *zhimin* (colonize) would be dropped from

[179] *Waijiaobu* archives, 02–16-001–06-61, quoted in Cheney, “Tibet Lost in Translation”, 780.
[180] See Urgungge Onon and Derrick Pritchatt, *Asia's First Modern Revolution: Mongolia Proclaims Its Independence in 1911* (E.J. Brill: Leiden, 1989).
[181] For many years the treaty was shrouded in mystery, with Chinese (and some Western) writers suggesting that it did not, in fact exist. A copy resurfaced in the Mongolian state archives in 2007. For general background, see A. Tom Grunfeld, *The Making of Modern Tibet, Revised Edition* (Abingdon: Routledge, 2015), 65.
[182] *Zhonghua Minguo linshi yuefa* (11 March 1912), Art. 3.
[183] *Qinding Xianfa Dagang* (27 August 1908), Art. 1.

official documents.[184] All this was part of a new vision of the Chinese nation – the idea of "Five Races Under One Union", under which Mongolians and Tibetans were both integral to the Chinese nation.[185]

Yet the shift from the traditional form of Chinese authority to a national one on its periphery was more theoretical than real. The Chinese government had limited resources to reassert its authority over Tibet and Mongolia, or to establish a new system of civil administration. Hence, the Peking government simultaneously reaffirmed the traditional bounds between the Qing throne and the outlying territories. Yuan's administration issued decrees reconfirming all the titles and privileges granted by Chinese emperors to high-ranking Mongols and Tibetans, bestowed higher ones on loyal aristocrats, and generally positioned himself and the Republic as the direct successors of the Qing, [186] in a manner that implied the seamless continuation of the traditional tributary system.

There was a fundamental paradox in Republican China's initial claims of legal authority over the whole territory of the former Qing Empire. It claimed a modern, national form of authority over the entirety of the Qing territory, yet what bound some of these territories to China was based on an entirely different logic of governance. It was, moreover, a logic which ill-fitted with the strictures of international law to which China, in its claim to become a normal member of the Family of Nations, was bound to follow. Very soon, this contradiction would come to the forefront, as China's neighbouring countries challenged its claims over its boundary regions.

The Invention of Chinese Suzerainty: Mongolia, 1911-1915

By the time of its unilateral declaration of independence in 1911, Mongolia had been politically bound to China since the seventeenth century. It was governed separately from China proper, but Qing officials governed Mongolia directly, unlike the situation in more distant territories. For much of modern history the nature of China's authority over Mongolia was not seriously

[184] Text in *Zhonghua Minguo zhengfu gongbao* [Republic of China Government Gazette], no. 103, 21 August 1912.
[185] At least in Mongolia, the vision had very little traction, as the Republic of China was viewed as "the country of the Han people". See Makoto Tachibana "The 1911 Revolution and "Mongolia": Independence, Constitutional Monarchy, or Republic" *Journal of Contemporary East Asia Studies* 3(1) (2014), 69-90.
[186] Jianyong Feng, "The 1911 Revolution and the Frontier: The 'Political Game' and 'State-Building in Outer Mongolia during the 1911 Revolution" *Asia-Pacific Journal* 12(5), 1-17.

questioned in the West.[187] Russia, the other power who, by virtue of its geography, had a special interest in the region, recognized China's authority over Mongolia in 1727-8, and reaffirmed it in in 1881, in return for preferential commercial treatment for Russian merchants.[188] China's authority over Mongolia was not seriously challenged by the Russians for the next century: a standard nineteenth-century account of the region by a Russian diplomat, for instance, described Mongolia as "composed of several principalities, which recognise the sovereignty of the emperor of China."[189] All the while, however, Russian strategists hoped that Mongolia (and Manchuria) would become independent if the Qing Empire were to collapse, and in 1907 secured from Japan recognition of a Russian sphere of influence in Outer Mongolia in a secret treaty.[190]

Only four years after Russia obtained the guarantee of a free hand from Japan, on 1 December 1911, Outer Mongolia proclaimed its independence from China. On 29 December the eighth Jetsun Dampa[191] was enthroned as the Bogd Khan, or Emperor, a title that had previously been assumed by successive Qing emperors.[192] The Chinese *amban* and his troops were disarmed and expelled in short order afterwards. As geography dictated, the new Mongolian government sought Russian support for its independence. However, the Russian government was unwilling to countenance Mongolian independence, but wanted to keep Mongolia autonomous as a buffer to China. It therefore set on the formula of 'Chinese suzerainty and Mongolian autonomy', the same formula Britain had decided upon in Tibet. Taking advantage of China's weak position, on 5 November 1913 China was induced to acknowledge the formula, with the full details of its suzerainty to be fleshed out at a later date in tripartite talks with Mongolia and Russia.[193] The formula satisfied neither the Mongolians, bent on independence, nor the Chinese, who

[187] See Louis Nemzer, "The Status of Outer Mongolia in International Law", *American Journal of International Law* 33(3) (July 1939), 452-464.
[188] Treaty of Peace, Boundaries etc. between China and Russia, 21 October 1727, 33 CTS 23; Treaty between China and Russia respecting the Re-Establishment of Chinese Authority in the Country of Ili etc., signed at St. Petersburg, 12(24) February 1881, 158 CTS 79.
[189] George Timkowski, Travels of the Russian Mission Through Mongolia to China, and Residence in Peking, in the Years 1820-1821 (London: Longman, Rees, Orme, Brown, and Green, 1827), 316.
[190] The deal was ratified through a secret annex to the Treaty of Portsmouth. See Masato Matsui, "The Russo-Japanese Agreement of 1907: Its Causes and the Progress of Negotiations", Modern Asian Studies 6(1) (1972), 33-48.
[191] Alternatively transliterated as Jebtsundamba Khutuktu, the holders of the title occupied a position analogous to that of the Dalai Lama in Tibet under the *ancient regime*, being simultaneously the highest-ranking lama and political leaders.
[192] Alan J.K. Sanders, *Historical Dictionary of Mongolia, Third edition* (Lanham, MD: The Scarecrow Press, 2010), 113.
[193] Declaration relative to Outer Mongolia between China and Russia, signed at Peking, 5 November 1913, 219 CTS 13.

sought sovereignty (although they extracted from the Russians recognition that Mongolia was part of China's territory). Hence, when the tripartite talks began at Kyakhta in September 1914, both set out to put their own spin on what Chinese suzerainty would mean in practice: the Mongolians in order to make it nominal, the Chinese to gut it of any meaning.

Negotiations began in earnest on 23 September, when the Chinese representative introduced a proposed outline for the draft tripartite treaty, which contained four demands: 1) Mongolian recognition of the Sino-Russian Declaration of 1913, 2) the rescinding of Mongolian independence, 3) the abandonment of the title of emperor by the Jetsun Dampa, and 4) the abandonment of the new Mongolian regnal calendar in favour of the Chinese republican calendar.[194] He insisted no other issue could be negotiated until Mongolia agreed to the four demands, a line which he held firm for most of the conference.[195] In reply, the Mongolian delegate categorically refused to abandon either the Jetsun Dampa's imperial title or the new Mongolian calendar. His government was willing, he said, to accept at the outermost the requirement that it should not make treaties or alliances that would harm China or its territorial integrity, but he otherwise maintained that "no [other] suzerain obligation can be recognised."[196] For the most part, however, he claimed (perhaps genuinely, given Mongolia's relative isolation) not to understand what suzerainty and autonomy meant, pushing China to produce increasingly detailed outlines of the rights it was claiming.

In the ensuing negotiations, the Chinese side proceeded on two very different tracks. On the one hand, it effectively wielded modern concepts of international law to its advantage. It pointed out that Mongolia's independence "had no reality in international affairs", given that no other country had recognised it.[197] The Chinese side also put much insistence on the preservation of China's territorial integrity, a relatively new concept at the time (it was not to become a mainstay of international relations until the establishment of the League of Nations).[198] At the same time, however, the Chinese negotiators also framed their arguments in terms of Chinese cultural exceptionalism. Thus, when the Russian delegate cited the precedent of Egypt and of

[194] The official Chinese minutes of the Kyakhta negotiations are reproduced in Lu Yiran (ed.), *Beiyang zhengfu shiqi de menggu diqu lishi ziliao* (hereinafter cited as *Beiyang menggu ziliao*) (Harbin: Heilongjiang Educational Publishing House, 1999).
[195] *Beiyang menggu ziliao,* 41-2.
[196] *Beiyang menggu ziliao,* 50.
[197] *Beiyang menggu ziliao,* 44.
[198] *Beiyang menggu ziliao*, 44, 50, 54, 60. On territorial integrity, see Samuel K N Blay, "Territorial Integrity and Political Independence", in Rüdiger Wolfrum and Margrét Sólveigardóttir (eds), *Max Planck Encyclopedia of Public International Law*, vol. IX (Oxford: Oxford University Press, 2012), 863.

Morocco for the proposition that royal titles can subsist under a suzerain, the Chinese delegate brushed them aside by claiming that "under Oriental customs", suzerainty could not countenance Jetsun Dampa holding the title of Bogd Khan under the Grand President of China, as Bogd Khan was previously used in Mongolia to refer to Qing emperors, and "there cannot be two masters within one territory".[199] The same went for the issue of the calendar: according to the Chinese delegate, "among those places which exist in Chinese culture, if there is a country it necessarily has [its own] regnal year…an autonomous region cannot have a regnal year.[200]

Moreover, Chinese negotiators were bent on perpetuating the traditional forms of authority formerly exercised by the Qing dynasty in Mongolia. In contrast to the creation of properly republican ceremonials within 'China proper' which was occurring at the same time, the Chinese negotiators insisted on a clause that all traditional ceremonies between Mongolia and China continue as before.[201] All Mongolian titles, including that of Jetsun Dampa, were to be conferred by the Grand President, who thus would have assumed for himself, in relation to Mongolia, the status of his imperial predecessors. All official appointments were to be confirmed, as before, by Chinese authorities. The Chinese draft treaty also contained a residual clause that provided that "all the matters in Sino-Mongolian relations not covered by the present treaty are to continue as under the old system".[202] Finally, there was much skirmishing over terminology. The Chinese insisted that Mongolia was to be treated as a *difan* (地方), or locality, as opposed to a *guo* (国), or country. Instead of a government (政府), it was only to possess an administration (官吏), and so on.[203] Mongolia, by contrast, insisted on calling itself a *guo* or indeed, somewhat grandly, as a 帝国 (empire).[204]

The Chinese delegation also proposed that lawsuits between Chinese and Mongolians should be tried under Chinese law by Chinese officials. In effect, China was seeking extraterritoriality in Mongolia for Chinese citizens, which sat oddly with its claim of Mongolia as being merely an autonomous part of Chinese territory over which it had sovereignty. This demand was

[199] It is worth noting that until about 1880 Russian diplomatic usage had always referred to the Chinese emperor as the Bogd Khan. Demetrius C. Boulger, *The Life of Sir Halliday Macartney* (London: John Lane the Bodley Head, 1908, 342.
[200] *Beiyang menggu ziliao*, 45. The calendar issue must have seemed an exceptionally petty one for the Russians, yet the issue had some historical resonance. Historically, acceptance of the Chinese calendar by states within the Chinese world-system was an important symbol of its acceptance of Chinese civilization, and tributaries were often required to accept the calendar as a condition of the relationship.
[201] *Beiyang menggu ziliao*, 48, 57.
[202] *Beiyang menggu ziliao*, 49, 58.
[203] *Beiyang menggu ziliao*, 53, 56-58, 69, 72,
[204] *Beiyang menggu ziliao*, 63, 64

justified by the Chinese delegate on grounds of Mongolian officials' mistreatment of Chinese (i.e., non-Mongolians) subjects in legal disputes.[205] The arguments made by China – that the local justice system inadequately protected its subjects – would have been familiar to Western diplomats seeking extraterritoriality in China, but with the added twist that China was claiming the right in relation to one of its own territories. Russia, playing off this apparent contradiction, argued that as Mongolia was Chinese territory, Chinese subjects there ought to be tried by local law, which is *ipso facto* part of Chinese law, and accused the Chinese government inventing new doctrines within international law.[206] Could a country in fact assert extraterritoriality within its own territory? And if it did so, could it still claim to be sovereign over it? Those questions were never satisfactorily answered, but illustrate the fact that Chinese elites were just as likely to condemn foreign practices that impinged on its sovereign authority as they were to use the same techniques against weaker counterparts.

Those debates were based on a more fundamental dispute as to the meaning of suzerainty. Whereas the Chinese delegate defined suzerainty as the voluntary cession, on the part of the suzerain, of part of its sovereignty over a given territory, the Russian negotiator defined it as complete autonomy and self-government for the vassal, subject to reserved powers for the suzerain. Such fine distinctions arguably did not matter from a practical point of view, but it was evidence of China's determination to exclude the Mongolians from the definition of their status. In fact, the Chinese were unwilling even to allow Mongolia a place at a table. In its view, it was not up to Mongolia "to determine the limits of suzerainty as a precondition for accepting suzerainty": since suzerainty was the partial relinquishment of sovereignty by the sovereign power, the sovereign alone decided what should be relinquished.[207] Hence, not only was the struggle over what was suzerainty, but it was also about who was entitled to define it.

More fundamentally, China's negotiating positions reflected a government torn between national and imperial logics of governance, the former to which it aspired, but the continuation of the latter which was for the moment the most practicable. It simultaneously sought to define Mongolia as an undifferentiated part of the Chinese *guotu*, while maintaining its distinctiveness by seeking the wholesale maintenance of pre-republican modes of political control and exterritoriality. Such an approach was bound to lead to absurdities, such as the claim to extraterritoriality in what was purported to be an integral part of China, or the preservation of

[205] *Beiyang menggu ziliao,* 146, 171
[206] *Beiyang menggu ziliao,* 91, 146.
[207] *Beiyang menggu ziliao,* 52.

neidi/*waidi* distinction even though Mongolia was supposed to be undifferentiated *guotu*. All this was bounded by Western norms concerning sovereignty and suzerainty, within which China had to make its case. On the other hand, the Chinese approach was consistent insofar all of its demands were designed to create or to reinforce effective Chinese control over Mongolia's internal administration: the specific logic of governance did not matter so much as long as its control over Mongolia was complete and effective, since only in that manner could it regain internationally recognized rights over it. That the result consisted of an internally incoherent series of negotiating points does not detract from its fundamental purposefulness.

The final tripartite treaty, signed on 7 June 1915, embodied these contradictions.[208] In the treaty, Mongolia was simultaneously under the suzerainty of China, part of Chinese territory, and autonomous from China.[209] Its head was allowed to keep the title of Bogd Khan, but the imperial title was to be conferred by the republican Chinese president (surely the only recorded instance of a president creating an emperor).[210] The Chinese calendar was to be used, but alongside the Mongolian one.[211] Mongolia was forbidden from concluding "treaties concerning political and territorial questions", but could conclude commercial treaties.[212] Neither Russia or China was allowed to interfere in Mongolia's internal administration, but both could establish extraterritorial courts, maintain troops, and China was allowed to maintain officials throughout Mongolia.[213] Effectively, Mongolia was at once Chinese and Mongolian, independent and dependent. The paradoxical situation would only be resolved in the most traditional of manners: taking advantage of the Russian Civil War, in 1919 China invaded Mongolia, forced its leaders to 'petition' the Chinese government to surrender its autonomy, and the Bodg Khan was made to *kowtow* to a portrait of the Chinese president, bringing to an end (for the time being) to the concept of an independent Mongolian state.[214]

What is Tibet? Suzerainty and the Legal Positioning of Tibet, 1914-1951

[208] Agreement between China, Mongolia and Russia relative to Outer Mongolia, signed at Kiachta, 7 June 1915, 221 CTS 101.
[209] Article II.
[210] Article IV.
[211] Article IV.
[212] Articles III and V.
[213] Articles V (internal administration), XIII-XV (extraterritoriality), VII (troops), and X (officials).
[214] Baabar (Bat-Erdene Batbayar), *Twentieth Century Mongolia* (Cambridge: White Horse Press, 1999), 193.

It was not until 2008 that the British foreign secretary abandoned his government's previous recognition of Chinese suzerainty over Tibet, in favour of a recognition of Chinese sovereignty. By that time, the origins of that suzerainty had long been forgotten, yet to different people the term had radically different meanings. To the Chinese government suzerainty was yet another Western colonial imposition, part of the long century of humiliation, and its rejection by the British was merely in conformity with international recognition of Tibet as a part of China;[215] to the Tibetans in exile suzerainty meant acknowledgment that Tibet was not a part of China, and the British government's volte-face was decried as an act of betrayal.[216] As always, the truth was far more complicated, and evolved in ways which those involved in the shaping of Tibet's future could not have foreseen, which have been much misunderstood since.

As described earlier, the legal status of Tibet vis-à-vis China was not one which had a clear answer in the Western legal framework due to the perceived incommensurability between traditional Chinese and Western doctrines of political authority. The British tried to convince the Chinese to accept a suzerainty over Tibet in the 1906 Anglo-Chinese Convention, but were rebuffed by the Chinese envoy, who insisted on Chinese sovereignty instead.[217] The final document said nothing about Tibet's political status, but was essentially negative in nature—Britain promised not to interfere in Tibet beyond certain limits, and the Chinese undertook not to allow any foreign power (i.e. Russia) to interfere in Tibet. Formal recognition of Chinese suzerainty came in the most roundabout of ways the following year, when Britain and Russia, in that year's Anglo-Russian Entente, "recognizing the suzerain rights of China in Thibet", agreed to only negotiate with Tibet through China "[i]n conformity with the admitted principle of the suzerainty of China over Thibet".[218] Not being a party, neither China nor Tibet was legally bound by that 'recognition', but the position taken by the great powers in the region could not help but be influential for the future of both China and Tibet.

Having realised the weakness of their position, China sent a military expedition to establish direct rule over Tibet in 1910, and the Dalai Lama fled to India. Chinese direct rule was short-

---

[215] John Sexton, " Miliband clears up Britain's Tibet policy ", *china.org.cn*, 2 November 2008, http://www.china.org.cn/international/news/2008-11/02/content_16700275.htm.

[216] See Robert Barnett, "Did Britain Just Sell Tibet?" *The New York Times*, 24 November 2008, A31; Free Tibet, "Britain Rewrites History by Recognising Tibet as Part of China for the First Time" *Free Tibet*, 6 November 2008, https://www.freetibet.org/news-media/pr/britain-rewrites-history-recognising-tibet-part-china-first-time.

[217] On the Anglo-Chinese Convention and suzerainty, see Cheney, "Tibet Lost in Translation".

[218] Convention between Great Britain and Russia relating to Persia, Afghanistan and Tibet, signed at St. Petersburg, 31 August 1907, 204 CTS 404. The Entente was a general settlement of the two powers' respective spheres of influence, a preliminary step to the formation of the Triple Entente.

lived; in the chaos that followed the Xinhai revolution in 1911, the Tibetans drove out the Chinese garrison, and in 1913 the Dalai Lama returned, proclaiming the end of the patron-priest relationship (the term he used to characterize the historical relationship between the Qing crown and Tibet) due to the collapse of the Manchus. It was in fact a declaration of independence, which was confirmed the same year in a treaty with Mongolia in which each recognised the other's independence. In any event, it was the only formal international recognition each nascent state would ever receive.

The British Indian government decided to solve the question of Tibet's status once and for all. In Delhi it was feared that the Tibetans might seek assistance against China from Russia, thus undermining Britain's attempts to exclude Russia from the region.[219] Pressure was applied on both Tibet and China, and a tripartite conference, at which Tibet and China had equal status, was convened at Simla in 1913.[220] The Tibetan envoy asked for the repudiation of the 1906 Anglo-Chinese Convention and recognition of Tibetan independence, the exclusion of Chinese troops and officials, as well as the recognition of the Dalai Lama as head of the Buddhism in China. The new Tibetan state would include Qinghai and portions of Sichuan and Gansu—in effect Greater Tibet—and China would be required to pay compensation to Tibet for damage caused during recent military clashes.[221] The Tibetan envoy justified his demands on grounds that the pre-existing relationship between China-Tibet was one of "the disciple towards the teacher". In summary, he said that "Tibet and China have never been under each other and will never associate with each other in the future."[222] As in Mongolia, it was a clear demand for independence, albeit on even less favourable terms than those of the Bodg Khan, without even symbolic retained rights for China. In support of their demands, the Tibetan side came prepared with a large quantity of historical documents aimed at establishing both its historical independence and title over Greater Tibet.[223]

By contrast, the Chinese delegation came unprepared for the Tibetan case, and could muster no documents apart from a list of MPs purported to have been elected for Tibet in the Chinese parliament. It asserted instead authority over Outer Tibet on the basis of "what is called in International Law "effective occupation"", but was at times reduced to quoting from British

[219] Sir Charles Bell, *Tibet: Past and Present* (Oxford: Clarendon Press, 1924) 148-49. Bell was the British political officer for Tibet at the time.
[220] Anon, *The Boundary Question Between China and Tibet: A Valuable Record of the Tripartite Conference Between China, Great Britain and Tibet Held In India, 1913-1914* (Peking, 1940).
[221] Ibid, 1-7.
[222] Ibid, 3.
[223] Ibid, 23-87.

travel books to prove its case.[224] In the main, the Chinese demands were a statement that Tibet forms "an integral part of the territory of the Republic of China", that the rights associated with that fact should be respected by Britain (although the exact nature of the rights was not specified). China would not convert Tibet into a province and Britain would not annex it. Tibetan foreign affairs were to be conducted through China, except for commercial intercourse with Britain. Finally, Tibet would be partitioned into two parts, the boundary of which approximates to the restrictive definition of Outer Tibet.[225]

Finally, the British presented their draft. It also split Tibet into two parts, albeit on terms more favourable for Outer Tibet. Article 2 defined Tibet as "a State under the suzerainty, but not the sovereignty, of China".[226] As suzerain, China would not be deemed a "foreign power" under the 1904 Anglo-Tibetan Convention, and the Chinese representative in Inner Tibet would be entitled to an escort of 100 men. But overall, the draft entirely decoupled suzerainty from sovereignty. China retained no external or international rights in relation to Outer Tibet, and the latter could only conduct relations with foreign countries and with China, through the intermediary of the United Kingdom. Neither was China given any right in relation to Tibet's internal affairs.[227] China could not convert Tibet into a province, represent it in the Chinese parliament, or keep any official or "colonist" inside Outer Tibet (Inner Tibet, which had a large non-Tibetan population, was excluded from these provisions).[228] On those terms, Chinese suzerainty would be entirely deprived of any significance, and Tibet would become a *de facto*, but not *de jure*, independent.

The Chinese negotiator, Ivan Chen (Chen Yifan), protested to the Indian foreign office and in April, after exhaustive talks, managed to wrestle concessions from the British.[229] The "but not the sovereignty of China" formula in the original draft was dropped, so that the exact relationship between sovereignty and suzerainty was obscured once again. The British side also agreed to recognise that "Tibet forms part of Chinese territory", but only as a separate note and not within the main treaty.[230] Chen was however rebuffed when he asked for an agreement defining the "political, not geographical" limits of Chinese suzerainty in Tibet. The British side counted that since the term was vague and there existed differences of opinion among publicists,

[224] Ibid, 15-6.
[225] Ibid, 7-11.
[226] Ibid, 91.
[227] Ibid, 91-95.
[228] Ibid.
[229] Ibid, 101-114
[230] Ibid, 102

the term could not be defined in the treaty, which naturally raises the question of why the term was chosen in the first place.[231] Any discussion aimed at defining suzerainty would be tantamount to winning more concessions for the Chinese side, given that the alternative was to admit that suzerainty meant nothing in practice.

The final draft was presented by Sir Henry McMahon, the British plenipotentiary, in April. Chen was at first reluctant to sign, and it was only when McMahon threatened to drop British recognition of Chinese suzerainty from the treaty (tantamount to an acknowledgment of Tibetan independence) that he relented, and reluctantly initialled the treaty, pending confirmation from his government.[232] Two days later, Chen informed the other delegates that the Beijing government had repudiated his acceptance of the terms. Contrary to later Chinese claims, the reason for the rejection was not based on the rejection of Chinese suzerainty over Tibet, which at any rate must have been known in Beijing for some time, but because the proposed frontier between Inner and Outer Tibet was not acceptable to the Chinese government.[233] The British and Tibetan representatives then proceeded to ratify the convention regardless, with the provision that the Chinese government would be disbarred from its rights under it until it ratified it.[234] The point, at least legally, became moot when the British government, in turn, rejected the convention as being incompatible with the 1907 Anglo-Russian Convention, which forbade either power to deal directly with the Tibetan government "in conformity with the admitted principle of suzerainty of China over Tibet".[235]

Chinese historiography has tended to portray China's actions at Simla as a forceful rejection of British designs over Tibet in general, and of suzerainty in particular.[236] However, although the

---

[231] Ibid.
[232] Ibid, 140.
[233] Ibid, 145-150.
[234] The text of the Convention, along with the text of the Anglo-Tibetan Declaration of 3 July which disbarred China from its rights until it signed the Convention, are reprinted together in Melvyn C. Goldstein, *A History of Modern Tibet, 1913-1951: The Demise of the Lamaist State* (Berkeley, CA: University of California Press, 1989), Appendix C.
[235] It appeared that London had instructed McMahon not to sign on these grounds, but the cable had arrived too late.
[236] See e.g. Liu Qingtao, ""Zongzhuquan" yu chuantong fanshu tixi de jieti——cong "zong fan guanxi" yi ci de laiyuan tan qi" ["Suzerainty" and Disintegration of the Traditional Vassal System: From the Origin of the Chinese Word "Zongzhu Quan (宗主权) "] *China's Borderland History and Geography Studies* 27(1) (March 2017) 1-14; Wang Jiawei and Nyima Gyaincain, *The Historical Status of China's Tibet* (Beijing: China Intercontinental Press, 1997). For a similar post-1949 view from the ROC's perspective, see Tieh-Tseng Li, "The Legal Position of Tibet", *American Journal of International Law* 50(2) (April 1956), 394-404. Chinese sources are unanimous in this interpretation, the only difference being on the degree of blame attached to Ivan Chen for initialling the treaty.

proposed boundary was inacceptable to the Chinese government, Chen had in fact scored an important success. The affirmation that Tibet was Chinese territory, coupled with the deliberate ambiguity over the nature of sovereignty, meant that the prospect of Tibetan independence with British support was averted for the time being, in addition to providing a basis for later Chinese claims over Tibet, which would have been more difficult to maintain had China accepted either that suzerainty was not sovereignty, or that Tibet was not part of its territory.

Thus, the suzerainty the British proposed at Simla was, in fact, quite acceptable to China for the time being. The best evidence for the Chinese government's shift of stance comes from an August 1915 proposal by China to evacuate Chamdo (then under Chinese military occupation) in exchange for Tibetan acknowledgement of Chinese suzerainty in a tripartite treaty (at Simla China had insisted on retaining Chamdo).[237] In other words, China was proposing to cede territory to Outer Tibet in exchange for the acknowledgment of her suzerainty that had been agreed upon at Simla. V. K. Wellington Koo, who conveyed the message to the British ambassador to China, made favourable references to the recently concluded Russo-Sino-Mongolian Kyakhta agreement, which he said China wished to emulate in relation to Tibet, because suzerainty allowed China to "save face".[238] The favourable reference to Kyakhta, which then and now was considered by almost all outside observers as a Russian diplomatic success, is telling as well. This fitted with a broader pattern whereby the Nationalist government was happy to tolerate a great deal of ambiguity on its boundaries in order to focus on other priorities, whilst simultaneously appeasing domestic audiences.[239]

In the end, the British did not pursue the proposal because they sought further concessions as to the border between Inner and Outer Tibet, but the Chinese government's willingness to go so far as to trade territory in exchange for a recognition of its suzerainty demonstrates a significant shift in Chinese attitudes towards suzerainty, in contrast with the late Qing insistence on sovereignty. The Chinese government later reaffirmed their acceptance of suzerainty on a number of occasions, most notably in a 1921 political declaration, in which it asserted it wanted "nothing more than the re-establishment of Chinese suzerainty over Tibet, with recognition of

[237] *Waijiaobu* archives, 03-28-024-03-004. This is an important document, as it is one of the few insights into the private attitude of the Chinese government towards both sets of tripartite talks.
[238] Ibid.
[239] See generally Hsaio-ting Lin, *Tibet and Nationalist China's Frontier: Intrigues and Ethnopolitics, 1928-49* (Vancouver: UBC Press, 2006).

the autonomy of the territory immediately under the control of the Lhassa government", a position the Chinese government seems to have maintained until the 1930s.[240]

Many on the British side found the importance China now attached to its newly declared suzerainty puzzling, since from their point of view Chinese suzerainty in Tibet was effectively meaningless. Jordan said as much to his Chinese interlocutors, whom he thought were sacrificing "the substance over the shadow" by focusing so much on their suzerainty.[241] In fact, the British Indian government had always regarded Chinese suzerainty in Tibet to be something of a fiction. As early as 1903, when China was still resisting the British claim of suzerainty, the viceroy Lord Curzon of Kedleston reported to London that "[w]e regard the so-called suzerainty of China over Tibet as a constitutional fiction—a political affectation which has only been maintained because of its convenience to both parties".[242] Whitehall, on the other hand, was more circumspect, and had rebuked Curzon for his stated view in 1903, as the issue involved not only Indian, but also wider British interests in China.[243]

However nominal the British intended found China's suzerainty to be, they quickly discovered that suzerainty did in fact limit Britain's scope of action in Tibet, if only by dint of the term's legal uncertainty. In 1919, the Tibetan government requested arms from the British; the Chinese and Tibetan armies had clashed in 1917, and China had only recently forced Mongolia to surrender its autonomy, the Tibetan government was naturally anxious to strengthen its defences. The government in Delhi was strongly in favour of the sale, but in London the Foreign Office dithered because Britain was a signatory of the 1919 Saint-Germain Convention, which prohibited international arms sales except to the high contracting parties.[244] China was a signatory but Tibet, with its dubious international status, was not. Obviously, sale through

[240] H.G.W. Woodhead (ed.), *The China Year Book 1921–2* (Tientsin Press, Ltd, 1921). Quoted and reprinted in A.G. Noorani, India–China Boundary Problem 1846–1947 (Oxford: Oxford University Press, 2011), 318-322. No source is provided, but is said to come from "an official of the Waichiaopu".
[241] Sir John Jordan to Earl Curzon of Kedleston, 2 April 1919, FO 371/3688/79285.
[242] Lord Curzon of Kedleston to Lord George Hamilton, 8 January 1903, in East India (Tibet). Papers Relating to Tibet, Cd. 1920, 162. The despatch is unsigned but the words are undoubtedly Curzon's. His impolitic remark was still cited by the Chinese government as proof of British deviousness a century later.
[243] Lord George Hamilton to Lord Curzon of Kedleston, 27 February 1903, in East India (Tibet). Papers Relating to Tibet, Cd. 1920, 183
[244] Convention between Belgium, Bolivia, the British Empire, China, Cuba, Czechoslovakia, Ecuador, France, Greece, Guatemala, Haiti, the Hedjaz, Italy, Japan, Nicaragua, Panama, Peru, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Siam and the United States relative to the Control of the Trade in Arms and Ammunition, signed at St. Germain-en-Laye, 10 September 1919, 225 CTS 482.

China would be impossible. Hence, the exact nature of Chinese suzerainty, which the British at Simla had categorically refused to clarify, came back to haunt them.

The Indian government and some in the Peking legation argued that the status of Tibet under Chinese suzerainty was really similar to that of a British self-governing dominion, another semi-sovereign status which had recently entered the international vocabulary. Just as they could ratify the Convention on their own, nothing precluded Tibet to do so without reference to China.[245] At any rate, they argued, there was no effective government in China as there was in Tibet, and it would be just to help an organised political community to defend itself against an unorganised one.[246] And China's refusal to ratify at Simla deprived it of any suzerain rights in any case. In the final formulation, the Indian government proposed that Britain should deal with Tibet as a "self-governing dominion of Chinese Commonwealth, standing in same relation to China as Canada does to Great Britain."[247] On the other hand, the bulk of Foreign Office opinion was against the sale.[248] Remembering that the notes attached to the Simla Convention did in fact recognize Tibet as part of Chinese territory, an official minuted that "[w]e should find it difficult to argue that Tibet is not subject to Chinese suzerainty – and if so, is Tibet not part of 'China'?"[249] But to that question not even the Foreign Office legal advisor could provide a definitive answer.[250] Whitehall also argued that suzerains, lacking in international personality, could not enter into binding international agreements.[251] In the end, weapons were supplied in order to induce China to reopen negotiations over Tibet after it was remembered that the government had not yet ratified the treaty.

But the episode alerted the British government to the fact that suzerainty was not, in fact, meaningless, even if they did not know, more than anyone else, what it meant. The Foreign Office tried to press the Chinese government into renewing talks, but the latter dithered and the

[245] Curzon to India Office, 23 April 1920, FO 535/F660/22/10
[246] L/P&S/18/344 B. 344. The argument was similar to Thomas Baty's and Japan's argument that China, because of its internal disorder, could not be a state. See Thomas Baty, "Can an Anarchy be a State?" *American Journal of International Law* 28(3) (July 1934) 444-455. From the British point of view, however, this was a somewhat unappealing argument, given its longstanding public support for the integrity of China. Baty's later argumentation along these lines will be discussed further in Chapter 3.
[247] Beilby Alston to Earl Curzon of Kedleston, 27 April 1920, FO 371/5315 F/677/22/10.
[248] Memorandum by Charles Henry Bentinck, 13 May 1920, FO 371/5315 F/834/22/10.
[249] Minute by Miles Lampson, 14 April 1921,FO 371/6607 F/1238.
[250] Minute by William Malkin, 14 April 1921, FO 371/6607 F/1238. Malkin thought Tibet's status as a vassal tended to suggest it was not a part of China, but ignored the fact that the British had accepted the opposite view at Simla. He quoted Oppenheim at some length, but did not take a strong stance either way.
[251] India Office to Foreign Office, 15 October 1919, L/P&S/18/344 B.344 P5833.

tripartite talks were never renewed.[252] Given that the talks were not going to lead to British acknowledgement of Chinese sovereignty over Tibet, the Chinese government had little incentive to disturb the status quo, which served China's interests, at least until Tibet could be reabsorbed like Mongolia.

Thereafter there were periodic British proposals to scrap their recognition of Chinese suzerainty because it hampered Britain's room for manoeuvre in Tibet—a 1943 proposal made it as far as the War Cabinet, but was never acted upon.[253] Nor did the ever-lurking idea of dominion status find favour; suzerainty was already obscure enough without introducing another concept without equivalent in Asia.[254] Meanwhile, Tibet, even though it was *de facto* independent, laboured under the handicap of being a vassal, and was not generally recognized as a sovereign country, though it did maintain relations with a few foreign countries.[255] After World War II, China renewed anew its claims to Tibet and, as is well known, after the settlement of the Chinese Civil War the new Communist regime annexed Tibet in 1951, thus bringing an end to its ostensible suzerainty, although the British maintained the pretence of Chinese suzerainty until 2008, by which time the origins of the concept had become even more nebulous than they had hitherto been.

Conclusion

The tussles over suzerainty on China's borderlands may seem so obscure that that it might be tempting to dismiss them as of antiquarian interest alone. However, the parallel proceedings at Kyakhta and Simla are of importance not only in relation to the understanding of China's understandings of sovereignty, but also to the status of sovereignty and half-sovereignty within

[252] In order to induce China to resume the talks, in 1921 Curzon (by the foreign secretary) told Wellington Koo that unless China came back to the negotiating table Britain would recognise Tibet "as an autonomous state under the suzerainty of China, and intend dealing on this basis with Tibet in the future." It is not obvious why the Foreign Office thought this would be an effective threat, given that these were the terms China all but accepted at Simla and sought in 1915. In the event the Chinese stalled, and the talks never resumed. The text of Curzon's ultimatum is in FO 371/6609/59/10.
[253] Files on this issue are at FO 371/35755 and L/P&S/12/4196.
[254] Similarly, "dependent" and "owing some degree of allegiance" were both rejected. See Ashley Clarke to Peel, 17 January 1944, L/P&S/12/4194.
[255] Anand, "Strategic Hypocrisy", 240. Tibet considered joining the League of Nations and the Universal Postal Union, but in neither case did the Tibetans pursue the application with any seriousness. Had an application been made, it would have been most unlikely to be granted, even putting the legal problems aside.

international law more broadly. Chinese historiography has long situated the Mongolian and Tibetan episodes as part of a broader historical narrative in which successive governments continuously strove for the recovery of its territorial sovereignty against foreign encroachments, culminating (with the exception of the unfinished business of Taiwan) in the recreation of the Chinese geobody, reversing a century of national humiliation.

However, the rather dubious origins of 'modern' suzerainty have obscured a fundamental truth, namely the fact that not only did Republican China agree, in both Tibet and Mongolia, to the notion of Chinese suzerainty, but it was able to shape that empty vessel into a form which not only ensured the continuation of nominal Chinese title over these territories, but also prevented their *de jure* independence, as well as forming the legal basis for the re-absorption of both territories. At a time when it was unable to exercise any form of effective territory over them, China was able to obtain, from two great powers, guarantees that they would not support the independence, as they might well have done, of either Tibet or Mongolia. And given the loose nature of imperial China's authority over Tibet and Mongolia, it is not clear that the two sets of tripartite arrangements represented a diminution of what China could have claimed by way of title under international law in the absence of effective control over these territories. In other words, though it was outwardly an outside imposition, suzerainty was in fact indispensable to China's legal construction of its territory, and to the maintenance of Chinese sovereignty over its borderlands. Meanwhile, although imperial Russia did not survive long enough to witness the aftermath of Kyakhta, the British had ample opportunity, over the following decades, to ponder how a status which it imposed over both China and Tibet in order to neutralise and protect its interests in the latter backfired. Legal indeterminacy, in other words, can work both ways.

China and its Great Power interlocutors were, of course, not the only actors in this story, and the contrasting fates of the still-born Mongolian and Tibetan states on the one hand, and of China on the other, illustrate the centrality of sovereignty as the *grundnorm* of the international system, as well as the importance of legal framing within the international system. Far from being "alienation and subordination rather than empowerment" for the non-European world, as a leading TWAIL scholar put it, sovereignty was in fact essential to China's ability to maintain its control over Tibet and Mongolia and to resist foreign inroads, and fatal to those who lacked it. Because suzerainty was an intermediate status which only existed in relation to sovereignty and not independently of it under then-current understandings of international law, the vassal in fact had limited scope to define the limits of its status, as was evident at both Kyakhta and

Simla where, despite having a seat at the table, their putative sovereign was able to impose legal constraints on their autonomy. And because the framing of suzerainty muddled rather than clarified the location of sovereignty—was it divisible, and if so, in what ways?—neither Tibet nor Mongolia unambiguously acquired the essential attribute of legal sovereignty that would enable them to be recognized as full members of the international society, allowing for their forcible absorption by China.

If Mongolia had been acknowledged sovereign within the international system, China could not have simply 'revoked' its autonomy; and if Tibet had an unambiguous international status Britain would not have been so self-circumscribed in its dealings with it. The location of sovereignty under suzerainty might have thought to be the kind of legal metaphysics without much relevance to anyone except to legal philosophers, but at least in the case of Tibet the conundrum did limit the British government's freedom of action in the region, even if the limits were self-imposed ones. But the very fact that when confronted with the competing demands of a *de facto* state without sovereignty and of a *de jure* sovereign without power the British were inclined to side with the latter against its own interests in the region is in itself telling of the normative force of sovereignty as a recognized international norm. In other words, a weak sovereign was still a sovereign, endowed by sovereignty with a greater status than its actual authority might have justified.

Hence, although suzerainty arose because of shifts in power and actual control on the ground, once established it took a life of its own, the two in a mutually constitutive relationship within a situation of considerable fluidity, especially in relation to power on the ground. The legal framing not only served to legitimize some of the actors and delegitimize others as international persons, but it also shaped and constrained the behaviour of the actors in ways none of them could have reasonably foreseen. For instance, not only did the expected security bonanza for British India never materialise in the case of Tibet, but post-independence India, which inherited the British framing in 1947, found it no less problematic in a myriad of ways which, although outside of the temporal scope of this chapter, are a dramatic illustration of the residual force of the framing even in the post-imperial context. Similarly, it is hard to imagine that the Indian Political Service officers who devised the formula of "Chinese suzerainty and Tibetan autonomy" could have imagined their actions would still be debated a century later in tussles over the future of Tibet, which most of them assumed would eventually have escaped the control of China in due course thanks to their ingenuity.

In 1902, in another context, Sir Arthur Conan Doyle wrote that "a suzerainty is a vague term, but in politics, as in theology, the more nebulous a thing is the more does it excite the imagination and the passions of men."[256] In China just as in South Africa, suzerainty meant different things to different people: to Britain, it was a tool of imperial statecraft which had unexpected repercussions; to China it felt like dispossession, but in fact turned to be an important (if unacknowledged) tool in preserving its territory. To the short-lived and often forgotten Tibetan and Mongolian states, however, suzerainty was their beginning and their end.

[256] Arthur Conan Doyle, *The Great Boer War* (McClure, Phillips, 1901), 20.

Chapter 3: "Can an Anarchy be a State?" China as a Non-State and the Rules of Exit from International Society

> "Statehood has its reasons it is not a naturalistic *deus ex machina*. If and when those reasons do not exist, statehood can claim no particular protection".[257]

> "The road to statehood is a one-way street. Once an entity has become a state it will remain one, no matter how useless and ineffectual its government might have become".[258]

In the July 1934 issue of *The American Journal of International Law* appeared an article cryptically entitled "Can an Anarchy be a State?" The argument was deceptively simple: to be recognised as a state under international law, a people within a territory must have a government. Therefore, it must follow that "the entire absence of government is incompatible with the nature of a state". A state which had no effective government can continue to exist "for a very few days"; but if internal anarchy persists longer, the state ceases to exist entirely. The article ended on an ominous note: "If there is no single government in control or struggling to maintain its control, it is unreasonable to expect foreign countries to stand by and watch with folded hands the development of anarchy. There is neither precedent nor authority directing them to do so, and common sense may well forbid it".[259] Though no specific country was named, the contemporary reader could not have failed to grasp the significance of the argument, nor what country the author really had in mind. For the author was Thomas Baty, the British legal advisor to the Japanese foreign ministry, and his views on the extinction of states had formed a crucial element of Japan's justification for its invasion of Manchuria which it presented to the League of Nations in 1932.

Twenty years later, by then an embittered exile, Baty complained that "all the troubles of the Far East during the last thirty years flow directly from the unscientific and feeble idea of statesmen that there must always be a China—that is the territory of the old Empire, which

[257] Martti Koskenniemi, "The Future of Statehood" *Harvard International Law Journal* 32 (Spring 1991), 397-410, at 407-08.
[258] Vaughan Lowe, *International Law* (Oxford: Oxford University Press, 2007), 165.
[259] Thomas Baty, "Can an Anarchy be a State?", *American Journal of International Law* 28 (3) (July 1934), 444-55.

vanished in 1912, must always be a sovereign and indivisible international unit".[260] Today, Baty's views on the subject have been thoroughly rejected, and international law scholars and practitioners agree that once recognised there is a strong presumption against a state's death, if states can die at all. Instead, states that by reason of their internal conditions cannot fulfil their international obligations are commonly described as 'failed states'. A failed state, however, does not cease to exist legally, but continues to maintain its international legal personality; it enjoys all the international incidents of statehood, even when it is incapable of fulfilling its international obligations, and even when an alternative government capable of doing so has emerged within a part of its territory. Yet Baty's challenge still stands today: can an anarchy be a state? And must there always be a China?

Being comes before well-being, and a study of China's sovereignty during the Republican Era must confront its uncertain international status, the product of prolonged internal strife. Through a study of Japan's failed challenge to Chinese statehood following its invasion of Manchuria in 1931, I argue that the first part of the twentieth century witnessed an important, but hitherto underappreciated transformation in the international legal rules governing the membership of international society. Legitimacy and effectiveness, traditionally the twin pillars of statehood, became decoupled from each other, with legitimacy eventually becoming the principal criterion for statehood. As a result, the membership of the international society was stabilised, leading to its transformation from a relatively open-ended system with an unstable membership to a closed system where membership, once acquired, is *de facto* permanent, and where a lack of an effective government, long regarded as a *sine qua non* for statehood, no longer precluded the continued maintenance of statehood. Moreover, I argue that the debates surrounding China's international status during that period revealed that the effectiveness criteria for statehood, although often described as an 'objective' test, is inherently open-textured, and its application was fundamentally political and culturally contingent in practice, which helped to hasten its demise.

This chapter proceeds in four parts. The first section describes the curious neglect of state extinction within international relations, and the classical understanding of state death through internal anarchy (the lack of any effective government) within international law. The second section describes how Japan, during the Manchurian Crisis of 1931 –32, attempted to justify its invasion of Manchuria by arguing that China, due to its internal condition, was no longer a state

[260] Thomas Baty, *Alone in Japan: The Reminiscences of an International Jurist Resident in Japan 1916-1954* (Tokyo: Maruzen, 1954), 22.

entitled to the protection of international law. The third section explains why, as a result of both shifts within international law doctrine and of pragmatic considerations, Japan's arguments failed to carry the day in the League of Nations, even though most Great Powers agreed with Japan's assessment of China's internal condition. The conclusion explores the importance of the episode in the evolution of the rules governing membership of international society, as well as its legacy for Chinese statehood to the present day.

How Does a State Die? Theoretical Considerations[261]

If a state can come into being, it must follow that a state can also die. Yet international relations has traditionally neglected the subject, a curious situation in a discipline whose mainstream puts so much emphasis on the question of state survival.[262] The imbalance is often justified by IR scholars on the grounds that state extinction is, at least in the Westphalian era, a rare event: Alexander Wendt, for instance, baldly states that "[t]he death rate of states is almost nil",[263] while Stephen Waltz writes that "[i]n the international system few states lose their lives".[264] The English School, despite its emphasis on the shifting nature of international society's membership, does little better: in practice, the expansion of international society is treated as a sort of one-way ratchet, an irresistible process into which all existing polities are invariably drawn international society one way or the other, and from which there is no exit, leaving, as Edward Keene points out, a conceptual model incapable of accounting for the experiences of the numerous political entities which belonged to the 'family of civilised nations' at various times, but which subsequently disappeared from the map.[265] Rather more has been written about state recognition from a constructivist point of view, particularly in its social dimensions; and

[261] Political scientists generally speak of "state death" whereas lawyers prefer the more dramatic "state extinction"; English School scholars will also refer to "exit from international society", a slightly broader concept which includes cases such as Somalia. In this paper the first two terms are used interchangeably as the context dictates. See also Norman Davies, *Vanished Kingdoms: The History of Half-Forgotten Europe* (London: Penguin, 2011).
[262] I adopt Tanisha Fazal's definition of state death as "the formal loss of control over foreign policy to another state", which she takes to be synonymous with "exit from the interstate system", a definition based on the Weberian understanding of the state, but which also matches international law's definition of statehood. See Tanisha M. Fazal, *State Death: The Politics and Geography of Conquest, Occupation, and Annexation* (Princeton: Princeton University Press, 2007). See also Boris Kadercan, "Making Sense of Survival: Refining the Treatment of State Preferences in Neorealist Theory", *Review of International Studies* 39(4) (October 2013), 1015-37, 1020-21.
[263] Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), 279.
[264] Kenneth N. Waltz, *Theory of International Politics* (Long Grove, IL: Waveland Press, 2010), 137.
[265] Edward Keene, "The Standard of 'Civilisation', the Expansion Thesis and the 19th-century International Social Space", *Millennium* 42 (3) (June 2014), 651-673, 656.

this literature does furnish some useful frameworks for thinking of state death as a socially- and legally-driven, dynamic process.[266] Finally, Robert H Jackson's work on quasi-statehood—states which enjoy full legal sovereignty on the international plane but are unable to perform core state functions—continues to be influential, although his argument that such entities are the result of a "new sovereignty regime" born after the Second World War discounts the substantial pre-1945 history involved, some of which is discussed in this chapter.[267]

The same asymmetry is obvious within international law. Whilst the creation of states is a core subject within international law scholarship, state extinction is decidedly less in vogue. This can partly be attributed to a normative "terror of sovereignty vacuum",[268] but the scarcity of modern state practice must have played a role as well. James Crawford's standard treatise on the creation of states, for instance, dedicates a cursory chapter to the subject, almost as an after-thought. Like most authorities, he observes that "there is a strong presumption against the extinction of States once firmly established" and that this presumption is even stronger, when the state's disappearance was brought up through international illegality.[269] Beyond this, he remains vague as to under what circumstances a state can go extinct other than through a voluntary process, since "[a] State is not necessarily extinguished by substantial changes in territory, population or government, or even, in some cases, by a combination of all three" (these being three of the four criteria for statehood under the "objective" theory of statehood).[270] Vaughan Lowe is even more categorical: "[t]he road to statehood is a one-way street. Once an entity has become a state it will remain one, no matter how useless and ineffectual its government might have become.[271] All observe that state extinction is a rare event in the post-war era: from 1945 to 2005, Crawford counts there were ten cases of state extinction, only three of them involuntary (Hyderabad, South Vietnam, and Yugoslavia); during the same period, 128 new states came into existence or were reconstituted.[272]

---

[266] See for instance Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States Since 1776* (Oxford: Oxford University Press, 2010); George Kyris, "State recognition and dynamic sovereignty", *European Journal of International Relations* 28(2) (2022), 287-311.
[267] Robert H. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Oxford: Oxford University Press, 1991).
[268] Mariano Aznar-Gómez, "The Extinction of States", in Eva Rieter and Henri de Waele (eds.), *Evolving Principles of International Law: Studies in Honour of Karel C. Wellens* (Leiden: Martinus Nijhoff, 2012), 25-54, 26.
[269] James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2007), 700-717.
[270] Ibid, at 700. See also Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clarendon Press, 1994), 41; J. R. Brierly, *The Law of Nations: An Introduction to the International Law of Peace*, 5th edition (Oxford: Clarendon Press, 1955), 137.
[271] Lowe, *International Law*, 165. He notes, however, that this was not always accepted, citing Baty's views.
[272] Crawford, *The Creation of States in International Law*, 715.

Underlying the neglect of the subject in both disciplines is an assumption that state death is a rare event. Yet, until recently, state extinction was far from uncommon. On a restrictive definition,[273] of the twenty-three states which were indisputably members of the international society in 1816, fourteen (60%) have subsequently exited it at least once; four states, whose membership ceased as a result of the Second World War, later re-joined it, but the remaining ten became permanently extinct. Extending the timeframe, of the 35 states that joined the international society between 1816 and 1900, sixteen—almost half—subsequently exited it at some point, six of them permanently.[274] Using a more generous definition of statehood, which included more non-European entities than standard lists, Tanisha Fazal estimated that about 30% of all the states which have existed since 1816 have exited the international system at some point during their existence.[275] The extent of state death in the modern state system is even more dramatic if the criteria for inclusion are expanded to cover non-European entities often omitted from standard lists of states. For instance, using the most recent version of the International System(s) Dataset (ISD), which includes a significant number of non-European entities excluded from the COW country list, 287 of the 482 (59,5%) sovereign states that have existed between 1816 and 2016 exited the international system, with an especially high incidence in Asia and Africa during the long nineteenth century.[276]

A particularly interesting but often overlooked mechanism for state death is that of loss of statehood through prolonged internal anarchy or lack of government. Well into the twentieth century, it was universally accepted within international law that internal anarchy could lead to the loss of statehood, a position shared by publicists from both the naturalist and positivist camps. Of the former, James Lorimer stated categorically in his 1883 *Institutes of the Law of Nations* that "[w]hen a State, by losing control over its citizens, falls into anarchy it ceases to

[273] The definition employed by the Correlates of War (CCW) Project is as follows: before 1920, the entity must have had a population greater than 500,000 and have had diplomatic missions at or above the rank of *chargé d'affaires* with Britain and France. After 1920, the entity must be a member of the League of Nations or the United Nations, or have a population greater than 500,000 and receive diplomatic missions from two major powers.
[274] Correlates of War Project. 2017. "State System Membership List, v2016", http://correlatesofwar.org
[275] Fazal, *State Death*, 3.
[276] The ISD criteria are that a state should have 1) A population of at least 10,000; 2) Autonomy over a specific territory; 3) Sovereignty that is either uncontested or acknowledged by the relevant international actors. In addition of being inclusive of small states, the ISD criteria also avoids the Eurocentric bias of requiring states to exchange envoys with Britain and France. As the authors note, Japan for much of the nineteenth century had few diplomatic linkages with foreign countries as a matter of state policy, but its statehood was never challenged for that reason. Charles R. Butcher and Ryan D. Griffiths, "States and their International Relations since 1816: Introducing Version 2 of the International System(s) Dataset (ISD)", *International Interactions* 46(2) (2020), 291-308. Finally, *contra*, Edward Keene has criticised the focus on state death of such statistical approaches for 'flattening' the 19th century international and for the loss of information it creates. See Edward Keene, "Mapping the global international system of the nineteenth century", on file with the author.

be a State", as "[t]he overthrow of the rational will of any single State…becomes the warrant for the assertion of the rational will of the other States with which it formerly maintained…international relations".[277] On this view, a state's place in the international society is subject to the continuous approbation of its other members, which is subject to revocation if anarchy persists within it. By way of illustration, he mentioned France after Napoleon's defeat at Sedan and, prophetically, the takeover of Russia by 'Nihilists', in which case "the international recognition of Russia would immediately cease".[278] At the other end of the spectrum, William Edward Hall, whose understanding of international law was as positivist as Lorimer's was based on natural law, concurred. In *A Treatise of International Law* (1890) he stated that statehood is "retained so long as the corporate person undergoes no change which essentially modifies it from the point of view of its international relations" such as "the capacity of the state to give effect to its general legal obligations".[279] Fifteen years later, Lassa Oppenheim, under the heading of "extinction of international persons" in his landmark *International Law: A Treatise* (1905), also acknowledged "permanent anarchy within a State" as a possible way for a state to disappear though, unlike Lorimer, he thought it would be an unlikely occurrence.[280] What united publicists was their acceptance of the basic syllogism that the criteria governing the recognition of states must be the same ones that govern its disappearance.[281]

Contemporary state practice also supported the idea that a state of internal anarchy could be incompatible with statehood and sovereignty. For instance, under the 1904 Roosevelt Corollary, the United States claimed a right to intervene militarily in countries of the Western hemisphere in case of "chronic wrongdoing, or an impotence which results in *a general loosening of the ties of civilized society*" [emphasis added] on the part of a government.[282] Following that doctrine, the United States occupied Cuba in 1906 in order to "restore order" and to "protect life and property", establishing a provisional government in the process.[283] This was followed

[277] James Lorimer, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities* (Edinburgh and London: William Blackwood and Sons, 1883), 132.
[278] Ibid, 133.
[279] William Edward Hall, *A Treatise on International Law* (Oxford: Clarendon Press, 1890), 22.
[280] Lassa Oppenheim, *International Law: A Treatise. Volume I: Peace*, 2nd edition (London: Longmans, Green and Co, 1912), 124. The passage is repeated without comment in subsequent editions.
[281] See also Ineta Ziemele, "States, Extinction of", in Rüdiger Wolfrum and Margrét Sólveigardóttir (eds.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2008), https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1111
[282] Theodore Roosevelt, "Annual Message of the President to Congress", 6 December 1904, in United States, *Papers Relating to the Foreign Relations of the United States* (Washington DC: Government Printing Office, 1904), XLI.
[283] Louis A. Pérez, Jr., *Cuba and the United States: Ties of Singular Intimacy* (Athens, GA: University of Georgia Press, 2003).

by the occupation of Haiti in 1915 and of the Dominican Republic in 1916, ostensibly on the same grounds. In each case an US-appointed provisional government, which assumed the sovereignty of the state, was established. All these republics were recognised as sovereign states at the time of America's intervention, and academic authorities recognised them as members of the Family of Nations. However, their previous membership of the international system counted for naught, and there was little international backlash against America's actions. Outside of the United States, examples of this phenomenon are scarcer, though the British, for instance, claimed the power to depose rulers under its protection on grounds of "maladministration".[284] Even if few, if any of these rulers' territories were full members of international society in the same way as the Central American republics, their nominal sovereignty was recognised by at least the protecting power.[285] At any rate, the fact that few states protested the legality of America's actions under the Roosevelt Corollary is evidence of a fair degree of acceptance of America's stance within the international community.[286]

The norm was reinforced further by the Great Powers' refusal to recognize new states, especially those of a revolutionary origin, unless and until they demonstrated a minimum degree of internal governance and stability. The British government refused to recognise Mexico and Argentina in 1823 and 1824 until it was satisfied the new states "acquired a reasonable degree of consistency" and the "confidence and goodwill of the several orders of the people", but also not until the new republics had sufficient military means to defend against a potential Spanish attack.[287] Similarly, the United States refused to recognize Cuban independence on at least three separate occasions because of the rebels' lack of "some known and defined form of government… in which the functions of government are administered by usual methods, competent to mete out justice to citizens and strangers, to afford remedies for public and private wrongs, and able to assume the correlative international obligations and capable of performing the corresponding international duties resulting from its acquisition of the rights of

[284] Fiona Groenhout, "Loyal Feudatories or Depraved Despots? The Deposition of Princes in the Central India Agency, *c*. 1880-1947", in Waltraud Ernst and Biswamoy Pati (eds.), *India's Princely States: People, Princes and Colonialism* (Abingdon: Routledge, 2007), 99-117.
[285] See Lauren Benton, "From International Law to Imperial Constitutions: The Problem of Quasi-Sovereignty, 1870-1900", *Law and History Review* 26(3) (Fall 2008), 595-619 and Priyasha Saksena, "Jousting Over Jurisdiction: Sovereignty and International Law in Late Nineteenth-Century South Asia", *Law and History Review* 38(2) (May 2020), 409-457.
[286] The exception was Latin America, whose distinctive view of the question of state extinction will be discussed later.
[287] George Canning's despatch of 10 October 1823, quoted in Hersch Lauterpacht, *Recognition in International Law* (Cambridge, Cambridge University Press, 1947), 28.

sovereignty."[288] Closer to the Manchurian Crisis, the approach was also adopted by the committee of jurists appointed by the League of Nations to settle the dispute over the Åland Islands in 1920, who found that Finland was not a sovereign state between 1917 and 1918 due to the "abnormal character of her internal situation", because of internal strife, the absence of an effective government, and general lack of a "stable political organisation".[289]

In 1936, the first (and so far the last) attempt to codify the rules of state extinction occurred when the *Institut de droit international*, a body comprised of the world's leading international lawyers, passed a set of resolutions on the recognition of new states and new governments: Article 5 stated that "Recognition *de jure* is irrevocable; it ceases to have effect only in case of the definite disappearance of one of the essential elements [of statehood].[290] During the drafting of that article, the Swiss delegate Felix Calonder stated, *nem con*, that "this consists only of formulating an idea on which the whole *Institut* is in agreement: if a State cannot fulfil its functions and falls into a chaotic state, the effects of the recognition cease".[291] Debate, such as it was, concerned whether it was necessary for the recognition of the state to be revoked in these cases or whether recognition automatically became a dead letter.[292] There was no suggestion that, once in existence, a state was entitled to exist forever notwithstanding prolonged internal chaos. Writing as late as in 1945, Hans Kelsen, in his *General Theory of Law and State*, summarized the existing legal position as being that "a State ceases to exist when the government is no longer able to obtain obedience to the coercive order which until now has been efficacious for this territory".[293]

Hence, by the time of the Manchurian Crisis in 1931, international law unambiguously recognized the possibility that internal anarchy could lead to the extinction of statehood. However, the next sections will show that, whilst this was widely accepted in theory, and while most Great Powers agreed with Japan's dim view of Chinese statehood, the argument ultimately

[288] United States. Government Printing Office. *Papers Relating to the Foreign Relations of the United States, Transmitted to Congress, with the Annual Message of the President, December 6, 1875, Volume I* (Washington D.C.: Government Printing Office, 1875), viii.
[289] League of Nations O.J. Special Supplement No. 3 (October 1920), 8.
[290] "La reconnaissance *de jure* est irrévocable ; elle ne cesse ses effets qu'en cas de disparition définitive de l'un des éléments essentiels dont la réunion se trouvait constatée au moment de la reconnaissance."
[291] [I]l ne s'agit que de formuler une idée sur laquelle l'Insiitut tout entier est d'accord : si un Etat ne peut remplir ses fonctions et tombe dans une situation chaotique, les effets de la reconnaissance cessent." *Institut de droit international. Annuaire.* Vol. 39 (Brussels: Goemaere, 1936), 214.
[292] Ibid., 206-16.
[293] Hans Kelsen, Anders Wedberg (trans.), *General Theory of Law and State* (Cambridge, MA: Harvard University Press, 1949), 220.

failed to convince, as a result of changes which occurred both within international legal doctrine and because of pragmatic considerations.

"Fictions Cannot Last Forever": the Manchurian Crisis

After the establishment of the Republic of China in 1911, internal conditions in the country steadily worsened. From 1917 and 1927 there were two, sometimes three, governments claiming to be the sole national government of China at any given time. This was in addition to the ravages of the Warlord Era, which led to almost continuous internecine fighting and the creation of hundreds of *de facto* independent fiefdoms within the country.[294] In these circumstances, Chinese thinkers unsurprisingly worried about the extinction of the country, and leading intellectuals such as Liang Qichao openly warned that China would become a *wanguo* (perished nation), like India and Poland, then under British and Russian rule.[295] Despite such fears, China's international legal personality survived the overthrow of the Manchus and the subsequent decades of internal chaos exceptionally well, at least in theory. The republican government easily gained international acceptance as the legal successor to the Qing dynasty and, in 1920, the Republic of China was admitted as one of the original members of the League of Nations named in the Covenant of the League, which required prospective members to be "organised peoples", capable of fulfilling its international obligations[296] (although, as will be described later, the admission of China was not without controversy). Chinese sovereignty was subject to various restrictions, chiefly in the economic sphere and in the realm of personal status. However, China's formal statehood was not questioned, and the 1922 Nine-Power Treaty, whilst legitimising the aforementioned fetters on Chinese sovereignty, committed the signatories to guarantee "the sovereignty, the independence, and the territorial and administrative integrity of China".[297] Despite the upbeat language of the Nine-Power Treaty, the "territorial and administrative integrity of China" was widely regarded within the

[294] See generally John K. Fairbank (ed.), *The Cambridge History of China: Volume 12, Republican China, 1912-1949* (Cambridge: Cambridge University Press, 1983).
[295] Liang Qichao, "Mieguo xinfa lun" [New Techniques for the Destruction of Countries], Yinbingshi wenji [Collected Writings from the Ice-Drinker's Studio – Collected Essays], (Taipei: Zhonghua shuju, 1984), 6: 32–47. On *wanguo*, see Rebecca E. Karl, *Staging the World: Chinese Nationalism at the Turn of the Twentieth Century* (Durham, NC: Duke University Press, 2002).
[296] *Covenant of the League of Nations*, Preamble.
[297] Treaty between the United States of America, Belgium, the British Empire, China, France, Italy, Japan, the Netherlands, and Portugal, Signed at Washington February 6, 1922, United States Treaty Series No. 723, 6 February 1922.

international community as something of a fiction; there was very little belief in the Chinese government's ability to manage and to control its territory. As if to underscore the point, while the Washington Conference at which the Nine-Power Treaty was negotiated was underway, the nominal president in Beijing was forced out by a warlord, who assumed the office for himself, before being forced out in turn a year later.

However, no public challenge to China's claim to statehood occurred until events in Manchuria set an audacious legal argument in motion. On 18 September 1931, elements of the Imperial Japanese Army blew up a small section of Japanese-owned South Manchuria Railway. Following the explosion, the Imperial Japanese Army invaded Manchuria, and on 18 February 1932 proclaimed into existence Manchukuo, nominally an independent kingdom but in reality a Japanese puppet state. The Chinese government, unable to muster the resources for a counterattack, turned to the international community. Using its status as a founding member of the League of Nations, it appealed to the organisation for assistance in September, and the next month the League mandated Japan's withdrawal from Manchuria.

At first, the Japanese government claimed necessity and self-defence as justifications for its actions, but soon found the need to make a more substantial argument to assuage international opinion, especially after the establishment of Manchukuo. On 22 February 1932, four days after the proclamation of Manchukuo, the Japanese government advanced an explosive claim: China, due to her persistent internal anarchy, could no longer be considered a state under international law, having lost one of the essential elements of statehood, and was therefore not entitled to the protection of the League Covenant. In the words of Japanese foreign minister Kenkichi Yoshizawa:

> "[I]t cannot be emphasized that the Japanese Government do not and cannot consider China is an "organized state" within the meaning of the League of Nations Covenant. China has, it is true, been treated in the past by common consent as if the expression connoted an organized people. But fictions cannot last forever, nor can they be tolerated when they become grave sources of practical danger…there is no unified control in China and no authority which is entitled to claim entire control of China."[298]

Japan did not push this argument to its logical conclusion: it did not argue that China's place in the League should be vacated, nor did it break off diplomatic relations: in fact, it professed to be happy to "recognise the fiction of Chinese sovereignty".[299] (In this Japan acted differently

[298] League of Nations Archives, C.266M.154.1932.VII, 23 February 1932.
[299] *League of Nations O.J.*, Vol 13, 1873 (21 November 1932).

than Italy, which claimed Abyssinia had ceased to be under the League's protection due to the doctrine of *debellatio,* whereby sovereignty can be extinguished by military conquest). But the radical implications of the Japanese position were obvious: if accepted, it would mean that China was not entitled to the protections associated with its membership of the League of Nations, because it was no longer entitled to be a member of the League, nor indeed a state. As was noted at the time, if the claim were accepted, it would remove "the very basis for any restraint upon, or even criticism of [Japan's] actions *vis à vis* China".[300] It would also be the first time since the establishment of the League that one of its members advanced such an argument.

The Japanese government followed up its statement in August by releasing a legal opinion by Thomas Baty, the legal advisor to the Japanese foreign office. In the opinion, which would prove extremely influential on Japanese public opinion, Baty began by arguing that the 1922 Nine-Power Treaty did not make the Chinese state's international legal personality indestructible, nor was it intended to preserve China as it was: "[t]here was no intention to bind down China to an unalterable and unchangeable unity. That would have been to make her a controlled state", exempt from "'the ultimate remedies for misgovernment", by which he meant the death of the old state and the birth of new ones in its stead.[301] As to the Nine-Power Treaty, he argued that, despite the fact that China was in a state of anarchy in 1922 as well, there was at least some hope the central Chinese government could recover its control.[302] A decade later, however, there was no such prospect, especially in Manchuria. Hence, he concluded, it was perfectly legal for Japan to recognise a "spontaneously and solidly organised native Government in Manchuria".[303]

The central flaw of this argument was obvious: no one seriously believed the Japanese claim that Manchukuo was anything except a puppet state created by Japan.[304] Later commentators have also emphasized the degree to which Baty's views were, by the 1930s, at the fringes of international law, resting as they did on strong naturalist views expressed in pithy naturalist syllogisms that took little account of the developments in international law since the early

[300] Westel W. Willoughby, *The Sino-Japanese Controversy and the League of Nations* (Baltimore: Johns Hopkins Press, 1935), 254-55.
[301] *Japan Advertiser*, 17 August 1932.
[302] Ibid.
[303] Ibid.
[304] Baty was apparently one of the few in the dark, and his colleagues at the Foreign Ministry felt badly enough to tell him of the truth later.

1900s.[305] However, this view suffers from at least two problems. Firstly, as was discussed earlier, the view that anarchy could extinguish statehood was at one point one shared by almost all international law writers, both positivist and naturalist. Secondly, what is both striking and surprising from both the opinions of contemporary international jurists and diplomats was the fact that the Japanese government's, and Baty's views on China's internal organisation were widely shared, if not outright unoriginal. Far from being a fringe position, few had any belief in China's administrative integrity, and many considered that this should affect her international status as a state. The Japanese government put so much reliance on the argument that China was not an "organised state" simply because its factual basis was already received wisdom within the international community, albeit one which only Japan took to its natural conclusion.

For instance, just before Baty's opinion was made public, H. A. Smith, Professor of International Law at the University of London claimed, when discussing the League of Nations' practice to ask applicant states whether they met the criteria of statehood, that "had these tests been imposed upon China it is clear that no satisfactory answers could have been returned". China's membership "must…be regarded as anomalous" and was only the by-product of China having been named as a founding member of the League by the Covenant.[306] Similarly, when the British Foreign Office's legal advisor read the Baty opinion, he criticised because it claimed Manchukuo's formation was the result of the will of its inhabitants, which was manifestly untrue, but Baty's conclusions as to China's international status and internal conditions were not challenged at all.[307] To the German publicist Carl Schmitt, the fact that the League of Nations had admitted China to its membership was evidence of its irrelevance in Asian affairs, as China was a member despite having "no effective administration".[308]

---

[305] Vaughan Lowe, "The Place of Dr. Thomas Baty in the International Law Studies of the 20th Century", *Oxford Legal Studies Research Paper No. 11/2008*, 9 March 2008; Peter Oblas, "Naturalist Law and Japan's Legitimization of Empire in Manchuria: Thomas Baty and Japan's Ministry of Foreign Affairs", *Diplomacy & Statecraft* 15(1) (2004), 35-55; Anthony Carty, "Thomas Baty: An International Lawyer as Public Intellectual between Imperial Japan and the Republic of China" *Japanese Yearbook of International Law* 56 (2013)70-94. Interest in Baty in recent years has been surprisingly strong, chiefly as a cautionary tale for international lawyers.

[306] Herbert Arthur Smith, *Great Britain and the Law of Nations: A Selection of Documents Illustrating the Views of the Government of the United Kingdom upon Matters of International Law*, Vol 1, (London: P. S. King & Sons, 1932), 29-30. Smith later became the doctoral supervisor of the Chinese international judge Wang Tieya, who was taken aback to hear Smith declare his country did not exist.

[307] FO 371 F 1719/1/10, 24 February 1932; FO 371/16177 F 6891/1/10, 19 August 1932. See also Anthony Carty and Richard Smith, *Sir Gerald Fitzmaurice and the World Crisis: A Legal Adviser in the Foreign Office, 1932-1945* (The Hague: Kluwer Law International, 2000).

[308] Carl Schmitt, "Der Völkerbund und Europa" (1927), reprinted in Günter Maschke (ed.), *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik. 1924–1978* (Berlin: Duncker & Humblot, 2005), 240-254.

At the political level, of the signatories of the Nine-Power Agreement, the United States was by far the one the most sympathetic towards China. Yet the head of the State Department's Far Eastern Section openly expressed his belief that "China…has not political organization…None but a politically organized people, a state, can at once enjoy the rights and fulfil the obligations of sovereignty…From the point of view of foreign relations, there is now in China no person or group whom a majority of the Chinese people, or a majority even of the leaders, recognize as having authority to make commitments on China's behalf or to accept commitments made by the Powers in China's favor."[309] Meanwhile, within the British Foreign Office, it was thought that "there is virtually no Chinese Government in existence (the nominal Government at Nanking is without power and on the point of collapse)".[310] As recently as 1927, the British government had landed substantial military forces in Shanghai: when pressed to withdraw by the League, it declined, citing China's internal anarchy, which "modified the hypothesis upon which the Washington policy was based".[311] This justification was virtually undistinguishable from Japan's in 1932, a fact underlined by the Japanese government, and which may explain the British government's lack of enthusiasm in condemning Japan.

Early international reaction to Japan's invasion of Manchuria also played a role in encouraging Japan to pursue this line of argument. When the British government announced in January 1932 that it would not protest Japan's invasion of Manchuria, *The Times* approved of the policy, stating that "[n]or does it seem to be the immediate business of the Foreign Office to defend the 'administrative integrity' of China until that integrity is something more than an ideal. It did not exist in 1922, and it does not exist to-day. On no occasion since the Nine-Power Treaty was signed has the Central Government of China exercised any real administrative authority over large and varying areas of its territory."[312] The editorial was generally taken as an authoritative interpretation of British official views, and Henry L. Stimson, then the American Secretary of State, later blamed it for having emboldened the Japanese government to adopt that line of argument that it hitherto "had not dared to argue".[313] A better view is that Japan would not have

[309] Stanley K. Hornbeck, "The Attitude and Policy of the United States Toward China", *Annals of the American Academy of Political and Social Science* 132(1) (July 1927), 48-51, 48.
[310] Charles William Orde, "Memorandum by Mr. Orde", 15 January 1932, in Rohan Butler, Douglas Dakin, and M. E. Lambert (eds.), *Documents on British Foreign Policy 1919-1939. Second Series. Vol. IX. The Far Eastern Crisis, 1931-1932* (London: Her Majesty's Stationery Office, 1965), 127-29.
[311] *League of Nations O.J.*, March 1927, 292.
[312] "No British Note to Japan", *The Times*, 11 January 1932, 13.
[313] Henry L. Stimson, *The Far Eastern Crisis: Recollections and Observations* (New York: Council on Foreign Relations, 1936), 105.

needed any encouragement to advance such a commonly-held opinion, which was in fact expressed openly by senior members of the State Department.

Finally, the maintenance of extraterritoriality by Western powers in China, under which Chinese sovereignty was limited in several areas, was entirely premised on the idea that China's internal state made it impossible for her to respect her treaty engagements toward foreigners. The Japanese government did not fail to grasp the significance of this, and pointedly noted that since "the abnormal conditions of China are such as can scarcely qualified her to be a modern organised state", many countries have "retain[ed] extraordinary privileges which operate as limitations of Chinese sovereignty".[314] Western powers' imposition of extraterritoriality on China, in Japan's view, was really a step away from recognising that China was not a state at all.

Japan's confidence in the strength of her argument also helps explain why it agreed to the establishment of the Lytton Commission to investigate the rights and wrongs of the Manchurian Crisis. During the debates at Geneva on the establishment of the Commission, the Japanese delegation was persistent in broadening its terms of reference so that the Commission would acquire "a real knowledge of the situation as a whole both in Manchuria *and in China itself*" (emphasis added).[315] By linking the situation in Manchuria with that in the rest of China, Japan hoped that the latter would colour the Commission's view of the former as well. The final terms of reference were deliberately wide, and the Commission undertook extensive inquiries into China's internal conditions within and without Manchuria.[316]

Japan's claim was received in China with outrage. The robust Chinese rebuttal was two-fold. First, Chinese delegates endeavoured to disprove, or at least to give another interpretation to the factual basis for Japan's claims. In its submissions, the Chinese delegation endeavoured to argue that the country's internal turmoil was the inevitable by-product of the process of modernisation that it was undergoing at the time. The Chinese government also argued that it should not be held to the same standards as Western countries. W.W. Yen, the Chinese representative, argued that a degree of chaos was to be expected in a country "as large as Europe and [with] a population of four hundred million people", especially one which recently was "an absolute monarchy and was suddenly transformed into a republic". Hence, "a certain amount

[314] League of Nations, *Appeal of the Chinese Government. Observations of the Japanese Government on the Report of the Commission of Inquiry*, C. 775. M. 366. 1932. VII., 19 November 1932, 36.
[315] *League of Nations O.J.*, Vol 12, 23 November 1931, 2366.
[316] League of Nations, *Appeal by the Chinese Government: Report of the Commission of Inquiry* (afterwards "Lytton Report"), C. 663. M. 320. 1932. VII., 1 October 1932, 5-9.

of unrest and commotion" must be expected.[317] In effect, the argument twisted on its head the one traditionally employed by Great Powers in relation to China, which they used to justify the maintenance of extraterritoriality and of other limits on Chinese sovereignty.

Secondly, Japan's internal organisation came under extensive attack: could Japan, it was asked, be considered an organised state, with its "army and navy running amok and out of the control of the Government?" This was not an idle question, as during 1931-32 Japan underwent three coup attempts, all involving Japan's China policy; just before the release of the Lytton Report, the Japanese prime minister was assassinated, again over the Manchurian question. The Chinese delegation apparently considered asking the League to investigate Japan's internal organisation in response to Japan's claims, but the proposal was never acted upon.[318] Chinese civil society also mobilised: the claim that China was not a state received wide publicity in the domestic press and provoked much anger. An elite civic organisation, the National Diplomatic Association (國民外交協會), was established with the specific aim of rebutting Japanese claims on the international stage.[319] But Japan's criticisms clearly touched a nerve among some: Hu Shih, the pre-eminent Chinese liberal of his generation, was moved to reflect:

> "Our enemies openly mock us as a country without modern organisation. When we hear this, we are certainly very angry, but what is the use of anger? We should reflect: if we lack a modern organised state, is it because our society lacks a centre of gravity?"[320]

In the same vein, after attacking Japan as "not even a geographical expression" until the Meiji Restoration, the writer Chen Yangfeng rued that Japan felt able to speak of China in such disparaging terms and called for national self-reflection.[321] It is important to underline that none of the Chinese critiques of the Japanese case challenged the idea that internal political organisation should have a bearing on China's international status: there was no attempt at challenging the premises of the effectiveness doctrine, nor was there an effort to assert alternative bases for sovereign rights. The Chinese rebuttal, whether it was anchored in modernisation theory or in *tu quoque* appeals against Japan, implicitly accepted the legitimacy of the argument Japan was advancing, if not its merit. If anything, the prevailing Chinese Neo-

[317] *League of Nations O.J.* Vol 13, 19 February 1932, 366.
[318] Willoughby, *The Sino-Japanese Controversy and the League*, 246.
[319] See also Jiao Runming, "Jiuyiba hou zhongguo zhishi jie bochi riben qin hua miulun kao" ["Chinese Intellectuals' Refutation of Japanese Reasons for Invading China after the "Nine-One-Eight" Incident"], *Xueshu Jiaoliu* 2015 (9), 209-218.
[320] Hu Shih, "Cantong de huiyi yu fanxing" ["Painful Memories and Reflections"], in *Hu Shi wenji* [*Collected Works of Hu Shih*], Vol 5 (Beijing: Peking University Press, 1998), 381.
[321] Quoted in Jiao, "Jiuyiba hou zhongguo zhishi jie bochi riben qin hua miulun kao".

Darwinist *mieguo* discourse, which anchored state legitimacy in its ability to survive, was perfectly concomitant with the Japanese view.

The Lytton Report, issued in late 1932, castigated Japan's actions and fingered it as the aggressor in Manchuria, leading to Japan's withdrawal from the League. But on the issue of China's internal conditions, the report was much more equivocal, given the reality of internal disorder in China. Of all the arguments Japan presented, the rejection of China's statehood was the first to be addressed. True, the Commission rejected arguments that "China is "not an organised State" or "is in a condition of complete chaos and incredible anarchy", and that her present-day conditions should disqualify her from membership of the League of Nations and deprive her of the protective clauses of the Covenant", opinions which it rejected as "polemics".[322] However, it did so largely based on the fact that at the time of the conclusion of the Nine-Power Treaty in 1922, there existed three national governments in parallel, in addition to many smaller autonomous entities and widespread banditry, so that the signatories must have taken a positive view of China's statehood. In contrast, in 1932 "the central authority is not, at least openly, repudiated"[323] (there were still two parallel governments in China in 1932, but the one in Guangzhou was no longer in open rebellion). Yet even from that very low expectation the Commission still proceeded to offer extensive comments about China's internal conditions, much of it negative. For instance, it contradicted its earlier claim about the repudiation of central authority by observing that the China Soviet Republic had "become an actual rival of the National Government. It possesses its own law, army and government, and its own territorial sphere of action. For this state of affairs there is no parallel in any other country."[324] This was in any case admitted by the Chinese government in its submissions to the Lytton Commission.[325] The report did however accept China's contention that China's conditions were partly the result of a determined modernisation effort aimed at overcoming deeply entrenched difficulties.[326]

When the report was debated at the League's Assembly in December 1932, many delegations voiced their agreement with this negative assessment of China's internal condition. The most explicit was the speech of the Canadian representative C. H. Cahan, who openly stated his belief

[322] Lytton Report, 17.
[323] Ibid.
[324] Ibid, 22-3.
[325] *League of Nations. Appeal from the Chinese Government. Communication from the Chinese Delegation.* A (Extr.) A. 155. 1932. VII, 3 December 1932.
[326] Ibid, 13-4.

that China was not a state and would not have been admitted to the League under its present rules:

> The prescribed condition for admission to membership of the League of Nations are that the applicant shall be a fully governing state and that it shall give effective guarantees of its sincere intention to observe its international obligations. The clear assumption was that each Member State should be directed by a strong central government, capable of maintaining peace, order and good government within its own territorial jurisdiction, and also capable of fulfilling its obligations under the Covenant of the League of Nations. It is doubtful to my mind whether the National Government of China has yet been in a position to comply fully with these conditions.[327]

Similarly, Stanley Bruce of Australia, after pointedly remarking that "[t]he Covenant contemplated relations nations...which had control over the whole of their territories and of their nationals", said the report "shows that…that point has hardly been reached."[328] The Swiss and Czechoslovak delegations, among others, expressed similar sentiments, leading the British representative, a China expert otherwise sympathetic to the country, to report with satisfaction that "[m]any speakers realised that the chaotic condition of China and the actions of the Chinese government lay at the root of the whole trouble".[329]

In sum, much of the international community, at the time of the Manchurian Crisis, agree with Japan's assessment of China's internal condition. However, the League almost unanimously rejected Japan's case, leading to the latter's withdrawal from the League, with the Japanese government remaining convinced of the strength of their case, both publicly and privately.[330]

The conventional view of the Manchurian Crisis considers it an important early example of the now-sanctified international legal doctrine that states whose creation was the result of an internationally illegal act will not receive recognition as states although some, such as James Crawford, have disputed the characterization, arguing that the League in fact rejected Japan's

[327] *League of Nations O.J.* (Special Supplement No. 111), Vol 3, 8 December 1932, 57.
[328] *League of Nations O.J.* (Special Supplement No. 111), Vol 3, 8 December 1932, 62.
[329] FO 371/16184 F 8644/1/10, 15 December 1932. In a later memorandum, Lindley endorsed Baty's view that "China is a geographical expression not a state". FO 371/16185 F 8926/1/10, 30 December 1932.
[330] Sadako N. Ogata, *Defiance in Manchuria: The Making of Japanese Foreign Policy, 1931-1932* (Berkeley and Los Angeles: University of California Press, 1964); Ian Nish, *Japan's Struggle with Internationalism: Japan, China, and the League of Nations, 1931-3* (Abingdon: Routledge, 1993).

argument because Manchuria was obviously lacking the necessary independence from Japan that is a requirement of statehood.[331] However, Japan's arguments as to *Chinese* statehood, as distinct from Manchukuo statehood, have been largely overlooked, despite the fact that, as shown by the previous section, it had gained a degree of traction within the League when it debated the matter. This was in stark contrast with the remainder of Japan's case, in particular its account of Manchuria's "spontaneous" creation, which was widely disbelieved.

In this section, I argue that the Manchurian Crisis was a turning-point, though a largely overlooked one, in the development of the rules surrounding state extinction. Even though international law still recognises the possibility of statehood being extinguished through the loss of one of more of the fundamental pre-requisites of statehood, in practice this became a dead letter after 1932, with extremely rare and limited exceptions[332] Instead, statehood became a *de facto* permanent attribute once acquired, whose involuntary loss was all but impossible in practice, thus stabilizing the membership of the international system. This was underlaid by two developments. First, I argue that the Manchurian Crisis occurred at a critical juncture in the decoupling of effectiveness from legitimacy as the bases for statehood: henceforth, legitimacy became the key determinant for statehood, as opposed to the historical position where the two attributes were mutually constitutive of each other. Secondly, I argue that this change was partly the result of smaller states' contestation of the notion of effectiveness as an inherently open-textured one whose application was necessarily political and rested on culturally particularistic assumptions, thus obviating the effectiveness criterion's legitimacy.

In classical international law, statehood was almost entirely based on the criterion of effectiveness—whether a government had established effective control over a territory with a permanent population and, later, whether it had the ability to engage in international intercourse with other states. Conversely, the failure to meet one or more of the essential conditions of effectiveness over a sufficient period of time was the criteria governing the extinction of states, created a symmetry between the dynamics of state entry and state exit from international society. There were regular attempts to introduce an independent legitimacy criterion, based on either monarchical or republican legitimacy. However, these efforts, whether from the Holy Alliance legitimists or from Girondin republicans, inevitably floundered. Entities initially considered internationally illegitimate, be they revolutionary France or rebellious American republics, almost always secured recognition once they maintained their effective control long

[331] Crawford, *The Creation of States in International Law*, 132.
[332] See section V.

enough. In other words, effectiveness generated its own legitimacy.[333] The orthodox position was summarized thus by the Italian jurist Dionisio Anzilotti in 1928: "there are no legitimate and illegitimate states. The legitimacy of the state resides in its existence."[334]

Ostensibly, the establishment of the League of Nations did little to change the centrality of the traditional indicia of effectiveness for statehood. In fact, the Covenant of the League explicitly entrenched effectiveness as a *sine qua non* for membership, which presupposed statehood. The Preamble made specific reference to "organised peoples" and Article 1 required prospective members to give "*effective guarantees* of its sincere intention to observe its international obligations" (emphasis added). Applicant states had to fill out a questionnaire that asked "Does the country possess a stable government and well-defined frontiers?"[335] If the League was in doubt, it was empowered to ask the applicant to fulfil special conditions in order to be admitted, which it did on a number of occasions, most notably in relation to Abyssinia.[336]

However, whilst seemingly entrenching legitimacy as the basis of statehood, the League's practices for the admission of new members in fact led to the decoupling of legitimacy and effectiveness, which until then had been mutually constitutive. This was because effectiveness is not a binary variable: states often had ineffective governments, but they were rarely *entirely* ineffective. As a result, the League began to consider legitimacy separately from effectiveness, and in effect allowed states which lacked effectiveness to join as long as they were considered sufficiently legitimate on other grounds.

Thus Albania was admitted to the League in 1920 despite lacking not only *de jure* or *de facto* international recognition and fixed borders, but at a time when its government, politely described by the League Assembly's Fifth Committee as "not of the most elaborate description", had no control over strategic points and large parts of its territory which were then under Yugoslav and Greek occupation.[337] Nevertheless, its admission was accepted on the

[333] On early understandings of the legitimacy-effectiveness nexus, see Thomas D. Grant, *The Recognition of States: Law and Practice in Debate and Evolution* (Westport, CT: Praeger, 1999) and Krystina Marek, *Identity and Continuity of States in International Law*, 2nd ed. (Geneva: Librairie Doz, 1968).
[334] Quoted in Anne Peters, "Statehood after 1989: '*Effectivités*' between Legality and Virtuality", in James Crawford and Sarah Nouwen (eds.), *Select Proceedings of the European Society of International Law*, Vol 3 (Hart Publishing: Oxford and Portland, OR, 2012), 171-184, 172.
[335] League of Nations, *Record of the Fourth Assembly, Meetings of the Committee, Minutes of the Sixth Committee (Political Questions), Report of the Second Sub-Committee of the Sixth Committee, Abyssinia's Application for Admission to the League*, Annex 5, 14 September 1923, p. 34.
[336] Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge: Cambridge University Press, 2019). 289-293.
[337] The bar for "stable government" was not very high in practice: the government of the Democratic Republic of Georgia was considered stable because it had survived three years, though it did not survive for a fourth. League

vague grounds that it was "a State which desired to live", and whose people possessed a "strong national sentiment" and racial and linguistic unity.[338] It was also argued that admission to the League would encourage the development of Albanian institutions, a concern which pervaded the Committee's discussions. Indeed, good intentions were thought to be sufficient for some: Lord Robert Cecil thought unstable states should be admitted as long as they made "constant efforts… to acquire a real stability", something which he thought deserved the League's support.[339] Some were also willing to overlook deficiencies in their enthusiasm to expand the membership of the League as quickly as possible: Bolivia hinted that possessing "most of the characteristics of a regularly constituted state" could be sufficient for admission to the League;[340] Argentina sought the scrapping of the questionnaire approach altogether, preferring to admit automatically any state recognised by the international community.[341]

The exact balance of convenience between effectiveness and legitimacy was never explicitly articulated which, given the subjective nature of the balancing exercise was unsurprising. Decisions could be inconsistent: the Baltic states were admitted despite the Bolshevik threat on their borders, but the Caucasian states were not for the same reasons. But the key difference from orthodox doctrines of statehood was the recognition that effectiveness and legitimacy could operate independently from each other, and that lack of effectiveness could be compensated by the existence of substantial national legitimacy. By allowing one to compensate for the other, the League's admissions practices significantly weakened the importance of effectiveness, one a *sine qua non* for statehood but which now took second place to legitimacy. And if effectiveness was no longer an absolute prerequisite for statehood, then it followed logically that statehood could no longer be lost due to a lack of effectiveness, though the point was not appreciated at the time. Hence, though Chinese statehood may have lacked in effectiveness, as a charter member of the League and as a state whose integrity was guaranteed by all the major powers through the 1922 Nine-Power Treaty ensued that it would be treated as a legitimate state, regardless of its internal condition.

Once admitted, membership in the League of Nations carried with it another dimension of legitimacy. Though never a pre-requisite for statehood (small states were routinely excluded due to their size), League membership was one of the most visible markers of statehood and of

---

of Nations, *The Records of the First Assembly. II: Meeting of the Committees* (Geneva: League of Nations, 1920), 221.

[338] *Records of the First Assembly*, 189-191; 212-214 (Albanian admission).

[339] *Records of the First Assembly*, 186.

[340] *Records of the First Assembly*, 162.

[341] *Records of the First Assembly*, 223.

sovereignty. Membership meant that the state in question had been vetted by the Great Powers and the main members of the international community according to an ostensibly objective set of criteria and had passed the test to its satisfaction. Thus, during the debates on Manchuria, delegates pointed to the fact that China was not only a member of the League, but had recently been elected to the League's Council, the inner sanctum of the body, as *prima facie* evidence that China satisfied the criteria of statehood, despite its internal condition. Even during the Warlord Era, Chinese diplomatic representation at the League continued largely uninterrupted with the same diplomats serving successive regimes in Beijing, thus maintaining the sense of international continuity.[342] Later still, when Abyssinia had been overrun by Italy, its representatives were still allowed to attend the Assembly and to appeal to its members, though the Abyssinian state had *de facto* ceased to exist.[343]

Finally, the collective security provisions of the Covenant also served to entrench legitimacy's status as a key criterion for statehood independent of effectiveness. Once admitted, members of the League could avail themselves of the protection of the Covenant, whereby signatories undertook to "preserve as against external aggression the territorial integrity and existing political independence of all Members of the League".[344] It was obvious that the duty would be meaningless if it only applied until a state was entirely conquered by a belligerent. Thus, on the basis of the duty and of the Kellogg-Briand Pact of 1928 which outlawed war as an instrument of foreign policy, the League of Nations accepted the doctrine of non-recognition of states created by internationally wrongful acts during the Manchurian Crisis, enjoining its members from "[recognizing] any situation…brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris."[345] Hence, although not usually understood as such, the League's collective security system was in reality a part of the new theory of statehood, which again elevated legitimacy (as expressed by prior membership of the League of Nations) over effectiveness, a doctrine whose implication became even starker during the Abyssinian Crisis, where the government of Abyssinia had *de facto* ceased to exist. The decoupling of legitimacy from effectiveness is a development today usually associated with the establishment

[342] Alison Adcock Kaufman, "In Pursuit of Equality and Respect: China's Diplomacy and the League of Nations" *Modern China* 40(6) (November 2014), 605-638, 609.
[343] Meghan Donaldson, "The League of Nations, Ethiopia, and the Making of States", *Humanity Journal* 11(1) (Spring 2020), 6-31.
[344] Covenant of the League of Nations, Art 10.
[345] *League of Nations O.J.* (Special Supplement No. 101), Vol 1, 11 March 1932, 87.

of the United Nations and decolonisation,[346] but the Manchurian Crisis shows that its origins are in fact to be found in the Versailles settlement.

Chinese delegates' challenge to Japan's own fulfilment of the "organised state" criterion pointed to a broader issue with the efficiency test, namely that it was so open-textured that its application, in practice, was necessarily the result of a political judgment which went beyond the League's own "objective" questionnaire approach. For one thing, while there was general exasperation at China's internal state, by 1932 China's internal condition had indeed improved compared to the previous decade. The Lytton Report's apparent contradictions—rejecting the arguments about Chinese internal anarchy, while providing evidence in support at the same time—can be seen as attempting to acknowledge both realities, or it can be read as evidence that the "effectiveness test" is impossible to apply in all but the extreme circumstances. Moreover, the temporal aspect of the effectiveness test was open to variegated interpretations: to the Chinese government and the Lytton Commission, the long-term persistence of anarchy in China was balanced out by the gains that had been made, whilst in the Japanese argument the duration, as opposed to the direction of travel, counted the most. Such questions, in the absence of a widely accepted test for effectiveness, were bound to be political ones. Given that the League often took a flexible view of effectiveness when it considered application from new members, it was unsurprising that an inflexible approach for *existing* members found little favour.

Moreover, there were good pragmatic reasons for existing states to reject the disappearance of international personality except in the most extreme of circumstances. In effect, if China, a member of the League Council, and with at least some semblance of government, could see its statehood challenged because of its internal order, many other states—including, as the Chinese delegation argued, Japan—could suffer the same fate, or at least have the argument brandied against them. Understandably, few League members wanted to open that Pandora's box. What would be a reasonable threshold before statehood was nullified by ineffective government? And who was to make the determination?

At Geneva, the attitudes of the smaller Latin American states, where memories of the Roosevelt Corollary were still fresh, and which were the most critical of the idea that internal turmoil could lead to a diminution of a country's sovereign rights, were especially negative. The most

[346] Gerard Kreijen, *State Failure, Sovereignty and Effectiveness: Legal Lessons from the Decolonization of Sub-Saharan Africa* (Leiden: Martinus Nijhoff, 2004).

explicit articulation of that position from Juan Antonio Buero of Uruguay, who challenged the very basic assumptions behind the effectiveness test, in terms that were radical by the standards of the day:

> "Are we sure that our own state of civilisation is the best? Who is the custodian of the standard of development and organisation for the various countries? And if their development could be measured impartially, would that not involve a right of supervision, a disguised right to intervene, as it were?"[347]

In Buero's view, if there were objections to a state's admission to the League on the basis of insufficient development, they should be made before it is admitted; to act otherwise would be to render the League's protection of weaker states meaningless. The position of Latin American delegates was anchored in a particular Latin American tradition of international law that emphasised sovereignty and was resolutely anti-imperialist.[348] In fact, one of the first sustained challenge to nullification of statehood through the effectiveness test came from the region in the form of the Drago Doctrine, which rejected America's claim to the right to intervene in Latin American states in case of internal chaos. At the time, their opposition had little effect, but twenty years later, international legal thinking had converged toward what was once a radical position, and Latin America's protests fell onto more receptive ears.

Buero's remarks represented a radical challenge to the ostensibly universalist basis of the effectiveness test. Just like the standard of civilisation, the effectiveness test rested on specifically Western assumptions of what "effectiveness" in terms of governance meant. In contrast, the Chinese delegation did not challenge those assumptions; instead, they analogised China's development and instability in terms of American and European state formation, using the language of modernisation theory: what was described as chaos could be described equally as "the birth-pains of every nation" shared by all Great Powers in their history.[349] By analogising China's present to Europe's past, the Chinese delegates skirted the thorny question of cultural particularism and implicitly accepted the universality of the notion of "organised state". This was perhaps unsurprising, given that few within China would have been prepared to defend the chaos as either acceptable or inherently culturally Chinese. In any case, this rhetorical strategy appears to have been successful, and the Lytton Report took the same line.[350]

---

[347] *League of Nations O.J.* Special Supplement 51, 5 March 1932, 57.
[348] Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842-1933* (Cambridge: Cambridge University Press, 2014).
[349] *League of Nations O.J.*, Vol 13, 19 February 1932, 366.
[350] *Lytton Report*, Chapter I.

Compared with the vague-sounding notion of "legitimacy", effectiveness is often considered a relatively straightforward and clear test. Yet, what the Manchurian Crisis illustrated was the impossibility of its application in an objective manner. This, combined with the inherent self-interest of existing members of the international community to restrict the application of the test, meant that although widely accepted in theory, state extinction through prolonged anarchy was all but a dead letter in practice in 1932, though it remained in theory. At the 1936 meeting of the *Institut de droit international*, no doubt with the Manchurian episode in mind, a Belgian delegate proposed to establish an international body that could make such decisions. Unsurprisingly, the idea went nowhere. State death, just like recognition, was an inherently political question, and a body that could determine the death of states was a step too far.

The Unresolved Contradictions of State Extinction

The notion that China was not an "organised state" had a strange afterlife. When the principal Japanese wartime leaders were tried by the International Military Tribunal for the Far East after the war, the Indian judge Radhabinod Pal resuscitated this view in his infamous dissent, which would have acquitted all the defendants. Pal all but claimed that China was not a state at the time of the Manchurian Crisis due to her internal conditions, and that Japan's invasion of the territory was justifiable on those grounds. But after an elaborate exposition he ultimately discontinued that line of argument, citing the court's rejection of the evidence proffered by the defence on this issue: like many pre-war statesmen and lawyers, he was unwilling to take this belief to its logical conclusion.[351] Pal cited ample legal authority in support of this proposition, underlining once again the fundamental orthodox nature of that line of argument.

Meanwhile, if China was disorganised in the early 1930s, the ensuing one and half decade of savage warfare against Japan did much to forge her national identity. Although the meaning of "China" remains contested, the existence of at least one China as a political entity has not been seriously challenged since the end of the war, though the question of which political entity is entitled to call itself China has remained unanswered to the present day.

However, following the Second World War, although the possession of a government was still a requirement for statehood, in practice the requirement fell by the wayside to a degree

[351] *United States et al. v. Araki et al.*, International Military Tribunal for the Far East, Dissenting Opinion of the Member for India, December 1948.

unimaginable in the League era. The United Nations Charter, just like the League Covenant, requires potential members to be "able and willing to carry out these obligations [of the Charter]", i.e. to possess a functioning government.[352] However, in the heyday of decolonisation, the UN regularly recognised and admitted states which could not be said to have a government capable of fulfilling the most elementary international obligations, or indeed sometimes a government of any sort. In 1960, Congo was admitted as a sovereign state to the UN, even though due to colonial maladministration, secessionist warfare, foreign military occupation, bankruptcy, and the collapse of the central government, the country could not be said to be anything but in a state of prolonged anarchy.[353] Although Congo's admission to the UN was viewed as an aberration at the time, subsequent admissions to the United Nations only confirmed the definitive abandonment of the effectiveness criterion.[354] In an even more extreme case, in 1974 Guinea-Bissau was admitted as a sovereign state to the UN, even though the country was still almost wholly occupied and administered by Portugal as a colony at the time. The new country's purported government "did not actually exercise authority over the majority of the population and in the major towns", and certainly would not have been capable of fulfilling any of the duties prescribed by the UN Charter.[355] In both cases, the legitimacy attached to the cause of colonial self-determination was allowed to prevail over the 'objective' criteria of statehood by the international community. But most infamous all is the case of Somalia, which retained its statehood even as it descended into prolonged anarchy. Such entities are often described as "failed states", a categorization which recognizes their underlying status as internationally recognized states.

Conversely, illegitimate states created as the result of internationally illegal acts, such as Rhodesia and Republika Srpska, will not be afforded recognition as states no matter how effective their internal government is. As for states with pre-existing recognition, only a combination of loss of legitimacy and loss of effectiveness will end a state's juridical existence: the Republic of South Africa never lost international recognition, even though Apartheid, its

[352] Article 4, Charter of the United Nations. See Thomas D. Grant, *Admission to the United Nations: Charter Article 4 and the Rise of Universal Organization* (Leiden: Martinus Nijhoff, 2009).
[353] Crawford, *The Creation of States in International Law*, 56-58 ("Anything less like effective government it would be hard to imagine"). See also Kreijen, *State Failure, Sovereignty and Effectiveness*, Chapters 2 and 3.
[354] See for instance Rosalyn Cohen (Higgins), "The Concept of Statehood in United Nations Practice", *University of Pennsylvania Law Review* 109(8) (1961), 1127-1171, at 1138 ("apart from the aberration in the case of the Congo, the long-established criterion of effective government as a prerequisite to statehood has been fully conceded and adhered to in United Nations practice").
[355] David Raič, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002), 98-99. Crawford describes the principle as being one of "qualified effectiveness" which, given the facts of the case, seems exceedingly generous. Crawford, *The Creation of States in International Law*, 387.

organising principle, was declared a crime against humanity by a convention signed by more than one hundred states. Yugoslavia appears to be the only state in the post-1945 era to have lost its statehood by reason other than conquest or voluntary merger: the loss of a significant part of its territory, combined with major powers' declared intention to punish it for crimes against humanity, led to the UN General Assembly declaring it having "ceased to exist" in 1992 without a legal successor, though Serbia and Montenegro claimed otherwise.[356] In other words, a state once recognized remains a state as long as it retains either legitimacy *or* effectiveness, no matter how limited.

Today, statehood is in effect a *Hotel California*—one can check in any time, but one can never leave. In 1996, Boutros Boutros-Ghali bemoaned the situation: "[t]he Charter of the United Nations [does not] provide for any mechanisms through which the international community can respond when a sovereign State loses one of the attributes of statehood, such as its Government."[357] His call for the international community to re-examine the rules governing state extinction went unheeded: not since the abortive 1936 attempt by the *Institut de droit international* has anyone attempted to do so, evidence of the thorny nature of the question. To some extent, doctrines such as that of humanitarian intervention have arisen in response to the stickiness of statehood in the *Charter* era: but even then, they merely derogate temporarily to statehood, whilst acknowledging its underlying existence. Climate change, which brings up the prospect of entire countries losing their territory to the ocean, will only make the issue of state extinction more pressing in decades to come.[358]

The Japanese challenge to China's statehood has largely been forgotten, a footnote in the history of the Second World War in Asia. But the question remains. "Can an anarchy be a state?" Eight decades on, the answer to Baty's taunt appears so far to be "no, but yes".

[356] United Nations Security Council Resolution 777 declared Yugoslavia "has ceased to exist" without further particulars. The Badinter Arbitration Committee Opinion No. 8, often cited as the legal basis for the finding that Yugoslavia has ceased to exist, is also notably light on detail.
[357] Boutros Boutros-Ghali, "Introduction", in United Nations, *The United Nations and Somalia, 1992-1996* (New York: United Nations Department of Public Information, 1996), 87.
[358] James Ker-Lindsay, "Climate Change and State Death", *Survival: Global Politics and Strategy* 58(4) (2016), 73-94.

Chapter 4: China and the League of Nations: The Social Construction of China as a Great Power

La Chine est une énorme chose, elle est là, elle existe.[359]

In 1919, as representatives of the world's lesser powers anxiously circled Paris in the hopes of obtaining a favourable hearing from the Big Five, a pamphlet appeared in London. Its authors were V. K. Wellington Koo and C. T. Wang, China's leading representatives at the Paris Peace Conference. Much of it was diplomatic boilerplate welcoming the establishment of the League, but it began with this striking claim:

> It is Confucius who first taught us that we must not be merely content with the orderly government of a single individual nation, but that, besides, we must seek for the establishment of what he termed "Tatungism," which means literally "great communism," figuratively "utopianism," and practically "a league of nations."[360]

To modern readers, the claim that Confucius was the intellectual progenitor of the League of Nations might seem stretched. But Koo was laying a rhetorical claim, on behalf of China, to the League's intellectual founding, and to ownership of the new international order it was supposed to usher in. Though China was not technically present at its creation—having declined to ratify the Treaty of Versailles—it was an early and enthusiastic supporter of the League,[361] which was to become one of the main stages of its international diplomacy in the next two decades. Foreign policy was one of the few areas in which the struggling Beiyang government possessed (at least nominal) full untrammelled sovereignty, and it took full advantage of the new, seemingly fluid international situation to pursue an aggressive campaign of international status-seeking.

Scholarship on China's relationship with the League, on the other hand, have often followed a well-trodden path, which at times assumes the character of a Victorian morality play. It begins with the rapturous welcome of Wilson's Fourteen Points, swiftly followed by the betrayal at Versailles over Shandong, which gave rise to the May Fourth Movement, followed by a blank until the Manchurian Crisis as the beginning of the end for not only China's pre-war internationalist moment, but for the League itself. Thus, China is woven into the history of the League and vice versa, but only as a canvass on which the League's defects are episodically

[359] Charles de Gaulle to the Council of Ministers, 8 January 1964. Quoted in Bernard Brizay, *La France en Chine* (Paris: Perrin, 2013), 488.
[360] V. K. Wellington Koo and Chen-Ting T. Wang, *China and the League of Nations* (London: George Allen & Unwin Ltd, 1919), 1.
[361] It became a member of the League by the simple expedient of ratifying the Treaty of Saint-Germain-en-Laye.

laid out.[362] More recently, scholarship on republican China's diplomacy at the League has tended to both lay greater emphasis on China's own diplomacy and more positive in their evaluation of Chinese diplomacy at the League. But the emphasis still tends to be on the more defensive aspects of that diplomatic activity, with emphasis on treaty revision and technical collaboration with the League.

However, in addition to treaty revisionism and the recovery of Chinese sovereignty, Chinese diplomats at the League simultaneously engaged in a far more ambitious project, that of promoting China's international status, and of obtaining recognition as a great power. On the international plane, there existed simultaneously two Chinas. There was, on the one hand, the China which existed on the ground, ravaged by constant civil war, serial bankruptcies, incapable of paying her dues to the League and whose representatives acted on behalf of whichever warlord happened to occupy Beijing at any given time. On the other hand, there was a China which claimed at Geneva that it was a great power and the natural representative of all of Asia in a manner reminiscent of the earlier tributary system, deserved to be treated as a great power, despite all evidence to the contrary, and which tenaciously pressed for permanent representation on the Council of the League of Nations, normally the preserve of great powers, over the whole effective lifetime of the League. Indeed, it would be fair to say that the recovery of China's international status was inextricably linked with that of the Republican sovereignty project.

Using a combination of arguments based on sheer physicality, history, civilization, and regionalist and universalist rhetoric, Chinese diplomats argued that any world order which did not give proper recognition to China's status was illegitimate. Furthermore, to overcome the glaring fact that China could not be described as a great power according to the traditional, military criteria, they tried to construct a new normative international order, and argued that China was a new type of great power, entitled to that status on a set of normative criteria which were more in harmony with the League's pacifist aspirations, her lack of military power being a strength, not a weakness. Coming at a time of greater permeability within international

[362] See generally Alison Adcock Kaufman, "In Pursuit of Equality and Respect: China's Diplomacy and the League of Nations", *Modern China* 40(6) (November 2014), 605-638; Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford: Oxford University Press, 2007); 605-638. Recent Chinese scholarship has been more positive in regards to the ROC's diplomacy, but the League does not feature prominently outside of the set-piece episodes. For a Chinese-language treatment, see Chi-hua Tang, "'Daguo diwei' de zhuiqiu: Ershi shiji qianban qi zhongguo zai guoji zuzhi zhong de nuli" [China's Bidding for the Great Power Status at International Organizations in the Early 20th Century], *Journal of Humanities College of Liberal Arts National Chung Hsing University* 32 (2002), 815-833. Comparative China-Japan treatments are more common: an important new addition is Harumi Goto-Shibata, *The League of Nations and the East Asian Imperial Order, 1920–1946* (Singapore: Palgrave Macmillan, 2020). See also footnote 37 for literature on technical collaboration between China and the League.

hierarchy, this was a bold play for status, which led to mixed results, but which arguably laid the groundwork for China's modern claims to great power status. And many of the rhetorical and political strategies adopted by China's diplomats in Geneva, from the invocations of ancient Confucian wisdom to that of Asian regional leadership to the framing of China as the *true* embodiment of the new international order, would be adopted by the successors in the People's Republic of China to the present day.

International relations literature has long debated how states seek status. In the case of great power status, they have traditionally tended to agree with Martin Wight's famous aphorism that "[g]reat power status is lost, as it is won, by violence"[363], or at the very least material preponderance. This has also generally been be the view of practitioners: for instance, Japan, the newest great power to be acknowledged by the international community at the time of the League's creation, was only generally as recognized as such in the aftermath of her victory in the Russo-Japanese War, which was held to have settled the question once and for all.[364] Yet more recent accounts have stressed the social nature of status recognition, the important of both active assertion and recognition of status, and the importance of ideational, non-material factors.[365] The decline of major inter-state warfare, and the growing interest in normative status-seeking have also formed part of the re-evaluation. But the relationships between material, ideational, and aspirational factors remain fraught with questions. For instance, does a country's status aspirations follow the ebb and flow of its material capabilities, or does a country develop (or try to develop) material capabilities in accordance with its status aspirations? And to what extent can a country pursue the status-chasing game when its material capabilities do not match up with the status it considers to be its due?

China's diplomacy at the League of Nations during the inter-war period offers an extreme case study for national status-seeking: a country whose idea of its proper station within international hierarchy was wholly out of step with the way it was perceived, and which constantly strove to obtain recognition as the equal of established great powers, though it possessed none of the traditional qualifications for great power status. The relative isolation of its representatives from domestic upheavals—in practice, the same group of diplomats served continuously at the League during the course of its existence—further exacerbated the detachment of China's

[363] Martin Wight, *Power Politics* (New York: Continuum, 1978), 48.
[364] L. Oppenheim, *International Law: A Treatise, Vol I, Peace*, 2nd ed (London: Longmans, Green & Co., 1912), 171.
[365] For a recent overview, see Elias Götz, "Status Matters in World Politics", *International Studies Review*, viaa046 (2020), https://doi.org/10.1093/isr/viaa046

diplomacy from realities at home, whilst preserving a strong degree of continuity in China's policy at the League. Though its success was ultimately limited, this campaign arguably shaped the way China viewed its place in the world, at a time when the idea of China as a great power still a far-fetched one to most, and helped to lay the foundations for its subsequent, and more successful claim to great power status and to regional leadership.

A Nationalist Internationalism? China, the "Geographical Principle", and Membership of the Council of the League of Nations

At the core of the League of Nations was the Council. Under the original terms of the Covenant, it was to consist of four permanent members (the Big Four) and of four non-permanent ones, to be elected at the discretion of the Assembly, with the first four named in the Covenant. As the "executive" of the League, membership of the Council carried with it enormous benefits, not least in terms of international prestige and hierarchy. Hitherto, attainment of great power status was a matter of impressionistic judgment. In the case of Japan, for instance, it took the Russo-Japanese War for her claim of great power status to be generally recognized by commentators. By contrast, the highly influential Hurst-Miller draft of the League Covenant described the permanent members as states who were "deemed to be directly affected by all matters within the sphere of action of the League", as close to a formal definition of great power status as could be found.[366] Viscount Cecil, one of the chief architects of the League, later confirmed, when the point was disputed, that "the permanent Members of the League were intended to be Great Powers *in the ordinary acceptation of that term*."[367] [Emphasis added.] At any rate, given the original permanent membership of the Council, few could have doubted that the two were synonymous.

The composition of the Council reflected the tensions between the universalist aspirations which invested the League with its moral legitimacy and its status as an organisation designed for the principal powers of the First World War. Initially the Council was to be of five permanent members, with no representation for lesser powers. But after much haggling, it was agreed that four states should be elected by the Assembly as non-permanent members (the United States having declined to ratify the Covenant, there were in fact only four permanent

[366] The text of the draft Covenant is reprinted in Florence Wilson, *The Origins of The League Covenant Documentary History of Its Drafting* (London: The Hogarth Press, 1928), Annex E.
[367] League of Nations C. 299. M. 139. 1926. V., 143.

members initially). Later, it was decided that no non-permanent member could be re-elected for three years after the completion of their three-year term, although the eligibility bar could be overridden by a vote of two-thirds of the Assembly. Given its prestige and symbolic status within the new international hierarchy, from the onset non-permanent was highly prized and eagerly sought; and once elected states sought to obtain the right to re-election just as keenly: it was even observed that there was an "unfortunate belief that the surrender of a non-permanent seat implies something derogatory to the dignity and prestige of the outgoing member."[368]

China scored an early success when it was elected as a non-permanent member of the Council for its second session in 1920. Greece had occupied the seat, but the fall of Venizelos meant that his disenchanted Western backers dropped Greece from the Council, and China was elected to the seat instead. This was welcomed in the domestic press as evidence that China had returned to its rightful place within the community of nations. In fact, to many in China, a non-permanent seat was the bare minimum. In one of the first Chinese-language books on the League of Nations, published in 1920, Wu Pinjin complained that China, despite being the "decisive Great Power in Asia", had already been grouped with the "weak and small countries" at the Paris Peace Conference. If China failed to be elected to even a non-permanent seat, will it be said that China "is not as qualified as Brazil? Not as good as Spain?"[369] In fact, both Brazil (which chose to quit the League when her claim to a permanent seat was rebuffed in 1926) and Spain (which secured a "semi-permanent" seat at the League Council) were both significantly better situated internationally than China in many aspects, but the remark highlighted the Chinese public's view of its rightful expectations on the global stage.

Quite beyond international status and hierarchy considerations, membership of the League Council also allowed China, for the first time in its modern history, to take an active part in the day-to-day management of international controversies beyond its immediate geographical neighbourhood. For instance, during its first stint in the Council, Chinese delegates spent much time on the governance of the Saar and the setting-up of the various specialist agencies within the League. The importance of this day-to-day involvement into the minutiae of international governance has been almost entirely overlooked in the literature, yet it seems crucial to underline both the novelty of the situation for China, and the role it played in legitimizing China as a credible interlocutor in matters of international governance.

[368] Felix Morley, *The Society of Nations: Its Organization and Constitutional Development* (Washington DC: The Brookings Institution, 1932), 352.
[369] Wu Pinjin, *Guoji lianmeng jiqi qushi* [The League of Nations and its Trends], vol. 2 (Shanghai: Shang wu yin shu guan, 1920), 45.

China's election in 1920 took place against the background of an attempt by China to introduce what would be later known—at least in the language of the Chinese delegates—as the "geographical principle" or "continental principle" (分洲主义) in Chinese. The idea was essentially that different parts of the world should all have some representation among the non-permanent membership of the Council. As the vice-chairman of the Assembly's First Committee, which dealt with constitutional matters, Koo was ideally placed to push the case for the geographical principle and used his position fully in order to do so. Koo had already signalled his intention when, in February 1919, he told the Commission on the League of Nations that he was "speaking for a third of the total population represented here in this conference, and therefore, of the proposed League".[370] Now, laying out his case to the First Committee, Koo argued that:

> There were certain nations whose geographical situation, historical tradition and present development, resulted in their being confronted with problems of a similar nature, and made their interests more or less identical, and those groups should have representation on the Council.[371]

He then treated the committee to a presentation of comparative statistics of physical size, population figure, and trade statistics to argue that Asia deserved no less consideration than Europe and the Americas in the allocation of non-permanent Council seats. Whilst he did not "grudge the European nations their representation" since "under present conditions Europe must take a predominant place in the League", he maintained that "the way to increase [the Council's] prestige was to make it representative of the whole world."[372] He asked that of the four non-permanent seats, three should be allocated to Europe and the Americas, and one to "Asia and the other continents" for the 1920 election only.[373]

Koo's proposal was opposed in strong terms by the Dutch delegate, who argued that "Asia, Africa, and Australia" was not a meaningful category; and even within Africa and Asia there was too much heterogeneity for them to be represented by a continental basis. But his main objection was that the selection of non-permanent members should be undertaken on merit, and not on representational considerations. Geographical representation, while a consideration, could be guaranteed by "the spirit of fair play which existed in the Assembly".[374] Conversely, Koo's proposal was unanimously supported by all the Asian, African, and Australasian

[370] Cited in Wang Tsao-Shih, "China and the League of Nations, 1920-1926", *Chinese Social and Political Science Review* 12(4) (October 1928), 582-596, 584.
[371] League of Nations, The Records of the First Assembly, Meeting of the Committees, vol I, 17.
[372] Ibid.
[373] Ibid, at 18.
[374] Ibid, at 41.

members present, as well as all of the American states with the exception of Guatemala. Opposition was strongest in Europe, where intermediate powers could expect the system of geographical quotas to diminish their influence.[375] The motion was approved 13 to 12, with a large number of abstentions and absences.[376]

There was renewed hostility against the Chinese proposal at the plenary meeting of the Assembly. Reporting the conclusions of the committee, Arthur Balfour told them he thought the proposed scheme was probably unconstitutional, as the Covenant provided for the non-permanent members to be selected by the Assembly "at its discretion", so as to make the geographical scheme incompatible with that requirement.[377] The Norwegian delegate specified his delegation only voted in favour of the resolution to demonstrated it wanted Asia to be represented but declared his country would not be bound by it in its voting.[378] Finally, Balfour proposed to amend the committee report so as to make the Chinese proposal a *recommendation* only, which was adopted 27 to 4.[379]

When the expansion of the Council by two non-permanent members was proposed at the third assembly in 1922, China again proposed that of the six non-permanent members, three were to be chosen from Europe, two from the Americas, and one from "the States of Asia or another continent". It would also "consecrate that universal character of the Council which is essential for the exercise of its world-wide authority".[380] The Chinese proposal commanded an "unexpected and imposing manifestation of Asiatic solidarity".[381] It was supported, in strong terms, by Persia, but also by India, Siam, and Japan, albeit in tepid terms. But the majority also argued that the Eurocentric composition of the Council was not a hinderance to the League's goals, but a virtue, given the centrality of European events within the League's agenda at the time. Several countries also opposed, in addition to the Chinese proposal, the expansion of the Council's membership outright, on the grounds that it would make the Council too unwieldy and that the inclusion of more non-great powers would weaken both the influence of the Assembly, and the effectiveness of the Council, which was bound by the unanimity rule.

[375] Of the European countries, only Norway voted in favour; of the non-European countries, only Guatemala voted against.
[376] Ibid, at 42.
[377] League of Nations, The Records of the First Assembly, Plenary Meetings, 419-420.
[378] Ibid, at 422.
[379] Ibid, at 435.
[380] League of Nations, Records of the Third Assembly, Plenary Meetings, 346
[381] League of Nations, Records of the Third Assembly, Minutes of the First Committee, 52.

The compromise was a non-bind recommendation—as opposed to a binding resolution—by the French jurist Joseph Barthélemy, who had been appointed rapporteur of a special sub-committee to study the question. The recommendation which was renewed annually by the Assembly until 1925 was that:

> It is desirable that the Assembly, in electing the six non-permanent Members of the Council, should make its choice with due *consideration for the main geographical divisions of the world, the great ethnical groups, the different religious traditions, the various types of civilization and the chief sources of wealth*. [Emphasis added].[382]

The recommendation was a far cry from China's demand for a *de facto* permanent non-permanent Asian seat and arguably created more problems than it solved from its point of view. Few countries could claim to have China's size or population, but many could plausibly say that they were the representatives of a "great ethnical group" or "chief sources of wealth". As the Portuguese delegate argued, if religion were to be taken into account, arguably the "great Mohammedan Powers" were France and the British Empire, and even Portugal could claim preference as the progenitor of a great South American civilization.[383] In practice, there were no obvious ways in which these claims could be weighed against each other, not even quantified, so that they were in practice unenforceable.

But the 1923 recommendation formed the legal basis for the "geographical principle", which it repeatedly invoked over the following decade and half as evidence that the Assembly had endorsed China's claim to a semi-permanent seat. What the moniker obscured was that what had been endorsed was not in fact the tripartite geographical scheme Koo had advanced in 1920, not even a primarily system of geographical balancing, as opposed to a mishmash of factors, geographical and cultural, which nominally had some bearing on the Assembly's voting decisions.

In fact, no sooner had the recommendation been approved that China was voted off the Council, losing out to three Western states—Czechoslovakia, Sweden, and Uruguay—since "the Government of that country no longer represented anything but the city of Pekin", in the words of a contemporary observer, a reminder that no matter how talented the Chinese representatives were at Geneva, their attempts at carving out an international position for China were ultimately limited by domestic developments.[384] Humiliatingly, China bottomed the poll, receiving fewer

[382] League of Nations, Records of the Third Assembly, Plenary Meetings, at 350.
[383] League of Nations, Records of the Third Assembly, Minutes of the First Committee, 46
[384] C. Howard-Ellis, *The Origin, Structure & Working of the League of Nations* (Boston and New York: Houghton and Mifflin Company, 1929), 140.

votes than Persia. In 1924 and 1925, China again sought election to the Council without success, despite Chao Hsin-Tsu reminding the Assembly of China's "ancient civilization, her large population and her magnificent land with unlimited natural resources" and the Chinese public's consequent expectation that "her international position and the privileges to which she is entitled shall be fully recognized."[385]

In 1926, Germany was to be admitted to the League of Nations following the conclusion of the Locarno agreements, which were to enter effect only when Germany had joined the League of Nations. It was understood that Germany, as an undisputed Great Power, would be offered a permanent seat on the League Council. But this provoked protests, not only from China, frustrated that it was being constantly passed over, but also by Poland, Spain, Brazil, and even Belgium, all of whom insisted that if Germany should obtain a permanent seat, so should they. Unlike China, each of the other claimants had at least one permanent member backing its claims.[386]

Offered with a unique opportunity of pressing its claims to the bitter end, China chose to back down. Having asked for equitable Asian representation year after year, the Chinese delegate, C. H. Chu, now assured the Assembly China was "not going to add more difficulties to this controversial subject".[387] He did however at domestic discontent when he told the Assembly that given its exclusion from the Council, "the Chinese people have not known whether the League still has its eye on the continent of Asia."[388] In fact, Chinese public opinion had in fact been seriously inflamed by what it perceived as the humiliation of being rebuffed for re-election to the Assembly.[389] But Chu proposed to do nothing other than to support the appointment of a committee to examine the enlargement of the Council. The following year, however, China renewed its diplomatic offensive on the committee on Council membership, where Chu bitterly complained that:

> Every year the Chinese delegation had proposed a recommendation that the geographical principle should be followed in the allocation of the non-permanent seats. Nearly every year that recommendation had been passed in the morning and

[385] League of Nations O.J. Spec. Supp. 33 (1925), 41. In 1924, the Chinese delegation walked out in protest.
[386] For a contemporary account, see Denys P. Myers, "Representation in League of Nations Council", *American Journal of International Law* 20(4) (October 1926), 689-713. A more recent treatment is in Thomas Müller, "Institutional Reforms and the Politics of Inequality Reproduction: The Case of the League of Nations' Council Crisis in 1926", *Global Society* 34(3) (2020), 304-317.
[387] League of Nations O.J. Spec. Supp. 42 (1926) 31.
[388] League of Nations O.J. Spec. Supp. 33 (1925), 43.
[389] Already in 1924 a motion had been laid in the Chinese parliament to withdraw from the League unless China was given a seat on the Council. Thereafter each electoral disappointment was accompanied by domestic calls to quit the League, though apart from the KMT's succession to the Chinese seat in 1928 this option never seems to have been seriously entertained.

> the election had taken place in the afternoon. The Members of the Assembly had so soon forgotten what they had adopted in the morning that they had not acted upon it in the afternoon.[390]

Thus, coming back to the earlier Chinese proposal, "a guarantee was necessary. No matter what number of seats was allocated to each continent, a definite allocation must be made".[391] Predictably, nothing was done—although Europe received further Council seats, Asia gained none—although China was finally elected to the Council at a subsequent session of the Assembly later the same year, serving until 1928.

In the end, Germany's entry was blocked by Brazil who, with the United States' boycott of the League, claimed to be Latin America's representative, "the spokesman of the whole American Continent"[392], in much the same way as China claimed to be the representative for Asia. Its claims to a permanent seat having been denied, it vetoed Germany's admission, then withdrew from the League, never to return.[393] The only winner from the episode was Spain, which managed to obtain the right to be re-elected indefinitely to the Council, in effect obtaining an unofficial permanent seat. China's claims might have appeared to be very exceptional to Chinese representatives, but the hallmark of national exceptionalism is that every country believe it is *really* exceptional.

On the whole, senior members of the League's permanent bureaucracy—including Sir Eric Drummond, the League's first secretary-general, but also figures such as his successor Joseph Avenol and Ludwik Rajchman, the head of the League's Health Organization—were much more sympathetic to China's claims than member states, who naturally had their own interests to preserve. In 1930, Drummond wrote that "[t]he question of election of China to the council might become an issue of world importance." But three difficulties stood in her way, namely "whether civil war ceased in China, and also whether she paid at least a considerable part of her contributions [and] that China would have to receive a 2/3 majority in order to be declared eligible."[394]

One unintended consequence, though one welcome from the Chinese point of view, of China's repeated failures to be consistently represented in the Council was the development and deepening of technical collaboration between the League and China. The collaboration, which

[390] League of Nations, C. 299. M. 139. 1926. V., 100.
[391] Ibid.
[392] League of Nations O.J. 1(1) (February 1920), 24.
[393] See also Chris Leuchars, "Brazil and the League Council Crisis of 1926", *Diplomacy and Statecraft* 12(4) (December 2001), 123-142.
[394] Quoted in Ian Nish, *Japan's Struggle with Internationalism: Japan, China, and the League of Nations, 1931-3* (London: Routledge, 2009), 16.

was not envisaged by the Covenant's drafters, had arisen more or less by happenstance in the early 1920s. But it was Drummond who, afraid that China, representing the Guomindang government in Nanjing for the first time, was considering leaving the League due to her failure at the 1928 Council election, authorized the intensification of the technical collaboration between the League and China, notably in the field of health, but also in economic development.[395] Thus, the League's permanent bureaucracy recognized the need to keep China within the fold, giving some credence to China's arguments (discussed in the next section) that her presence in the League was of importance to the League's future as well as to China.

China's final push for a permanent League seat came after Japan announced her intention to withdraw from the League in February 1933. The Manchurian Crisis had given China an unusual prominence with the League, and with Japan gone the question of Asian representation was naturally thrown open once again. This time, China's case was made bluntly: for the first time in its history, "the Council is now without any representation of the Far East. As "the lone outpost of the League in the Far East", it was "imperative that means be found to provide for China's participation in the Council at the present juncture", without which the League's prestige and basis in international solidarity would be undermined. The appeal was concluded in unambiguous terms: "hopes and expects that the League… will recognize her key position in Asia as well as her special relations with the League".[396] At the same time, government officials began again to threaten withdrawal: it was openly asked whether "the League was useful to China" and if "China's attachment to the League and to the Covenant, which the League had allowed to be broken with impunity, was worth while."[397]

There was something contradictory in China's plea. The League had failed China over Manchuria; yet China desired to be at the top table of the League more than ever. But even then, its proposal encountered resistance, in particular from Council members who hoped Japan would reverse and abandon its withdrawal from the League (withdrawals from the League only became effective two years following notice being given).[398] Traditional objections against

[395] The literature on China-League technical collaboration is voluminous. See Margherita Zanasi, "Exporting Development: The League of Nations and Republican China", *Comparative Studies in Society and History* 49(1) (January 2007), 143-169; Iris Borowy, *Coming to Terms with World Health: The League of Nations Health Organisation 1921-1946* (Frankfurt am Main: Peter Lang, 2009); Li Chang, *Guoji hezuo zai Zhongguo: lianmeng jiaose de kaocha 1919-1946* [International Co-operation in China: A Study on the Role of the League of Nations, 1919-1946] (Taipei: Zhongyang Yanjiuyuan Jindaishi Yanjiusuo, 1999); Harumi Goto-Shibata, "The League of Nations as an Actor in East Asia: Empires and Technical Cooperation with China", *International Relations of the Asia-Pacific* 17(3) (September 2017), 435–461.
[396] League of Nations O.J. 16(11) (November 1935), 1350.
[397] "China Claims Special Seat on League of Nations", *The China Weekly Review*, 28 September 1935, 129.
[398] Goto-Shibata, *The League of Nations and the East Asian Imperial Order*, 129-156.

giving China special treatment due to her internal condition and concerns as to the excessive council were also raised. In the end, in a typical solution, a committee was appointed by the Council to investigate the issue.

In May 1936, after the Japanese withdrawal had become effective, it reported that that whilst the time was wrong for any general revision of the Council's arrangements was undesirable, two new seats should be created, one for Asia and one for non-grouped European states, and that holders of both seats should be eligible for re-election.[399] The Council approved the report in a cursory debate, apart from Maxim Litvinov's catty remark that China was being given a seat for three years "because there were no other claimants in the Far East; there was no choice."[400] China was duly elected to a Council seat for three years, whose membership now stood at fifteen, double what the Covenant provided for. China had finally obtained the prize of a semi-permanent seat on the League Council, just as it had become irrelevant.

China: A different sort of great power?

What arguments, then, underpinned China's case for representation on the Council and what does it reveal about China's self-conception in the world? It must be noted at the onset that there were in reality two distinct issues. The first was whether Asia should have reserved representation and how much representation it should have among the non-permanent members of the Council. The second was whether China should have *de facto* permanent representation on the Council. Koo and his successors at Geneva systematically conflated the two issues and, in the process, conflated China and Asia as a whole.

What China wanted was not so much an Asian seat, though it also couched its proposals in those terms, as much as a permanent Chinese seat. Koo first admitted as much when, as foreign minister, he wrote in the *Peking Daily News*, unconstrained by diplomatic niceties, that China, as a country with a large area, population, and share of the League's dues, should never been excluded from the Council, in which case the domestic support for the League would be greatly affected.[401] And when Japan gave notice of its withdrawal from the League, the Chinese proposal was for the creation of a special seat for *China*, similar to those of Spain and Poland,

[399] League of Nations O.J. 17(6) (June 1936), 661-664.
[400] League of Nations O.J. 17(6) (June 1936), 549.
[401] V. K. Wellington Koo, "China's Position in the League of Nations", *Peking Daily News*, 23 September 1922, 4.

who were indefinitely eligible for re-election unlike the other non-permanent members, and not for Asia in general. To add to the confusion, both Chinese and non-Chinese diplomats regularly confused the two claims, further muddying the waters.

The conflation of the two claims was no doubt in part tactical since there seemed to have been assumption among Chinese delegates that the tripartite geographical scheme they favoured would lead to a *de facto* permanent Chinese seat, the main goal of successive Chinese delegations at the League. At first glance, this was not an unreasonable assumption: by 1920, excluding all European and American states, of the League's membership there were four British dominions and colonies (Australia, New Zealand, South Africa, and India), Liberia, Persia, Siam, and Japan (already a permanent member). Abyssinia joined in 1923, but even its civilizational status was in doubt to many in the League, while Liberia and Siam were not credible contenders (one Western diplomat described them as "distant and diminutive").[402] Finally, the British dominions were assumed to be adequately represented by the United Kingdom. That an Asian seat would be a *de facto* Chinese seat was also the assumption of others contemporary observers: Balfour said as much when he tried to oppose Koo's proposal in 1920.[403]

But this seems to have underestimated the extent to which other states outside of Europe and the Americas were equally desirous of Council membership and the associated privileges. Persia, from the onset the most enthusiastic supporter of China's proposals, served on the Council from 1928 to 1931 and from 1937 to 1949, holding the "Asian seat" during two periods when China had failed to secure election to the Council and easily outpolling China on a number of occasions. And even the British dominions eventually all sought non-permanent seats as their foreign policies became more independent, especially in the aftermath of the Statute of Westminster 1931. Australia was elected to the Council in 1933, New Zealand in 1936, and South Africa in 1939 (Canada having established the precedent in 1927).[404] Chinese assumptions that its claims to be the natural representative of Asia would be unchallenged were, thus, unduly optimistic. Its claims, which its diplomats took as obviously conclusive, were anything but.

The fact that China was claiming to be a great power meant that it offered no support whatsoever to the smaller countries which wanted a more equitable scheme of representation on the

[402] Sir George E. Foster, "What Does the League Mean to You?", *Maclean's*, 1 July 1922, 18-19.
[403] League of Nations, Records of the First Assembly, Meeting of the Committees, I, 42.
[404] See Frederic H. Soward, "The Election of Canada to the League of Nations Council in 1927", *American Journal of International Law* 23(4) (1929), 753-765.

Council. China was claiming to be a great power, and therefore distinctiveness from the other, lesser powers was a prerequisite for its status-seeking, lest China's claims be subsumed into broader claims of structural inequities by Latin American republics. In fact, the only country whose claims to special treatment for Council membership were supported by China was Spain, and in unusually enthusiastic terms: the Chinese government was under the impression that "Spain's success would mean her own success",[405] presumably because Spain was seen as the closest analogue to China in international status terms. Spain's semi-permanent representation on the Council would do nothing to correct the geographical imbalance against Asia, and in fact reinforce the Eurocentricity of the League, further underscoring the point that China was not interested in Asian representation as much as Chinese status.

What was China's claim for special consideration for its status based upon? Year after year, Chinese delegates made out their case in remarkably consistent terms, which provide an important insight into China's view of its own status in the world, as well as its conception of the post-war world order. The first argument was simply that China qualified as a great power because it was *big*. As early as 1919 Koo had underlined to the Commission on the League of Nations that he was "speaking for a third of the total population represented here in this conference, and therefore, of the proposed League".[406] Thereafter China's bulk was inevitably mentioned as a decisive argument for its admission. Size was defined by Chinese representatives alternatively in terms of population, physical area, or natural resources. All in all, this amounted to an argument that China was a sort of "natural" great power, entitled to that status not by virtue of the traditional markers of that rank, but by sheer size alone, both in terms of land area and of population.

The argument was not strictly speaking a representational one: there did not seem to have been any real Chinese interest in the idea of a League parliamentary assembly, an idea which gained a certain amount of traction within pro-League circles in Europe and in America, nor was there any push for India or other major population centres to be guaranteed representation (in a bold assertion of foreign policy independence from the United Kingdom, India stood for the Council in 1922, 1924, and 1925, without China offering the slightest support). Indeed, at times, China explicitly endorsed the skewed representational balance in favour of Europe, since it was the

[405] Shunsuke Obiya, "Between 'Coercive League' and 'Consultative League': a reappraisal of debates surrounding the 'Reform' of the League of Nations", *International Relations of the Asia-Pacific* lcaa008 (9 August 2020), https://doi.org/10.1093/irap/lcaa008.
[406] Cited in Wang, "China and the League of Nations, 1920-1926, 584.

location of many of the crises the League had to deal with.[407] But there seemed to have been an assumption that size in and of itself was a qualification for membership at the top table—"In view of the size of the country and the number of its inhabitants, no nation in the world was better qualified than China to claim a permanent seat on the Council."[408] Chinese representatives also lost no opportunity to remind delegates that China was "almost as large as the whole of Europe" and that a single Chinese province was the size of a European country. The "economic potentialities" of China were also often invoked. It was argued that in light of China's enormous internal market, natural wealth, and international trade, and the fact that China's "doors were kept open for commercial intercourse" (not altogether voluntarily), China deserved to be "treated as a great Power".[409]

Though never decisive, the argument had a certain amount of traction. Sir Eric Drummond, the League's first secretary general, thought that "China is so large that if she were in a settled condition she would be almost entitled to a permanent seat".[410] The notion that China could be considered a great power due to her size also had a certain amount of support within the international diplomatic community at the time. The Soviet diplomat Ivan Maisky, for instance, drew a distinction between "natural" great powers and "artificial" ones. A natural great power "possesses a great, compact and rich territory and has a large, vigorous and stable population." According to Maisky, there were three natural great powers in existence: the United States, the Soviet Union, and China. The British Empire was only an "artificial" great power, while Germany's expansionism in central and south-east Europe was an attempt at becoming a natural great power.[411]

China's linkage between size and representation was, moreover, not as outlandish as it seemed given the fact that contributions to the League's budget were initially assessed on the basis of their contribution to the Universal Postal Union, which used a formula heavily dependent on territory and population. Thus, China was assessed as a Class 1 contributor, paying as much as all the great powers, but without any of the benefits. In 1924 a new system, based on the size of national expenditures, was introduced, but China was still the sixth biggest contributor because of her size (India suffered from the same problem, but at least had enhanced

[407] League of Nations, The Records of the First Assembly, Meeting of the Committees, vol I, 18.
[408] League of Nations C. 299. M. 139. 1926. V., 68.
[409] Ibid.
[410] Quoted in Goto-Shibata, *The League of Nations and the East Asian Imperial Order*, 143.
[411] Ivan Maisky, Gabriel Gorodetsky (ed.), Tatiana Sorokina and Oliver Ready (trans.), *The Complete Maisky Diaries* (New Haven: Yale University Press, 2017), 374.

representation through the United Kingdom).[412] The high assessments led to frequent Chinese defaults, which in turn led to a marked disclination by the Assembly to elect China to the Council, creating a vicious cycle.

The argument about size was often coupled with a second one, namely that China was the natural representative for all of Asia. Thus, Koo told the League in 1920 that:

> There were certain nations whose geographical situation, historical tradition and present development, resulted in their being confronted with problems of a similar nature, and made their interests more or less identical, and those groups should have representation on the Council.[413]

Asia needed to be represented, the argument went, because to do otherwise would be detrimental to the prestige of the League, undermine its basis in universality, and reinforce its reputation as a European, not an international, organization. And as China was the only country that could represent Asia properly, it was necessary to make special arrangements for China to be represented. It is striking that China does not appear to have supported the bid of any other Asian, African, or Australian country to the Council, nor to have acknowledged that Asia was represented during the periods during which China was not a member (the only country whose bid China supported was that of Spain, which sat awkwardly with its claims that it was standing up for the interests of Asia against European dominance of the League).[414] Meanwhile, Turkey was dismissed as too European to "represen[t] true civilization in the Far East".[415] Persia's term from 1928 to 1931 was passed over *sub silentio*, even though Persia had been one of the most enthusiastic supporters of both Asian and special Chinese representation. But the most glaring omission was the lack of any acknowledgement that Japan, as both a great power and a great Asian power, might represent the continent on the Council, even though on the criteria enunciated in 1922 Japan, though a permanent member, certainly qualified on all counts.

Despite this focus on regional leadership and representation, China rarely tapped into Pan-Asian solidarism as a basis for its claims in the League, even though it had gained traction among Chinese intellectuals. Nor was there any suggestion that China would particularly stand up for the *ruoxiao* (small and weak) members of the League as a Council member, a concept

[412] Norman L. Hill, "The Allocation of Expenses in International Organization", *American Political Science Review* 21(1) (February 1927), 128-137.
[413] League of Nations, The Records of the First Assembly, Meeting of the Committees, vol I, 17.
[414] League of Nations. Question on the Composition of the Council. A. 48. 1926. VII., 4.
[415] "China Claims Special Seat on League of Nations", *The China Weekly Review*, 28 September 1935, 129.

championed by the Guomindang leadership,[416] and in fact often disassociated itself from smaller Latin American countries' more radical demands for equal representation on the Council regardless of size through a purely rotational system. When the Beiyang government was overthrown by the Guomindang in 1928, China's representation on the League remained substantially in the hands of the same group of diplomats; and despite the GMD having often criticized both the League and Beiyang's League diplomacy earlier, very little changed in the substance of China's League policy, apart from vague threats of withdrawal from the League if China's status within the League was not elevated at once, which never materialised. If anything, the new GMG government, after initial anxiety about its international status, was even more keen to press for an augmentation of China's international status than ever before, and the claim for a permanent seat for China continued to be persecuted with great fervour.[417] Little of the GMD's earlier enthusiasm for the small and the weak made its way to Geneva.

The tributary system also made an appearance in China's claims to regional leadership. As noted earlier, some of China's representatives at Geneva had openly drawn analogies between the tributary system and the League's organisation. At home, Pan-Asian rhetoric also often assumed a tributary flavour, as for instance in Sun Yat-Sen's famous 1924 Kobe speech, in which he praised the tributary system as being based on "the rule of Right", the basis for "Oriental civilization" and superior to the Occidental "rule of Might".[418] Kang Youwei, meanwhile, had proposed to divide the world into nine "continents" with their own local governments as part of his plan for the League of Nations based on *datong*: China would be part of "East Asia" with "Japan, Korean, Annam, South Sea Islands, Siam and Burma", all of them former tributaries or within China's traditional sphere of influence.[419]

This tolerance for systems of regional hegemony made its way into the China's League diplomacy: when China sought to revise Article 21 of the League Covenant, which protected the "validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace", it made it clear that its objections were not against the Monroe Doctrine and related concepts, even though

[416] See generally Craig A. Smith, "China as the Leader of the Weak and Small: The Ruoxiao Nations and Guomindang Nationalism", *Cross-Currents: East Asian History and Culture Review* 6(2) (November 2017), 530-557.
[417] Obiya, "Between 'Coercive League' and 'Consultative League': a reappraisal of debates surrounding the 'Reform' of the League of Nations".
[418] Translation in Sun Yat-Sen, T'ang Leang-Li (ed.), *Sun Yat Sen, China and Japan: Natural Friends, Unnatural Enemies* (China United Press, 1941).
[419] Hollington K. Tong, "Kang Yu-wei as Chinese Advocate of League of Nations", *Millard's Review of the Far East*, 8 February 1919, 342.

it made a nonsense of the League's collective security provisions as far as the Western hemisphere was concerned, but only against the Open Door Policy and Unequal Treaties which affected China. Its delegation went so far as to table an amendment to explicitly shield the Monroe Doctrine, whilst Latin American countries sought wholesale revision of Article 21.[420] (When the Covenant was being drafted, Koo sought to shield the Monroe Doctrine, but not the so-called Japanese Monroe Doctrine, from the reach of the Covenant and hence of the collective security arrangements; his attempt to exempt the former but not the latter floundered because juridically the two were undistinguishable, further evidence that China's desire to redress status inequalities did not extent to anywhere beyond those to which it was subjected itself.)[421]

The idea that the League, and the new international order it promised, could in fact be reconciled with China's interest in regional hegemony was by no means a new one among Chinese diplomats. As early as 1917, Zhou Wei (Sintchar Tchéou-Wei), later head of China's permanent office at the League of Nations in Geneva, wrote about what he understood to be the Chinese origins of the new international society then under discussion in a thesis-book entitled *Pro pace juridica universali et stabili; essai sur l'organisation juridique de la société internationale*.[422] Although completely forgotten today, it is interesting for many reasons, not least for its very early references to international society and to a League of Nations-like organization, which have been overlooked in the history of the intellectual development of the League. But much of the book attempts to reconcile internationalist aspirations for a new post-war world order with Chinese foreign policy goals of the time. As an example, in his discussion of historical precedents for a future international court, which was to be integral to his scheme for a new world organization, he wrote:

> "China played, during this period, on many occasions the role of mediator and supreme arbiter for the States (kingdoms) which surrounded it, such as Korea, Cochinchina, Annam, Burma, etc…
>
> In the capital of China, there existed "a permanent court of international justice", commonly called "the external High Court", or Li-Fan-Uyn in Chinese. The [neighbouring] states often had recourse to it to decide disputes between themselves. As these states, while recognizing the suzerainty of China, remained completely independent and free, especially in their relations with each other, the Chinese High Court was truly the embryo of a tribunal of nations."[423]

[420] League of Nations O.J. 2(3) (May 1921), 248.
[421] John H. Spencer, "The Monroe Doctrine and the League Covenant", *American Journal of International Law* 30(3) (1936), 400-413. For Koo's views, see David Hunter Miller, *The Drafting of the Covenant*, vol 1 (New York and London: G. P. Putnam's Sons, 1928), 449-450 and 453-461.
[422] S. Tchéou-Weï, *Pro pace juridica universali et stabili: essai sur l'Organisation Juridique de la Société Internationale* (Geneva: Atar, 1917).
[423] Tchéou-Weï, *Pro pace juridica universali*, 104.

The "Li-Fan-Uyn" seems to refer to the *Lifan Yuan*, which was charged with the administration of Mongolia and Tibet. Although its name was often translated as the "Court of Colonial Affairs", which was a tolerable approximation of its name in Chinese but not in Manchu, it could by no stretch of the imagination be described as a proto-international court, or even a primarily judicial body, though it undertook very limited judicial functions. It was instead a primarily administrative body charged with the administration of "frontier" regions. Insofar it settled disputes, it did so between Chinese tributaries and vassals, and not between "independent and free" nations in any meaningful sense.[424] But the passage is interesting, not so much for the author's shaky understanding of late Qing governance, but for his anachronistic attempt to retrofit the idea of international justice into China's history, and to reconcile the new spirit of internationalism with China's aspirations to regional hegemony, all while using the language of the former to give latter legitimacy, and even a progressive gloss. Might and right, according to this view, needed not to be in contradiction, as Sun suggested, but could be simultaneously pursued by China as the benevolent representative and leader of an Asia united by its culture.

Culture, and indeed a form of reverse standard of civilization, was the third argument that played an important part in advancing China's claims. Many Chinese intellectuals had seen in Wilson's manifesto parallels with features of Confucian philosophy, as well as their own utopian writings. Some, including most prominently Kang Youwei, viewed the League as the achievement of the Confucian ideal of *datong*, which Kang had attempted to modernize in his 1913 utopian treatise *Datong Shu*. In fact, one of the League's early Chinese names was *guoji datong meng* (國際大同盟), reflecting the implicit linkage between Confucian utopianism and Wilsonian internationalism.[425] Koo had launched his 1919 appeal to the Big Four by drawing extensively on Confucius and *datong*, and this was to remain a constant feature of China's campaign for a permanent seat at the Council and for status within the League more generally.

Chinese culture, it was argued, was not only highly advanced, but especially in harmony with the aspirations upon which the League was based because of its inherent love for peace and justice. Hence, China, by virtue of her culture and history, was uniquely suited to a higher tier of membership within the League. As Koo argued as early as 1919:

[424] See generally Dittmar Schorkowitz and Ning Chia (eds.), *Managing Frontiers in Qing China The Lifanyuan and Libu Revisited* (Leiden: Brill, 2016).
[425] See generally Manela, *The Wilsonian Moment*; Carrai, *Sovereignty in China*; Marc Andre Matten, *Imagining a Postnational World Hegemony and Space in Modern China* (Leiden: Brill, 2016).

> Nurtured in the philosophy of peace based on Reason and Justice, the spirit of the Chinese people is the spirit of the League of Nations... the sentiment in favour of the League prevails throughout the length and breadth of the Chinese Republic.[426]

China's interactions with the international system during the long nineteenth century was profoundly shaped by the so-called standard of civilisation. But here the narrative had subtly shifted: the argument was essentially that China, from being at the outer edges of the 'civilized' international society as nineteenth-century Western states had classified it, had in fact moved to its centre because the fundamentals of Chinese civilization and the new values system of the League were intimately linked. The new standard, as with the old standard, was explicitly exclusionary: C. H. Chu even went so far as to claim that China's people "were human beings in the real acceptance [sic] of the term, peace-loving and civilised",[427] the obvious implication being that other peoples were less civilized in comparison, so that demographic heft only counted for some countries, but not for others (and in line with China's distinct lack of interest for the representation of other major population centres). The standard of civilization had not been repudiated, but repurposed and given a Chinese flavour.

Civilization alone, according to Chinese diplomats, could constitute a standalone entitlement for permanent Council representation: China had 4,000 years of recorded history, produced sages such as Confucius, and so:

> Could a nation with so rich a literature, with a history so ancient, and with so immemorial a culture be refused the place to which she laid claim among the great Powers of the world and on equal footing with them?[428]

Chinese invocations of its civilizational superiority as a basis for its claims to international status could be extremely unsubtle. Even the fact that China had published the world's largest encyclopaedia was invoked as a justification for China's claim to special representation on the Council.[429] To underscore the point even further, the Chinese representative arranged for a copy to be donated to the League's library, then told the Assembly of what he had done whilst using the occasion to remind them again of the size of the encyclopaedia.[430] It is doubtful whether such tactics advanced China's cause, but they do demonstrate the importance China attached to her own civilizational status as a basis for their claim to status.

---

[426] Koo and Wang, *China and the League of Nations*, 2.
[427] League of Nations C. 299. M. 139. 1926. V., 67-68.
[428] Ibid, at 68.
[429] Ibid.
[430] League of Nations O.J. Spec Supp 44 (1926), 104. The encyclopaedia in question appears to be the *Siku Quanshu*.

Such arguments had a certain appeal in some of the ancillary bodies of the League. The statutes of the Permanent Court of International Justice, for instance, called for the representation of "the main forms of civilization and the principal legal systems of the world" among its judges. China was represented on the Court by a deputy judge from 1920 to 1930 and a full judge from 1931 to 1942, albeit out of 15 judges in total. The cultural argument also experienced some success at the League's International Committee on Intellectual Cooperation, where China successfully argued that the Committee should have East Asian members if it were to achieve its goal of facilitating intellectual exchanges globally.[431] But the importance of civilizational exceptionalism was by no means as clear in the context of the Council, concerned not with cultural collaboration but with power relations. Western powers simply did not acknowledge China's genealogical claims to have originated the League of Nations and the new interwar world order. They were seldom referred to by anyone but the Chinese representatives, and only *en passant*. In short, there was only very limited interest in incorporating the Confucian intellectual genealogy into the foundational myths of the League; and history on its own could not be allowed to supplant considerations of raw power, nor did the claims that the Chinese were inherently more peaceful, coming at a time of prolonged civil war, cut much ice.

Finally, the one area in which China's claim to status was lacking was also perhaps the one which was traditionally considered to be the most fundamental to great power status, namely military capacity. One approach was to simply deny China's military inferiority, as C. H. Chu did in 1926 when he courageously told the League that China was in fact a great military power with modern armaments and one and half million men under arms: it was just that they were being used, for the time being, for "internal politics."[432]

But on the whole Chinese diplomats argued that military considerations should not matter for great power status. At the same session of the Assembly, Chu told the delegates that:

> [P]eople nowadays generally recognise a Power by reason of its military strength. This is a wrong conception. From my humble point of view, in considering a nation as a great Power we should take into account solely its economic potentialities and geographical position. If we still take a narrow-minded point of view and consider a Power as a military Power, it will tend to encourage military preparations [which] in the long run, endanger the peace of the world.[433]

[431] Daniel Laqua, "Transnational Intellectual Cooperation, the League of Nations, and the Problem of Order", *Journal of Global History* 6 (2011), 223-247; Takashi Saikawa, "From Intellectual Co-operation to International Cultural Exchange: Japan and China in the International Committee on Intellectual Co-operation of the League of Nations, 1922-1939", PhD dissertation, University of Heidelberg, 2014.
[432] League of Nations, C. 299. M. 139. 1926. V. p 68.
[433] League of Nations O.J., Spec. Supp. 42 (1926), 31.

In other words, the whole conception of great power status as it existed was incompatible with the League's stated aim to ensure world peace by the elimination of great armaments. Tying his country's search for international status to the wider aims of the League, he continued:

> We should form an international public opinion which would entirely discourage and look down on militarism.[434]

Elsewhere, it was argued that China could become a great military power overnight, but did not want to for moral reasons:

> Some day, to the astonishment of the world, China would claim her right to be on an equal footing with the great military Powers, but the Chinese intellectual class held that militarism should be discouraged. China had her own national characteristics, which had enabled her to live for many thousands of years and she did not depend on military force as a means of existence.[435]

Of all the arguments advanced by Chinese delegates in arguing for China's status as a great power, this was perhaps the one whose treatment was the most equivocal. Since military power clearly did still matter, a surfeit of utopianism about the moral superiority of disarmament might in fact backfire and convince the world even more that China was not a great power. Collective security, the League's core mission, also depended on great powers being willing to commit to its military enforcement, if needed, and there was never any realistic aspect of a country qualifying for Council permanent membership solely as a normative "great power". Hence, there was an incentive to not push that line of argument too far. If it did reveal tensions—how can a League dedicated to disarmament and the elimination of warfare allocate status based on military strength? —those were questions that dogged not only the League, but also the United Nations, awkward facts which were beyond the most skilful Chinese diplomat's ability to explain away.

Conclusion

China's great power status-seeking at the League might well be described as a failure. Despite investing tremendous diplomatic effort in the endeavour, its demands for recognition as a great power on the League's main body were frequently rebuffed and even privately mocked, it failed to secure re-election on multiple occasions, and even after the withdrawal of Japan from the

[434] Ibid.
[435] League of Nations, C. 299. M. 139. 1926. V. p 68.

League it did not receive the permanent seat it had long maintained was its natural entitlement. Unlike other intermediate powers such as Spain and Poland, China never managed to secure a *de facto* permanent seat—even the 1936 special seat it received was subject to the standard bar on consecutive terms and had to be balanced with the creation of another European seat, occupied by Latvia—hardly a power of any sort—in the first instance. And the constant expansion of the Council led to the "core" permanent members meeting in private conclaves, diminishing the utility of a seat on the Council as well as the status it originally carried.

On the other hand, China was a member of the Council for 12 of the 20 years from the League's establishment until 1939, the best showing for any non-European country. Had the Second World War not intervened to make the League irrelevant, it is arguable that its constant request for a privileged Council seat would have been satisfied with the removal of the bar on re-election, putting China on the same footing as Spain and Poland, if only because the non-representation of Asia would have become an embarrassment to the League in the long run, and undermined its universalist rhetoric. The continuing program of technical collaboration between the League and China, originally put in place to stop China from leaving the League, also forged unusually intimate bounds between the organisation and China and gave the League's permanent bureaucracy a vested interest in keeping China within the fold.

Beyond China's status-seeking *simpliciter* at the Council of the League of Nations, by far the most interesting part of the Chinese diplomatic campaign was in terms of the alternative world order it offered to justify its claims. Such claims were of course, to an extent, self-serving: Cecil remarked in 1926 that China and Brazil had both presented attractive cases for permanent membership; it just so happened that they were entirely in contradiction with one another as to which criteria should matter.[436] But they do reveal much about the place China saw for herself in the international system and the types of criteria Chinese representatives thought were important in addition to military strength.

From the onset there never appeared to be any doubt in the minds of not only the Chinese diplomatic corps, but also of elite opinion at home, that China was a country of first-tier importance and status and should be represented accordingly. Viewed from the outside, neither of these things was obvious. A country ravaged by unrest at home and many of whose core state functions were carried out under international tutelage, it was not even clear to some observers whether China could be considered to be a real state in any meaningful sense, let alone a great

[436] League of Nations, C. 299. M. 139. 1926. V., 75.

power. Japan was the acknowledged great power of Asia, and the region's need for a second one was by no means obvious. The almost total detachment between the expectations of Chinese domestic audiences and of the international community, and between China's largely cocooned group of diplomats and the situation at home both contributed to this extreme mismatch, so that China's campaigning had little bearing with the situation on the ground. In a stark illustration, its delegates spent much of the 1923 Assembly session trying to garner support for the geographical principle, succeeded, then were promptly voted out of the Council with the lowest total vote because "the Government of that country no longer represented anything but the city of Pekin"[437], a situation which they made no efforts to address in the Assembly. Thus, no matter how skilfully conducted, China's diplomacy at the League could not help but be subject to repeated disappointments due to its fate being linked with events well beyond the control of China's diplomatic representatives.

Beyond this, it was evident that Chinese diplomats thought China represented three distinct things: a "natural" great power owing to its size and resources, a "normative" great power due to its culture and civilization, and an "Asian" great leader because of what it perceived to be its natural position of leadership on Asia. Of the three, the easier to accept for Western powers was the first, which was undisputable, yet which was not easily operationalized into great power status *per se*, since China's resources could be perfectly well be exploited without affording the Republic of China superpower status. As to the normative aspect, the League already had its own Wilsonian creation story without needing to adopt another one based on the writings of Confucius, so China's arguments that it deserved to be a great power because of Confucius (or indeed because of the size of Qing encyclopaedias) had but a limited impact at the time. But civilizational exceptionalism continued to form a part of China's foreign policy up to the present day, the cast having been set during the Republican Era.

Turning to the regional lens, by far the most striking thing is China's attempts to reconcile internationalist ideals represented by the League and a pseudo-tributary system whereby China would be entitled to the predominant place in East Asia. Republican China was barely able to preserve her official borders intact, much less to assert authority over parts of the continent which were under foreign domination; yet it seemed natural for Chinese diplomats to invest significant political capital to defend the Monroe Doctrine instead of allying itself with smaller Latin American republics, which would have made far more sense diplomatically. But status is about differentiation and China, when offered the choice between a diplomatically expedient

[437] Howard-Ellis, *The Origin, Structure & Working of the League of Nations*, 140.

one and a status-enhancing one, had no hesitation in choosing the latter, even if it could only affect negatively its contemporaneous attempts at treaty revision. Recent scholarship on China's engagement with internationalism during the interwar period has sometime characterized it as a "national internationalism".[438] This does not appear, however, to capture fully the regionalist dimensions of China's internationalism at the time. But China did not adopt the *ruoxiao* approach officially advocated by the GMD; indeed, diplomatically it did everything to repudiate the notion that it was *ruoxiao*.

Ultimately, Martin Wight was correct in a sense: China's great power status, such as it was, was won through the violence of the Second World War. But whilst China's status as a great power might be taken for granted today, there was nothing pre-determined about the ROC's decision to consciously cast itself as a great power on the international stage at a time of extreme internal weakness and impotence, when a natural option would have been to trim its international ambitions. Arguably, China's relationship with the League of Nations, so often viewed through the lens of the failure over Shandong and Manchukuo, was in fact key in laying the intellectual groundwork for China's ascent to great power in the post-1945 era.

[438] Liang Pan, "National Internationalism in Japan and China", in Glenda Sluga and Patricia Clavin (eds.), *Internationalisms: A Twentieth-Century History* (Cambridge: Cambridge University Press, 2017), 170-190.

Chapter 5: The Chinese Soviet Republic, Or How to Think Like a State

By the early 1930s, the Republic of China had outwardly achieved a certain stability and coherence in its exercise of sovereignty. It enjoyed unchallenged international legal personality and recognition, and was even beginning to assert itself as a putative great power, or at any rate a regional one. True, many territorial questions remained unsettled: on its borders, it still had difficulty asserting its sovereignty against would-be seceding states, though it was able to prevent them from gaining international recognition as independent states. Within China proper, its authority still often depended on the goodwill of local strongmen, but the worst excesses of the Warlord Era had been successfully tamed. The principle of treaty revision had been accepted by all the relevant powers, and if China was the last sovereign state to be labouring under a regime of extraterritoriality (after Thailand had eliminated them entirely in 1926), at least it was seemingly on track to achieve the same goal.

Yet just as the Nanjing Decade was coming into its full flow, that fragile stability was attacked from an internal competitor, which presented a very different vision of what Chinese sovereignty should look like both in theory and in practice. In the scattered soviet areas centred around the Jiangxi Soviet which comprised the Chinese Soviet Republic (CSR), the Chinese Communist Party's first attempt at state-building, the future heirs of the Chinese state on the Mainland grappled with the challenge of defining the nature of China, its borders, and its constituent peoples. But the early CCP's challenge to the Republican state went beyond the simple contestation of who should wield political authority within its boundaries. Following a radical tradition within Chinese political thought, many of the Party's first generation of key leaders rejected the very legitimacy of the Chinese territorial state which the Beiyang and Nanjing governments had painstakingly built up. Instead, they openly questioned not only the Republic's legitimacy, but China's very existence as a united territorial state, the very thing successive Republican governments had been trying to preserve. Instead, they advanced radical ideas about the nature of the Chinese state, territory, and minority self-determination.

Because the CCP later came to repudiate this legacy in favour of continuing the Republican approach, this period in the Party's has often been neglected or dismissed as something of an aberration. But this takes for granted the inevitability of the Chinese state in its current form, and discount the receptive historical context in which the CCP made its most radical proposals. Conversely, by dismissing the CCP early approach to Chinese sovereignty, the distinctiveness

of the Republican approach is also lost from view. Hence, it is impossible to properly understand the latter without providing a view of the alternatives in contention.

This chapter begins by discussing the intellectual background of the CCP's radical approach to Chinese sovereignty and the territorial state by looking at the pre-Communist writings of its key founders, including Chen Duxiu, Li Dazhao, and Mao Zedong. It then examines the sovereignty practices embodied in the Chinese Soviet Republic, the little-remembered unrecognized state which represented the first of the CCP's attempts at the exercise of sovereignty and nation-building. Finally, I discuss how the outbreak of full-scale hostilities between Japan and China forced the CCP to substantially adjust its earlier approach, so that it eventually came to adopt, at least in principle, the Republican approach with its emphasis on territorial unity and the overarching importance of the state form.

Big China or Small Chinas? The Origins of CCP Views of the Territorial State

Any discussion of the CCP's attitudes toward sovereignty during the Republican Era must proceed with two things in mind. First, as a revolutionary entity fighting for its very survival against stacked odds, its views on the idea of sovereignty were by necessity somewhat haphazard and shaped by its immediate physical surroundings. Understandably, under its strained circumstances, "[l]eaders such as Mao did not devote much effort to analyzing the intricacies of the concept and practice of sovereignty".[439] But neither did it mean that they simply thought, in a slightly dismissive description, that "sovereignty was simply the people's right to manage their own affairs",[440] nor that the CCP did not reflect on the subject, even though they might not have had the luxury of trained legal advisors nor the benefit of engaging with the wider world as a recognized sovereign, as the Republican government did. It does, however, lead to a more fragmented and sometime contradictory picture, which needs careful disentangling.

Secondly, such a discussion must deal with the retrospective imposition of post-1949 attitudes to the earlier phase of the CCP's history within Chinese historiography, which tends to obscure the distinctiveness and the originality of its views of sovereignty during the Republican Era. As

[439] Douglas Howland, "The Dialectics of Chauvinism: Minority Nationalities and Territorial Sovereignty in Mao Zedong's New Democracy", *Modern China* 37(2) (March 2011), 170-201, 170.
[440] Ibid.

will be expanded upon in the Conclusion, despite its claims to revolutionary discontinuity with earlier Chinese governments, where sovereignty is concerned, the People's Republic of China has largely chosen to continue to act in the mould of the Chinese state which the Beiyang and Nanjing governments had created in previous decades. Thus, many of the CCP's earlier positions—such as on state succession and on minority self-determination—legacies from a time when it was unburdened by the task of actual national governance, became politically embarrassing. They were accordingly often excised from the official narratives, which has done much to distort the actual views of the pre-1949 CCP.

One of the key features of Republican sovereignty practice was the importance it gave to the Chinese territorial state and its unity. This was a new development: the Qing Dynasty never bothered to clearly define the limits of its territory, nor its exact relationship with its periphery, not unlike many contemporaneous empires who preferred deliberate vagueness on this count. Illustrating its approach, its 1908 draft constitution merely contained the tautology that "the Great Qing Emperor rules over the Great Qing Empire".[441] Given the ebb and flow of the Qing's territorial extent through conquest, annexation, and cession, fluidity rather than fixity naturally prevailed when it came to Chinese territoriality under the Qing. Republican China, by contrast, was obsessively concerned with the exact definition of its territorial state, laying out its maximalist territorial claims in its first constitution—the first time in modern history a country had constitutionalised its unrealised territorial claims—stubbornly pursuing its claims even when they seemed hopeless, and emphasizing the unity of the Chinese territorial state. When the Guomindang established its government in Nanjing in 1928, it purported to nullify all Beiyang laws in an apparent act of revolutionary discontinuity, but it sought to maintain state continuity and its uncompromising approach to territoriality remained the same.

By contrast, the early history of the Chinese Communist Party, which soon became the most serious internal challenger to the Republican state and eventually supplanted it, began with a highly ambivalent attitude towards the Chinese territorial state. Influenced by the obvious failures of the Republican Chinese state and Leninist views on the "National Question", the initial focus of their debate was less on how to preserve the Chinese geobody, as opposed to whether the existing Chinese territorial state was worth saving at all, or whether it should be abandoned and allowed to fall apart. Setting the stage within radical Chinese circles was a

[441] Principles of the Constitution (1908), Article 1.

famous debate in 1914–15 between Chen Duxiu and Li Dazhao, who would later co-found the Chinese Communist Party in 1921.

Chen had been much concerned with the question of *wangguo*—perished states, and in a famous 1904–05 essay had warned that China was on the path of becoming one itself.[442] In Chen's 1904 articulation, the state was an essentially territorial entity, and preservation of the national territory—"the first important thing for a state" was critical for its survival, for "no nation-state in the world can cede an inch of its sacred and inviolable territory to other people", which was precisely what the Qing had already done. Yet by 1914, having participated in the establishment of the Republic of China before becoming disillusioned with its manifold failures, Chen had come to reject the Republican project with its obsession on the territoriality of the Chinese state. For the Republican state had failed to create a Chinese *polis*, and what good was the preservation of a territorial entity if its government was incapable of commanding the allegiance and loyalty of its people? The modern Western view of a state was that of "an organization whose members cooperate in the search for the security and happiness of the citizens"; according to this test, China had never been a state, and fears of China being partitioned into a *wangguo* like India were therefore misplaced. Given the failures of the Republican state, he concluded, "it is neither glorious to maintain one's state nor regrettable to lose it".[443]

This pessimistic view shocked his fellow traveller Li Dazhao, who was driven to pen a response the following year. True, he admitted, there are good states and bad states, and certainly the Republican Chinese state was in the latter category; yet since long as statehood is indispensable for the survival of a nation, even bad states had to be put up with, in the absence of a better alternative. The fortunes of every state ebb and flow, and that the fortunes of one were at a low point was not an argument for giving up entirely. A bad state could be improved, but a *wangguo* "cannot be repaired for all eternity". And although battered, "our state still possesses its body", i.e., its territory. Hence, it was worth carrying on with China, if only to avoid the fate of Korea or Vietnam.[444] The protagonists soon made up, but the cleavage they had set up about the nature

[442] Chen Duxiu, "Wangguo pian" [An Essay on wangguo], reprinted in *Chen Duxiu zhuzuo xuan* [Selected Important Works of Chen Duxiu], vol. 1 (Shanghai: Shanghai Renmin Chubanshe,1993).
[443] Chen Duxiu, "'Shuang Ping Ji' Xu", *Jiayin zazhi* 1(4), 10 November 1914. Reprinted in *Duxiu zhuzuo xuan*, vol. 1 (Shanghai: Shanghai Renmin Chubanshe, 1993), 110-112. Reprinted and partially translated as "Patriotism and Consciousness of Self", in Hélène Carrère D'Encausse and Stuart R. Schram (trans.), *Marxism and Asia: An Introduction with Readings* (London: Allen Lane The Penguin Press, 1969), 204-206.
[444] Li Dazhao, *Jiayin zazhi* 1(8) (10 August 1915), Reprinted and partially translated as "Pessimism and Consciousness of Self", in Carrère D'Encausse and Schram, *Marxism and Asia*, 206-208.

of the Chinese territorial state would be a recurring theme within radical Chinese politics and within the Chinese Communist Party in the decades to come.

One who initially took Chen Duxiu's side was Mao Zedong, who in 1919–20 wrote extensively in support of what in retrospect seems like a quixotic venture to set up an independent, or at the very least autonomous Hunanese state as the first step toward the reconstruction of China on looser lines.[445] Some have since dismissed the episode as nothing but a youthful fancy of no great relevance: indeed one editor of Mao's writings has described them as being "of historical rather than intellectual interest", a scathing assessment which has discouraged their study.[446] But given the background of the Chen-Li debate, as well as the volume and specificity of Mao's writings on the subject, it is worth taking the episode, as well as Mao's thirty-odd pieces of writing on the subject, seriously, not least because of its apparent influence on the shape of CCP approaches to sovereignty in the following decades.[447]

Mao's thesis was a straightforward one. A common fallacy in international relations held that only "big countries" can survive in the world of the future. This has led to imperialism and to the repression of minorities by the Western big states. The "Great Republic of China" could not even manage that: instead of gaining overseas colonies, it had crushed its national minorities, been saddled with three parallel governments, dozens of pillaging warlords, mountains of debt, and little else. Its largely illiterate inhabitants could have little notion of what a republic was. But the tide was turning against big states in international affairs—the big states of Europe were beginning or had broken apart. The only way to save China was therefore "break down the foundationless big China and build many small Chinas", as the first step to a potential reconstruction of "Big China" on sounder lines. Each one of the Republic's provinces and districts should become its own country, twenty-seven in total, and Hunan among them, which could in the future provide the basis of a reconstructed federal China on German or American lines at some unspecified point in the future.[448] Another unspoken subtext was that most

[445] Mao's writings on the Republic of Hunan were first translated in Angus W. McDonald, Jr. "Mao Tse-tung and the Hunan Self-Government Movement, 1920: An Introduction and Five Translations", *The China Quarterly* 68 (December 1976), 751-777. A more extensive collection can be found in Stuart R. Schram, *Mao's Road to Power: Volume I The Pre-Marxist Period, 1912-1920* (Armonk, NY: M. E. Sharpe, 1992).
[446] Schram, "introduction" to *Mao's Road to Power: Volume I*, xxxvii.
[447] Marc Andre Matten for instance calls the episode "a temporary aberration in the process of nation building." But whether nation-building should take place on the basis of the existing Chinese territorial state or not was precisely the subject of contention, and a recurring theme in early CCP history instead of an aberration. See Matten, *Imagining a Postnational World: Hegemony and Space in Modern China*, 3.
[448] "The Fundamental Issue in the Problem of Hunanese Reconstruction: The Republic of Hunan", 3 September 1920; "Break Down the Foundationless Big China and Build Up Many Chinas Starting with Hunan", 5 September 1920; and '" Complete Self-Rule" and "Semi-Self-Rule"', 3 October 1920. Reprinted in Schram, *Volume I The Pre-Marxist Period, 1912-1920*, 543-547; 563-564.

Chinese provinces did exactly that within living memory—declaring their independence in 1911, before being reabsorbed by the new Republic in 1912, so that Mao's proposal would not have seemed nearly as radical as it appears today.

In an October 1920 essay, "Oppose Unification", Mao went even further, setting his sights on not the Republic of China, but on the idea of China itself. The Chinese, according to Mao, suffered from a sort of gigantism, "a kind of empty vanity for wearing big hats". The real cause of China's problems "lies in the two characters *Zhongguo*, and the unification of this China", which is nothing but "an empty frame with absolutely inside". For four thousand years and twenty-four dynasties the Chinese had killed each other on a massive scale, but that China never had any genuine foundation and was not a country at all. "Would it make much difference whether or not there were Chinese people within this piece of territory, China? Does it matter much to the human race that there are Chinese?" Mao asked rhetorically, before reiterating that the only way to build a "genuine China" was to dismantle "the present phoney China" on provincial or regional lines.[449]

Mao's writings from the period are not altogether entirely internally consistent. Although his plans explicitly called for the creation of independent states within China, he was not totally free from nationalist scruples and in some articles tried to obfuscate the distinction between self-rule and independence as part of his demands.[450] His attacks on "Big China" presupposed the existence of a Chinese people whose fate was interlinked to some degree, and who would eventually be reunited on a sounder national basis. Yet far from being an aberration in the context of that era, his views were part of a tradition in radical Chinese thought which questioned the necessity of a united Chinese polity as the political expression of the self-determination of the Chinese nation, when the existence of the latter was very much in question. The Hunanese republic project predictably went nowhere and petered out in 1920 amid a general of unreality, but its influence, as well as that of the Chen-Li debate, would continue be felt in the Chinese Communist Party's early phases.

[449] "Oppose Unification", 10 October 1920. Reprinted in Schram, *Volume I The Pre-Marxist Period, 1912-1920*, 579-582.

[450] For instance, in '" Complete Self-Rule" and "Semi-Self-Rule"', 3 October 1920, Mao downplays the importance of Hunan independence to his project by claiming that his goal is less about substituting "province" with "country" than simply to enact Hunanese self-rule. In the same essay, he also suggests that his independent Hunan would be somewhat analogous to American state and not a fully-fledged sovereign state.

Given the views of its key founding theorists, it is not surprising that the Chinese Communist Party would initially take an ambivalent view toward the Chinese territorial state. In addition, the strong Soviet influence, particularly on minority questions, reinforced this tendency within the Party. At its second party congress in 1922, CCP delegates voted in favour of recognizing the independence of Outer Mongolia, which had been brought by force of arms under Chinese sovereignty in 1919, before being successively taken by White Russian forces and by the Soviet Union. At the same party congress, they also voted to support a resolution that Tibet, Xinjiang, and Mongolia should become "democratic self-governing states" (*minzhu zizhi bang*) who could in due course reunite with China proper (the eighteen provinces) in a federal China, whilst repudiating forceful unification.[451]

There is some difficulty assessing the CCP's statements on national self-determination and the state form of China from that period. The Party's statements appear to be based under the assumption was that, once proletarian revolutions had been successful in the territories of the Sinic periphery, they would willingly join China proper on a federative basis. However, it is difficult to reconcile this with the CCP's endorsement of the independence of Outer Mongolia, and indeed enthusiastic support for the Soviet attempt to renew the Treaty of Kyakhta with the Republican government. Some historians have thus concluded that the CCP was under the impression that the Soviet Union would restore Outer Mongolia to China after the revolution there had become successful, although this interpretation is disputed.[452] Whatever the case, it is clear that, although the CCP's official line did not echo Chen Duxiu's and Mao Zedong's earlier radicalism, it nevertheless remained fixated on the idea that Chinese reconstruction could only be achieved through the deconstruction of the Republican territorial state, albeit with the vehicle

[451] "Zhongguo gongchandang di er ci quanguo dahui xuanyan" [Declaration of the Second National Congress of the Communist Party of China], in *Zhonggong Zhongyang Wenjian Xuanji* [Selected Documents of the CCP Central Committee], vol. 1 (Beijing: Zhonggong Zhongyang Dangxiao Chubanshe, 1992).

[452] The evidence on the point is murky and a definitive answer may never be reached. For two interpretations of those events, see Bruce A. Elleman, *International Competition in China, 1899-1991: The Rise, Fall, and Restoration of the Open Door Policy* (Abingdon: Routledge, 2015), 142 ("the Soviet government promised that Outer Mongolia would be handed back to a Chinese national government under the CCP's leadership") and Xiaoyuan Liu, *Reins of Liberation: An Entangled History of Mongolian Independence, Chinese Territoriality, and Great Power Hegemony, 1911-1950* (Washington DC: Woodrow Wilson Center Press, 2006), who argued the Soviet Union never had any such intention nor made such a promise. The key takeaway was that the CCP at the time was willing to allow non-*neidi* territories to remain independent if it advanced the broader revolutionary cause.

for deconstruction in the shape of a Communist challenge to Republican rule rather than provincial government, as Mao had envisaged earlier.

The Soviet influence at that stage was also strong. Not only did the CCP adopt the Leninist approach to ethnic minorities, but it also committed itself to defend Soviet territorial interests even when they were at odds with Chinese nationalist aspirations, most strikingly in Outer Mongolia. The CCP's closeness to the Soviet line—as indeed its later insistence that its primary role was to defend the Soviet Union against Japanese imperialism during the early 1930s—would prove an impediment to the Party becoming the standard-bearer for Chinese nationalist feelings, which became increasingly focused on territorial issues, due to the influence of nationalist education and to the loss of Manchuria.[453] But international proletarian solidarity, not the defence of Chinese territorial sovereignty, as later CCP mythology would have it, remained the guiding principle of the Party's approach to questions of national sovereignty during much of its two decades of existence.

So far, the CCP's views on sovereignty and Chinese territoriality had remained somewhat hypothetical ones, but the Party's turn to rural revolution in the aftermath of the destruction of the First United Front in 1927 provided it with an opportunity to put its theory to practice, as it assumed the control of substantial swarths of territory for the first time. Having successfully established its authority in a number of soviet eras throughout China, on 7 November 1931, the CCP proclaimed into existence the Chinese Soviet Republic (CSR), the Party's first—and largely neglected—foray in state-building and in the exercise of formal sovereignty.

The CSR was a curious creation: it was comprised of a series of discontiguous soviet areas under Communist control, extending from Shanxi in the north to Guangdong in the south, whose territorial extent ebbed and flowed with the Red Army's fortunes on the field. To modern eyes, it has the appearance of a series of guerrilla bases, not that of a state. The CSR was centred around the Jiangxi–Fujian Soviet, the largest contiguous territory under Communist rule, which led to the CRS and Jiangxi Soviet being used interchangeably in the literature on the period. Moreover, the CSR lacked any international recognition, and as a result is today seldom discussed *qua* state, or even as an unrecognized state.[454]

---

[453] See generally Peter Zarrow, *Educating China: Knowledge, Society and Textbooks in a Modernizing World, 1902-1937* (Cambridge: Cambridge University Press, 2015).

[454] In fact, the CSR is seldom discussed at all. PRC historiography, for instance, traces the establishment of modern China to 1949 and not before; the CSR is treated as an experiment, but no more. There has been a very minor flurry of interest in the CSR recently, possibly the result of the CCP's 100 anniversary celebration, but it is still described as "a rehearsal of state governance" as opposed to something which forms part of the broad sweep of

Yet although the decision to take up the armed struggle in the countryside was dictated by the circumstances, the fact that the CCP's leaders made a conscious effort to equip the CSR with the appurtenances of a traditional state, ranging from a constitution to national emblems to a new legal and economic system, and even a rudimentary foreign policy, is of importance in and of itself. The CSR was an attempt to give the Chinese communist revolution a distinctive sovereign form, separate and unrelated to that of the Republic of China.

This approach obviously had a number of purposes: most immediately, a successful CSR would demonstrate that the Communists were a viable alternative to GMD rule to the rest of China, and the setting up of a permanent form of government in the territories under CCP control also had immediate practical advantages. But by assuming the outward form of statehood, the CCP's leaders were underlining that the CSR was, to their minds, a different entity than the China that had been painstakingly created by the Beiyang and Nanjing governments.

What its leaders desired was not to take over the ROC under the traditional principles of revolution and of state succession—which would have bound them to the existing "imperialist" treaties and political structures—but to deconstruct and reconstruct the Chinese state by setting up a rival state from which to take apart the existing one: the influence of the Party's earlier debates is evident. The approach was unusual enough for the Lytton Commission to underline the fact, describing the CSR as "an actual rival of the National Government" possessing "its own law, army and government, and its own territorial sphere of action", a state of affairs which was said to have "no parallel in any other country".[455]

An explicit affirmation of the approach, and an open challenge to the congruence between the Chinese state and nation was made in the CSR Central Committee's Proclamation No 1 of December 1931, which contains a striking declaration of principles:

> From today, there are two absolutely different countries within the Chinese territory: one is the so-called Republic of China, the tool of imperialism, a government of the warlord, bureaucrat, and landlord classes used to oppress the labouring and miserable masses of workers, peasants, and soldiers…. The other is the CSR, a state of the broad masses of exploited and oppressed masses of workers, peasants, and soldiers. Its banners are: smash imperialism, destroy the landlord class, overthrow the KMT warlord government, set up a soviet government for all

Chinese statehood, no doubt because of the awkward questions it would raise. See e.g. "Zhongguo gongchandang rrn kaishile zhiguo li zheng de weida yuyan", Ministry of Justice of the People's Republic of China, 11 May 2021, https://www.moj.gov.cn/pub/sfbgw/zwgkztzl/2021nzt/20210420fdbnl_2329/hsjy/202105/t20210511_391713.html

[455] League of Nations, *Appeal by the Chinese Government: Report of the Commission of Inquiry*, C. 663. M. 320. 1932. VII., 1 October 1932, 17.

> of China, fight for the interests of the several hundred million oppressed and exploited masses of workers, peasants, and soldiers and other exploited masses, fight for a genuine peace and the unity of the whole country.[456]

This declaration represents what is believed to be the first recorded instance of the use of "Two Chinas", an expression which has since become somewhat politically sensitive in the context of Taiwan, and it is one of the under-appreciated ironies of modern Chinese history that the idea of "Two Chinas", today considered *verboten* by the PRC, in fact originated with the CCP's own doctrines. Although the proclamation is partly an exercise in political rhetoric and should be read as such, the deliberate use of "countries" (**国家**) instead of a more evasive form of words left little room for ambiguity as to the intention of its originators. The declaration's terms still presupposed, in line with earlier CCP thinking, the existence of a Chinese nation; on the other hand, in this conception the state was identified as a functional vehicle for particular ideological aspirations, which only bore a functional relationship with China as a continuing cultural, geographical, and national entity.

But if China as a state was differentiated from China as a continuing territorial and national entity, what were its outer limits? Where did it begin and end, and who would be included? There the CSR's reconstruction project hit a snag. The 1912 ROC constitution had been notably ambitious in its territorial remit. By contrast, the CSR's constitution, a seventeen-article document which clearly owed much to the 1918 Soviet constitution, said nothing about what it understood China's territorial extent to be except that it aimed to achieve the "triumph of the dictatorship throughout the whole of China".[457] Its approach to territoriality, in that respect at least, resembled more the Qing's open-ended and deliberately ambiguous approach than the Republican one.

But the same constitution did include far-reaching and radical provisions about minorities and self-determination which help to clarify the CCP's then-understanding of China, and where the CSR's approach diverged radically from both that of the PRC and of the ROC, for it provided a wide-reaching right of self-determination by China's national minorities, in line with earlier Party congress declarations:

> The Chinese Soviet government recognizes the right of self-determination of the national minorities in China, their right to complete separation from China and to

[456] Chinese Soviet Republic, "Zhonghua suwei'ai gongheguo zhongyang zhixing weiyuanhui bugao di yi hao" [Announcement No. 1 of the Central Executive Committee of the Chinese Soviet Republic], https://zh.wikisource.org/wiki/中华苏维埃共和国中央执行委员会布告_第一号.

[457] Constitution of the Chinese Soviet Republic, Article 1. All translations are taken from *Fundamental Laws of the Chinese Soviet Republic* (London: Martin Lawrence Ltd, 1934).

> the formation of an independent state for each national minority. All Mongolians, Tibetans, Miao, Yao, Koreans, etc living on the territory of China, shall enjoy the full right to self-determination, i.e., they may either join the Chinese Soviet state or secede from it and form their own state as they may prefer.[458]

This provision, at first sight expansive and unlimited in nature, represented in some ways the high watermark for the idea of self-determination in Chinese constitutionalism. It is all the more striking when compared with the *other* Chinese constitution of 1931, the GMD's Provisional Constitution of the Republic of China, adopted six months earlier and which replaced the 1912 provisional constitution. In one of its most important changes, the Provisional Constitution had declared the Republic of China to be "a unified republic forever", in contrast to the 1912 constitution, which remained silent on the point.[459] The distinctiveness of Tibet and Mongolia—though not of Qinghai, singled out in the 1912 constitution but since then nominally brought back to the fold of the Republic by the Ma family—was acknowledged by being mentioned separately from the *neidi* in Article 1 and by a guarantee that the "system of local government in Mongolia and Tibet shall be determined separately by law in the light of the local conditions".[460] But that was as far as the now-unitary nature of the ROC could be loosened to accommodate minorities' claims.

And yet the CSR constitution's self-determination guarantees were more equivocal and limited than their expansive language suggested. For one thing, who qualified as a 'national minority' was never defined: the list of peoples entitled to self-determination, left deliberately open-ended, reflected the CCP's immediate material concerns. The Miao, for instance, who had provided material assistance to the Red Army, were singled out for special mention. The Manchus, meanwhile, were mentioned in Article 4, which dealt with citizenship, but not in relation to self-determination: a discussion of their national rights would have been awkward at a time when the Japanese were making use of the same principle to justify their occupation of Manchuria. And the CCP had little to say about Taiwan: "Formosians" were grouped with Koreans and "Annamites" in Article 4, that is to say part of the broader Sinic periphery but not of China proper, in line with the CCP's then-policy of supporting the Taiwanese cause as a

[458] Constitution of the Chinese Soviet Republic, Article 14.
[459] Provisional Constitution of the Republic of China, Article 3. Translated taken from Harley Farnsworth Macnair, *China in Revolution: An Analysis of Politics and Militarism under the Republic*, (New York: H. Fertig, 1931), 228-236.
[460] Provisional Constitution of the Republic of China, Article 80.

national liberation movement related to, but separate from, that of China, which had first been adopted in 1928.[461]

But even for the 'national minorities' whose self-determination were the concern of the CCP and of the CSR, that right was circumscribed by Marxist strictures. Hence:

> The Soviet Government in China will do its utmost to assist the national minorities in liberating themselves from the yoke of the imperialists, the Guomindang militarists, the princes, lamas, and others, and in achieving compete freedom and autonomy…[462]

By equating 'internal' oppressors (princes, lamas, etc.) with the imperialist powers, the CCP was denying the legitimacy of the very real self-determination that was being exercised in Lhasa because it was not in accordance with what it understood to be *true* self-determination. National minorities had national rights, but they had to be exercised in accordance with the overarching theories of Marxism. Though it was of limited immediate importance at the time, in the long run its consequences would be fully felt by those minorities.

Yet from its onset, the CSR/CCP's ostensible lack of interest in the existing Chinese territorial state sat uneasily with the unfolding Manchurian Crisis, which brought territoriality front and centre of Chinese politics. After Japan occupied Manchuria in September 1931, the CCP/CSR issued a raft of manifestos which called for popular resistance against Japan and generally criticized the Guomindang's cautious response.[463] But although the creation of a rival territorial Chinese state should have been an ideal occasion for the CCP to assert itself as the champion of the Chinese territorial state, the documents and manifestos which accompanied the birth of the CSR made scant mention of the situation in Manchuria except implicitly as part of the broader pattern of imperialist encroachment against China. Both the Japanese invasion and the Guomindang's existence were lumped together under the generalized umbrella of imperialism, and condemned on the same basis.

In fact, for an aspiring state, even an unrecognized one, the CSR had remarkably little to say about foreign policy. A foreign affairs commissar had been appointed and a perfunctory foreign policy manifesto was issued, but it contained very little, beyond the *pro forma* formula about the overthrow of imperialism, treaty revision, denunciations of secret diplomacy, and other

---

[461] See Steve Tsang, "From Japanese Colony to Sacred Chinese Territory: Taiwan's Geostrategic Significance to China", *Twentieth-Century China* 45(3) (October 2020), 351-368 and Frank S. T. Hsiao and Lawrence R. Sullivan, "The Chinese Communist Party and the Status of Taiwan, 1928-1943", *Pacific Affairs* 52(3) (Autumn 1979), 446-467.
[462] Constitution of the Chinese Soviet Republic, Article 14.
[463] See generally Schram, *Volume IV The Rise and Fall of the Chinese Soviet Republic, 1931-1934*.

hallmarks of a desiccated Wilsonianism.[464] The only concrete foreign relationship it mentioned was, unsurprisingly, that with the Soviet Union: it highlighted the choice of the October Revolution Day as the CSR's anniversary and offered obeisance as the "best friend and ally of the Soviet Union". The CSR constitution was equally vague about foreign affairs, beyond repeating the laundry list of demands in even more peremptory terms. Pending the total defeat of imperialism worldwide, it declared, the CSR was willing to deal with existing imperialist powers on a basis of absolute equality. Foreign business concerns within the territories of the CSR had the right to continue to operate, but any breach of CSR law would lead to expropriation and imprisonment, a clause whose air of unreality must have been obvious to even its drafters, given the lack of foreign interests in the CSR's territories.[465]

As the list of Japanese encroachments into Chinese territory lengthened, the CSR's leadership became seemingly more comfortable in taking assertive stances in defence of Chinese territoriality. Mao's much-quoted telegram of 6 October 1932, with its memorable, if somewhat confused description of the League of Nations as "a League of Robbers", contained a robust condemnation of the Lytton Commission's proposals to recognize a *de facto* form of Manchurian autonomy.[466] It was as close to a defence of China as a territorial state as could be found in the CCP's policy documents of that era. But even there the condemnation had to be coupled with a lengthy attack on the Guomindang for selling out China to the imperialists, and it did not call for any concrete action against Japan.[467]

In April 1932, the CSR took the step of formally declaring war against Japan, a symbolic gesture under the circumstances which is nevertheless proudly commemorated in the CCP's party chronicles to the present day. At a time of great nationalist fervour within China, the advantages of associating the CCP with the anti-Japanese cause and to turn the CSR into an explicit vehicle for defending Chinese sovereignty were obvious. But even that declaration of war, normally the most unequivocal of political acts, remained a confused affair. Apart from the awkward question of why it was issued so late into the day, it made clear that the fight against the

[464] "Zhonghua suwei'ai gongheguo linshi zhengfu duiwai xuanyan" [Foreign Declaration of the Provisional Government of the Chinese Soviet Republic], 7 November 1931, in *Zhonggong Zhongyang Wenjian Xuanji* [Selected Documents of the CCP Central Committee], vol. 7 (Beijing: Zhonggong Zhongyang Dangxiao Chubanshe, 1992).
[465] Constitution of the Chinese Soviet Republic, Article 8. The provision may also have been intended to allow for the continued operation of certain missionary-run schools and clinics, although the evidence is very incomplete.
[466] The striking turn of phrase appears to have been borrowed from Rabindranath Tagore, who used it as early as in 1921.
[467] "Circular Telegram Opposing the Report of the International Investigation Team", 6 October 1932, in Schram, *Volume IV The Rise and Fall of the Chinese Soviet Republic, 1931-1934*, 292-294. Signed by Mao, Xiang Ying, and Zhang Guotao.

Guomindang was still the overwhelming priority— "the national revolutionary war" being a "prerequisite for fighting directly against Japan"—a line which was not seriously departed from until the formation of the Second United Front in 1937.[468] In another manifesto, National Revolutionary Army soldiers were urged to kill their officers, defect to the Red Army, and fight against the GMD, with the ongoing war with Japan scoring only a secondary mention.[469]

The CCP's leadership was hemmed in by two ideological and a practical problem when it came to the question of the defence of Chinese sovereignty. The practical problem was of course simply the fact that the immediate enemy which threatened its physical existence was the other Chinese government, not Japan or any other outside power. The theoretical questions were equally thorny. The first was the CCP's difficulty in distinguishing, at a doctrinal level, the invading Japanese from the Nanjing government. Adherence to Soviet orthodoxy meant that although the Japanese were naturally condemned as imperialists, the Guomindang were for their "running dogs of imperialism", as was virtually every opponent of the CCP.[470] If everyone who opposed the CCP was an imperialist or an enabler of imperialism, to be condemned and defeated without distinction, then the distinctiveness of Japan's attack on Chinese sovereignty was lost, since the transfer of territory from one imperialist (or imperialist-adjacent regime) to another would not be an event of any great import for China, when it clearly was. Indeed, insofar as the attack weakened the dominant imperialist/imperialist-adjacent power in China, it might even been viewed as something of a positive, though for understandable reasons this position does not seem to have been publicly articulated at the time.[471] In other words, there was no sense yet of the hierarchy of enmity which would emerge during the United Front era and periodically thereafter.

The problem is reflected in the confusing CCP/CSR exhortations to resistance of the period, which often give the impression that the Japanese invasion was merely a second-order issue.

---

[468] "Directive of the Provisional Cenral Government on Mobilizing for the Declaration of War Against Japan", 15 April 1942, in Schram, *Volume IV The Rise and Fall of the Chinese Soviet Republic, 1931-1934*, 209-214. Signed by Mao, Xiang Ying, and Zhang Guotao.

[469] "Oppose Japanese Imperialism's Occupation of Rehe and Attack on Beiping and Tianjin", 3 March 1933, in Schram, *Volume IV The Rise and Fall of the Chinese Soviet Republic, 1931-1934*, 361-363. Signed by Mao, Xiang Ying, and Zhang Guotao.

[470] See Xiaorong Han, *Chinese Discourses on the Peasant, 1900-1949* (Albany: State University of New York Press, 2005) and Dong Wang, *China's Unequal Treaties: Narrating National History* (Lanham: Lexington Books, 2005), 67-68. The habit of condemning opponents as running dogs of imperialism was not unique to the CCP in the Chinese context: Sun Yat-sen hit the Qing with the same epithet, and during the First United Front both the Guomindang and the CCP attacked the Beiyang government in the same terms.

[471] After 1949, Mao was reported to have thanked Japanese visitors on multiple occasions for the Japanese invasion of China for bringing the CCP to power; possibly this was something in the nature of a hoary joke, but it is nevertheless striking that it was said at all.

Adding to the confusion was the CCP's ideologically reading of the world situation, which meant that the League of Nations was condemned as part of the imperialist plot to dismember China, as were the Guomindang's efforts in Geneva to obtain international support against Japan.[472]

The second one was the ongoing debate, among the CCP's leadership between those who desired to prioritize the internal development of the CSR—in short, to normalise the CSR as an authentic expression of a Chinese state—and those who wanted the CSR to take a much more active anti-imperialist stance, both against the Guomindang government and Japan. The debate had clear parallels with earlier ones on whether the existing Chinese state could be rebuilt, though identification with the Moscow line seems to have been the main determining factor in party leaders' support for one option or another. The CSR did enact a radical program of social change during its existence: it enacted far-reaching legislation in land reform and in family law, which suggested an upbeat long-term view of the Republic's prospects.[473] Although its exact details are obscure, it appears the debate ended inconclusively with a compromise solution which in practice leaned toward the more actively anti-imperialist side.[474]

In the end, the CSR was never fully developed into one of the "Two Chinas" which would have challenged the Nanjing government's territorial state from within. By 1934, the Red Army, having suffered from a series of military defeats, was forced to embark on the Long March, rendering the CSR virtually defunct, though its legal shell remained until 1937 when, after the outbreak of full-scale war with Japan, the CCP agreed to form the Second United Front with the Guomindang. As part of the deal, the CSR was dissolved, although having been virtually defunct for some years its passing went almost entirely unnoticed.[475]

Meanwhile, the bruising experience of the Long March as well as the seriousness of the threat to Chinese sovereignty led the CCP to reassess its equivocal commitment to the idea of the Chinese state in favour of proletarian internationalism. In March 1937, Liu Shaoqi criticised the CCP's lack of emphasis on the loss of Chinese sovereignty in Manchuria due to its rigid

[472] Several Central Committee proclamations from that era present the League, Japan, and the GMD as part of an international conspiracy to dismember China, which reflected both the ideological blinkers the Party operated under and perhaps the paranoid style of its approach to foreign relations.
[473] The domestic legislation of the CSR is beyond the scope of this chapter. One of the very few modern accounts is in William E. Butler (ed.), *The Legal System of the Chinese Soviet Republic, 1931-1934* (New York: Transnational Publishers, 1983).
[474]Ilpyong J. Kim, *The Politics of Chinese Communism: Kiangsi Under the Soviets* (Berkley and Los Angeles: University of California Press, 1973), 103-104.
[475] The dissolution of the CSR is not mentioned in the CCP's United Front manifesto at all, and there is some doubt as to the exact date of its demise in historical sources.

adherence to the Moscow internationalist line, which prevented the Party from claiming the mantle of defender of Chinese sovereignty.[476]

By 1941, the CCP was openly endorsing concepts such as "nation supremacy" (民族至上) and "state supremacy" (国家至上), distinctly un-Marxian expressions which it had earlier condemned.[477] Attempting to reconcile the nationalism of these expressions with the orthodox Communist position, Zhou Enlai argued that although such terms have negative connotations when used by Nazi Germany or the British Empire, in the Chinese context those concepts were anti-imperialist ones which took priority over even class struggle. He did not repudiate all of the Party's former approach—self-determination for national minorities was still part of the equation—but he also equated the superordinate importance of the Chinese nation with that of the Chinese state. The CCP now disclaimed any intention to break the unity not only of the Chinese people, but also that of the Chinese state, whose unity was now invested with a revolutionary significance.[478] Having made its peace with the existing Chinese territorial state, the CCP would henceforth vie for supremacy within its confines, and even expand it from the foundations bequeathed by successive Republican governments, whilst the CSR's distinctive approaches to Chinese statehood and sovereignty were definitely abandoned. The People's Republic of China was the inheritor of the Republican Chinese state in far more than the strict legal sense.

Conclusion

This chapter has shown that far from being an aberration, the CCP and its leaders' early approach to Chinese sovereignty was anchored in a long tradition which questioned key tenets of the Republican restorationist project for Chinese sovereignty as well as the idea of China as one united territorial and national entity. Such radicalism was influenced in part by the official Soviet line, but also by indigenous Chinese writings which pre-date the Soviet Union. These converged in the creation of the Chinese Soviet Republic which, however, was quickly

[476] Liu Shaoqi, "Guanyu guoqu baiqugongzuo geizhongyang de yifengxin" [A Letter to the Party Center Concerning Past Work in the White Areas], in *Zhonggong Zhongyang Wenjian Xuanji* [Selected Documents of the CCP Central Committee], vol. 9 (Beijing: Zhonggong Zhongyang Dangxiao Chubanshe, 1992), 181.
[477] Zhou Enlai, "Minzu zhishang yu guojia zhishang" ["Nation Supremacy and State Supremacy"], *Xinhua Ribao*, 15 and 22 June 1941. Available at https://www.marxists.org/chinese/zhouenlai/349.htm. "Nation supremacy" was also the title of a 1940 patriotic play by Lao She about the need for Hui-Han unity against the Japanese onslaught, reflecting the tricky interplay between *minzu* and and *guojia*.
[478] Ibid.

overtaken by events. The Japanese invasion of Manchuria brought the CCP's position increasingly at odds with national sentiment, and the outbreak of the Second Sino-Japanese War decisively set the Party onto a path of convergence with the Republican view of Chinese sovereignty. As I will argue in the thesis' conclusion, the People's Republic of China not only claims the heir of the Republic of China from a legal point of view; it is very much the continuation of the both the territorial state it sought to maintain and of its ideology of Chinese statehood as well.

Conclusion

All Chinese students learn that Zengmu Ansha, Sansha City, Hainan Province, is the southernmost point of the "sacred territory of the People's Republic of China".[479] 5,500 kilometres from China's northernmost point and 3,5 degrees north of the Equator, it shares its latitude with Uganda and Brazil. Starting from the west, the fourth dash of the nine-dash line curves itself a few miles south of it, almost hugging the Malaysian coast.[480] The problem is that Zengmu Ansha doesn't exist. At least, not as dry land. Zengmu Ansha, or James Shoal in English, is 22 meters below sea level. The southernmost territory of China is only accessible via scuba gear. This has not stopped regular Chinese naval expeditions from placing monuments of sovereignty on Zengmu Ansha at regular intervals—by dropping them into the sea.

What has led to this extraordinary situation? Chinese fishermen based in Hainan fished in the Spratly/Nansha Islands for centuries and occasionally erected buildings on the largest ones. The Qing government published gazetteers where all of this activity was noted. But Zengmu Ansha, being underwater, was not one of them. Nor did it have a common Chinese name, despite occasional claims to the contrary. In 1930, the French navy raised the flag on the largest of the Spratly Islands, and three years later formally annexed six of the islands—but crucially, not the James Shoal. Chinese public opinion, which viewed the move as another diminution of China's territory by an imperialist power, was outraged. The then Chinese government, which had never claimed the Spratlys and which might have confused the Spratlys with the Paracel Islands north of them, nevertheless decided to stake a claim.

In order to assert its territorial claims, in 1935, China's newly-established Review Committee for Land and Water released a list of 132 Chinese names for islands in the South China Sea, most of which were simply translated names which were found on Western navigation charts. James Shoal, mapped by the Royal Navy in the 1870s and possibly named after one of the White Rajahs of Sarawak, thus became Zengmu Tan, or James Sandbank. A year later, the

---

[479] Preamble of the Constitution of the People's Republic of China, 1982.

[480] See generally Bill Hayton, *The South China Sea: The Struggle for Power in Asia* (New Haven: Yale University Press, 2014); Chris P. C. Chung, "Drawing the U-Shaped Line: China's Claim in the South China Sea, 1946–1974" *Modern China* 42(1) (January 2016), 38-72; Hurng-yu Chen, "中華民國政府繪製南海諸島範圍線之決策過程及其意涵" ["The ROC Decision-Making Process of Drawing the South China Sea U-shaped Line Map and Its Implications"], *Bulletin of Academia Historica* 47 (March 2016), 91-118; "南沙主权碑的故事" ["The story of Nansha Sovereign Monument"], *ocean.china.com.cn*, 25 February 2015, archived at https://web.archive.org/web/20171225091842/http://www.oceanol.com/redian/shendu/2015-02-25/41261.html; "曾母暗沙" ["James Shoal"], *Baidu Baike*, https://baike.baidu.com/item/曾母暗沙/538385.

nationalist geographer Bai Meichu drew the first iteration of the nine-dash line under the assumption that Zengmu Tan was an island, thus compounding the translation mistake.

In 1947, the Republican government quietly renamed Zengmu Tan to Zengmu Ansha, having in the meantime clarified that it was not an island but a shoal. But the same year, it officially claimed Zengmu Ansha as the ROC's southernmost point, despite knowing that it was completely underwater. When the People's Republic of China was established two years later, it simply continued the ROC's earlier claims, although the People's Liberation Army Navy only visited it in the 1980s. And that is how a submerged shoal became China's southernmost territory, "established in the course of history" based on the fact that "Chinese people have since ancient times lived and engaged in production activities" there, a claim repeatedly made in all Chinese books and publications, without the slightest sense of contradiction.

At one level, the story of Zengmu Ansha can be read as the simple debunking of the PRC's maximalist claims in the South China Sea; and indeed it has often been retold for that very purpose.[481] But it also illustrates the first of the major theme of this dissertation, namely the persistence of Republican China's influence on contemporary China existence and self-conceptualisation as a sovereign entity, whereby even its scriveners' errors have been transformed into shibboleth for modern Chinese statehood, to be defended to the death as integral parts of the national territory. It is striking that despite its revolutionary origins, the People's Republic of China's official geobody is—with the notable exception of Outer Mongolia as discussed in **Chapters 2 and 5**—largely the inherited Republican 'begonia leaf', and that PRC territorial irredentism is largely confined to these borders, from the Sino-Bhutanese border (where remarkably, hazy claims of suzerainty made in haste by Republican politicians a century ago are still the basis for its current territorial claims) to the South China Sea, as discussed above.

Of course, territoriality is one of the areas where one would expect a degree of path-dependency, given the accretive nature of territorial claims. But the People's Republic of China is in many more ways the inheritor of the state-body which was weaved together during the Republican Era. The modern invisibility of the Chinese Soviet Republic (**Chapter 5**) and of the radical vision of sovereignty and statehood it embodied—characterized in official historiography, if at all, as a "rehearsal of state governance" instead of something far more interesting and transformative—contrasts with the official PRC emphasis on the continuity of the Chinese state

[481] See e.g. Hayton, *The Invention of China*.

its current shape, not only in 1949 but also in 1911 and through preceding dynasties, whose defence is today a key justification underlying its claim to political legitimacy. Indeed, the symbolic locating of 1949 as the legally seamless regime transition, as well as the beginning of formal Communist statehood within Mainland China, instead of the more awkward alternative founding of 1931, strongly symbolise the PRC's desire to preserve its continuity—legal, but also symbolic—with the ROC. As the story of the CSR illustrates, China as it exists today—Mao's dismissively termed "Big China" and in many ways the creation of the Republican era, was the China that prevailed; but it was nonetheless the result of a conscious choice from China's leaders, not an inevitable outcome.

Nowhere is this continuity more in plain sight than when it comes to Taiwan, the ultimate Republican-era sovereignty hangover from the PRC's point of view—and in stark contrast with its earlier view about Taiwan's place within the Chinese body politic. As a distinctive Taiwanese cultural identity has slowly displaced that of Chineseness, the republican link—Taiwan is after all still the Republic of China, with the symbolic and the constitutional paraphernalia of that political entity—becomes paradoxically ever-more central to the PRC's claim over the island. Few things would provoke war as quickly as Taiwan's complete abandonment of its claim to be China in some sense, however tenuous—even President Tsai Ing-wen's position, already considered unacceptably separatist by Beijing, is that Taiwan is independent on the island of Taiwan *qua* Republic of China, a position in line with the long-standing strong preference of Taiwan's electorate for some form of status quo for the foreseeable future. Bilateral CCP-KMT meetings, with their studied political ambiguity but built around the idea of "One China" and harking all the way back to the days of the United Front, still play an important, albeit diminishing role in cross-strait relations.

Moving on to the broader international system aspects of this thesis, in a recent article about the rise of China in an English School perspective, Barry Buzan wrote (citing Gong and Suzuki's work on China's entry into international society) that China was "quickly and harshly pushed from being an empire to being a state" in the 19th century, and fretted that the PRC's modern discourse about harmony, with its "imperial/hierarchical implication", seems to put China in "the same camp as Russia: great powers that still seem to be thinking like empires."[482] While Buzan is undoubtedly correct to say that the PRC's modern harmony discourse (just like the earlier Republican diplomatic discourse which argued in favour of the inherent peacefulness

[482] Barry Buzan, "China's rise in English school perspective", *International Relations of the Asia-Pacific* 18(3) (September 2018), 449-476.

of Chinese culture discussed in **Chapter 4**) has a strong hierarchical and imperial element to it, his account of China's transition from empire to sovereign state, and his worry about a form of imperial backsliding, under-estimates the persistence of the imperial form in China, but also more broadly the persistence of empire as a primary institution of international society during the twentieth century, an era which is generally viewed as being characterised by what Andrew Phillips has termed a "global sovereign state monoculture."[483]

Republican China's acceptance, then instrumental mobilization of the seemingly antiquated suzerain/vassal relationship in Tibet and Mongolia (**Chapter 2**) is thus less of a legal curio (even though the antiquarian language involved may give this misleading impression) than a striking piece of evidence for the fact that China's 'push' toward statehood was neither as abrupt nor as complete as Buzan suggests. To say that China never stopped being an empire is not to say that China is a pre-modern society in the pejorative sense (as is often the subtext when modern China's imperial dimensions are discussed), because of the simple fact that empire never ceased to be modern, and continued to be a viable form of governance for much of the twentieth century. Indeed, the transformative technological, administrative, and legal innovations of the twentieth century made empire in many ways more, not less viable as a mode of governance, whose displacement by the sovereign state in the second part of the last century was arguably a result of contingency, not of historical inevitability.[484]

The international system of the inter-war era was thus far more heterarchical and far less sovereign than is often acknowledged, with continuing legal experimentation around the core idea of empire. Far from being a period of the flattening of the international system, international hierarchies, old and new, as well intermediate, semi-sovereign entities, proliferated during the first half of the twentieth century. It is all too easy to forget that the Treaty of Versailles specifically allowed any "fully self-governing State, Dominion or Colony" to join the League of Nations, that not only the fledging British dominions (itself a novel political category) joined the League as full members, but also British India, a non-dominion colonial dependency and (ostensibly) an empire of its own right. This is not to mention India's

[483] Andrew Phillips, "From Global Transformation to Big Bang—A Response to Buzan and Lawson", *International Studies Quarterly* 57(3) (September 2013), 640-642, at 641.

[484] Phillips, "From Global Transformation to Big Bang". See also Duncan S. A. Bell, "Dissolving Distance: Technology, Space, and Empire in British Political Thought, 1770–1900", *The Journal of Modern History* 77(3) (September 2005), 523-562 and Mark Mazower, *Hitler's Empire: Nazi Rule in Occupied Europe* (London: Penguin, 2009). The role of technology in enabling imperialism is of course a new idea within the historiography of European imperialism; but the extent to which it made imperialism stronger in the 20th century is perhaps easier to forget in light of the decolonization of the post-1945 period.

many vassal princely states, which had no international legal personality *per se*, but which nevertheless were both participants and sites of contestations over the nature of imperial and international sovereignty, as Priyasha Saksena's recent work on the relationship between international law and the princely states has demonstrated.[485] When Chinese and British officials jostled over the meaning of suzerainty, and when British Indian officials fretted over whether China's suzerain-vassal relationship with Tibet could be assimilated to the United Kingdom's relationship with its dominions, they were not asking an idle intellectual question, but trying to fit an old and obscure political relationship within the evolving framework of global imperialism. And if the persistence of imperial hierarchies seems obvious once baldly stated, it is salutary to remember that what is hidden in plain sight is often the hardest to spot.[486]

But while the extent to which the post-war international system represented a disruption from what came before it can be exaggerated, there can be little doubt that changes were afoot, as concepts within that order were thrown into a state of flux and open to reinterpretation and redefinition. This thesis has tried to show that Chinese diplomats were not merely passive observers, but active and impactful participants to that process of mutual reconstitution, and that they exploited their country's liminality as an ostensibly equal but structurally disadvantaged member of the 'Family of Nations' to advance ideas, using old and new vernaculars of sovereignty, about sovereignty and international order, such as Chinese diplomats' attempt to reengineer the idea of great power status and regional representation through a culturalist paradigm (**Chapter 4**), at a time when previous paradigms of international ordering seemed discredited to many, even if the "spirit of the League of Nations" did not take as many had hoped. Indeed, one might even see in their actions the beginnings of an attempt at a non-Western-centric re-founding of the international system, through the creation of alternative origins story.

Those efforts did not pay off immediately—indeed China's attempts at claiming Asian political leadership and great power status internationally must have seemed positively quixotic, coming a time when China's own statehood was by no means a settled question internationally (**Chapter 3**); but after the Second World War many of the ideas previously advanced by the

[485] Priyasha Saksena, *Sovereignty, International Law, and the Princely States of Colonial South Asia* (Oxford: Oxford University Press, 2023).
[486] See for instance Daniel Immerwahr, *How to Hide an Empire: A Short History of the Greater United States* (New York: Farrar, Straus and Giroux, 2019) for pointing the obvious, but shockingly neglected reality of the United States as a formal empire, in addition to the informal American empire which is much more familiar.

ROC's representatives, particularly the 'geographical principle' of representation within the United Nations Security Council. As to China's claims to the natural leadership of Asia by virtue of its historical position and culture, if these arguments sound familiar, it is because they have never truly disappeared from the Chinese foreign policy vernacular: the discourse of *hexie shijie* (harmonious world) is merely the latest variation on a theme already well established in the inter-war period, further underscoring the continuity between Republican and PRC approaches to world order.

To this a sceptical retort might be *so what*? After all, diplomats are paid to advance their country's interests, which often means engaging in national status-seeking; and much of this flurry of Republican-era activity is not incompatible with a realist/Krasnerian understanding of the role of sovereignty discourse within international relations, which harks back to the age-old debate about the relative merits of the logic of consequences versus the logic of appropriateness.[487] On this view, when Wellington Koo (or indeed Xi Jinping) sings the praises of Chinese culture as a inherently superior basis for a new international order, or uses China's size as an argument for status, they were or are simply reaching for the closest convenient rhetorical argument to pursue their underlying goals.

To be sure, Koo did not purely show up in Paris to publish pamphlets on Chinese intellectual thought for its own sake, but with a specific political purpose in mind. But even taking the realist counter-case at its highest, the fact that he and his colleagues adopted the rhetorical arguments they chose, particularly when they persisted in pursuing arguments which otherwise and repeatedly failed to convince anyone else, tells us much about their background assumptions about the nature of the international system they worked in as well as the community of practice in which they existed. Or to put it in more theoretical terms, as the recent body of work associated with the so-called practice turn has highlighted, there is a separate logic of practicality, which coexists and is ontologically prior to the others because it is located at the intersection of structure and agency.[488] Diplomacy is, to a very large extent, about this logic of practicality because it is a practice before it is anything else. One does not need to believe that Confucius foretold the League of Nations or that the *Lifan Yuan* was the predecessor of the Permanent Court of International Justice to note the importance of these arguments having been made in the first place.

[487] See Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).
[488] See Vincent Pouliot, "The Logic of Practicality: A Theory of Practice of Security Communities", *International Organization* 62 (Spring 2008), 257-288.

To recapitulate, this thesis has examined the ways in which Republican China's diplomatic elites as well as the leaders of the short-lived Chinese Soviet Republic wielded sovereignty as a concept and as a practice. It has argued that they used their country's liminality within the evolving international system of the era to play an important in debates about the changing nature of sovereignty within the international system and advanced their policy objectives, in particular to defend its legitimacy as an international actor. It has sought to highlight important continuities between the Republican era and modern-day China, particularly on questions of territoriality. Most of all, it has sought to reclaim the agency of these actors, and push back against traditional English School account of international society which minimize non-Western agency during the period, adopting a historically grounded approach inspired by the methodological aspirations of Global IR.

There is still much scope for further work. For instance, this thesis has largely focused on a small subset of Chinese elites who for the most part operated directly within the international arena; but the role played by Chinese intellectuals, civil society, and others, particularly the ground up, "from below" perspective, is deserving of far more investigation as well. In addition, these findings may have policy implications for the present-day, for instance in relation to China's irredentist territorial claims and to China's behaviour within international organisations, two subjects which have been the subject of heightened political interest in recent years[489] Within China, the now-somewhat abated 'Republican fever' and the ongoing reassessment of the Republican era's diplomacy, may also spur research as well as policy in new directions.[490] But Republican China's experiences, as well as those of other liminal states, should never again be discounted as "additions to the main story, rather than the story itself".[491]

[489] See Zhang Qiang and Robert Weatherley, "The rise of 'Republican fever' in the PRC and the implications for CCP legitimacy", *China Information* 27(3) (2013), 277-300.
[490] See for instance Eric Hyer, *The Pragmatic Dragon: China's Grand Strategy and Boundary Settlements* (Vancouver: UBC Press, 2015), though he understates the continuity between ROC and PRC territorial policies in the immediate aftermath of 1949.
[491] Ruskola, "China in the Age of the World Picture".

Bibliography

Notes on arrangement

Newspaper articles, speeches, etc, are listed in the usual manner in part **c** unless they were part of printed collections referred to multiple times, in which case they are not individually listed but included as part of the parent collection in part **b**.

No attempt has been made to harmonize the romanization of Chinese names. If the original publication included a transliterated name, the author is generally listed under that name. If no transliterated name was included, the author's name is given in pinyin. All transliterations of titles of books, articles, etc., are in pinyin.

a. Archives

British Library, India Office Records

- L/P&S/12 (Political (External) Department Files and Collections)
- L/P&S/18 (Political and Secret Department Memoranda)

Institute of Modern History, Academia Sinica

- Diplomatic Archives (*Waijiaobu* archives)

League of Nations Archives

- Appeal of the Chinese Government, communications from the Chinese and Japanese delegations and Report of the Commission of Inquiry
- Committee on the Composition of the Council
- League of Nations Official Journal
- Records of the First, Third, and Fourth Assemblies

The National Archives (United Kingdom)

- FO 371 (Political Departments: General Correspondence from 1906-1966)
- FO 535 (Confidential Print Tibet and Mongolia)

b. Printed collections

General

Parry, Clive, ed. *Consolidated Treaty Series*, 243 vols. Dobbs Ferry, NY: Oceana Publications, 1969-1980. (CTS)

China

Anonymous. *The Boundary Question Between China and Tibet: A Valuable Record of the Tripartite Conference Between China, Great Britain and Tibet Held in India, 1913–1914*. Peking, 1940.

Carrère D'Encausse, Hélène and Stuart R. Schram, trans. *Marxism and Asia: An Introduction with Readings*. London: Allen Lane The Penguin Press, 1969.

Chen Duxiu zhuzuo xuan [Selected Important Works of Chen Duxiu], 6 vols. Shanghai: Shanghai Renmin Chubanshe,1993.

Cohen, Jerome Alan and Hungdah Chiu. *People's China and International Law: A Documentary Study*, 2 vols. Princeton: Princeton University Press, 1974.

Fundamental Laws of the Chinese Soviet Republic. London: Martin Lawrence Ltd, 1934.

Li Hongzhang quanji, 12 vols. Changchun: Shidai wenyi chubanshe, 1998.

Lu, Yiran, ed. *Beiyang zhengfu shiqi de menggu diqu lishi ziliao* [Historical Documents Relating to Mongolia Region from the Beiyang Government Era.] Harbin: Heilongjiang Educational Publishing House, 1999.

Schram, Stuart R., ed. *Mao's Road to Power: Revolutionary Writings 1912-1949*, 10 vols? Armonk, NY: M. E. Sharpe, 1992–.

Têng, Ssu-yu and John King Fairbank. eds. *China's Response to the West A Documentary Survey, 1839-1923*. Cambridge MA: Harvard University Press, 1982.

Zhonggong Zhongyang Wenjian Xuanji [Selected Documents of the CCP Central Committee], 18 vols. Beijing: Zhonggong Zhongyang Dangxiao Chubanshe, 1992.

Zhonghua Minguo zhengfu gongbao [*Republic of China Government Gazette*]

France

Ministère des Affaires étrangères. *Documents diplomatiques: Affaires du Tonkin, deuxième partie, décembre 1882–1883*. Paris: Imprimerie nationale, 1883.

United Kingdom

Butler, Rohan, Douglas Dakin, and M. E. Lambert. eds. *Documents on British Foreign Policy 1919-1939. Second Series. Vol. IX. The Far Eastern Crisis, 1931-1932*. London: Her Majesty's Stationery Office, 1965.

East India (Tibet). *Papers Relating to Tibet*, Cd. 1920 (1904).

United States

Department of State. *Papers Relating to Foreign Affairs, Accompanying the Annual Message of the President to the Second Session Thirty-Ninth Congress, Part I*. Washington D.C.: Government Printing Office, 1867.

Department of State. *Papers Relating to the Foreign Relations of the United States, Transmitted to Congress, with the Annual Message of the President, December 6, 1875, Volume I*. Washington D.C.: Government Printing Office, 1875.

Department of State. *Papers Relating to the Foreign Relations of the United States*. Washington D.C.: Government Printing Office, 1904.

Department of State. *United States Treaty Series*. Washington D.C., 1795-1945.

c. Books, articles, etc.

Acharya, Amitav. “Global International Relations (IR) and Regional Worlds: A New Agenda for International Studies”. In*ternational Studies Review* 58(4) (December 2014), 647-659.

Acharya, Amitav. “Advancing Global IR: Challenges, Contentions, and Contributions”, *International Studies Review* 18(1) (March 2016), 4-15.

Acharya, Amitav and Barry Buzan. *The Making of Global International Relations: Origins and Evolution of IR at its Centenary*. Cambridge: Cambridge University Press, 2019.

Alejandro, Audrey. *Western Dominance in International Relations? The Internationalisation of IR in Brazil and India*. Abingdon: Routledge, 2019.

Alexandrowicz, C. H. “Empirical and Doctrinal Positivism in International Law”. *British Yearbook of International Law* 47 (1975), 286-289.

Anand, Dibyesh. “Strategic Hypocrisy: The British Imperial Scripting of Tibet's Geopolitical Identity”. *Journal of Asian Studies* 68(1) (February 2009), 227-252.

Anderl, Felix and Antonia Witt. “Problematising the Global in Global IR”. *Millennium: Journal of International Studies* 49(1) (September 2020), 32-57.

Anghie, Antony. *Imperialism, Sovereignty and the Making of International Law*. Cambridge: Cambridge University Press, 2005.

Aznar-Gómez, Mariano. “The Extinction of States”. In Eva Rieter and Henri de Waele (eds.), *Evolving Principles of International Law: Studies in Honour of Karel C. Wellens*. Leiden: Martinus Nijhoff, 2012), 25-54.

Baabar (Bat-Erdene Batbayar). *Twentieth Century Mongolia*. Cambridge: White Horse Press, 1999.

Backhouse, E. and J. O. P. Bland. *Annals & Memoirs of the Court of Peking (From the 16th to the 20th Century)*. Boston and New York: Houghton Mifflin Company, 1914.

Baidu Baike. “**曾母暗沙**” [“James Shoal”]. *Baidu Baike*, https://baike.baidu.com/item/曾母暗沙/538385.

Barnett, Robert. “Did Britain Just Sell Tibet?” *The New York Times* (24 November 2008) at A31

Baty, Thomas. *Alone in Japan: The Reminiscences of an International Jurist Resident in Japan 1916-1954*. Tokyo: Maruzen, 1954.

Baty, Thomas. "Can an Anarchy be a State?" *American Journal of International Law* 28(3) (July 1934), 444-455.

Baty, Thomas. *International Law in South Africa*. London: Steven and Haynes, 1900.

Bell, Sir Charles. *Tibet, Past & Present*. Oxford: Clarendon Press, 1924.

Bell, Duncan S. A. "Dissolving Distance: Technology, Space, and Empire in British Political Thought, 1770–1900". *The Journal of Modern History* 77(3) (September 2005), 523-562.

Bell, H. T. Montague and H. G. W. Woodhead, eds. *The China Year Book 1913*. London: George Routledge & Sons, 1913.

Benton, Lauren. "From International Law to Imperial Constitutions: The Problem of Quasi-Sovereignty, 1870-1900". *Law and History Review* 26(3) (Fall 2008), 595-619.

Bhabha, Homi K. *The Location of Culture*. London: Routledge, 1994.

Blay, Samuel K. N. "Territorial Integrity and Political Independence". In Rüdiger Wolfrum and Margrét Sólveigardóttir, eds. *Max Planck Encyclopedia of Public International Law*, Vol. IX. Oxford: Oxford University Press, 2012, 863

Borowy, Iris. *Coming to Terms with World Health: The League of Nations Health Organisation 1921-1946*. Frankfurt am Main: Peter Lang, 2009.

Boulger, Demetrius C. *The Life of Sir Halliday Macartney*. London: John Lane the Bodley Head, 1908.

Boutros-Ghali, Boutros. "Introduction". In United Nations, *The United Nations and Somalia, 1992-1996*. New York: United Nations Department of Public Information, 1996, 87.

Brierly, J. R. *The Law of Nations: An Introduction to the International Law of Peace*, 5th edition. Oxford: Clarendon Press, 1955.

Brizay, Bernard. *La France en Chine*. Paris: Perrin, 2013.

Bull, Hedley. "The Emergence of a Universal International Society". In Hedley Bull and Adam Watson, eds. *The Expansion of International Society*. Oxford: Oxford University Press, 1984, 117-126.

Butcher, Charles R. and Ryan D. Griffiths. “States and their International Relations since 1816: Introducing Version 2 of the International System(s) Dataset (ISD)”. *International Interactions* 46(2) (2020), 291-308.

Butler, William E., ed. *The Legal System of the Chinese Soviet Republic, 1931-1934*. New York: Transnational Publishers, 1983.

Buzan, Barry. “China’s rise in English school perspective”. In*ternational Relations of the Asia-Pacific* 18(3) (September 2018), 449-476.

Caflisch, Lucius. “Unequal Treaties”. *German Yearbook of International Law* 35 (1992), 52–81.

Callahan, William A. *Contingent States: Greater China and Transnational Relations*. Minneapolis: University of Minnesota Press, 2004.

Callahan, William A. “Nationalising International Theory: Race, Class and the English School”. *Global Society* 18(4) (October 2004), 305-321.

Callahan, William A. “Chinese Visions of World Order: Post-hegemonic or a New Hegemony?” *International Studies Review* 10(4) (2008), 749-761.

Cams, Mario. “Recent Additions to the New Qing History Debate”. *Contemporary Chinese Thought* 47(1) (2016), 1-4

Cao, Deborah. *Chinese Law: A Language Perspective*. London: Routledge, 2004.

Carlson, Allen. *Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era*. Stanford: Stanford University Press, 2005.

Carrai, Marie Adele, “Learning Western Techniques of Empire: Republican China and the New Legal Framework for Managing Tibet”. *Leiden Journal of International Law* 30(4) (December 2017) 801-824

Carrai, Maria Adele. *Sovereignty in China: A Genealogy of a Concept Since 1840*. Cambridge: Cambridge University Press, 2019.

Carty, Anthony and Richard Smith. *Sir Gerald Fitzmaurice and the World Crisis: A Legal Adviser in the Foreign Office, 1932-1945*. The Hague: Kluwer Law International, 2000.

Carty, Anthony. “Thomas Baty: An International Lawyer as Public Intellectual between Imperial Japan and the Republic of China”. *Japanese Yearbook of International Law* 56 (2013), 70-94.

Cassel, Pär Kristoffer. *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan*. New York: Oxford University Press, 2011.

Chan, Phil C.W. *China, State Sovereignty and International Legal Order*. Leiden: Brill Nijhoff, 2015.

Chang, Jui-Te. "An Imperial Envoy: Shen Zonglian in Tibet, 1943–1946". In Hans van de Ven, Diana Lary, and Stephen R. Mackinnon, eds. *Negotiating China's Destiny in World War II*. Stanford: Stanford University Press, 2015.

Chang, Li. *Guoji hezuo zai Zhongguo: lianmeng jiaose de kaocha 1919-1946* [International Co-operation in China: A Study on the Role of the League of Nations, 1919-1946]. Taipei: Zhongyang Yanjiuyuan Jindaishi Yanjiusuo, 1999.

Chen, Ching-Chang. "The absence of non-western IR theory in Asia reconsidered". In*ternational Relations of the Asia-Pacific*, 11(1) (January 2011), 1-23.

Chen, Hurng-yu. "中華民國政府繪製南海諸島範圍線之決策過程及其意涵" ["The ROC Decision-Making Process of Drawing the South China Sea U-shaped Line Map and Its Implications"], *Bulletin of Academia Historica* 47 (March 2016), 91-118; "南沙主权碑的故事" ["The story of Nansha Sovereign Monument"]. *ocean.china.com.cn*, 25 February 2015, archived at https://web.archive.org/web/20171225091842/http://www.oceanol.com/redian/shendu/2015-02-25/41261.html

Chen Shangsheng, ed. *Zhongguo chuantong duiwai guanxi de sixiang zhidu yu zhengce*. Jinan: Shandong daxue chubanshe, 2007.

Chen, Song-Chuan. *Merchants of War and Peace: British Knowledge of China in the Making of the Opium War*. Hong Kong: Hong Kong University Press, 2017.

Cheney, Amanda J., "Tibet Lost in Translation: Sovereignty, Suzerainty and International Order Transformation, 1904–1906". *Journal of Contemporary China* 26(107) (2017) 769-783.

"China Claims Special Seat on League of Nations", *The China Weekly Review*, 28 September 1935, 129.

China's Tibet: A Bimonthly of Tibetan News & Views. Beijing: Minzu Press, 1990.

Chinese Soviet Republic. “Zhonghua suwei'ai gongheguo zhongyang zhixing weiyuanhui bugao di yi hao” [Announcement No. 1 of the Central Executive Committee of the Chinese Soviet Republic]. https://zh.wikisource.org/wiki/中华苏维埃共和国中央执行委员会布告_第一号.

Chiu, Hungdah. “Nationality and International Law in Chinese Perspective – With Special Reference to the Period Before 1950 and the Practice of the Administration at Taipei”. In Ko Swan Sik, ed. *Nationality and International Law in Asian Perspective*. Dordrecht: Martinus Nijoff Publishers, 1990.

Chiu, Hungdah. “The Development of Chinese International Law Terms and the Problem of their Translation into English”. In Jerome Alan Cohen, ed. *Contemporary Chinese Law: Research Problems and Perspectives*. Oxford: Oxford University Press, 1970.

Chung, Chris P. C. “Drawing the U-Shaped Line: China's Claim in the South China Sea, 1946–1974”. *Modern China* 42(1) (January 2016), 38-72

Cohen (Higgins), Rosalyn. “The Concept of Statehood in United Nations Practice”. *University of Pennsylvania Law Review* 109(8) (1961), 1127-1171.

Cohen, Warren I. *East Asia at the Center: Four Thousand Years of Engagement with the World*. New York: Columbia University Press, 2000.

Coleman, Andrew and Jackson Nyamuya Maogoto. “‘Westphalian’ Meets ‘Eastphalian’ Sovereignty: China in a Globalized World”. *Asian Journal of International Law* 3(2) (2013), 237-269.

Correlates of War Project. 2017. "State System Membership List, v2016", http://correlatesofwar.org

Craig, David M. “’High Politics’ and the New ‘Political History’”. *The Historical Journal* 53(2) (June 2010), 453-475.

Crane, Robert Treat. *The State in Constitutional and International Law*. Baltimore, MD: Johns Hopkins Press, 1907.

Crawford, James. *The Creation of States in International Law*. Oxford: Oxford University Press, 2007.

Crossley, Pamela Kyle. *Hammer and Anvil: Nomad Rulers at the Forge of the Modern World*. Lantham: Rowman & Littlefield, 2009.

Davies, Norman. *Vanished Kingdoms: The History of Half-Forgotten Europe*. London: Penguin, 2011.

Davis, Kathleen. *Periodization and Sovereignty: How Ideas of Feudalism and Secularization Govern the Politics of Time*. Philadelphia: University of Pennsylvania Press, 2017.

de Carvalho, Benjamin. "Sovereignty in International Relations: Trajectories, Challenges, and Implications". In Benjamin de Carvalho, Julia Costa Lopez, and Halvard Leira, eds. *Routledge Handbook of Historical International Relations* (Abingdon: Routledge, 2021), 221-230.

Detter, Ingrid. "The Problem of Unequal Treaties". *International and Comparative Law Quarterly* 15 (1966), 1069–1089.

Donaldson, Meghan. "The League of Nations, Ethiopia, and the Making of States". *Humanity Journal* 11(1) (Spring 2020), 6-31.

Donnelly, Jack, "Sovereign Inequalities and Hierarchy in Anarchy: American Power and International Society". *European Journal of International Relations* 12(2) (2006), 139-170

Doyle, Arthur Conan. *The Great Boer War*. New York: McClure, Phillips & Company, 1901.

Dreyer, June Teufel. "The 'Tianxia Trope': will China change the international system?" *Journal of Contemporary China* 24(96) (2015), 1015-1031.

Dyzenhaus, David, ed. *Law as Politics: Carl Schmitt's Critique of Liberalism*. Durham: University of North Carolina Press, 1998.

Eastman, Lloyd E. *Throne and Mandarins: China's Search for a Policy During the Sino-French Controversy, 1880–1885*. Cambridge, MA: Harvard University Press, 1967

Elleman, Bruce A. *International Competition in China, 1899-1991: The Rise, Fall, and Restoration of the Open Door Policy*. Abingdon: Routledge, 2015.

Ellenborough, Edward Law, Lord. *A Political Diary, 1828–1830*. London: Richard Bentley & Son, 1881

Epstein , Charlotte. "The Postcolonial Perspective: An Introduction". In*ternational Theory* 6(2) (2014), 294–311.

Esherick, Joseph W. "Cherishing Sources from Afar", *Modern China* 24(2) (April 1998), 135-161.

European Union External Action Service. “Munich Security Conference , 20 February 2022 - Opening statement by HR/VP Josep Borrell”, 20 February 2022, https://eeas.europa.eu/headquarters/headquarters-homepage/111167/munich-security-conference-20-february-2022-opening-statement-hrvp-josep-borrell_en

Fairbank, John K., ed. *The Cambridge History of China: Volume 12, Republican China, 1912-1949*. Cambridge: Cambridge University Press, 1983.

Fairbank, John K., ed. *The Chinese World Order: Traditional China's Foreign Relations.* Cambridge, Mass. Harvard University Pres, 1968.

Fazal, Tanisha M. *State Death: The Politics and Geography of Conquest, Occupation, and Annexation*. Princeton: Princeton University Press, 2007.

Feng, Jianyong, “The 1911 Revolution and the Frontier: The ‘Political Game’ and ‘State-Building’ in Outer Mongolia During the 1911 Revolution”. *Asia-Pacific Journal* 12(5) (2014), 1-17

Fitzmaurice, Andrew. “Scepticism of the Civilizing Mission in International Law”. In Martti Koskenniemi, Walter Rech, and Manuel Jiménez Fonseca, eds. *International Law and Empire: Historical Explorations*. Oxford: Oxford University Press, 2017, 359-384.

Foster, Sir George E. “What Does the League Mean to You?”. *Maclean’s*, 1 July 1922, 18-19.

Fravel, M. Taylor. “China’s Sovereignty Obsession: Beijing’s Need to Project Strength Explains the Border Clash With India”. *Foreign Affairs,* 26 June 2020, https://www.foreignaffairs.com/articles/china/2020-06-26/chinas-sovereignty-obsession

Free Tibet. “Britain Rewrites History by Recognising Tibet as Part of China for the First Time” (6 November 2008). https://www.freetibet.org/news-media/pr/britain-rewrites-history-recognising-tibet-part-china-first-time.

Freud, Ernst, “The Control of Dependencies Through Protectorates” *Political Science Quarterly* 14(1) (March 1899), 19-38

Genell, Aimee M. “Autonomous Provinces and the Problem of ‘Semi-Sovereignty’ in European International Law”. *Journal of Balkan and Near Eastern Studies* 18(6) (2016), 533-549.

Goldstein, Melvyn C. *A History of Modern Tibet, 1913–1951: The Demise of the Lamaist State*. Berkeley, CA: University of California Press, 1989.

Gong, Gerrit W. *The Standard of Civilization in International Society*. Oxford: Oxford University Press, 1984.

Goto-Shibata, Harumi. "The League of Nations as an Actor in East Asia: Empires and Technical Cooperation with China". *International Relations of the Asia-Pacific* 17(3) (September 2017), 435–461.

Goto-Shibata, Harumi. *The League of Nations and the East Asian Imperial Order, 1920–1946*. Singapore: Palgrave Macmillan, 2020.

Götz, Elias. "Status Matters in World Politics". *International Studies Review*, viaa046 (2020), https://doi.org/10.1093/isr/viaa046

Grant, Thomas D. *Admission to the United Nations: Charter Article 4 and the Rise of Universal Organization*. Leiden: Martinus Nijhoff, 2009.

Grant, Thomas D. *The Recognition of States: Law and Practice in Debate and Evolution*. Westport, CT: Praeger, 1999.

Gray, Andrew, Liz Lee and Michel Rose, "China says it respects sovereignty of ex-Soviet states after EU uproar". Reuters, 24 April 2023. https://www.reuters.com/world/some-eu-ministers-say-china-envoys-remarks-ukraine-sovereignty-unacceptable-2023-04-24/.

Groenhout, Fiona. "Loyal Feudatories or Depraved Despots? The Deposition of Princes in the Central India Agency, *c*. 1880-1947". In Waltraud Ernst and Biswamoy Pati, eds., *India's Princely States: People, Princes and Colonialism*. Abingdon: Routledge, 2007, 99-117.

Grunfeld, A. Tom. *The Making of Modern Tibet, Revised Edition*. Abingdon: Routledge, 2015.

Guillaume, Xavier. "Historical Periods and the Act of Periodisation". In Benjamin de Carvalho, Julia Costa Lopez, and Halvard Leira (eds.), *Routledge Handbook of Historical International Relations*. Abingdon: Routledge, 2021, 562-570.

Guo, Songtao, Liu Xihong, Chang Te-yi; J.D. Frodsham, trans. *The First Chinese Embassy to the West: The Journals of Kuo-Sung-T'ao, Liu Hsi-Hung and Chang Te-yi*. Oxford: Clarendon Press, 1974.

Hall, David L. and Roger T. Ames. *Thinking from the Han: Self, Truth, and Transcendence in Chinese and Western Culture*. Albany: State University of New York Press, 1998.

Hall, Todd H. "Dispute Inflation". *European Journal of International Relations* 27(4) (2021), 1136-1161.

Hall, William Edward. *A Treatise on International Law*. Oxford: Clarendon Press, 1890.

Han, Xiaorong. *Chinese Discourses on the Peasant, 1900-1949*. Albany: State University of New York Press, 2005.

Hass, Mark L. *The Ideological Origins of Great Power Politics, 1789–1989.* Ithaca, NY: Cornell University Press, 2005.

Hayton, Bill. *The Invention of China*. New Haven: Yale University Press, 2020.

Hayton, Bill. *The South China Sea: The Struggle for Power in Asia*. New Haven: Yale University Press, 2014.

Heraclides, Alexis and Ada Dialla. *Humanitarian Intervention in the Long Nineteenth Century: Setting the Precedent*. Oxford: Oxford University Press, 2015.

Hevia, James L. *Cherishing Men from Afar: Qing Guest Ritual and the Macartney Embassy of 1793*. Durham, NC: Duke University Press, 1995.

Higgins, Rosalyn. *Problems and Process: International Law and How We Use It*. Oxford: Clarendon Press, 1994.

Hill, Norman L. "The Allocation of Expenses in International Organization". *American Political Science Review* 21(1) (February 1927), 128-137.

Hobson, John M. *The Eastern Origins of Western Civilisation*. Cambridge: Cambridge University Press, 2004.

Holland, Thomas Erskine; Thomas Alfred Walker and Wyndham Legh Walker, eds. *Lectures on International Law*. London: Sweet & Maxwell, 1933.

Hornbeck, Stanley K. "The Attitude and Policy of the United States Toward China". *Annals of the American Academy of Political and Social Science* 132(1) (July 1927), 48-51.

Howard-Ellis, C. *The Origin, Structure & Working of the League of Nations*. Boston and New York: Houghton and Mifflin Company, 1929.

Howland, Douglas. *International Law and Japanese Sovereignty: The Emerging Global Order in the 19th Century*. Basingstoke: Palgrave Macmillan, 2016.

Howland, Douglas. "The Dialectics of Chauvinism: Minority Nationalities and Territorial Sovereignty in Mao Zedong's New Democracy". *Modern China* 37(2) (March 2011), 170-201.

Hsiao, Frank S. T. and Lawrence R. Sullivan. "The Chinese Communist Party and the Status of Taiwan, 1928-1943". *Pacific Affairs* 52(3) (Autumn 1979), 446-467.

Hsü, Immanuel C. Y. *China's Entrance into the Family of Nations: The Diplomatic Phase, 1858–1880*. Cambridge MA: Harvard University Press, 1960.

Hu, Cheng, *Quanqiu hua yu guojia zhuquan: Bijiao fenxi* [*Globalization and National Sovereignty: A Comparative Analysis*]. Beijing: Tsinghua University Press, 2003.

Hu, Shih, "Cantong de huiyi yu fanxing" ["Painful Memories and Reflections"]. In *Hu Shi wenji* [*Collected Works of Hu Shih*], Vol 5. Beijing: Peking University Press, 1998, 381.

Huang, Zhenze. "Will China Change Its Approach to the Ukraine War?". *The Diplomat*, 8 July 2023. https://thediplomat.com/2023/07/will-china-change-its-approach-to-the-ukraine-war/

Hurrell, Andrew. "Beyond Critique: How to Study Global IR?". In*ternational Studies Review* 18(1) (March 2016), 149-151.

Hurrell, Andrew. "Why International Relations and Area Studies Need Each Other". *St Antony's International Review* 16(1) (August 2020), 191-196.

Hwang, Yih-Jye. "Reappraising the Chinese School of International Relations: A postcolonial perspective". *Review of International Studies* 47(3) (July 2021), 311-330.

Hyer, Eric. *The Pragmatic Dragon: China's Grand Strategy and Boundary Settlements*. Vancouver: UBC Press, 2015.

Ilbert, Sir Courtenay. *The Government of India, Being a Digest of the Statute Law Relating Thereto, with Historical Introduction and Illustrative Documents*/ Oxford: Clarendon Press, 1898.

Immerwahr, Daniel. *How to Hide an Empire: A Short History of the Greater United States*. New York: Farrar, Straus and Giroux, 2019.

Information Office of the State Council of The People's Republic of China. “Tibet—Its Ownership and Human Rights Situation”. Reprinted in *Chinese Journal of International Law* 2(2) (2003), 747-789.

Institut de droit international. Annuaire. Vol. 39. Brussels: Goemaere, 1936.

Japan Advertiser, 17 August 1932.

Jenco, Leigh K. *Changing Referents: Learning Across Space and Time in China and the West*. Oxford: Oxford University Press, 2015.

Jenco, Leigh K., Murad Idris, and Megan C. Thomas. “Comparison, Connectivity, and Disconnection”. In Leigh K. Jenco, Murad Idris, and Megan C. Thomas. eds. *The Oxford Handbook of Comparative Political Theory*, Oxford: Oxford University Press, 2020, 1-40.

Jiao, Runming. “Jiuyiba hou zhongguo zhishi jie bochi riben qin hua miulun kao” [“Chinese Intellectuals’ Refutation of Japanese Reasons for Invading China after the “Nine-One-Eight” Incident”]. *Xueshu Jiaoliu* 2015 (9), 209-218.

Kadercan, Boris. “Making Sense of Survival: Refining the Treatment of State Preferences in Neorealist Theory”. *Review of International Studies* 39(4) (October 2013), 1015-37, 1020-21.

Kamola, Isaac. “IR, the Critic, and the World: From Reifying the Discipline to Decolonising the University”. *Millennium: Journal of International Studies* 48(3) (June 2020), 245-270.

Kang, David C. *East Asia Before the West: Five Centuries of Trade and Tribute*. New York: Columbia University Press, 2010.

Kantorowicz, Ernest H. *The King's Two Bodies: A Study in Medieval Political Theology*. Princeton: Princeton University Press, 1957.

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

Kaufman, Alison Adcock. “In Pursuit of Equality and Respect: China’s Diplomacy and the League of Nations”. *Modern China* 40(6) (November 2014), 605-638.

Kawashima, Shin. “China”. In Bardo Fassbender and Anne Peters, eds. *The Oxford Handbook of the History of International Law*. Oxford: Oxford University Press, 2012, 451-474.

Kayaoğlu, Turan. *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China*. Cambridge: Cambridge University Press, 2010.

Keene, Edward. *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics*. Cambridge: Cambridge University Press, 2002.

Keene, Edward. "The Standard of 'Civilisation', the Expansion Thesis and the 19th-century International Social Space". *Millennium* 42 (3) (June 2014), 651-673, 656.

Kelke, W. H. H. "Feudal Suzerains and Modern Suzerainty" *Law Quarterly Review* 12 (1896). 215-227.

Kelsen, Hans; Anders Wedberg, trans. *General Theory of Law and State*. Cambridge, MA: Harvard University Press, 1949.

Ker-Lindsay, James. "Climate Change and State Death". *Survival: Global Politics and Strategy* 58(4) (2016), 73-94.

Kim, Ilpyong J. *The Politics of Chinese Communism: Kiangsi Under the Soviets*. Berkley and Los Angeles: University of California Press, 1973.

Kim, Samuel S. "Sovereignty in the Chinese Image of World Order" in Ronald St. John Macdonald, ed., *Essays in Honour of Wang Tieya*. Dordrecht: Martinus Nijhoff Publishers, 1994, 425-446.

Kirby, William C. "The Internationalization of China: Foreign Relations at Home and Abroad in the Republican Era". *The China Quarterly* 150 (1997), 433-458.

Koo, V. K. Wellington. "China's Position in the League of Nations". *Peking Daily News*, 23 September 1922, 4.

Koo, V. K. Wellington and Chen-Ting T. Wang. *China and the League of Nations* (London: George Allen & Unwin Ltd, 1919.

Koskenniemi, Martti. "The Future of Statehood". *Harvard International Law Journal* 32 (Spring 1991), 397-410.

Koskenniemi, Martti. *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*. Cambridge: Cambridge University Press, 2001.

Krasner, Stephen D. *Sovereignty: Organized Hypocrisy*. Princeton: Princeton University Press, 1999.

Krasner, Stephen D. “Organized Hypocrisy in Nineteenth-Century East Asia”. *International Relations of the Asia-Pacific* 1(2) (2001), 173-197.

Kreijen, Gerard. *State Failure, Sovereignty and Effectiveness: Legal Lessons from the Decolonization of Sub-Saharan Africa*. Leiden: Martinus Nijhoff, 2004.

Kristensen, Peter Marcus. “How can Emerging Powers Speak? On Theorists, Native Informants and Quasi-Officials in International Relations Discourse”. *Third World Quarterly*, 36(4) (2015), 637-653.

Kwan, Shiu Cheung Alan. “Sun Yat-sen on China’s Place in International Society”. DPhil diss. University of Oxford, 2020.

Lake, David A. “Hierarchy and International Relations: Theory and Evidence”. In William R. Thompson *et al*, eds. *Oxford Research Encyclopedia of Politics* (26 September 2017), https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-324

Laqua, Daniel. “Transnational Intellectual Cooperation, the League of Nations, and the Problem of Order”. *Journal of Global History* 6 (2011), 223-247.

Larsen, Kirk W. *Tradition, Treaties, and Trade Qing Imperialism and Chosŏn Korea, 1850–1910*. Cambridge MA: Harvard University Press, 2011.

Lauterpacht, Hersch. *Recognition in International Law*. Cambridge, Cambridge University Press, 1947.

Lean, Eugenia. *Public Passions: The Trial of Shi Jianqiao and the Rise of Popular Sympathy in Republican China*. Berkeley and Los Angeles: University of California Press, 2007.

Learoyd, Arthur. “Configurations of Semi-sovereignty in the Long Nineteenth Century”. In Jens Bartelson, Martin Hall, and Jan Teorell, eds., *De-Centering State Making: Comparative and International Perspectives*. Cheltenham: Edward Elgar, 2018.

Legg, Stephen. “An International Anomaly? Sovereignty, the League of Nations and India's Princely Geographies”. *Journal of Historical Geography* 12 (January 2014), 96-110.

Leuchars, Chris. “Brazil and the League Council Crisis of 1926”. *Diplomacy and Statecraft* 12(4) (December 2001), 123-142.

Li, Guangmin, *et al*. *Guo ji fa* [*International Law*]. Beijing: Tsinghua University Press, 2006.

Li, Tieh-Tseng. “The Legal Position of Tibet”. *American Journal of International Law* 50(2) (April 1956), 394-404.

Li, Xingyuan. *Li Xingyuan riji* [*Diary of Li Xingyuan*]. Beijing: Zhonghua sluijii, 1987.

Li Zhiting. ““New Qing History”: An Example of “New Imperialist” History”. *Contemporary Chinese Thought* 47(1) (2016), 5-12.

Liang, Qichao. “Mieguo xinfa lun” [New Techniques for the Destruction of Countries]. In *Yinbingshi wenji* [Collected Writings from the Ice-Drinker’s Studio – Collected Essays]. Taipei: Zhonghua shuju, 1984, 6: 32–47.

Lin, Hsaio-ting. *Tibet and Nationalist China's Frontier: Intrigues and Ethnopolitics, 1928–49*. Vancouver: UBC Press, 2006.

Liu, Lydia. “Legislating the Universal: The Circulation of International Law in the Nineteenth Century”. In Lydia Liu, ed., *Tokens of Exchange: The Problem of Translation in Global Circulations* (Durham: Duke University Press, 1999), 127-164.

Liu, Lydia H. *The Clash of Empires: The Invention of China in Modern World Making*. Cambridge MA: Harvard University Press, 2004.

Liu, Qingtao. “‘Zongzhuquan’ yu chuantong fanshu tixi de jieti—cong ‘zong fan guanxi’ yi ci de laiyuan tan qi” [“‘Suzerainty’ and Disintegration of the Traditional Vassal System: From the Origin of the Chinese Word ‘Zongzhu Quan (宗主权)’”]. *China's Borderland History and Geography Studies* 27(1) (March 2017), 1-14.

Liu, Xiaoyuan. *Reins of Liberation: An Entangled History of Mongolian Independence, Chinese Territoriality, and Great Power Hegemony, 1911-1950*. Washington DC: Woodrow Wilson Center Press, 2006.

Loh, Dylan MH and Jaakko Heiskanen. “Liminal sovereignty practices: Rethinking the inside/outside dichotomy”. *Cooperation and Conflict* 55(3) (2020), 284-304.

Long, Tom and Carsten-Andreas Schulz. “Republican internationalism: the nineteenth-century roots of Latin American contributions to international order”. *Cambridge Review of International Affairs* 35(5) (2002), 639-661.

Lorca, Arnulf Becker. *Mestizo International Law: A Global Intellectual History 1842-1933*. Cambridge: Cambridge University Press, 2014.

Lorimer, James. *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities*. Edinburgh and London: William Blackwood and Sons, 1883.

Lowe, Vaughan. "The Place of Dr. Thomas Baty in the International Law Studies of the 20th Century". *Oxford Legal Studies Research Paper No. 11/2008*, 9 March 2008.

Lowe, Vaughan. *International Law* (Oxford: Oxford University Press, 2007.

Lynch, Daniel. "Chinese Thinking on the Future of International Relations: Realism as the *Ti*, Rationalism as the *Yong*?". *The China Quarterly* 197 (March 2009), 87-107.

Macdonell, John, "Suzerainty" in Hugh Chisholm, ed., *The Encyclopædia Britannica Eleventh Edition*, vol. 26. New York: Encyclopædia Britannica Inc., 1911, 173–175.

Macnair, Harley Farnsworth. *China in Revolution: An Analysis of Politics and Militarism under the Republic*. New York: H. Fertig, 1931.

Maisky, Ivan; Gabriel Gorodetsky, ed., Tatiana Sorokina and Oliver Ready, trans. *The Complete Maisky Diaries*. New Haven: Yale University Press, 2017.

Manela, Erez. *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism*. Oxford: Oxford University Press, 2007.

Mao, Haijian, Joseph Lawson, Craig Smith and Peter Lavelle, trans. *The Qing Empire and the Opium War: The Collapse of the Heavenly Dynasty*. Cambridge: Cambridge University Press, 2016.

Marek, Krystina. *Identity and Continuity of States in International Law*, 2nd ed. Geneva: Librairie Doz, 1968.

Martin, Peter. *China's Civilian Army: The Making of Wolf Warrior Diplomacy* (New York: Oxford University Press, 2021.

Martin, W. A. P. *A Cycle of Cathay, or China, South and North, With Personal Reminiscences*, third edition. New York: Fleming H. Revell Co., 1900.

Martin, W. A. P. *The Lore of Cathay; Or, the Intellect of China*. Edinburgh and London: Oliphant, Anderson & Ferrier, 1901.

Matsui, Masato. "The Russo-Japanese Agreement of 1907: Its Causes and the Progress of Negotiations". *Modern Asian Studies* 6(1) (1972), 33-48.

Matten, Marc Andre. *Imagining a Postnational World: Hegemony and Space in Modern China*. Leiden: Brill, 2016.

Mazower, Mark. *Hitler's Empire: Nazi Rule in Occupied Europe* London: Penguin, 2009

McDonald, Angus W., Jr. "Mao Tse-tung and the Hunan Self-Government Movement, 1920: An Introduction and Five Translations". *The China Quarterly* 68 (December 1976), 751-777.

Miller, David Hunter. *The Drafting of the Covenant*, vol 1 (New York and London: G. P. Putnam's Sons, 1928.

Ministry of Foreign Affairs of the People's Republic of China. "Xie Feng: The U.S. side's so-called "rules-based international order" is designed to benefit itself at others' expense, hold other countries back and introduce "the law of the jungle"", 26 July 2021. https://www.fmprc.gov.cn/eng/wjbxw/202107/t20210726_9134605.html

Ministry of Justice of the People's Republic of China. "Zhongguo gongchandang rrn kaishile zhiguo li zheng de weida yuyan". 11 May 2021. https://www.moj.gov.cn/pub/sfbgw/zwgkztzl/2021nzt/20210420fdbnl_2329/hsjy/202105/t20210511_391713.html

Mitchell, Ryan Martínez. *Recentering the World: China and the Transformation of International Law*. Cambridge: Cambridge University Press, 2022.

Morley, Felix. *The Society of Nations: Its Organization and Constitutional Development*. Washington DC: The Brookings Institution, 1932.

Mote, Frederick W. *Imperial China: 900–1800*. Cambridge MA: Harvard University Press, 1999.

Müller, Thomas. "Institutional Reforms and the Politics of Inequality Reproduction: The Case of the League of Nations' Council Crisis in 1926". *Global Society* 34(3) (2020), 304-317.

Myers, Denys P. "Representation in League of Nations Council". *American Journal of International Law* 20(4) (October 1926), 689-713.

Nemzer, Louis. "The Status of Outer Mongolia in International Law". *American Journal of International Law* 33(3) (July 1939), 452-464.

Nish, Ian. *Japan's Struggle with Internationalism: Japan, China, and the League of Nations, 1931-3*. London: Routledge, 2009.

"No British Note to Japan", *The Times*, 11 January 1932, 13.

Noorani, A. G. *India–China Boundary Problem 1846–1947: History and Diplomacy*. Oxford: Oxford University Press, 2011.

Norbu, Dawa. *China's Tibet Policy*. Richmond: Curzon Press, 2001.

Norbu, Dawa. "The Europeanization of Sino-Tibetan Relations, 1775–1907: The Genesis of Chinese 'Suzerainty' and Tibetan 'Autonomy'". *The Tibet Journal* 15(4) (1990), 28-74.

Obiya, Shunsuke. "Between 'Coercive League' and 'Consultative League': a reappraisal of debates surrounding the 'Reform' of the League of Nations". *International Relations of the Asia-Pacific* lcaa008 (9 August 2020), https://doi.org/10.1093/irap/lcaa008.

Oblas, Peter. "Naturalist Law and Japan's Legitimization of Empire in Manchuria: Thomas Baty and Japan's Ministry of Foreign Affairs". *Diplomacy & Statecraft* 15(1) (2004), 35-55.

Ogata, Sadako N. *Defiance in Manchuria: The Making of Japanese Foreign Policy, 1931-1932*. Berkeley and Los Angeles: University of California Press, 1964.

Onon, Urgungge and Derrick Pritchatt. *Asia's First Modern Revolution: Mongolia Proclaims Its Independence in 1911*. Leiden: E. J. Brill, 1989.

Oppenheim, L., ed. *The Collected Papers of John Westlake on Public International Law*. Cambridge: Cambridge University Press, 1914.

Oppenheim, L. *International Law: A Treatise, Vol I, Peace*, 2nd ed. London: Longmans, Green & Co., 1912.

Oppenheim, L. "The Science of International Law: Its Task and Method". *American Journal of International Law* 2(2) (April 1908), 313-356.

Pan, Chengxin and Emilian Kavalski, eds. *China's Rise and Rethinking International Relations Theory*. Bristol: Bristol University Press, 2022.

Pan, Liang. "National Internationalism in Japan and China". In Glenda Sluga and Patricia Clavin, eds. *Internationalisms: A Twentieth-Century History*. Cambridge: Cambridge University Press, 2017, 170-190.

Panaite, Viorel. "The Legal and Political Status of Wallachia and Moldova in Relation to the Ottoman Porte". In Gábor Kármán and Lovro Kunčević, eds. *The European Tributary*

States of the Ottoman Empire in the Sixteenth and Seventeenth Centuries. Leiden: Brill, 2013, 9-42.

Parfitt, Rose. *The Process of International Legal Reproduction: Inequality, Historiography, Resistance*. Cambridge: Cambridge University Press, 2019.

Pedersen, Susan. "What is political history now?" In David Cannadine. ed. *What Is History Now?* London: Palgrave Macmillan, 2002), 36-56.

Perdue, Peter C. "The Tenacious Tributary System". *Journal of Contemporary China* 24(96) (2015), 1002-1014.

Pérez, Louis A., Jr. *Cuba and the United States: Ties of Singular Intimacy*. Athens, GA: University of Georgia Press, 2003.

Peters, Anne. "Statehood after 1989: '*Effectivités*' between Legality and Virtuality". In James Crawford and Sarah Nouwen, eds. *Select Proceedings of the European Society of International Law*, Vol 3. Hart Publishing: Oxford and Portland, OR, 2012, 171-184.

Peyrefitte, Alain. *L'empire Immobile, Ou, Le Choc Des Mondes: Récit Historique*. Paris : Fayard, 1989.

Peyrefitte, Alain. *The Immobile Empire*. New York: Knopf, 1992.

Philpott, Daniel. *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations*. Princeton, NJ: Princeton University Press, 2001.

Phillips, Andrew. "From Global Transformation to Big Bang—A Response to Buzan and Lawson". In*ternational Studies Quarterly* 57(3) (September 2013), 640-642.

Platt, Stephen R. *Provincial Patriots: The Hunanese and Modern China*. Cambridge MA: Harvard University Press, 2007.

Pouliot, Vincent. "The Logic of Practicality: A Theory of Practice of Security Communities". In*ternational Organization* 62 (Spring 2008), 257-288.

Raič, David. *Statehood and the Law of Self-Determination*. The Hague: Kluwer Law International, 2002.

Reeves, Jesse S. "The Origin of the Congo Free State, Considered from the Standpoint of International Law". *American Journal of International Law* 3(1) (January 1909), 99-118.

Ruskola, Teemu. “China in the Age of the World Picture”, in Anne Orford, Florian Hoffmann, and Martin Clark (eds.), *The Oxford Handbook of the Theory of International Law*. Oxford: Oxford University Press, 2016, 138-155.

Saikawa, Takashi. “From Intellectual Co-operation to International Cultural Exchange: Japan and China in the International Committee on Intellectual Co-operation of the League of Nations, 1922-1939”. PhD dissertation, University of Heidelberg, 2014.

Saksena, Priyasha. “Jousting Over Jurisdiction: Sovereignty and International Law in Late Nineteenth-Century South Asia”. *Law and History Review* 38(2) (May 2020), 409-457.

Salter, Michael G. *Carl Schmitt: Law as Politics, Ideology and Strategic Myth*. Abingdon: Routledge, 2012.

Sanders, Alan J. K. *Historical Dictionary of Mongolia*, 3rd ed. Lanham, MD: Scarecrow Press, 2010.

Saksena, Priyasha. *Sovereignty, International Law, and the Princely States of Colonial South Asia*. Oxford: Oxford University Press, 2023.

Sautman, Barry. “All that Glitters is not Gold: Tibet as a Pseudo-State”. *Maryland Series in Contemporary Asian Studies* 2009 (No. 3), 1-86.

Schmitt, Carl. “Der Völkerbund und Europa” (1927). In Günter Maschke, ed. *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik. 1924–1978*. Berlin: Duncker & Humblot, 2005, 240-254.

Schorkowitz, Dittmar and Ning Chia, eds. *Managing Frontiers in Qing China The Lifanyuan and Libu Revisited*. Leiden: Brill, 2016.

Schreuder, D. M. *Gladstone and Kruger: Liberal Government & Colonial ‘Home Rule’ 1880–85*. London: Routledge & Kegan Paul, 1969.

Schwarzenberger, Georg. *A Manual of International Law*, 6th edition. Abingdon: Professional Books, 1976.

Sexton, John. “Miliband Clears up Britain's Tibet Policy”. *china.org.cn* (2 November 2008), http://www.china.org.cn/international/news/2008-11/02/content_16700275.htm.

Smith, Craig A. “China as the Leader of the Weak and Small: The Ruoxiao Nations and Guomindang Nationalism”. *Cross-Currents: East Asian History and Culture Review* 6(2) (November 2017), 530-557.

Smith, Herbert Arthur. *Great Britain and the Law of Nations: A Selection of Documents Illustrating the Views of the Government of the United Kingdom upon Matters of International Law*, Vol 1. London: P. S. King & Sons, 1932.

Soward, Frederic H. "The Election of Canada to the League of Nations Council in 1927". *American Journal of International Law* 23(4) (1929), 753-765.

Spencer, John H. "The Monroe Doctrine and the League Covenant". *American Journal of International Law* 30(3) (1936), 400-413.

Spencer, Richard. "UK Recognises China's Direct Rule over Tibet". *The Daily Telegraph*, 5 November 2008.

Spruyt, Hendrik. "Collective Imaginations and International Order: The Contemporary Context of the Chinese Tributary System". *Harvard Journal of Asiatic Studies* 77(1) (June 2017), 21-45.

Stimson, Henry L. *The Far Eastern Crisis: Recollections and Observations*. New York: Council on Foreign Relations, 1936.

Stivachtis, Yannis A. "The Regional Dimensions of International Society". In Cornelia Navari and Daniel Green (eds.), *Guide to the English School in International Studies* (Chichester: Wiley Blackwell, 2014), 109-126.

Strangio, Sebastian. "Bill Hayton on the Invention of the Chinese Nation". *The Diplomat*, 27 October 2020, https://thediplomat.com/2020/10/bill-hayton-on-the-invention-of-the-chinese-nation/

Sun, Yat-Sen; T'ang Leang-Li, ed. *Sun Yat Sen, China and Japan: Natural Friends, Unnatural Enemies*. China United Press, 1941.

Suzuki, Shogo. *Civilization and Empire: China and Japan's Encounter with European International Society*. Abingdon: Routledge, 2009.

Svarverud, Rune. *International Law as a World Order in Late Imperial China: Translation, Reception and Discourse, 1847-1911*. Leiden and Boston: Brill, 2007.

Svarverud, Rune. "The Formation of a Chinese Lexicon of International Law 1847-1903". In Michael Lackner and Natascha Vittinghoff, eds. *Mapping Meanings: The Field of New Learning in Late Qing China*. Leiden: Brill, 2004, 507-536.

Tachibana, Makoto. “The 1911 Revolution and ‘Mongolia’: Independence, Constitutional Monarchy, or Republic”. *Journal of Contemporary East Asia Studies* 3(1) (2014), 69-90.

Tai, Katharin and Yuan Yi Zhu. “A Historical Explanation of Chinese Cybersovereignty”. *International Relations of the Asia-Pacific*, lcab009, https://doi.org/10.1093/irap/lcab009, 25 January 2022.

Tang, Chi-hua. “’Daguo diwei’ de zhuiqiu: Ershi shiji qianban qi zhongguo zai guoji zuzhi zhong de nuli” [China’s Bidding for the Great Power Status at International Organizations in the Early 20th Century]. *Journal of Humanities College of Liberal Arts National Chung Hsing University* 32 (2002), 815-833.

Tarazona, Liliana Obregón. “The Civilized and the Uncivilized”. In Bardo Fassbender and Anne Peters, eds. *The Oxford Handbook of the History of International Law*. Oxford: Oxford University Press, 2012, 917-940.

Tchéou-Weï, S. *Pro pace juridica universali et stabili: essai sur l'Organisation Juridique de la Société Internationale*. Geneva: Atar, 1917.

Timkowski, George. *Travels of the Russian Mission Through Mongolia to China, and Residence in Peking, in the Years 1820–1821*. London: Longman, Rees, Orme, Brown, and Green, 1827.

Tok, Sow Keat. *Managing China’s Sovereignty in Hong Kong and Taiwan*. New York: Palgrave Macmillan, 2013.

Tong, Hollington K. “Kang Yu-wei as Chinese Advocate of League of Nations”. *Millard’s Review of the Far East*, 8 February 1919, 342.

Tsang, Steve. “From Japanese Colony to Sacred Chinese Territory: Taiwan’s Geostrategic Significance to China”. *Twentieth-Century China* 45(3) (October 2020), 351-368.

Tung, Cheng-Chia and Alan H. Yang. “How China Is Remaking the UN In Its Own Image”. *The Diplomat*, 9 April 2020, https://thediplomat.com/2020/04/how-china-is-remaking-the-un-in-its-own-image/

Vattel, Emer de. *Le droit des gens, ou Principes de la loi naturelle, appliqués à la conduite et aux affaires des Nations et des Souverains*, volume 1. London, 1758.

Viola, Lora Anna. *The Closure of the International System: How Institutions Create Political Equalities and Hierarchies*. Cambridge: Cambridge University Press, 2020.

Walsh, Michael J. "States of Exception: The Violence of Territoriality, Sacrality, and Religion in China-Tibet Relations". *Journal of Religion and Violence* 1(1) (2013), 71-98

Walsh, Michael J. *Stating the Sacred: Religion, China, and the Formation of the Nation-State*. New York: Columbia University Press, 2020.

Waltz, Kenneth N. *Theory of International Politics*. Long Grove, IL: Waveland Press, 2010.

Wang, Ben, ed. *Chinese Visions of World Order: Tianxia, Culture, and World Politics*. Durham: Duke University Press, 2017.

Wang, Dong. *China's Unequal Treaties: Narrating National History*. Lanham: Lexington Books, 2005.

Wang, Jiawei and Nyima Gyaincain. *The Historical Status of China's Tibet*. Beijing: China Intercontinental Press, 1997.

Wang, Tieya. 'International law in China: historical and contemporary perspectives', in *Recueil des cours: Collected Courses of The Hague Academy of International*, vol 221. Dordrecht: Martinus Nijhoff Publishers, 1990, 195-370.

Wang, Tsao-Shih. "China and the League of Nations, 1920-1926". *Chinese Social and Political Science Review* 12(4) (October 1928), 582-596.

Wang, Yuan-Kang. *Harmony and War: Confucian Culture and Chinese Power Politics*. New York: Columbia University Press, 2010.

Wang, Zheng. *Never Forget National Humiliation: Historical Memory in Chinese Politics and Foreign Relations*. New York: Columbia University Press, 2014.

Wendt, Alexander. *Social Theory of International Politics*. Cambridge: Cambridge University Press, 1999.

Wight, Martin. *Power Politics*. New York: Continuum, 1978.

Wight, Martin. *Systems of States*. Leicester: Leicester University Press, 1977.

Willoughby, Westel W. *The Sino-Japanese Controversy and the League of Nations*. Baltimore: Johns Hopkins Press, 1935.

Wilson, Florence. *The Origins of The League Covenant Documentary History of Its Drafting*. London: The Hogarth Press, 1928.

Woodhead, H. G. W., ed. *The China Year Book 1921–2*. Tientsin: Tientsin Press, 1921.

Wu, Pinjin. *Guoji lianmeng jiqi qushi* [The League of Nations and its Trends], vol. 2. Shanghai: Shang wu yin shu guan, 1920.

Xiao, Yang. "Liang Qichao's Political and Social Philosophy". In Chung-Ying Cheng and Nicholas Bunnin (eds.), *Contemporary Chinese Philosophy*. Oxford: Blackwell Publishers, 2002.

Zanasi, Margherita. "Exporting Development: The League of Nations and Republican China". *Comparative Studies in Society and History* 49(1) (January 2007), 143-169.

Zarakol, Ayşe. *After Defeat: How the East Learned to Live with the West*. Cambridge: Cambridge University Press, 2010.

Zarakol, Ayşe, ed. *Hierarchies in World Politics*. Cambridge: Cambridge University Press, 2017.

Zarrow, Peter. *Educating China: Knowledge, Society and Textbooks in a Modernizing World, 1902-1937*. Cambridge: Cambridge University Press, 2015.

Zhang, Feng. "International Societies in Pre-Modern East Asia: A Preliminary Framework". In Barry Buzan and Yongjin Zhang, eds. *Contesting International Society in East Asia*. Cambridge: Cambridge University Press, 2014, 29-50.

Zhang, Jianhua. "Ershi shiji zhongguo dui bupingdeng tiaoyue gainian de qishi" [Origins of the Concept of Unequal Treaties in Twentieth-Century China]. In Niu Daoyong ed., *Ershi shiji de zhongguo* [*Twentieth Century China*]. Nanchang: Jiangxi renmin chubanshe, 2003.

Zhang, Jinfan. *The Tradition and Modern Transition of Chinese Law*. Heidelberg: Springer, 2014.

Zhang, Qiang and Robert Weatherley. "The rise of 'Republican fever' in the PRC and the implications for CCP legitimacy". *China Information* 27(3) (2013), 277-300.

Zhang, Yongjin. *China in the International System, 1918-1920: The Middle Kingdom at the Periphery*. London: Macmillan/St Martin's Press, 1991.

Zhang, Yongjin. “China's Entry into International Society: Beyond the Standard of 'Civilization'“. *Review of International Studies* 17(1) (January 1991), 3-16.

Zhang, Yongjin. “Understanding Chinese Views of the Emerging Global Order”. In Wang Gungwu and Zheng Yongnian, eds. *China and the New International Order*. Abingdon: Routledge, 2008, 149-167.

Zhang, Yongjin. “The “English School” in China: A Story of How Ideas Travel and are Transplanted”. Australian National University IR Working Paper 2000/4 (December 2000). https://ir.bellschool.anu.edu.au/sites/default/files/uploads/2019-07/ir_working_paper_2000-4.pdf.

Zhang, Yongjin and Barry Buzan. “The Tributary System as International Society in Theory and Practice”. *Chinese Journal of International Politics* 5(1) (March 2012), 3-36.

Zhang Xiaoming. “China in the conception of international society: the English School's engagements with China”, *Review of International Studies* 37(2) (April 2011), 763-786.

Zhang, Xiaoming. *国际关系英国学派 历史, 理论与中国观* [*English School of International Relations: History, Theory and View on China*]. Beijing: Renmin chubanshe, 2013.

Zhao, Suisheng. *A Nation-state by Construction: Dynamics of Modern Chinese Nationalism*. Stanford: Stanford University Press, 2004.

Zhou, Enlai. “Minzu zhishang yu guojia zhishang” [“Nation Supremacy and State Supremacy”]. *Xinhua Ribao*, 15 and 22 June 1941. Available at https://www.marxists.org/chinese/zhouenlai/349.htm.

Ziemele, Ineta. “States, Extinction of”. In Rüdiger Wolfrum and Margrét Sólveigardóttir, eds., *Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press, 2008, https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1111

d. Miscellaneous

Charter of the United Nations

Covenant of the League of Nations

United States et al. v. Araki et al., International Military Tribunal for the Far East, Dissenting Opinion of the Member for India, December 1948.

United States v. the Netherlands (1928) 2 R.I.A.A. 829.