Master Practitioner of International Law: Japan's Rise through the Ranks of International Society, 1853-1905

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Abstract

This thesis examines Japan's rise through the ranks of international society between 1853 and 1905 from the lens of the practice of international law. It pursues two objectives: (1) to present a theoretical integration of the English School and the practice literature in IR; and (2) to analyze how Japan achieved this rise by becoming a 'master practitioner' of international law.

The study offers a conceptualization of international society as a universal yet stratified community of practice of international law. It identifies three stages of a practitioner: novice, regular, and master, based on three cumulative criteria of background knowledge and rule acceptance, simple compliance, and ability to exploit the rules for national interests and international reputation, particularly through forward-looking and backward-looking mistake-correcting. Empirically, the study examines how Japan transitioned from a novice practitioner under the Tokugawa regime (1853-68) to a regular practitioner under the Meiji government (1868-1894) and a master practitioner during and after the Sino-Japanese War (1894-1905) by correcting two mistakes: the sinking of the *Kowshing* and the Port Arthur massacre. I conduct a single-N qualitative research, analyzing Japanese and foreign archival sources and writings of prominent publicists, who served as key recognizers.

Three contributions are made to IR. First, the thesis brings international law to the center of the English School's notion of international society and shifts the analysis from its passive narrative of socialization and conformity to a more agential narrative of practice. Second, the thesis demonstrates that attaining high position in international society was harder than what has been conventionally suggested by revealing how masterful performance, not simple compliance, accorded high rank. Finally, the thesis brings an agential understanding of Japan's rise through its historically-grounded analysis. The study furthers the English School, and the larger themes of hierarchy, practice, and agency speak to the broader IR.

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Chapter 1:

Introduction

This study examines how Japan rose through the ranks of international society between 1853 and 1905 from the lens of the practice of international law. Studies of international society and Japan's meteoric rise from a nation subjugated under European and American unequal treaties in the 1850s to a full-fledged great power by 1905 abound in International Relations (IR), particularly in the English School.[1] Despite these legacies, many puzzles remain underexplored, and this thesis seeks to help fill that gap.

One such puzzle is how little the English School has written about changes in an entity's position within international society through the lens of practice. Since the 'practice-turn' in IR of the 2000s, scholars have provided key insights into the quotidian, manifold practices undergirding international politics and analyzed how practice fits into the (re)production of international hierarchy.[2] Meanwhile, the English School, drawing from scholars such as Charles Manning, Michael Oakshott, Ludwig Wittgenstein, and Ted Schatzki, has increasingly used the notion of practice in its theorizing: Robert Jackson's *The Global Covenant* and Bill Bain's *Between Anarchy and Society* are two such

[1] 'International society' is the signature concept of the English School. Bull 1977; Bull and Watson 1984; Suganami 1984; Gong 1984. For disciplines other than English School, examples include Mearsheimer 2001; Larson and Shevchenko 2010.
[2] Schatzki, Cetina, and Savigny 2001; Adler and Pouliot 2011a; Pouliot 2016; Lechner and Frost 2018. For other literature on practice, see among others Neumann 2002; Pouliot 2010; Adler and Pouliot 2011b; Bigo 2011; Navari 2011; Adler-Nissen 2013; Wilson 2012.

examples.[3] Nevertheless, the English School has hardly used practice to study how an entity changes its position within international society, particularly when it comes to non-European entities. Given that the English School has extensively studied how different entities joined and engaged with international society – whether one subscribes to the notion of an 'expansion of international society' or its revisions[4] – this gap is surprising. This thesis seeks to fill this gap.

1.1. Objectives and Research Question

Two main objectives thus animate this thesis. The first is to present a theoretical integration of the English School and the practice literature to reexamine the notions of international society and entities' position within it. The second is to analyze Japan's journey as a case study. Namely, I examine how Japan rose through the ranks of international society by becoming what I call a 'master practitioner' of international law. Thus, the question driving the thesis is:

> *How did Japan's use of the practice of international law shape its position within international society between 1853 and 1905?*

I begin my analysis at 1853 to reflect the fact that Japan did not encounter European international law until the arrival of American and European naval fleets and imposition of unequal treaties.[5] Although Japan did have relations with European powers prior to 1853,

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[3] Jackson 2000; Bain 2003.
[4] For instance, some scholars have preferred the notion of a 'globalization' of international society to reflect how interactions among different entities shaped and propagated international society, as opposed to an expansion that suggests that international society simply increased in membership. Dunne and Reus-Smit 2017.
[5] Osataka 1926; McOmie 2006.

even during the so-called 'seclusion period,' these relations were limited, mostly based on trade, and conducted in accordance with Japan's conception of diplomacy, and thus less relevant for the present study.[6] Meanwhile, I end my periodization at 1905 because both practitioners in the day and modern-day scholars were in consensus that Japan attained a dominant position within international society by that time. Practitioners in the late 19th and early 20th century marked this recognition through means such as abrogation of extraterritoriality that came into effect in 1899 and the promotion of diplomatic missions from legations to embassies.[7] Modern-day scholars have pointed to various indicators, such as the two above, Japan's defeat of China and Russia in war, the signing of the Anglo-Japanese Alliance, and overall what Singer and Small call 'active and influential [participation] in European-centered diplomacy.'[8] The temporal scope of this study thus has practical and scholarly precedence.

1.2. Approach

The thesis combines the English School and the practice literature to conceptualize international society as a *universal yet stratified community of practice of international law*. I distinguish between three stages of a practitioner – novice, regular, and master – based on the cumulative criteria of background knowledge and rule acceptance, simple compliance, and the ability to exploit the rules for national interests and international

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[6] Ibid.; Ibid.; Yanagihara 2012. See Chapter 3.
[7] Edward VII to Meiji Emperor, 1 November 1905, letter of credence, in Diplomatic Archives of the Ministry of Foreign Affairs of Japan (digitalized). Also see Gong 1984; Suganami 1984; Okagaki 2013.
[8] Singer and Small 1966; Howland 2016.

reputation, particularly through mistake-correcting. I differentiate between forward-looking mistake-correcting (in which the practitioner acknowledges the mistake, assumes responsibility, and acts differently in the future) and backward-looking mistake-correcting (in which the practitioner engages in narrative-building to portray the mistake as having been a compliant act all along). A practitioner rises through the ranks of international society by going through the three stages. In determining when the practitioner reached a particular stage, I examine the important but hitherto understudied role of prominent international legal scholars (henceforth 'publicists') as key recognizers. Empirically, I reveal the process by which Japan transitioned from a novice practitioner under the Tokugawa regime (1853-68) to a regular practitioner in the first few decades of the Meiji government (1868-1894) and a master practitioner during and after the Sino-Japanese War (1894-1905). I illuminate how publicists by the turn of the 20th century pointed to Japan's conduct during the Sino-Japanese War to confidently rank it alongside the European and American powers in international society. In discussing the Sino-Japanese War, I analyze two cases of mistakes that Japan made and corrected: the sinking of the British steamship *Kowshing* and the Port Arthur massacre.

Three discretionary notes on the Sino-Japanese War cases are warranted here. First, the narrow focus does not imply that other cases inside and outside the Sino-Japanese War were not significant. Rather, I cover the two cases because they invited particularly high international scrutiny and condemnation at the time, posing grave threats to Japan's

national interests and international reputation.[9] Not all mistakes are equal: highly visible and consequential mistakes threaten an entity more than smaller ones and carry a greater weight in determining its position within the community of practice. From this logic, examining how Japan maneuvered these two high-stakes cases is well-suited to understand how Japan became a master practitioner of international law. Second, my lack of emphasis on developments beyond the Sino-Japanese War, such as the Anglo-Japanese Alliance of 1902 and the Russo-Japanese War of 1904-5, does not discount the role they played in securing Japan's high position in international society. I only study the Sino-Japanese War because practitioners in the day and modern-day scholars have overwhelmingly agreed that this was the moment in which Japan reached the high rank, and later developments only cemented this status.[10] Finally, by studying how Japan attained a dominant position in international society, I do not suggest that Japan automatically gained equal treatment with the European and American powers. The Triple Intervention of 1895, in which Germany, Russia, and France forced Japan to return to China the Liaodong Peninsula that it won from the war, and the failure of Japan's racial equality proposal at the 1919 Paris Peace Conference reveal that widely-recognized high status did not eliminate discrimination for the newcomer among the European and American powers, particularly as the first non-white power.[11] These limitations invite future scholarly research. For the present, however, my aim is to analytically focus on how Japan reached the rank of the Europeans and the Americans by becoming a master practitioner of international law.

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[9] Chapter 4 will discuss these further. See also Howland 2007; Howland 2016; Paine 2003.
[10] Iriye 1989. Also see Howland 2016; Mearsheimer 2001.
[11] Paine 2003; Shimazu 2002; Ward 2013.

1.3. Contributions to IR

The study offers three contributions to IR. First, the thesis refines the English School's understanding of international society by highlighting the role of international law and the agential narrative of practice. The English School has traditionally understood international society from the lens of its expansion and non-Europeans' socialization and conformity, particularly through meeting the standard of civilization.[12] Recent scholars have refined the conventional understanding in many ways, such as by highlighting its stratified nature, the role of coercion in the expansion, and the agency of non-Europeans in shaping international society.[13] Nevertheless, as Chapter 2 will reveal, scholars have paid insufficient attention to the role of practice of international law, and the socialization-and-conformity approach remain persistent in their analyses. In filling this gap, the thesis elevates international law to the center of international society and shifts the analysis of non-European entities from the passive narrative of socialization and conformity to the more agential narrative of practice and competent performances.

Second, the thesis reexamines the English School narrative of how non-Europeans attained a dominant position in international society by distinguishing between what I call 'simple compliance' and 'masterful performance.' Conventionally, the English School has treated compliance with international law as the necessary condition for entry and rise through the ranks of international society.[14] While the thesis does not deny the importance of

[12] Bull and Watson 1984; Gong 1984.
[13] See among others Howland 2016; Keene 2014; 2002; Suzuki 2009; Dunne and Reus-Smit 2017.
[14] Gong 1984; Suganami 1984; Okagaki 2013; Howland 2016.

compliance, it unveils that simple compliance only accorded general membership, and that high status required a more active, masterful engagement with international law. By demonstrating that attaining high status was more difficult than what the English School has conventionally suggested, the thesis offers a new understanding of how an entity rose through the ranks.

Finally, empirically, the thesis brings agency to Japan by providing a historically-grounded and empirically-rich account of its rise. In recent years, there has been a concerted effort by IR scholars both inside and outside the English School to bring non-European agency and perspectives to their studies and to advance a Global IR.[15] This thesis speaks to this effort by revealing the roles of individual Japanese legal scholars, political leaders well-versed in international law, foreign legal experts hired by the Meiji government, and prominent publicists in driving Japan's transformation into a master practitioner and recognition by the international community. The historical details bring Japan to the center of the narrative and provide fruitful grounds for future studies of Japan in IR.

It is worth noting here that while the specific contributions are to the English School and agency, the thesis might speak to IR scholars outside the English School in more ways than the furthering of Global IR. The core ideas driving this thesis, hierarchy and practice, are of much interest to the broader IR. Recently, IR scholars across disciplines have criticized the long-held assumption of anarchy and studied hierarchy in multiple dimensions, from

[15] Suzuki 2009; Okagaki 2013; Howland 2016. Also see among others Acharya 2014; 2016; Zarakol 2011.

material power to race, gender, class, neo-colonialism, and norms, among others.[16] As Jack Donnelly put it, '[s]uper- and subordination, both formal and informal, are central to the structure of most international societies – including modern international society.'[17] The thesis speaks to this literature by adding the practice of international law as a dimension of hierarchy. By following Japan's journey from a novice to a regular and master practitioner, the study contributes to the broader IR's understanding in how hierarchy is manifested and how states maneuver it. Meanwhile, the analytical lens of practice has garnered increasing attention as a useful tool for IR, even for scholars who study the macro picture. In the words of Vincent Pouliot, 'social phenomena, including macro-structures such as international hierarchies of standing, are constituted in and through practice,' and thus '[t]o ignore them is to cut oneself short from a key set of explanatory factors in world politics.'[18] By using the lens of practice to analyze large concepts such as international society, the thesis could reveal the utility of incorporating practice in other studies within the broader IR.

1.4. Why Focus on the Practice of International Law and Japan?

Some may question my decision to study the practice of international law and to undertake a single-N study of Japan. For the former, they may wonder why I leave out the analysis of other practices, such as diplomacy, international administrative unions, and war. Past scholars have investigated how Japan accepted and adopted the European diplomatic

[16] See, among others, Mattern and Zarakol 2016; Lake 2009; Hobson 2014.
[17] Donnelly 2012.
[18] Pouliot 2016, 12, 10.

practices, used organizations such as the Universal Postal Union and International Telegraph Union, and waged war against China and Russia to assert its presence on the international stage.[19] Going beyond practice, some may attribute Japan's rise to other factors, such as the amassment of material power through modernization; Britain's growing concern with Russian expansion in Asia that pushed Britain to abrogate its unequal treaty with Japan, convince other powers to do the same, and mark Japan's status as an equal by signing the Anglo-Japanese Treaty; the attainment of civilized status; and the internalization of norms stipulated by the Europeans and the Americans.[20] I do not dismiss the salience of these factors in any way. Instead, I focus on the practice of international law because it is an essential yet so far understudied element of Japan's rise. As Chapter 2 will discuss in more detail, international law was the foundation of 19th-century international society insofar as it was based on the legal positivist notion that the society was a group of states that made and abided by international law.[21] As prominent publicist John Westlake put it, '[w]ithout society no law, without law no society.'[22] The practice of international law was thus an essential, if not the foremost, part of being a member of international society and merits scholarly attention.[23] My focus on international law is also compatible with studies of other practices such as diplomacy, international administrative unions, and war because international law often provided key guidelines for

[19] For example, Suganami 1984; Suzuki 2009; Howland 2016; Ravndal 2020.
[20] Mearsheimer 2001; Waltz 1979; Nish 2013; Otte 2007; Gong 1984; Suganami 1984; Finnemore and Sikkink 1998.
[21] Alexandrowicz 1967; Navari 2011; Wilson 2009.
[22] Oppenheim 1914, 3.
[23] English School scholars such as Bull and James highlight how international law constituted the supreme rules guiding relations between states. Bull 1977; James 1973. These will be discussed further in Chapter 2.

how to conduct these practices. Stipulations about how to protect the rights of diplomatic representatives, international administrative law, and treaties such as the Geneva Convention are all examples of such guidelines.[24] Finally, while the diverse factors beyond practice are important, they miss key elements of Japan's rise. Material power, British geopolitical interests, attainment of civilized status, and norm internalization respectively miss the role of social recognition of Japan's high status, Japan's agency beyond reliance on circumstances, the undergirding of the notion of civilization by the practice of international law, and the need to not only internalize norms but to assert its acceptance and translate it into action.[25] In sum, I treat the practice of international law not as the exclusive factor behind Japan's rise, but rather a central and compelling factor that warrants analysis.

For the latter, I undertake a single-N study because my aim is to *understand* Japan's rise and attain high internal validity. Pursuing a constitutive approach, I envision a constellation of factors that made Japan's rise in international society possible and examine one such factor – the practice of international law – as my central focus. [26] In other words, I do not seek a causal model of explanation, invalidate alternative factors behind Japan's rise, or test my theoretical approach involving the practice to other cases. As the conclusion suggests, such endeavors would be potential areas of future scholarly works. My focus on Japan in particular – as opposed to China or Ottoman Empire, for example –

[24] For example, Otsuka 1969; Takahashi 1899a.
[25] Chapter 2 illuminates these elements.
[26] Hollis and Smith 1991; Wendt 1998.

stems from two reasons.[27] First, Japan's transformation into a dominant power is remarkable for its comprehensiveness and speed, and it played a key role in determining Japan's trajectory in the 20th century and beyond, not least with regards to the world wars. Japan therefore holds historical significance for studies of international relations, and this led to my desire to contribute to the existing English School and other IR works on the subject. Second, Japan's engagement with international law was more pronounced than that of its non-European counterparts and thus appeared to be a particularly important element of Japan's rise. As Hazel Jones notes, although non-European entities generally engaged with international law by virtue of being brought into international society, Japan gave much more priority to legal study than its counterparts such as China and the Ottoman Empire.[28] The importance of international law to Japan's rise is further revealed by other examples. For instance, Japan participated in international legal organizations such as International Law Association (ILA) and Institut de Droit International (IDI); established the Japanese Association for International Law and Diplomacy in 1897, ten years before the U.S. established its equivalent; and in 1902 began the publication of the *Journal of International Law,* which became the 'first international law journal published outside the European continent.'[29] The thesis does not cover all of such instances by virtue of its focus. Nevertheless, these revealed the pertinence of the lens of international law in understanding Japan's rise, and the case of Japan thus appeared useful for my theoretical framework of international society as a community of practice of international law.

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[27] Zhang 1991 provides an insightful analysis on China's entry.
[28] Jones 1990, 24.
[29] Okagaki 2013, 87; Kuriyama 1957, 4; Rasilla 2018, 145.

1.5. Methods and Sources

This thesis undertakes qualitative research and has theoretical and historical elements. For the study's first objective of presenting a theoretical integration, I engage critically with the seminal scholarly works in the English School and the practice literature. I identify within the English School the openings to which I could incorporate the notions of practice, and I identify key concepts from the practice literature to further develop in my own theoretical approach. For my second historical objective of examining Japan's rise through the practice lens, I utilize a single-N study to reveal the process by which Japan transitioned between a novice, regular, and master practitioner and was recognized as such by publicists.

The thesis examines a wide range of primary and secondary sources. I draw on theoretical literature from scholars such as Hedley Bull, Adam Watson, Hidemi Suganami, Gerrit W. Gong, Shogo Suzuki, Tomoko Okagaki, Douglas Howland, Emanuel Adler, Vincent Pouliot, Silviya Lechner, and Mervyn Frost.[30] Meanwhile, the empirical analysis uses primary and secondary sources mostly from Japan, Britain, and the U.S., and some from France and Germany. For Japan's learning and masterful practice of international law, I consulted archival sources such as telegrams and correspondence between top leaders, records of key meetings, and reports of consequential incidents in the Sino-Japanese War,

[30] Bull and Watson 1984; Suganami 1984; Gong 1984; Suzuki 2009; Okagaki 2013; Howland 2016; Adler and Pouliot 2011a; Lechner and Frost 2018; Pouliot 2016.

as well as other primary sources such as the publicists' books, important official proclamations, and diaries of top leaders and diplomatic officials. Japan's strict Covid restrictions prevented me from physically accessing the Diplomatic Archives. Archives were closed throughout the summer under the state of emergency; government-mandated quarantine prevented my visiting in the winter before the archives closed for the holidays, and the archives reopened after I returned to Oxford for Hilary Term. I maneuvered this roadblock in two ways. First, I consulted the government's published compilation of important historical documents (*Nihongaikobunsho,* or *Documents on Japanese Foreign Policy*) and extensive official digital archives (Japan Center for Asian Historical Records, National Archives of Japan). Second, I visited the permanent archival exhibitions at the Japanese Ministry of Foreign Affairs and Ministry of Justice that held some documents of interest. Of these two, the first way constituted my primary solution to exploring Japanese primary sources. Meanwhile, to probe how Japan's status was recognized, I consulted foreign primary sources including the publicists' key books and treatises (some digitized, many in print), the physical *The Times* newspapers from 1894, and the *British Documents on Foreign Affairs'* volume on the Sino-Japanese War containing a compilation of key historical documents. I accessed these sources through the Bodleian Libraries, particularly the Law and Weston Libraries. Finally, for secondary sources, I found particularly helpful the works by Japanese scholars on the history of international law such as Yanagihara Masaharu and Akashi Kinji, historians such as Hazel Jones, Ian Nish, and Anthony Best, and IR scholars such as Suzuki and Howland. I accessed these secondary sources through my visit to Japan's National Diet Library (Japan's national library) as well as through the

Bodleian Libraries, particularly the Japanese Library at the Nissan Institute. I consulted these works and others primarily for the primary sources and historical details they provided, not their particular arguments.

Two potential concerns on sources might be raised. First, some may argue that my reliance on published compilations and digital archives may have narrowed my scope for research. After all, sources presented in these mediums have been selected by intermediaries, and thus I would have been presented with fewer and more historically visible sources than if I had perused materials at the physical archives freely. While access to physical archives would indeed have been ideal, I have mitigated the limitation to a very large extent. For one, the compilations and digital archives were extremely extensive. Japan's digital archives contained 'the large majority of [Japan's] historical documents,' and both the *Nihongaikobunsho* and the *British Documents on Foreign Affairs* often offered several volumes for each year, filled with telegrams, correspondence, records, and memos.[31] For another, the published compilations and digital archives have been widely used by scholars inside and outside of Japan. There is, in other words, scholarly precedence for using these mediums. Finally, I made sure to triangulate what I found with sources outside of these alternatives, in other primary sources (such as books and diaries) or in secondary sources. Enough details and perspectives that these alternatives missed were noted, considered, and used in my analysis.

[31] Ministry of Foreign Affairs of Japan, n.d.

Some might also question why I examined public sources such as books, telegrams, reports, and newspapers more than private sources. They may argue that since individuals may hide their true opinions or seek to put themselves in a better light in public sources, reliance on those sources would yield a partial if not biased perspective on the subject. While the concern would be valid in other research, I deliberately chose to rely on public sources, since becoming a master practitioner and being recognized occur as a public performance.[32] In engaging in forward- and particularly backward-looking mistake correcting, what mattered most was how Japan presented its conduct and legal arguments to the European and American powers, not how individuals privately thought about the matter. Recognition also had to occur in public and influential mediums such as in publicists' writings to render it widely-held and secure. In these regards, public sources were *essential* to provide strong empirical support to the study.

I note that all translations of Japanese (and in certain instances, French) are my own unless otherwise specified. Japanese names also are in the format of last name first name, and I present the names of individuals as such. The only exceptions are Japanese individuals who are better known by the English versions of their names, such as Shogo Suzuki and Hidemi Suganami.

[32] For practice as a public performance, see for example Adler and Pouliot 2011a; Pouliot 2016.

1.6. Overview

The rest of the thesis proceeds as follows. Chapter 2 critically analyzes the English School and practice literature and develops my theoretical framework. Chapter 3 examines how Japan transitioned from a novice practitioner under the Tokugawa regime to a regular practitioner under the Meiji government by learning international law and achieving high background knowledge, high rule acceptance, and simple compliance. Chapter 4 illustrates how Japan became a master practitioner in the Sino-Japanese War by correcting two consequential mistakes and how the publicists ranked Japan alongside the European and American powers by the turn of the 20th century. Chapter 5 summarizes the findings and delineates avenues for future research.

Chapter 2:

International Society as Community of Practice of International Law

To address the first objective of my research, this chapter presents a theoretical integration of the English School and the practice literature in IR. I conceptualize international society as a *universal yet stratified community of practice of international law*. I distinguish between a novice practitioner, regular practitioner, and master practitioner based on three cumulative criteria of background knowledge and rule acceptance, simple compliance, and ability to exploit the rules for national interests and international reputation, particularly through forward-looking and backward-looking mistake correcting. In examining practitioners, I shed light on the role of publicists as key recognizers who accord status in the community.

As the Introduction noted, the intention is not to formulate a grand theory that is mutually exclusive with other IR theory paradigms or the traditional English School. I do not discredit their explanations for Japan's rise, such as the amassing of material power, shifts in British geopolitical interests, the pursuit of civilized status, or the role of norm internalization.[1] Rather, I seek to recover the practice of international law to the center of the English School. The practice of international law has long been buried in the English School, and its excavation and elevation using the conceptual tool of the practice elicit a theoretically and empirically enriched account of Japan's rise.

[1] Mearsheimer 2001; Nish 2013; Suganami 1984; Gong 1984; Finnemore and Sikkink 1998.

The chapter proceeds in three steps. First, I examine how the English School has understood international society and Japan's position within it. I identify how it has embodied a passive narrative of socialization and conformity and understated the practice of international law. Second, I introduce the practice literature and critically analyze its conceptualizations of practice, community of practice, competence, background knowledge, and master practitioner. Finally, I develop the insights I derive from the two literatures to develop my theoretical framework.

2.1. Orthodox and Revised English Schools on Japan and International Society

This section examines the English School's account of international society and Japan's position within it. I separate my analysis into what I call the 'orthodox' and 'revised' Schools. By 'orthodox' School, I refer to the classic 20th-century works that subscribe to the 'expansion of international society' thesis, such as that of Bull, Watson, Suganami, and Gong.[2] In contrast, 'revised' School in this study refers to the 21st-century works that offer alternatives to the expansion thesis. There has been a diverse and substantial literature in the revised School, whose contributions have included revealing the coercive and imperialistic side to the 'expansion,' conceptualizing a 'globalization,' rather than an expansion, of international society, and considering the experiences of entrants not studied in Bull and Watson's classic *Expansion of International Society*, such as Greece.[3] For the

[2] Bull and Watson 1984; Suganami 1984; Gong 1984.
[3] Keene 2002; Dunne and Reus-Smit 2017; Stivachtis 1998.

sake of space and topic, however, I limit my study to three key revised works on Japan by Suzuki, Okagaki, and Howland.[4] I put forth two observations from my analysis. First, both orthodox and revised Schools, albeit to different extents, have studied Japan from the passive lens of *socialization and conformity*. Second, neither School has engaged fully with the notion of the practice of international law, although they have alluded to it to a notable extent. These observations invite the incorporation of the practice literature into the English School in studying international society.

2.1.1. Orthodox English School

The orthodox School conceptualizes a 'society' of sovereign states that is bound by common institutions and rules, the most notable of which was international law.[5] Members of the society were both makers and subjects of international law. Non-European entities 'entered' international society by meeting the European 'standard of civilization,' which stipulated that they conduct their external affairs in accordance with international law and transform their domestic organization to be able to fulfill international obligations.[6] This narrative has commonly been termed the 'expansion of international society' thesis. From this perspective, Gong and Suganami illustrate how Japan entered international society by diligently undergoing domestic and social reforms to meet the standard of civilization, such as by protecting the basic rights of foreign nationals, creating a constitutional form of government, adhering to international law particularly during wars against China and

[4] Suzuki 2009; Okagaki 2013; Howland 2016.
[5] Bull and Watson 1984, 1. Also see Bull 1977.
[6] Gong 1984; Bull 1984, 120.

Russia, establishing permanent diplomatic relations, and conforming to norms and practices of '"civilized" international society.'[7] When Japan fulfilled the standard, it 'gain[ed] full "civilized" status' that entitled membership in the international society; the Western Powers marked this by abrogating the unequal treaties and granting Japan sovereign equality.[8]

This narrative is focused on Japan's socialization and conformity to international society. Driven by the assumption that international society was a 'normative good,' the orthodox School takes Japan's acceptance and adoption of the standard of civilization for granted.[9] Suganami, for instance, sheds light on this by portraying Japan as a 'keen student' that engaged in 'West-worship.'[10] In doing so, the orthodox School portrays Japan as a passive participant in the expansion of international society. [11] This narrative is too simplistic, however, and one must examine how acceptance took time in Japan and the ways in which Japan may have exploited the institutions and rules for its own benefit.

While the orthodox school alludes to the practice of international law, it does not fully engage with it. Practice grounds the orthodox account because it derives its conceptualization of international society from legal positivism, which replaced natural

[7] Gong 1984, 14-5, 174-187. Suganami 1984, albeit a much briefer account, echoes Gong's narrative. He focuses most on how Japan engaged in successful Westernization by adopting diplomatic/consular systems and abiding by laws of war.
[8] Gong 1984, 195; Suganami 1984, 192.
[9] Suzuki 2009, 12.
[10] Suganami 1984, 191-2, 195.
[11] Suzuki 2009, 12; Watson 1984, 31; Bull 1984, 124.

law as the dominant legal doctrine in the 19th century.[12] Legal positivism envisioned an exclusive and European society of states that made and abided by international law – that is to say, *practiced* international law – and the rest that were 'candidates for admission' that gained entry once they adopted the practice. [13] In this regard, orthodox scholars emphasize compliance with international law as an essential part of entry into international society. While Suganami and Gong allude to this,[14] Bull is the most direct. Explicitly highlighting practice and the role of publicists as recognizers, Bull notes that non-Europeans had to

> '[adopt] common forms of international law, at first indicated in *practice* in the making and observance of treaties according to common procedures, and *later recognized by international legal publicists* who spoke of the expansion of "the family of nations"'[15]

Yet, as the phrase 'the standard of *civilization'* demonstrates, the orthodox scholars bury the lens of practice under the more abstract notion of civilization and the socialization and conformity required to attain it.[16] This stems from how the 19th- and 20th-century publicists, from whom the orthodox scholars derive much insight, classified the world into 'civilized,' 'barbarous,' and 'savage' peoples, with the 'civilized' being associated with Europe and the Americas, and only the 'civilized' being entitled to 'plenary political recognition' as sovereign states and members of the society. [17] In this regard, the orthodox understanding of the standard of civilization shifted from a purely legal and practical

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[12] Wilson 2009; Howland 2016. Also see Navari 2011. Natural law did not disappear, as discussed later.
[13] Alexandrowicz 1967, 10. Also see Oppenheim 1914; 1905; Lorimer 1883; Howland 2016; Anghie 2005; Koskenniemi 2009; Tetsuya 2006.
[14] Suganami 1984; Gong 1984.
[15] Bull 1984, 121. Emphasis added.
[16] Bull and Watson 1894; Suganami 1894; Gong 1894.
[17] Lorimer 1883, 101; Wheaton 1866.

approach to a more cultural approach 'by which the "civilized" countries could test if these candidate states were indeed sufficiently "civilized" to merit recognition as full subjects of the international law and as full members of the Family of Nations.'[18] While civilization is undoubtedly an important aspect of non-Europeans' entry given its dominance in the 19th-century mindset, the overshadowing of the legal aspect cries for the excavation of the practice of international law to the forefront of the English School.

2.1.2. Revised English School

The revised works by Suzuki, Okagaki, and Howland offer more nuanced accounts of Japan and international society than the orthodox expansion thesis. However, these accounts, albeit to different extents, still demonstrate the persistence of the socialization-and-conformity approach and the lack of full engagement with the notion of practice.

SUZUKI

Suzuki examines how Japan was 'socialized into a Janus-faced European International Society' that stipulated order and coexistence among the civilized and exploitation and coercion with the uncivilized.[19] Japan successfully entered international society by conforming to both modes of interaction: it became a '"civilized," Western-style state' through domestic reforms such as state centralization, industrialization, and mass mobilization, and it 'exhibit[ed] its "civilized" identity in its international relations'

[18] Gong 1984, 9.
[19] Suzuki 2009, 12.

through imperialism in Asia.[20] Suzuki theorizes the socialization in three steps: ‘gaining knowledge’ (learning); ‘learning the competence and skill’ (‘comply[ing] with the procedural norms’ but without full commitment) and ‘demonstration of commitment’ (full conformity and willingness to be held accountable).[21] Japan gained knowledge of international society’s coercive mode of interaction; learned competence and skill through domestic reforms of modernization to become a ‘Westernized state;’ and demonstrated commitment by ‘behaving like a European Great Power’ and pursuing imperialism towards Asia.[22]

By highlighting how Japan accepted and engaged with both modes of interaction, the passive socialization-and-conformity approach is dominant in Suzuki’s account. Suzuki tries to portray Japan as agential by suggesting that, after its ‘coerced’ encounter with the society through gunboat diplomacy, Japan *chose* to accept and conform to the society.[23] However, this is arguably not enough agency, because his analysis still concerns how Japan complied with the rules of the game as encapsulated in both modes of interaction. One must study more of how Japan used and exploited the situation at hand.

While Suzuki’s model of socialization is compatible with the practice of international law, he does not take this conceptual opportunity. As the next section will demonstrate, the

[20] Ibid., 140, 114. See pages 140-176 for his discussion of imperialism.
[21] Ibid., 30-1, 33.
[22] Ibid., 56, 120, 140.
[23] Ibid., 7. To make this argument, he illustrates how China did not engage with the dual modes of interaction.

three stages of socialization reveal conceptual similarities to the practice literature. Nevertheless, he does not engage with the literature, and he also has two other shortcomings. First, he pays insufficient attention to Japan's actions pertaining to *international law* because he examines *domestic* reforms of modernization for learning competence and skill. But if, as he claims, Japan had to demonstrate commitment in its international relations, one must analyze in greater detail how Japan engaged with international law. Second, Suzuki speaks little of how and by whom Japan attained recognition as a member of international society. Suzuki implicitly assumes that demonstration of commitment leads to recognition, but international society was exclusive, and recognition was difficult to come by.[24] Thus, further examination of how recognition unfolded is necessary. As for who recognized Japan, Suzuki does not go beyond stating that Japan had to be 'collectively judged' by members of international society and that the audience for Japan's demonstration was 'primarily the European powers.'[25] This remains vague and must be unpacked.

OKAGAKI

Turning to international law more directly, Okagaki explains Japan's entry into international society through its 'conformity' with international law.[26] Japan's entry

[24] This will be explored more in Chapter 4. An example that is commonly invoked is how the revision of unequal treaties took Japan decades. I do not focus my thesis on Japan's process of treaty revision because there is already a substantial literature on it. Among others, see Nish 2001; Perez 1999.
[25] Suzuki 2009, 141.
[26] Okagaki 2013, 19. Okagaki's central thesis is that Japan achieved rapid entry into international society because it already had 'domestic institutions conducive to the Western style of modernization' before 1853, and Japanese leaders used the norms encapsulated in international law to usher this modernization and obtain membership in international society. By 'norms,' she refers to norms such as legal positivism, sovereign statehood, standard of civilization, the notion of 'might is right', and imperialism. Ibid., 7, 20.

occurred in three steps. First, Japan 'adopted' international law through learning. Second, Japan 'absorbed' international law, wherein it accepted its legitimacy and demonstrated commitment by applying it in relations with its Asian neighbors. Finally, Japan 'adapted' international law to enhance Japan's national interests, particularly with regards to the negotiation for the abrogation of unequal treaties.[27] When Japan demonstrated '[its] faithful observance of international law' in the Sino-Japanese War, Japanese leaders 'impress[ed] the West with [Japan's] level of civilisation' and succeeded in convincing the West to abrogate extraterritoriality.[28]

Okagaki largely embodies the socialization-and-conformity approach by attributing Japan's entry into international society to its conformity with international law. At first glance, her study of how Japan adapted international law to enhance national interests in the 1880s and 90s appears to grant Japan more agency than mere conformity suggests. In reality, however, she subsumes even such adaptation under conformity by arguing that Japan conformed to the use of international law as a tool of the strong and used it in treaty revision negotiations accordingly.[29] This conformity language is made most obvious in her discussion of the Sino-Japanese War. She asserts that Japan 'observe[d] international law faithfully' throughout the war and that 'Japan's compliance with international law won [the West's] assurance and trust.'[30] But as Chapter 4 illustrates, Japan's conduct during the

[27] See Ibid., Chapters 3-5.
[28] Ibid., 86, 79.
[29] Ibid., 79.
[30] Ibid., 86.

war was far from simple compliance. With the omission of such analysis, her portrayal of Japan remains passive and incomplete.

Okagaki also does not engage fully with the notion of practice. She implies practice in discussing how Japanese leaders oriented the country's actions in accordance with international law, but she still subsumes the practice under the more abstract banners of conformity and civilized status to understand Japan's learning and use of international law.[31] Her work is also unsatisfactory because she speaks of the recognizers in general terms such as the 'West' and 'Western powers.'[32] It is surprising that she does not examine individual Western practitioners as recognizers, since she focuses on individual Japanese leaders' agency throughout the study.[33] One notable exception is when she recounts the publicists' reactions to Japan's observance of international law in the Sino-Japanese War.[34] This seemed promising. However, she emphasizes how they recognized Japan's *civilization,* not necessarily practice, and she reverts back to the general language when she returns to discuss the abrogation of the unequal treaties.[35] Thus, Okagaki leaves much left to be analyzed on the role of practice.

[31] Ibid.
[32] Ibid., 19, 79.
[33] Ibid., 19.
[34] Ibid., 88-9.
[35] Ibid., 88-93.

HOWLAND

Departing from the orthodox and two revised accounts,[36] Howland illustrates how Japan engaged with international law to become a 'great power' that dominated international society by the early 20th century.[37] As he put it:

> 'It is not so much that Japan "joined" international society, as both nineteenth-century legal positivists and the twentieth-century English School would have it, but that Japan became a dominant power within the international community.'[38]

He views international society as universal but stratified. International society was universal on two levels: (1) by natural law, which envisioned international law as deriving from human reason and applicable to all, and which continued to inform international relations after the rise of legal positivism;[39] and (2) by the West signing treaties and establishing diplomatic relations with the rest of the world.[40] In this regard, Japan was always a member of international society by natural law, and it became part of the

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[36] I note the departure mostly in terms of Howland's conceptualization of a rise through the ranks and his explicit focus on international law. There are other significant points of departure as well.

One is the extent to which he sheds the language of civilization in understanding Japan's rise. While he does not dismiss the salience of civilization in the 19th-century mindset, he argues that 'the "standard of civilization" was merely a point of political rhetoric which the Western powers used to maintain their privileges in Japan,' rather than an objective standard that Japan had to meet for its rise. Granted, Howland does occasionally blur this line. For instance, he discusses how Japan had to conduct a 'civilized warfare' to attain great power status and defines this term as 'warfare that respected Japan's commitments to the laws of war.' While he seeks to ground the definition in Japan's compliance with international law, rather than culture, his association of a legally compliant act with a civilized act echoes the orthodox conceptualization of an adherence to international law constituting civilized status (encapsulated in the third requirement of the standard of civilization). Nevertheless, Howland is generally consistent in refraining from a civilizational language, especially compared to his earlier works. This, then, is a significant contribution to the English School.

Howland 2016, 4, 16-7, 24, 99. For examples of his earlier works that contained more emphasis on 'Japan's attainment of "civilized" status,' see Howland 2008; 2007.

[37] Howland 2016, 3.

[38] Ibid., 133.

[39] Ibid., 9, 127.

[40] Ibid., 3, 25.

positivist international society after its encounter with the West.[41] Yet, the society was stratified insofar as there was a core of 'great powers who defined and dominated international society,' and the rest that was subjugated to different extents, from extraterritorial rights to outright colonization.[42] In this environment, Japan asserted its sovereignty by engaging with four fields of international law: natural law, treaty law, international administrative law, and the laws of war. These involved, respectively, measures such as Japan's participation in the International Law Association (founded in 1873) informed by the natural law principle of inclusion of all;[43] retaining legislative jurisdiction under treaty law;[44] joining international administrative unions such as Universal Postal Union in 1877 and International Telegraph Union in 1879;[45] and conducting 'civilized warfare' against China and Russia.[46] As Japan asserted its sovereignty, it successfully rose through the ranks and became a great power.

Howland's account represents a significant departure from the socialization-and-conformity approach. Instead of merely accepting and complying with predetermined institutions and rules, Howland demonstrates how Japan engaged actively with international law and through it 'refined the very nature of international society and catalyzed the formation of a global order.'[47] However, his departure is not sufficient

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[41] Ibid., 25.
[42] Ibid, 3; Fisch 1984; Keene 2014.
[43] Howland 2016, 23.
[44] Ibid., 23.
[45] Ibid., 23-4. For more discussion on administrative unions, see Ravndal 2020. Publicists have often noted Japan's participation in administrative unions as well. See among others Hall 1904, 42.
[46] Howland 2016, 24. Also see Howland 2007.
[47] Howland 2016, 3.

insofar as he, in key instances such as war, sometimes struggles to examine Japan's engagement with international law beyond compliance. For instance, he focuses on how Japan had to conduct a 'civilized warfare' to attain great power status, and he defines this term as 'warfare that respected Japan's commitments to the laws of war'[48] – in other words, compliance. Although compliance was undoubtedly important, it would be fruitful to analyze more 'active' use of international law such as exploitation for self-interest.

As for practice, Howland's account points the most towards the notion, but his work is still wanting in three key respects. By examining Japan's engagement with international law, Howland explicitly adopts a 'methodology focused on legal practices.'[49] Nevertheless, as the first shortcoming, Howland does not engage at all with the practice literature in IR. Neither his theoretical chapter nor bibliography reveal any connection to the practice field, which is surprising and presents an opportunity. Second, Howland does not specify who recognized Japan's rise through the ranks, choosing instead to speak at the level of the 'great powers'[50] Given that his focus is on the practice of international law, we must further investigate the role of practitioners, particularly publicists, as recognizers. Third, Howland does not sufficiently examine how Japan attained the knowledge driving its engagement with international law. As learning is a central element of practice, this must be examined.

[48] Ibid., 24, 99.
[49] Ibid., 4.
[50] Ibid, 25.

In sum, the orthodox and revised accounts remain unsatisfactory because of the persistent influence of the socialization-and-conformity approach and the lack of full engagement with the notion of the practice of international law. The orthodox account by Bull, Watson, Suganami, and Gong over how Japan met the standard of civilization simplify Japan into a 'keen student' socialized into 'West-worship' and subsumes the practice of international law under the abstract banner of civilization.[51] Suzuki and Okagaki respectively explain Japan's entry by socialization into the Janus-faced international society and conformity to international law, and even Howland struggles to escape the conformity language in discussing war. Suzuki pays insufficient attention to Japan's use of international law, and while Okagaki and particularly Howland bring international law to the forefront in their analyses, none of the three revised scholars engage fully with the specific notion of its practice. The lack of engagement with practice in turn demonstrates that, except for Bull's brief mention of the role of publicists, the other orthodox and revised Scholars do not deconstruct who recognized Japan's change in position in international society. These call for an analysis of international society from the lens of the practice of international law and a greater understanding of Japan's agency.

2.2. Practice Literature

Having established the need for the practice lens and agential narratives, I now turn to introduce the practice literature. This section critically analyzes the literature's concepts of practice, community of practice, competence, background knowledge, and master

[51] Suganami 1984, 18.

practitioner, which I develop further in my theoretical framework. IR's interest in practice is not new. In discussing the agent-structure debate in 1987, for instance, Alexander Wendt pointed to practices as the missing nexus between agents and structures.[52] Since the 'practice-turn' in IR from the 2000s, scholars have drawn from philosophers and sociologists such as Ludwig Wittgenstein and Pierre Bourdieu to contend that the social world is structured by quotidian, manifold practices and to use practice as the 'main entry point in the study of world politics.' [53] To be clear, these scholars do not claim that the practice lens constitutes an universal theory of world politics.[54] Instead, they portray practice as a useful tool that can be used to 'understand both IR theory and international politics better or differently.'[55] This thesis will use this tool to add nuance to the English School and Japan's position in international society. As practice theory is a diverse field in both social theory and IR, there is much debate among scholars about what practice entails.[56] Because space constraints prevent in-depth examination of this debate, I focus my analysis on the classic work by Adler and Pouliot (2011) and two key works by Pouliot (2016) and Lechner and Frost (2018). I conduct my analysis and build my theoretical framework with the full understanding that the concepts I examine and develop in Section 2.3 are not exhaustive of all the possible practice approaches at hand.

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[52] Wendt 1987, 358-9.
[53] Adler and Pouliot 2011a, 3, 12. See among others Schatzki 2001; Navari 2011;Adler-Nissen 2013.
[54] Adler and Pouliot 2011a, 3.
[55] Ibid., 5.
[56] Pouliot 2016, 2; Navari 2011.

2.2.1. Practice, Community of Practice, Competence, and Background Knowledge

This thesis understands practice as 'a distinctive domain of *rule-following activity,* defined by concrete constitutive rules and espoused as common understanding by a group of participants,' a definition put forward by Lechner and Frost as a key modification to the conventional definition by Adler and Pouliot.[57] In this section, I first discuss these two definitions and examine their conceptualizations of competence, community of practice, and background knowledge. While the scholars' understanding of the community of practice is convergent, their other conceptualizations vary. I delineate my reasons for adopting Lechner and Frost's conceptualizations, before moving to the discussion of a master practitioner in Section 2.2.2.

WHAT IS PRACTICE?

The conventional definition holds practices as '*competent performances*.'[58] More specifically, practices are

> 'socially meaningful patterns of action which, in being performed more or less competently, simultaneously embody, act out, and possibly reify background knowledge and discourse in and on the material world.'[59]

From this definition emerges four key and related aspects of the concept of practice. First, practice is *socially meaningful*. Although practice is performed by individual entities, practice only attains meaning in a group context because the group holds a particular intersubjective understanding of that act.[60] For instance, waking up at 5 am every day in

[57] Lechner and Frost 2018, 115. Emphasis added.
[58] Adler and Pouliot 2011a., 6. Emphasis added.
[59] Ibid.
[60] Ibid. Also see Lechner and Pouliot 2018, 14.

solitude is fundamentally different from doing so as part of a group of soldiers jointly participating in military training,[61] insofar as the latter imbues the act with a specific meaning. In Barry Barnes' distinction, the act performed in solitude would be considered a habit, and only a socially situated act would qualify as a practice.[62] Practice only exists in a social context.

This leads to the second key aspect: practice presupposes an existence of a *community of practice.* A community of practice is a group of people who perform the practice and share the intersubjective meaning behind it.[63] The community is simultaneously a structure that enables the existence of a practice and an '[agent], made of up real people, who…affect political, economic, and social events.'[64] In this sense, individual practitioners are important parts of the study of a practice and the community. The key takeaway here is that practice is limited to the community, and being a practitioner necessarily entails being a member of the community. Anyone seeking to join the community must learn the practice and the meaning behind it.[65]

Third, practice is *competence.* Competence is the primary lens through which the community understands and assesses the practice.[66] As Janice Gross Stein notes:

> 'practice acquires meaning only through collectively shared understandings of competency, of what is well done or poorly done. Without that broader

[61] The example is borrowed from Lechner and Frost 2018, 14.
[62] Barnes 2001, 34.
[63] Adler and Pouliot 2011a, 17; Lechner and Frost 2018, 101.
[64] Adler and Pouliot 2011a, 17.
[65] Ibid., 17, 24; Lechner and Frost 2018, 101.
[66] Adler and Pouliot 2011a, 7.

> understanding, it would be difficult to construe individual "doing" as practice, [as it would be] devoid of any kind of standard.'[67]

In this regard, competence is 'never inherent but attributed in and through social relations,' or social recognition.[68] This need for social recognition makes a practice a 'performance' insofar as it constantly needs and has an audience to give it meaning and assess its competence. I discuss and critique the notion of competence below.

Finally, practice rests on *background knowledge.* Background knowledge is practical, rather than abstract: it 'is oriented toward action and, as such, it often resembles skill much more than the type of knowledge that can be brandished or represented, such as norms or ideas.'[69] Background knowledge, then, is the specific 'know-how' behind a practice.[70] One acquires background knowledge through learning, and thus learning is a key part of any examination of practice.[71] While Adler and Pouliot only discuss background knowledge as the requirement for practice, Lechner and Frost add that rule acceptance must also be considered.[72] There is a difference between obedience to rules and rule acceptance, although both lead to the same outcome of rule-following: '[t]o *obey the rules* is to agree to adopt them as an external constraint on action, for fear of adverse consequences, whereas to *accept the rules* is to follow the rules for their own sake -- because they are

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[67] Stein 2011, 89.
[68] Adler and Pouliot 2011a, 7.
[69] Ibid., 8.
[70] Stein 2011, 89.
[71] For more on learning, see among others Turner 2001.
[72] Lechner and Frost 2018, 100.

rules.'[73] Although one could follow the rules without rule acceptance per se, rule acceptance is as important as background knowledge if one is to be established within the community of practice through understanding of, and commitment to, practice.[74]

WHAT IS COMPETENCE?

Adler and Pouliot define competence as *correctness*.[75] Correctness here is determined subjectively by the community as the extent to which the practice resonates with the community's standards of what makes an act a practice.[76] '[A] practice can be done correctly or incorrectly:'[77] the more an act is consistent with the community's standards, the more correct and competent it is. In the eyes of the community, competent acts are acts 'well done.' [78] Thus, competence is not an objective condition. Neither is it about achieving desired results, with which the term competence might ordinarily be associated. Indeed, 'in some contexts incompetent practice might be more "successful" in bringing results than virtuoso performance.'[79] Consequently, what matters for competence is not the outcome per se, but rather that the way in which an act was performed (the extent to which it met the community's standards).[80]

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[73] Ibid., 123; Hart 1961, 86-8.
[74] Lechner and Frost 2018, 100.
[75] Adler and Pouliot 2011a, 8.
[76] Ibid., 7-8.
[77] Ibid., 8.
[78] Stein 2011, 89.
[79] Adler and Pouliot 2011a, 8.
[80] Pouliot 2016.

Lechner and Frost criticize Adler and Pouliot by asserting that the latter identify competence as an embellishment to a practice rather than a constitutive part of it. Adler and Pouliot, they declare, define competence by 'skill', or the ability to do something well.[81] However, 'a competent action, as an action embellished by a skill, can be downgraded into a simple action. For instance, "excellent cooking" can become just "cooking" (simple action) without lapse into unintelligibility.'[82] In defining competence by skill, Adler and Pouliot contradict their thesis that practice is equivalent to competence. Lechner and Frost therefore define competence as '*following of constitutive rules within social practices*'[83] and practice as the aforementioned definition of '*a distinctive domain of rule-following activity, defined by concrete constitutive rules and espoused as common understanding by a group of participants.*'[84] Here, competence is inseparable from, and constitutes, practice. Furthermore, competent (rule-following) acts and incompetent (non-rule-following acts) are fundamentally different, since constitutive rules are rules that the community uses to demarcate the boundary between itself and those who do not belong to it. [85]

I adopt Lechner and Frost's notion of rule-following for practice and competence for three reasons. First, rule-following places competence at the center of practice. I do not agree with their contention that Adler and Pouliot define competence by skill. As Lechner and

[81] Lechner and Frost 2018, 88.
[82] Ibid.
[83] Ibid., 87. Emphasis added.
[84] Ibid., 115. Emphasis original.
[85] Ibid., 103.

Frost concede, the ability to do something well implies an emphasis on the outcome.[86] Yet, Adler and Pouliot clearly demonstrate that the way in which an act was performed (the extent to which it followed the community's standards) trumps the outcome of the act in the process of social recognition.[87] This weakens Lechner and Frost's criticism. However, I agree that Adler and Pouliot blur the line between competence as a constitutive element of practice and competence as an embellishment. The case in point is their statement that 'a practice can be done correctly or incorrectly.'[88] The statement suggests that a practice that is incorrect and thus incompetent can still be considered a practice, but this comes in fundamental tension with their thesis that 'practices are competent performances.'[89] To avoid this analytical trap, I find Lechner and Frost's conceptualization of competence constituting practice to be essential. Second, rule-following deconstructs the notion of correctness effectively. Adler and Pouliot's conceptualization of correctness is abstract and less agential because it is based on the perception of the members of the community. However, rule-following provides a specific, observable, and more agential lens to correctness because one could trace how an entity followed the rules set down by the community. Since rule-following still derives meaning and recognition from other members of the community, Lechner and Frost's conceptualizations of competence and practice only add to Adler and Pouliot's key contributions to IR. Finally, the notion of rule-following is particularly suited to international law. As later parts of this chapter and

[86] In their words, a skill 'has been more or less well mastered once a *desirable outcome* has been reached,' such as the ability to cook 'a savoury dish.' Ibid., 87. Emphasis added.
[87] Adler and Pouliot 2011a, 8.
[88] Ibid.
[89] Ibid., 6.

Chapter 4 reveal, international law prescribed specific codes of behavior for its subjects to follow, and breaches elicited intense condemnation from others.[90] These reasons render the notion of rule-following particularly applicable to this study.

2.2.2. Master Practitioner

How do practitioners distinguish themselves through practice? Pouliot argues that practitioners become masters when they have their 'way of doing things' recognized by their fellow practitioners as authoritative over other alternatives.[91] Practitioners compete among themselves to impose their way of doing things over others, and once their claim of authority is recognized and accepted by their peers, social stratification emerges.[92] Change to this stratification occurs when virtuosos, or deviant practitioners, put forth an alternative way of doing things, 'succeed in making authority claims that this is how things are *now,*' and attain dominant standing themselves. [93] As most deviations from established ways of doing things are considered incompetent by the community of practice, virtuosos must have enough knowledge and ability to 'play on all the resources inherent in the ambiguities and indeterminacies of behaviours and situations' and convince their peers that they are correct.[94]

[90] Bull 1977, 134-6; Lechner and Frost 2018, 14.
[91] Pouliot 2016, 55.
[92] Ibid.
[93] Ibid., 57.
[94] Ibid., 58; Bourdieu 1990, 107.

Although Pouliot's notion of a master is insightful, it is still lacking in two respects. First, Pouliot does not discuss in depth the role of recognition from the top of the stratified system in attaining mastery. In studying how practice produces social stratification, he focuses on social recognition as coming from peers of similar standing: as he notes, one must 'secure recognition from the very opponents who are competing for the same resource.'[95] Even in his discussion of virtuosos who operate within a stratified system, he speaks of recognizers in the general term of 'the community.'[96] But in an already stratified system, becoming a master would surely require recognition, if not acceptance, from the incumbent masters that they are one of them. Even with recognition by practitioners of similar standing, the practitioner would be barred from attaining high standing without recognition from the top.[97] In this regard, recognition from the top is an essential element of mastery and attainment of high status that must be examined.

Second, Pouliot does not sufficiently illustrate how one becomes a master when there are not multiple ways of doing things. He bases his argument on the assumption that there are consistently alternatives to whatever way of doing things is dominant in the stratified system, hence the 'never-ending struggle for mastery' among the practitioners.[98] However, this assumption is less pertinent for international law, which prescribes a specific way of doing things and deviance is immediately deemed illegitimate. For example, if a signatory to the Geneva Convention decides to deviate from its prescriptions on the treatment of

[95] Pouliot 2016, 57.
[96] Ibid., 58.
[97] This ties into Naylor's notion of social closure. Naylor 2018.
[98] Pouliot 2016, 55.

prisoners, the community will respond with condemnation and punishment, not social recognition of the deviance as newly authoritative.[99] In this environment, a different conceptualization of mastery becomes necessary.

One such alternative is Lechner and Frost's distinction of a master practitioner from a novice through the notion of a mistake, by which they mean 'violation (often inadvertent) of the known and accepted rules.'[100] '[W]hat sets apart masters from novices,' they contend, is that the former 'knows how to recognize and how to *correct a mistake*, should one occur.'[101] While a novice practitioner will falter, a master practitioner would have enough rule acceptance to seek to correct it and enough background knowledge to materialize such correction. I agree with Lechner and Frost that mistakes are an important element of what constitutes a master. Although they confer significance to mistakes because 'the notion of following a rule is logically inseparable from the notion of making a mistake,' which 'when recognised, reveals the rule's oblique presence,'[102] I add that mistakes are also important because correcting them requires more active engagement with the rules than simply complying by them. Despite the significant analytical implications, Lechner and Frost do not elaborate or build on this distinction. In the next section, I develop the notion of mistake-correcting further and incorporate it within my theoretical framework.

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[99] Chapter 4 illustrates the intense criticisms that came with Japan's breaches of the rules.
[100] Lechner and Frost 2018, 100.
[101] Ibid., 99. Emphasis added.
[102] Ibid., 98. Lechner and Frost in turn derive the notion of mistake as 'a tell sign of rule-dependent action' from the works of Wittgenstein philosopher Peter Winch. Winch 1958.

This section critically analyzed the practice literature's conceptualizations of practice, community of practice, competence, background knowledge, and master practitioner. Having prepared the tools, I now turn to developing these concepts further and building my theoretical framework.

2.3. Tying Them All Together: Theoretical Framework

The previous two sections demonstrated where the English School presented opportunities for the insertion of the practice lens and the conceptual tools that the practice literature has contributed to IR. Having examined the English School and the practice literature in depth, I now turn to synthesizing them to produce my theoretical framework.

As my central contribution, I conceptualize international society as a *universal yet stratified community of practice of international law.* A state, constituted by individual practitioners, rose through the ranks in three stages: novice practitioner, regular practitioner, and master practitioner. One important indicator of this rise through the ranks was the writings of prominent publicists, who were key practitioners in the society. As I established in the Introduction, this interpretation of international society is not a universal theory that trumps other interpretations, but rather an illuminating but so far underutilized approach that refines the English School's understanding of the subject. Below, I elaborate on these three notions of international society, novice, regular, and master practitioner, and the role of publicists.

2.3.1. International Society

International society is first and foremost *a community of practice*. As a key thesis objective is to excavate and elevate the role of practice to the center of the English School, I adopt the notion of a community of practice in conceptualizing international society. The practice literature has envisioned 'the world [as] made up of various "constellations of practices," that is assemblages of communities and their practices that interact, overlap, and evolve.'[103] Lechner and Frost adopt this view for international society. They argue that international society is a 'macro practice' that is constituted by various practices. As they put it, '[t]he wider practice of states, known as "international society" may include, in addition to diplomacy, the practice of international law, war, or the balance of power.'[104] This lends itself well to the English School's notion of international society, in which there are various shared institutions and rules such as international law, war, diplomacy, the balance of power, and great powers.[105] Indeed, as Cornelia Navari notes, these are 'identical' to the practice literature's concept of practice as they refer to 'regulative standards, routines and repertoires which belong to the activities of law-making, war, diplomacy and so on.'[106]

Having adopted this lens, I conceptualize international society as at its core a community of practice of *international law*. As the Introduction noted, this certainly does not dismiss the salience of other practices: members of international society, including Japan, engaged

[103] Adler and Pouliot 2011a, 20. Also see Wenger 1998; Wenger, McDermott, and Snyder 2002.
[104] Lechner and Frost 2018, 86.
[105] Bull 1977.
[106] Navari 2011, 620; Schatski 2001.

with diplomacy, war, balance of power, and great powers.[107] Instead, focus on international law is warranted for two reasons. First, one cannot understand 19th-century international society or the English School analysis of it without international law because the notion of international society was underpinned by legal positivism. The previous discussion on the English School revealed that against the backdrop of legal positivism emerging as the dominant legal doctrine in the 19th century, co-constitutive relations emerged between international society and international law. In the words of eminent British publicist John Westlake:

> 'without society no law, without law no society. When we assert that there is such a thing as international law, we assert that there is a society of states: when we recognize that there is a society of states, we recognize that there is international law.'[108]

Under legal positivism, international society was constituted only by states that made and abided by international law, and the rest became 'candidates for admission' that gained entry once they adopted the practice. [109] The English School, which has derived much insight from legal thought, has come to reflect this by hailing international law as the 'supreme normative principle of the political organization of mankind,' the 'basic rules of coexistence among states and other actors in international society,' and 'a structure of expectations without which the intercourse of states would surely suffer an early collapse.'[110] The 19th-century mindset and the modern-day English School scholars thus suggest that we must consider international law as the basis of international society.

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[107] Howland 2016.
[108] Oppenheim 1914, 3.
[109] Alexandrowicz 1967, 10. Also see Oppenheim 1914; 1905; Lorimer 1883; Howland 2016; Anghie 2005; Koskenniemi 2009; Tetsuya 2006.
[110] Bull 1977, 134, 135; James 1973, 68; Wilson 2009, 168.

Second, international law guided other practices that I do not examine in this thesis, such as diplomacy and war. International law prescribed the specific ways in which such practices were to take place. For instance, Europeans and Americans established diplomatic missions and outlined the representatives' rights in accordance with international law, and specific treaties such as the Geneva Convention and Declaration of Paris shaped states' conduct in war.[111] In other words, conceptualization of international society in terms of any other practice involves the consideration of international law. For these reasons, it is apt to conceptualize international society as, at its core, a community of practice of international law.

Finally, international society was *universal yet stratified.* I accept Howland's assumption that international society was universal on two levels – natural law and Europeans' introduction of positivist international law across the globe.[112] Even at the height of legal positivism, natural law never disappeared as a legal doctrine and continued to inform international relations.[113] Meanwhile, between the 17th century and the end of the 19th century, the Europeans (and in the later part of this period Americans) entered into treaties with entities across the globe. [114] The emergence of multilateral treaties such as the Geneva Convention was also an indicator of the global reach of positivist international society.[115] On these two levels, non-Europeans found themselves in a universal community of

[111] For example, see Otsuka 1969; Takahashi 1899a.
[112] See Howland 2016, Chapter 1.
[113] Ibid.
[114] For example, see Keene 2014; Anghie 2005.
[115] Howland 2016.

international law in the 19th century. In this regard, international society was not an exclusive club that expanded to the rest of the world in a vacuum. Instead, I share the view held by recent English School scholars that international society was a universal social space that had a 'privileged group' at the core.[116]

This leads to my conceptualization of international society as stratified. The 'privileged group,' or the 'core,' has often been associated with material superiority and/or social prestige,[117] but another way of thinking about the 'core' is through its relationship with international law. Involving states such as Britain, France, the U.S., Germany, and Italy the core defined the rules of the game with which the newcomers had to comply. Namely, these states codified international law and drafted key conventions and treaties to which newcomers acceded, such as the Geneva Convention and the manual 'The Laws of War on Land.'[118] The core also exploited international law for their national interests, such as subjugating others under unequal treaties or more. As Bismarck remarked, '[international] law is used to protect the rights of the great powers' and was therefore 'tool of the strong.'[119] Thus, international society was universal but stratified, with the core defining the rules and using the rules for their own advantage. It is in this conceptualization of a universal and stratified social space that I replace the language of 'entry' for a 'rise through

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[116] Keene 2014.
[117] See, among others, Mearsheimer 2001; Singer and Small 1966; Keene 2014.
[118] On the dominance of these five states in international legal scholarship, see Kubben 2013. The Laws of War on Land was drafted by Gustave Moynier and unanimously adopted by the Institut de Droit International (IDI) at Oxford on 9 September 1880. Bankokukouhoukai 1894.
[119] Cited in Kume 1979, 330; Suzuki 2009, 83; Okagaki 2013, 7. Also see Stern 1979.

the ranks' in international society. To safeguard itself against the core's exploitations, Japan had to rise through the ranks to be part of the core.

2.3.2. Novice, Regular, and Master Practitioners

But what did this rise through the ranks look like? I envision the process in terms of three stages: novice, regular, and master practitioner. As theoretical concepts, these stages should be understood as ideal-types. Being a novice, regular, and master practitioner involved three cumulative criteria: (1) background knowledge and rule acceptance, (2) simple compliance, and (3) ability to exploit the rules for national interests and international reputation, particularly through forward- and backward-looking mistake-correcting.

A *novice* practitioner is in the community of practice but is low in background knowledge and low in rule acceptance. As a newcomer to the community, the practitioner only has basic background knowledge and is vulnerable to the more experienced practitioners taking advantage of its ignorance of the rules. In this environment, the practitioner may follow the rules mainly because it fears adverse consequences otherwise, not because it necessarily accepts the legitimacy of the rules. In the words of Lechner and Frost, as well as Hart, the practitioner is 'obey[ing] the rules' but is not 'accept[ing] the rules'.[120] To survive in the community, the novice practitioner engages in the learning of the rules, deriving insights from the more experienced practitioners in the process.

[120] Lechner and Frost, 123; Hart 1961, 86-8. See Section 2.2. for this discussion.

A *regular* practitioner has high background knowledge, high rule acceptance, and simple compliance. A novice becomes a regular practitioner towards the end of its learning campaign, and learning-by-doing is a key element because background knowledge is practically oriented towards action.[121] A regular practitioner consistently follows the rules and has built a reputation among the practitioners as such. Yet, at this stage, the regular practitioner does not seek to exploit the rules in its favor. In this light, the regular practitioner focuses on diligently following the rules, which I call 'simple compliance.'

Finally, a *master* practitioner has high background knowledge, high rule acceptance, simple compliance, and the ability to exploit the rules to protect its national interests and international reputation, particularly by correcting mistakes. Although scholars have conceptualized mastery through other means, such as authority over a particular way of doing things, I contend that a practitioner's reaction to *mistakes* is another important yet understudied aspect of mastery.[122] As Lechner and Frost suggest in passing, the ability to recognize and correct mistakes – by which they mean 'violation (often inadvertent) of the known and accepted rules' – separates a master from others.[123] I agree and elaborate on this point. A mistake, especially a highly visible breach of the rules, jeopardizes the practitioner's reputation as a rightful member of the community and threatens severe consequences to matters of national interest as other states reevaluate the trustworthiness of the offender. The practitioner thus must correct the mistake. Developing Lechner and

[121] Adler and Pouliot 2011a, 8; Stein 2011, 89.
[122] Pouliot 2016.
[123] Lechner and Frost 2018, 98-9, 100.

Frost's notion further, I categorize the mistake-correcting into at least two types. The first is *forward-looking:* the practitioner acknowledges the mistake, assumes responsibility for it, and acts differently in the future. This is an 'easier' type of mistake-correcting and does not depart much from the 'simple compliance' exhibited by regular practitioners. The second is *backward-looking:* the practitioner engages in narrative-building to portray itself as having complied with the rules all along. This is a 'harder' type of mistake-correcting because the practitioner must marshal its background knowledge to mount a successful defense. To convince the other practitioners indignant by the breach, the practitioner may need to exploit any ambiguities or controversies that the community may have about the rules to defend its actions. In this regard, I view the ability to correct mistakes, in forward and particularly backward-looking types, as an important indicator of when the practitioner has moved beyond 'simple compliance' into the more active and exploitative realm of practice. In responding to the defense, the other practitioners may or may not accept the offender's arguments in full. But even in cases when the practitioner's arguments are partially accepted, the knowledge and ability to exploit the rules that the practitioner demonstrated in making the defense distinguishes it from regular compliant practitioners.

2.3.3. Publicists as Key Recognizers

What indicates when a state rose through the ranks in international society? Previous scholarship has often utilized material indicators such as abrogation of unequal treaties and the promotion of diplomatic mission rankings.[124] Although these are undoubtedly salient,

[124] Bull and Watson 1984; Suganami 1984; Gong 1984. For diplomatic mission rankings, the most notable is Singer and Small 1966.

this thesis focuses on an equally important but hitherto understudied, more discursive indicator of the writings of prominent publicists. Their writings are useful indicators for two reasons. First, prominent publicists were leading figures in thinking about who was where in the stratified international society.[125] As I noted in Section 2.1, publicists throughout the 19th and early 20th centuries wrote extensively on the place of non-European states in international society, and their understanding of the hierarchy had real-life manifestations in how the core engaged in relations with the non-Europeans.[126] In forcing Japan to sign an unequal treaty, for example, Commodore Perry expressed pride '[t]o have secured a treatment suitable for the dignity of the United States…and not have allowed any act contrary to diplomatic courtesy common to civilized nations;' in doing so, he revealed the understanding of the world as stratified and each level being entitled to certain privileges, as illustrated by publicists such as Lorimer and Wheaton.[127] In this light, the publicists' opinions are useful to locate where Japan was within international society, and their recognitions of Japan's rise through the ranks complement the material indicators. Second, publicists often published multiple editions of their treatises over decades. Comparing different editions allows us to examine how publicists understood Japan at different points in time, which sheds light on the process of Japan's rise.

In sum, this section established the theoretical framework for my thesis. I delineated my conceptualization of international society as a universal yet stratified community of

[125] Wheaton 1904, 24.
[126] Ibid.; Lorimer 1883.
[127] Quoted in Otsuka 1969, 41.

practice of international law. I distinguished between a novice, regular, and master practitioner from the three cumulative criteria of background knowledge and rule acceptance, simple compliance, and ability to exploit the rules for national interests and international reputation, particularly through the lens of mistake-correcting. I discussed the difference between forward-looking mistake correcting (in which one acknowledges the mistake, assumes responsibility, and acts differently in the future) and backward-looking mistake (in which one engages in narrative building to portray itself as having been compliant all along). I concluded by discussing the utility of examining publicists as recognizers.

2.4. Conclusion

This chapter presented a theoretical integration of the English School and the practice literature. First, I examined the orthodox and revised English Schools for their insights on Japan and international society, their focus on socialization and conformity, and their lack of full engagement with the notion of the practice of international law. Second, I introduced the practice literature, analyzing and critiquing key concepts of practice, competence, community of practice, background knowledge, and master practitioner. Finally, I developed these concepts further and built my theoretical framework. In this endeavor, I discussed my conceptualization of international society, the distinction between a novice, regular, and master practitioner, and the role of publicists as key recognizers.

The thesis now turns to apply this theoretical framework to Japan's rise through the ranks in international society between 1853 and 1905. Chapter 3 investigates Japan's process of learning international law. I reveal how Japan gained high background knowledge and rule acceptance and thereby transitioned from a novice to a regular practitioner between 1853 and 1894. Chapter 4 probes how Japan became a master practitioner during the Sino-Japanese War. I study two highly visible mistakes that Japan made in the war and how Japan marshaled its knowledge and resources to engage in both forward- and particularly backward-looking mistake-correcting. I end the chapter by analyzing the writings of publicists, who reached a consensus by the turn of the 20th century that Japan was part of the core by virtue of its conduct during the war.

Chapter 3:

Becoming a Regular: Japan Learns and Practices International Law

This chapter examines the process by which Japan learned international law between 1853 and 1894, when the Sino-Japanese War began. It does so from the two lenses of background knowledge and rule acceptance, which the previous chapter established as the bases of being a practitioner.

I illustrate the following narrative. Between Japan's forced entry into international society (1853) and the end of the Tokugawa shogunate (1868), Japan was a novice practitioner with low background knowledge and low rule acceptance. After the Meiji government came into power, Japan enthusiastically embraced international law and demonstrated increasing rule acceptance. From the 1870s, the Meiji government intensified Japan's learning process. Meiji Japan engaged in 'learning-by-doing,' wherein it applied its knowledge to its foreign policy and gained experience in practicing international law. By 1894, Japan was a regular practitioner with high background knowledge, high rule acceptance, and consistent but simple compliance. Although publicists were impressed by Japan's progress, they still did not consider Japan to be in the same rank as the Europeans and the Americans in 1894.

This chapter serves two purposes for this thesis. The first is to ground the theoretical process of a novice learning and becoming a regular practitioner with empirical analysis.

The second is to reveal Japan's agency by presenting a historically-grounded, empirically-rich account of Japan becoming a practitioner. The discussion of individual practitioners and particular resources that Japan used for learning presents a granular analysis that has been lacking in the English School. Particularly notable addition here is the examination of foreign legal advisors, whom the Meiji government employed as part of the 3,000 hired foreigners (*oyatoi gaikokujin,* or *yatoi* for short) transforming Japan in all aspects from science and technology to agriculture, education, and politics.[1] The English School has either completely overlooked these advisors or only mentioned them briefly.[2] However, they played an indispensable role in Japan's learning, and reexamination of their contributions adds nuance to the narrative on Japan and international society.

The chapter proceeds in four sections. The first section examines Tokugawa Japan's learning as a novice practitioner, examining their use of diplomatic officials in Japan, publicists' key treatises, and officials and students sent abroad. The second section moves to the early Meiji era, when the government embraced international law and intensified the learning process. It introduces the wider range of treatises and diplomatic missions that contributed to learning, as well as students who studied international law abroad in a private capacity during this period and later helped transform Japan into a master practitioner. The third section examines how Meiji Japan became a regular practitioner after 1870, displaying high background knowledge and high rule acceptance. It discusses

[1] Jones 1980. I will discuss the *yatoi* later in the chapter.
[2] Suzuki 2009 is among the very few exceptions that mention the advisers, but he does not investigate them deeply either.

cases in which Japan successfully complied with international law, highlighting the foreign legal advisors who played a key role in this process. It also introduces some examples of Japan acceding to key international treaties and societies as indicators of Japan's high rule acceptance. The final section examines the publicists' writings to conclude that Japan was still ranking lower than the Europeans and the Americans in 1894.

3.1. Tokugawa Japan's Learning

This section examines how Tokugawa Japan as a novice practitioner attained basic background knowledge but remained low in rule acceptance.

The arrival of U.S. Commodore Perry in 1853 marked Japan's forced entry into the community of practice of international law. Before the forcible opening, Japan was unaccustomed to international law that had developed in Europe and that was predicated on sovereignty and sovereign equality.[3] This was unsurprising, as Japan had limited its foreign relations with the Netherlands, China, Korea, Ryukyu Islands, and Ezo,[4] and the Dutch had abided by Japan's terms of interaction wherein they treated Japan as superior and brought tribute to the rulers.[5] Consequently, Japan was woefully unprepared for Perry's arrival. As Osatake Takeki, a famous Japanese historian, later remarked:

> 'the degree of panic of the Japanese people was so enormous that we cannot imagine it now…Foreigners had been recognized as barbarous enemies and

[3] Akashi 2012.
[4] Yanagihara 2012, 478. The fact that Japan did have foreign relations before Perry's arrival disputes the conventional claim that Japan was in 'seclusion.'
[5] Akashi 2012, 728.

> animals. Yet those foreigners forced Japan to open up the country using their tools of civilization and announced their requirements based on international law.'[6]

Ignorant of European international law and the terms of interactions it stipulated,[7] Japan was forced to sign a series of unequal treaties, most notably the 1858 Treaties of Amity and Commerce with the U.S., Netherlands, Russia, Britain, and France.[8] These treaties imposed extraterritoriality, stripped Japan of tax autonomy, established diplomatic missions, and overall prescribed specific codes of behavior in accordance with international law (such as protecting diplomatic Ministers' rights).[9] By signing these treaties, Japan became a novice and subjugated member of the community of practice of international law. To safeguard national independence in this social environment, the Tokugawa shogunate launched the process of learning international law.

Lacking resources, the first source of learning was from the foreign diplomats in the context of signing unequal treaties. Townsend Harris, the U.S. Consul General, was particularly influential as the first Western envoy dispatched to Japan. While he negotiated the U.S.-Japan Treaty of Amity and Friendship with the Commissioners of the shogunate in 1857, he gave minute explanations on the workings of international law – such as the sending of envoys abroad, the envoys' functions and privileges, and the nature of foreign trade – as the Commissioners 'said they were in the dark on all these points and therefore

[6] Osataka 1926, 1; Yamauchi 1996.
[7] It is worth noting that Japan did have its own conception of international law before the encounters with Europe – it was just very different from the Western-style international law that was based on sovereignty. See Akashi 2012.
[8] Okagaki 2013.
[9] For example, Otsuka 1969, 42.

were like children.'[10] Harris consistently explained his 'undoubted rights under the laws of nations' and the rights of ministers and consuls; acquainted the shogunate officials with matters such as the role of arbitrator and the laws of neutrality; and overall impressed upon the shogunate of the importance of following international law in conducting relations with the great powers if it wanted to avoid dire consequences.[11]

In this regard, Tokugawa Japan in the 1850s had minimal background knowledge. Rule acceptance was also low: threatened with such dire consequences, the shogunate had little choice other than to obey international law. With the *sonno joi* ('revere the Emperor, expel the foreigners') movement growing in the streets, the national sentiment was hardly about accepting the legitimacy of foreign law.[12] Torn between foreign and domestic pressures, the Tokugawa shogunate nervously continued its learning campaign.

By the 1860s, the Tokugawa shogunate had greater resources and means to learn international law. One key aspect of this was the introduction of influential foreign books on international law. In 1865, Wheaton's *Elements of International Law* became available in Japan. It was the reprint of the book's Chinese translation, *Wanguo gongfa*, which had been made by missionary William A.P. Martin and published in China a year prior.[13] The book reached a wide and keen audience: it was not only presented to the shogun Tokugawa Yoshinobu, but was also eagerly read by authorities and officials in the Tokugawa

[10] Otsuka 1969, 42; Cosenza 1930, 491-2.
[11] Otsuka 1969; Consenza 1930; Yanagihara 2012, 735; Anand 2004, 42.
[12] Best 2021.
[13] Akashi 2012, 734; National Diet Library 2009; Ding 2002.

government, keen intellectuals, and leading opponents of the shogunate.[14] The book was also studied in *Bansho Shirabesho* ('Barbarian Books Research Institute'), a leading institution in the study of foreign works, which the Tokugawa shogunate established in 1856 to redress its acute lack of Western knowledge.

Alongside the learning from books, the Tokugawa shogunate began to send students abroad to speed up the learning process on all aspects of the West, which included studies on international law. While the shogunate initially planned to send its first students to the U.S., the outbreak of the U.S. Civil War forced it to change its plans. Instead, the shogunate made the requests to the Netherlands; these were successful, and in 1862, 16 students were chosen for this dispatch.[15] While students studied a variety of subjects, two of them – Nishi Amane and Tsuda Mamichi – specifically studied international law at Leiden University under Dr. Simon Vissering.[16] When they returned from their studies, Nishi translated his lecture notes and published them under the title *Bankoku Koho* (*Public Law of Ten Thousand States*) in 1868.[17] Published at a time when books on international law were still relatively scarce, *Bankoku Koho,* alongside Wheaton's book, became the forerunner of introductory works on international law.[18]

[14] Yamauchi 1996, 2; Anand 2004, 43.
[15] National Diet Library 2009.
[16] Ibid.
[17] Akashi 2012, 734.
[18] National Diet Library 2009.

These two books gave Tokugawa Japan deep insight into international law, albeit in different ways. The Chinese translation of Wheaton's work emphasized the concept of natural law in explaining international law:

> 'The rules of humans are called "natural law", and when this is extended to its limits and applied to states, it becomes "international law" [*gongfa*]. Pufendorf agreed with Hobbes and stated: "Apart from the extension of natural law, there is no other international law that can attain states' respect and obedience." Therefore, all civilized states set definite rules and laws [i.e. international law] to avoid the cruelties of war.'[19]

By appealing to the universality of natural law, 'Martin wanted to convince "the Chinese, who thought of themselves as civilized, had the moral duty to obey international law."'[20] The Japanese, who had also long thought of themselves as civilized in terms of Confucian ethics, found Martin's presentation of international law to be rather palatable.[21] Nishi's work, however, presented a more stark picture of international law based on legal positivism.[22] For one, he described international law as 'Western international law,' highlighting how international law applies only to certain members of the international system.[23] For another, he highlighted how international law applies to different degrees depending on material power.

> 'While "states which are able to effectively govern themselves and possess autonomy…are, in accordance with *Western* international law, entitled to equal rights with other states,' they were differentiated on the basis of power... "According to this power…European countries are classified as primary countries, secondary countries, and third-rate countries."'[24]

[19] Ding (Martin) 2002, 3; Suzuki 2009, 71.
[20] Suzuki 2009, 71.
[21] Ibid, 83.
[22] Kubben 2013 argues that the influence of natural law was more visible in American works than British works.
[23] Quoted in Suzuki 2009, 84.
[24] Ibid.

Nishi's work, therefore, demonstrated how Japan needed to attain knowledge of international law, supported by both material power and civilizational status, to become a respected practitioner of international law. Such a view, as we will see, was the path that Japan took in the 19th century.

While Nishi and Tsuda's dispatch represented explicit efforts by the Tokugawa shogunate to gather information about international law, they were not the only ones that gave Japan valuable knowledge. Also important were the official diplomatic missions that the Tokugawa shogunate sent abroad. There were six missions, and their destinations and purposes varied. For instance, the first was sent to the U.S. in 1860 to conclude the negotiations for the 1858 U.S.-Japan Treaty of Amity and Commerce. The second mission was sent to Europe in 1862 to negotiate the postponement of the opening of treaty ports as stipulated in the 1858 unequal treaties. The mission made official visits to France, Britain, the Netherlands, Prussia, Russia, and Portugal.[25] While these missions were significant in terms of the outcome themselves – Japan was able to secure the desired postponement from Britain, the Netherlands, and Prussia – they were equally significant in terms of the direct insight on Western conducts of diplomacy and international law they gave to the future Japanese leaders on the mission. The second mission, for example, included figures such as Fukuzawa Yukichi (Meiji Japan's leading philosopher), Fukuchi Gen'ichiro (future member of the Iwakura Mission), and Terashima Munenori (who later became Japan's first minister to Britain). Such interactions with the foreign countries contributed to the

[25] Inoue 2008.

increased realization that Japan must undertake reforms and adopt international law to protect itself from, and join the ranks of, the Europeans and the Americans. As Terashima expressed in 1865: '[I]t is time for the ruler of Japan to open his eyes and rid Japan of old habits. Japan must be reborn. This means that Japan must send ambassadors to several great powers overseas' and overall conduct their foreign affairs in accordance with international law.[26]

It is of historical interest to note that at the same time as these official missions, individual clans, particularly the Choshu and the Satsuma clans, were secretly dispatching students of their own. These clans, which were the leading opponents of the Tokugawa shogunate, recognized Japan's weakness in the face of the great powers and sought to acquire knowledge themselves, although such private dispatches were illegal at the time.[27] The students who studied abroad became influential leaders of Japan after the Meiji Restoration. The Choshu Five are a case in point. They were members of the Choshu clan in western Japan who were smuggled to Britain in 1863 and studied at University College London. One of them, Ito Hirobumi, served as a leader in the Meiji Restoration, became Japan's first Prime Minister in 1885, and drafted Japan's new constitution. Another, Inoue Kaoru, also became a leader in the Meiji Restoration and Japan's first Foreign Minister in 1885. [28] Before the dispatch, these Choshu students had been staunchly anti-British and

[26] Cited in Inuzuka 1993, 24; Suzuki 2009, 81.
[27] Cobbing 2000.
[28] The others were very important to Japan's development in their own right. Yamao Yozo became 'the Father of Japanese engineering'; Inoue Masaru became 'the Father of Japanese railways'; and Endo Kinsuke became 'the Father of the modern Japanese mint'. Embassy of Japan in the UK, n.d.

anti-West, having participated in the *sonno joi* (‘revere the Emperor, expel the foreigners’) movement and attacked the British legation in January 1863.[29] However, their studies in Britain impressed upon them that Japan needed to learn from the West to survive, and they ultimately played a fundamental role in transforming Japan during the Meiji era.

In sum, Tokugawa Japan gained basic background knowledge of international law by the late 1860s through foreign diplomatic representatives, books, and officials and students sent abroad. Nevertheless, its rule acceptance remained low and its background knowledge remained basic.[30] By intensifying the learning process and embracing international law, the Meiji Restoration set Japan on a clear course to shift from a novice practitioner to a regular practitioner.

3.2. Meiji Japan’s Learning

Between November 1867 and January 1868, the Choshu and Satsuma clans overthrew the Tokugawa shogunate, established a new government, and restored imperial rule in Japan. Dissatisfied with the perceived weakness of the Tokugawa shogunate against the foreign powers, these leaders of the Meiji Restoration sought a transformation of Japan to emulate the West and be an active participant in international society – as evidenced not least in their naming of their era, ‘Meiji’ (‘enlightened rule’).[31]

[29] National Diet Library n.d.b, n.d.a.
[30] Satow 2017, 358.
[31] See among others Suzuki 2009.

The Meiji government embraced the learning of international law as its top priority and vowed to strengthen Japan's learning process.[32] In January 1868, the Meiji Emperor notified the consuls in Japan 'to conduct the foreign policy according to the public law of the universe,' referring to international law.[33] The next month, the three main ministers of the Emperor declared, 'His Majesty...decided to keep the traditional constitution of the Empire and use Bankokukouhou [international law] from now on.'[34] The Meiji government's commitment to learning international law is embodied in the Charter Oath, also known as Imperial Oath of Five Articles, issued in April 1868. Written in the name of the emperor, the Charter Oath was an important public document that delineated the intentions and priorities of the new Meiji government for the Japanese domestic audience. While the first three Articles are concerned with developing internal unity, Articles 4 and 5 are particularly of interest. Article 4 proclaimed that 'we should leave behind bad habits of the past and follow the universal and correct path' that was international law.[35] Meanwhile, Article 5 declared that 'we should ask the world for knowledge and develop the nation.'[36]

The Meiji government's embrace of international law indicates higher rule acceptance. Understandably, fear of the consequences continued to motivate some aspects of learning and complying with international law. For instance, the secretary of the 1871-3 Iwakura Mission later reflected, '[i]n Western diplomacy…on the surface everyone behaves in a

[32] Yamauchi 1996; Ochiai 1965.
[33] Quoted in Yamauchi 1996, 2.
[34] Ibid.
[35] "Gokajou No Goseimon (Charter Oath)" 1868.
[36] Ibid.

friendly manner, but behind the scenes it is shot through deception and tricks'[37] – therefore, without 'deep knowledge of European diplomacy,' Japanese diplomats 'could fall under the tricks of European diplomats and leave unspeakable national difficulties in the future.'[38] Nevertheless, there emerged genuine acceptance of international law as legitimate during the Meiji period. As encapsulated in Article 4, these views hailed international law as 'universal and correct,' and such sentiments only grew as time passed on.[39] Thus, these two motivations coexisted in the early Meiji period to drive Japan's learning, and rule acceptance continued to increase.

Japan intensified its learning process in the 1870s and 80s. The Meiji government encouraged the translations of major European and American textbooks on international law, such as Charles de Martens' *Guide diplomatique*; TD Woolsey's *Introduction to the Study of International Law*; and JC Bluntschli's *Das Moderne Völkerrecht als Rechtsbuch*, made available in 1869, 1878, 1881, respectively. Translations of works by James Kent, AW Heffter, Henry Halleck, Amos S. Hershey, and W.E. Hall were also made available, respectively in 1876, 1877, 1878, 1879, and 1888. These translators included the likes of Fukuchi Gen'ichiro, who was part of the Tokugawa government's 1862 official diplomatic dispatch to Europe.[40]

[37] Kume 1979, 116; Suzuki 2009, 82.
[38] Ito 1936, 167; Suzuki 2009, 82.
[39] "Gokajou No Goseimon (Charter Oath)" 1868. Also see Okagaki 2013.
[40] Akashi 2012, 732.

The Meiji government also continued the dispatch of officials and students abroad, such as the 1871-3 Iwakura mission to the U.S. and Europe. This mission was a bold move by the Meiji government in two respects. First, it sent half of its senior leaders abroad, with such eminent participants such as Iwakura Tomomi (the *udaijin* who was one of the most important members of the government) and four vice ambassadors Okubo Toshimichi, Kido Koin (Takayoshi), Ito Hirobumi, and Yamaguchi Naoyoshi. Overall, there were around 50 emissaries and 60 students who had previously studied abroad and now acted as interpreters. [41] Second, the mission lasted for two years, which was considerably long for such senior leaders to be absent from the country.[42] From meeting the Queen in Britain to eminent legal scholars in Germany, the mission's members gained invaluable firsthand insights into the workings of international law and diplomacy.[43]

As the importance of learning became increasingly evident, some students began to study abroad without official government sponsorship. Among many, two students merit attention, given their significant contributions in transforming Japan into a master practitioner during the Sino-Japanese War.[44] First was Suematsu Kencho, who served as the President of the Imperial Board of Legislation during the war. In 1878, Suematsu arrived in Britain to work as an attaché at the Japanese legation. He was sent there by Ito, primarily to serve as an informant on British foreign and domestic policies.[45] Instead of

[41] Nish 1998.
[42] Ibid.
[43] Ibid.
[44] This will be discussed in Chapter 4.
[45] Mehl 1993, 174-7.

continuing to work at the legation, however, he enrolled at the University of Cambridge, where he studied law and received a B.A. and LL.B in 1884 and LL.M. in 1888.[46] As a student, Suematsu was enthusiastic in his study of law and actively debated politics in the Cambridge Union Society and the debating club at St John's College.[47] After graduation, Suematsu studied in Munich to read German and Austrian legal texts, not least due to his keen interest in Ito's efforts to draft a constitution after the German model at this time.[48] Although Suematsu's study was not officially sponsored by the government – indeed, he was recalled to Japan more than once but resisted[49] – the knowledge that he gained both of law and of British and European affairs made him a valuable figure in Japan.

The second was Ariga Nagao, who became Japan's foremost scholar on international law and served as one of two chief advisors and defenders of Japan's actions during the Sino-Japanese War. Between 1886 and 1887, he studied abroad in Germany and Austria. While in Austria, he studied law under Lorenz von Stein, a prominent German scholar who had in the early 1880s also taught governance and law to Ito.[50] After his return, he narrowed his focus on works of international law, such as those by Holtzendorf, Hall, Halleck, and Bluntschli, and lectured on international law at the prestigious Army Staff College.[51] The wealth of knowledge Ariga acquired during this time enabled him to play a prominent role in Japan's mistake-correcting in the Sino-Japanese War.

[46] Ibid; Steeds and Nish 2015, 14.
[47] Mehl 1993, 184.
[48] Ibid., 185.
[49] Ibid.
[50] Spaulding 2015, 43-50.
[51] Yi 2013, 49.

The most significant source of learning international law, however, arguably came from foreign advisors. Between 1868 and 1900, the Ministry of Foreign Affairs, the Ministry of Justice, and the Cabinet hired a total of 83 foreign advisors to work on various aspects of politics and law, and the fields of international law and treaty revision were particularly emphasized.[52] The Meiji government's decision to hire foreigners stemmed from its belief that importing foreign expertise was the most expedient means of learning. As a prominent British hired foreigner Basil Hall Chamberlain observed, 'it takes longer to get a Japanese educated abroad than to engage a foreigner ready-made.'[53] Particularly from the 1870s onwards, the Japanese government used these legal advisors to navigate foreign policy challenges in accordance with international law.

These legal advisors reveal Japan's agency well. As I noted at the beginning of the chapter, these legal advisors were part of about 3,000 hired foreigners (*yatoi*) that the Meiji government hired to spearhead reform in a variety of sectors, including government, infrastructure, and education. To attract the best and brightest minds, the government allocated a whopping third of its expenditures to the scheme and paid the *yatoi* salaries that

[52] Two discretionary notes are needed for this figure. First, one must emphasize that this figure is an estimate. Some data on the advisors and the *yatoi* in general is unavailable, for reasons such as scholars differing in terms of who should be considered to have worked on those matters and records of minor advisors not being as readily available as more major ones. Second, the figure of 83 advisors includes instances of simultaneous or multiple employment. Some advisors worked for multiple ministries, such as Gustave Emile Boissonade de Fontarabie and Hermann Roesler (both worked for Ministry of Foreign Affairs and Ministry of Justice). Even with these two discretionary notes, however, the main message of the extent to which the Meiji government relied on foreign advisors is still relevant. Burks 1985, 227; Umetani 1971, 237.
[53] Basil Hall Chamberlain was a prominent British *yatoi* serving as a Professor of Japanese at Tokyo Imperial University. Although he was not a legal advisor, his remarks are still salient. Chamberlain 1905, 183.

sometimes even exceeded those of Japanese ministers.[54] Despite granting them special treatments, the government made it clear from the beginning that the Japanese were in charge. The Japanese made the decisions of hiring and firing, were responsible for control and management, and replaced most *yatoi* with trained Japanese by the end of the century.[55] As well-respected *yatoi* Dr. William Griffth noted, the foreigners were 'dedicated "servants" of the Japanese.'[56] The government hired the majority from Britain, France, the U.S., and Germany, although there were 26 national groups represented among the *yatoi.* Japan assigned each national group to different areas. For instance, the British, German, and American *yatoi* were respectively prominent in infrastructure,[57] agriculture, and education.[58]

As for legal matters, American *yatoi* dominated international law, while the French and German counterparts were preeminent in domestic constitutional law and the British worked on industrial and tax laws.[59] There were a few reasons why many advisors in international law were American. For one, in the 1870s and 1880s, the government was frustrated with Britain with regards to negotiations over revising the unequal treaties. Britain was particularly intransigent over Japan's efforts at negotiations, and scholars have

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[54] Jones 1990, 20-21. Also see Jones 1980, 40; Katano 2011, 17; Gluck 1981.
[55] Jones 1990; Burks, 1990, 7.
[56] Quoted in Burks 1990,13.
[57] The importance of the *yatoi* in technology and infrastructure cannot be overstated. For instance, Japan hired a British national, Richard Henry Brunton, to oversee the construction of lighthouses at strategic points on Japan's coastline. This was a crucial task. Lighthouses were essential infrastructure at the time, as they were used by European powers to safely guide their vessels in and out of harbors, and the lack of them therefore interfered with the prospect of trade. It was so important that, in signing unequal treaties with Japan, Britain, France, Netherlands, and the U.S. required the construction of lighthouses. Brunton 1991a; 1991b; Japan Coast Guard Maritime Traffic Department 2018.
[58] Jones 1990; Burks 1985, 226.
[59] Ibid.; Ibid.

argued that Japan sought to counter the British by relying on American legal advisors.[60] For another, the Americans were particularly prolific in producing textbooks on international law in the 19th century. From Wheaton to Kent, Woolsey, and Halleck, Japan had learned much of international law from the Americans.[61] There was also the factor of availability as well: Japan had attempted to hire Holland – the aforementioned British publicist – but was unsuccessful.[62] Despite the reliance on Americans, however, the Japanese made sure to learn from multiple national groups to mitigate any national bias and have a well-rounded understanding of international law.[63]

To become a regular practitioner of international law, Japan had to both reform its domestic legal system and successfully navigate foreign policy issues in accordance with international law. Japan derived important contributions from the *yatoi* in its domestic legal reforms, namely the promulgation of the constitution and the compiling of civil, criminal, and commercial codes.[64] The Meiji government first hired French advisors, such as Georges Bousquet (hired in 1872) and Gustave Emile Boissonade de Fontarabie (hired in 1873), to aid Japan's efforts to model the constitution and the codes after the Napoleonic Codes.[65] After strong domestic opposition thwarted the pursuit of the French model,[66] the government changed its focus to the Prussian model and hired German advisors such as Carl Friedrich Hermann Roesler (hired in 1878) and Albert Mosse (hired in 1886). These

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[60] Jones 1980, 8. Also see DC Church's thesis, which scholars of *yatoi* have often cited. Church 1978.
[61] Kubben 2013.
[62] Yamauchi 1996, 3.
[63] Jones 1990.
[64] For example, Anand 2004, 42; Nakamura 1966.
[65] Katano 2011, 146.
[66] Yatsuka 1891; Hirakawa and Wakabayashi 1989, 475.

advisors, all highly accomplished in their home countries, provided insightful advice to Ito and other Japanese leaders in drafting the constitution and the codes.[67] As for international law, Japan used the advisors both to further its knowledge and to conduct its foreign affairs in accordance with the rules, as will be noted in the next section.

3.3. Meiji Japan's Simple Compliance

From 1870 onwards, Japan began to practice international law and secured some notable results. On 24 September 1870, the Meiji government issued a Proclamation of Neutrality in the Franco-Prussian War, two months after Spain and two weeks before the U.S.[68] Having proclaimed to the world that Japan would conduct its affairs in accordance with international law, the Meiji government saw the Franco-Prussian War as its first major opportunity to substantiate this promise.[69] The government was careful to shape the language of the proclamation to be consistent with international law, and it achieved this from advice by the influential Dutch-American missionary *yatoi* Guido Fridolin Verbeck, who was acquainted with Wheaton's work on international law.[70] At this point, Japan had no foreign advisors directly in charge of international law and foreign relations, but the experience impressed upon Japan that such specialists would be necessary to conduct foreign affairs according to the European and American rules and secure its position as a practitioner. In this regard, Foreign Minister Soejima Taneomi, who himself had studied under Verbeck and thus knew the value of foreign knowledge, began to hire foreign

[67] Umetani 1971, 167; Katano 2011, 286; 'Shihou no Kindaika' Exhibition, Ministry of Justice of Japan.
[68] Howland 2016, 30.
[69] Ibid. Also see earlier in this chapter.
[70] Yanagihara 2011, 18; Howland 2016, 30.

officials whom he knew were supportive of Japan's efforts to practice international law. [71] Japan hired its first legal advisor to the Ministry of Foreign Affairs, Erasmus Peshine Smith, in 1871 for $10,000 per year (when he had been earning $2,000 per year in the U.S.).[72] Smith was soon followed by other Americans such as Charles William Le Gendre, Eli Sheppard, and Henry Denison, as well as others including the Italian Alessandro Paternostro.[73]

Japan's efforts and successes continued. In 1872, Japan fought and won its first ever international arbitration over the *María Luz* incident, in which Peru demanded compensation from Japan for releasing bonded Chinese laborers on board a Peruvian ship docked in the port of Yokohama.[74] By consulting with Smith, Japan argued that the ship was under Japanese jurisdiction by virtue of it being docked in Japanese waters and that Japan was justified in releasing the laborers under international law.[75] Through the works

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[71] He served as Foreign Minister between 1871 and 1873. Soejima had studied under Verbeck and had mastered English Studies. National Diet Library n.d.c.
[72] Jones 1990, 20.
[73] Paternostro made a significant contribution in Japan furthering its knowledge of international law. An Italian scholar and professor of international law at the University of Naples Federico II and the University of Palermo, Paternostro was asked to teach at the law school Meiji Houritsu Gakkou. Paternostro gave his students a comprehensive understanding of both natural and positive international law, as well as specific prescriptions that pertained to diplomacy, war, neutrality, and others. The legal jargon that he used in his lectures informed the studies of Japanese students and officials at the time and still endure today. His students also became prominent legal experts: Adachi Mineichiro, for instance, became the President of the Permanent Court of International Justice at the Hague in 1931-1934. Paternostro, then, contributed to the emergence of a generation of confident Japanese legal specialists. Yanagihara 2011, 20.

Sheppard advised Japanese officials on legal issues such as the rights of foreign ships in offshore Japanese waters. He also helped establish a European-and-American-style consular service and elucidated the rights and duties of foreign residents in Japan with regards to treaty revisions and extraterritoriality. University of California Berkeley, 1996.
[74] For example, Howland 2016, 33-36. Yanagihara 2011, 18; Jones 1980,78.
[75] Ministry of Foreign Affairs of Japan 1872.

of Smith and Le Gendre, Japan invaded Taiwan in 1874 and justified it,[76] and through advice by Denison, Japan successfully declared neutrality in the 1884 Sino-French War.[77] In 1886, in demonstration of its commitment to positive law,[78] Japan pledged adherence to the Geneva Convention of 1864. To implement such adherence, Japan built hospitals, had its Red Cross Society recognized by the International Committee of the Red Cross in 1887, and began the training of nurses by 1890.[79] Even in the realms of international administrative law, Japan demonstrated commitment by acceding to 'various "universal conventions" as to weights and measures, posts, telegraphs, and the like,' such as the Universal Postal Union in 1877 and International Telegraph Union in 1879.[80] To further emphasize that it was a well-established member of the community of practice of international law, Japan joined two international legal organizations: the International Law Association (ILA) and Institut de Droit International (IDI). The ILA was an inclusive institution – attended by legal scholars, peace activists, publicists, and other interested parties from any country – that served as a forum for discussion of pressing matters and formulation of advice for governments. Japan began to send representatives to the ILA in 1874, one year after its founding, and used the forum to call for the abrogation of unequal treaties on the basis of Japan's progress. Meanwhile, the IDI (also founded in 1873) was a more exclusive institution that was filled largely by legal scholars and committed to codifying international law. Japan was able to accede to the IDI in 1892, when its Euro-

[76] For example, Suzuki 2009.
[77] Ibid.; Ministry of Foreign Affairs of Japan 2019, 150; Saito et al. 1935.
[78] Howland 2016, 8.
[79] Hall 1904, 42; Holland 1898, 114; Siebold 1901, 15.
[80] Hall 1904, 42. Also see Howland 2016, 8; Ravendal 2020.

American members 'recognized that Japan had produced meritorious scholars of international law.'[81]

These records indicate that by 1894, Japan had more than high background knowledge and rule acceptance. Whether it be issuing statements of neutrality, partaking in international tribunals, or acceding to the Geneva Convention, Japan had concrete records of complying with international law and further appealed to other practitioners of its competence and commitment to international law in forums such as the international legal organizations. In other words, Japan was no longer a novice in the community of practice: it was a regular. Other members of the community had acknowledged it, whether it be through the victory at the 1872 tribunal or the admittance into the international legal organizations.

Nevertheless, Japan was not yet considered to be ranking alongside the Europeans and the Americans at this point. Although Japan's learning and instances of rule-following were certainly impressive, this was not enough to qualify to be among the core of international society. One way to ascertain this is to compare what different editions of works by publicists stated about the members of the core. For instance, the 1st, 2nd, 3rd, and 4th editions of Hall's *A Treatise in International Law* (1880, 1884, 1890, 1895) – considered the authoritative textbook in international law at the time[82] – do not include Japan within the core, and indeed hardly mentions Japan throughout the work.[83] However, in the 5th

[81] Howland 2016, 28.
[82] Yamauchi 1996, 4.
[83] Hall 1880; 1884; 1890; 1895.

edition (1904), the right of Japan to rank with the Europeans and Americans for purposes of international law is strongly asserted.[84] Lorimer corroborates this view. Writing in 1883, he notes that '[s]hould the Japanese…continue their present rate of progress for another twenty years, the question whether they are not entitled to plenary political recognition [as states that made and abided by international law] may have to be determined.'[85] In other words, Japan had a high potential to rank alongside the Europeans and the Americans, but it was not there yet. Before 1894, then, Japan was a regular practitioner, no more, no less.

3.4. Conclusion

Between 1853 and 1894, Japan under the Tokugawa and Meiji regimes transitioned from a novice to a regular practitioner by intensively learning and complying with international law. After it was forcefully introduced to international law in 1853, the Tokugawa shogunate launched the process of learning by listening to foreign diplomatic representatives in Japan, consulting influential foreign treatises, and sending officials and students abroad. In this regard, Tokugawa Japan attained basic background knowledge, but rule acceptance remained low. The Meiji government, meanwhile, embraced international law and demonstrated high rule acceptance. Meiji Japan intensified its learning as a wider range of treatises became available, more officials and students such as Suematsu and Ariga learned international law abroad, and the government employed foreign legal advisors. From 1870 onwards, the Meiji government secured concrete results in conducting

[84] Hall 1904, 42.
[85] Lorimer 1883, 102-3. See Chapter 2 for more discussion on Lorimer.

its foreign affairs in accordance with international law, thereby demonstrating consistent albeit simple compliance. While publicists were impressed by Japan's progress, however, they still did not consider Japan to be ranking with the Europeans and the Americans.

The next chapter turns to examine how Japan became a master practitioner of international law during and after the Sino-Japanese War. By making full use of the knowledge it gained through learning, Japanese leaders and publicists defended consequential mistakes in the war, convinced the international legal community that Japan was faithful to international law throughout the war, and won recognition by publicists to have ranked with the Europeans and the Americans.

Chapter 4:

Becoming a Master: Japan Corrects Mistakes in Sino-Japanese War

This chapter probes how Japan became a master practitioner of international law between the Sino-Japanese War and the turn of the 20th century. I examine two highly visible, internationally condemned mistakes that Japan made in the Sino-Japanese War: the sinking of the British steamship *Kowshing* and the massacre at Port Arthur. I trace how Japanese leaders and publicists exploited their knowledge of international law to engage in both forward- and particularly backward-looking mistake-correcting. These Japanese individuals successfully convinced their foreign counterparts that they were in the right and thereby safeguarded Japan's national interests and international reputation. I conclude by analyzing publicists' writings on Japan by the turn of the 20th century, which confidently ranked Japan alongside the Europeans and Americans due to Japan's conduct in the war.

A note on the case selection is warranted here. As I discussed in the Introduction, my focus on these two particular cases does not imply that other cases inside and outside the Sino-Japanese War were insignificant. Rather, I study the two cases because they invited particularly high international scrutiny and condemnation at the time and jeopardized Japan's national interests and international reputation.[1] Not all mistakes are equal: highly visible and consequential mistakes pose a greater threat to an entity than smaller ones and

[1] Howland 2007; 2016; Paine 2003.

carry a greater weight in determining its position within the community of practice. In this regard, analyzing how Japan maneuvered these two particularly high-stakes cases is key to understand how Japan became a master practitioner of international law. Additionally, the chapter also does not dismiss the salience of other factors besides mistake-correcting in Japan's attainment of high rank. The criteria for becoming a master are cumulative, that is, being a master requires having high background knowledge, high rule acceptance, and simple compliance. As Chapter 3 revealed and the end of this chapter will show, publicists indeed noted these factors such as Japan's accession to the Geneva Convention and the Red Cross Society and participation in international administrative unions on the post, telegraphs, and weights. The chapter acknowledges this and instead seeks to shed light on mistake-correcting as an important but understudied element of Japan's rise through the ranks.

The chapter separates the analysis of the two cases into their immediate aftermath and after the war. This is because after the war, Japanese publicists defended the two cases together in their influential treatises. The chapter thus proceeds as follows. First, I discuss the *Kowshing* incident and its immediate aftermath, in which Japanese practitioners Suematsu Kencho and Alexander von Siebold justified the incident and, with the help of British publicists, convinced Britain to absolve Japan from blame. Second, I introduce the Port Arthur massacre and its immediate aftermath, when the government defended the affair and the world's attention decreased. Third, I investigate how Ariga and Takahashi Sakue, Japan's two foremost publicists, forcefully defended the two cases after the war by writing

works in French, English, German. These works built the narrative of Japan as a scrupulously law-abiding state, and their works received public support from some of the most prominent foreign publicists. Finally, I illustrate how foreign publicists by the turn of the 20th century accepted Japan's arguments and ranked Japan alongside the Europeans and the Americans.

4.1. The *Kowshing* Incident and Immediate Aftermath

On 25 July 1894, the Japanese navy cruiser *Naniwa* sank the British steamship *Kowshing,* which had been leased by China to transport troops to Korea. The *Kowshing* incident, as it came to be known, destroyed the British property and claimed nearly 1,000 lives (900 of whom were Chinese soldiers, who drowned or died as the *Naniwa* fired upon them in the water).[2] The *Kowshing* incident, as it came to be known, sparked immediate condemnation by the great powers, particularly by Britain, that it was against international law. This argument rested on two grounds. First, the sinking preceded any formal declaration of war. To critics, the sinking constituted an illegal surprise attack on the part of Japan. Second, the *Kowshing* belonged to Britain, which was a neutral power. Critics argued that international law prohibited such belligerent acts on neutral powers.[3] In Britain, figures such as the Minister to China, Nicholas O'Conor, and the Law Officers of the Crown

[2] Howland 2008, 681.
[3] For example, Japan Center for Asian Historical Records, National Archives of Japan 2022.

condemned the 'outrageous illegality' of the act and demanded that Japan assume full responsibility.[4]

The *Kowshing* incident shocked the Japanese leaders, who immediately feared damage to Japan's national interests and international reputation. Shortly before the incident, Japan had secured the abrogation of its unequal treaties from Britain – the first among the foreign powers. Ecstatic at the success after many decades of negotiations, top leaders such as Foreign Minister Mutsu Munemitsu and Ambassador to London Aoki Shuzo had expressed that 'we must try to make our government and people act in accordance with "the Laws of Nations"' so as to facilitate future negotiations for abrogation with the other powers.[5] In this environment, the news of the *Kowshing* devastated the leaders: even the usually composed Prime Minister Ito is said to have gone into a rage, lambasting the *Naniwa* and 'wonder[ing] what the Japanese navy will do to cope with the grave international complication created by it.'[6] In the week following the incident, there was a scramble

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[4] N.R. O' Connor to Earl of Kimberley, 27 July 1894, telegram, 6549/188 in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print.* Part I, *From the mid-nineteenth century to the First World War.* Series E, *Asia, 1860-1914.* Volume 4, *Sino-Japanese War, 1894*, 81.

The Law Officers of the Crown argued that Britain was fully entitled to demand compensation from Japan. Law Officers of the Crown to Earl of Kimberley, 2 August 1894, letter, 6594/230 in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print.* Part I, *From the mid-nineteenth century to the First World War.* Series E, *Asia, 1860-1914.* Volume 4, *Sino-Japanese War, 1894*, 94.

[5] Quoted in Gong 1984, 196.

[6] Quoted in Togo Gensui Hensankai 1934, 85-6. It is of interest here to note that, according to some historians, the captain of the *Naniwa*, Togo Heihachiro, only gave the order to sink the *Kowshing* because he knew it would be legal under international law. There is some plausibility to this claim: Togo had studied international law in Britain in 1872, as part of his education as a cadet at the Thames Nautical Training College. He is reported to have said that he sank the *Kowshing* because he 'thought it right.' Even if this were true, however, records suggest that the Japanese government was unaware of it. The government was in a state of shock at the incident and the international controversy it brought. Ibid., 101; Clements 2010.

within the Japanese government to ascertain what had actually happened. Desperate to convince the great powers that Japan was still committed to following international law, Munemitsu and Aoki expressed 'great regret' at the incident and assured the foreign leaders that the Japanese government will conduct an investigation.[7] Should any wrong be found on its side with regards to the observation of international law, the Japanese government promised to pay 'every reparation in their power.'[8] In other words, depending on the results of the investigation, Japan was willing to engage in forward-looking mistake correcting by acknowledging the mistake, assuming responsibility for it, and acting differently in the future.[9]

Mutsu tasked the investigation to Baron Suematsu Kencho, the President of the Imperial Board of Legislation.[10] Given his legal background, Suematsu was well suited to investigate the *Kowshing* incident from the perspective of international law.[11] As the investigation progressed, Suematsu realized that the facts were on Japan's side. For

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[7] Aoki to Earl of Kimberley, 8 August 1894, note, 6594/280 in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print.* Part I, *From the mid-nineteenth century to the First World War.* Series E, *Asia, 1860-1914.* Volume 4, *Sino-Japanese War, 1894*, 113.
[8] Ibid.
[9] Mutsu to Aoki, 31 July 1894, telegram, 712 in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 12 *Gunkan Naniwa Koushingou Gekichin Ikken,* 344. Also see Mutsu to Aoki, 31 July 1894, telegram, 6594/200(i) in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print.* Part I, *From the mid-nineteenth century to the First World War.* Series E, *Asia, 1860-1914.* Volume 4, *Sino-Japanese War, 1894*, 86 ; R.S. Paget to Earl of Kimberley, 31 July 1894, telegram, 6594/198 in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print.* Part I, *From the mid-nineteenth century to the First World War.* Series E, *Asia, 1860-1914.* Volume 4, *Sino-Japanese War, 1894*, 85.
[10] Suematsu, 31 July 1894, 'Reports relating to the "Kow-shing Affairs,' report, 6594/454(i) in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print.* Part I, *From the mid-nineteenth century to the First World War.* Series E, *Asia, 1860-1914.* Volume 4, *Sino-Japanese War, 1894*, 267-270.
[11] See Chapter 3 for his background.

instance, when Suematsu met with three of the surviving members on board the *Kowshing*, they confirmed that the Chinese troops on board prevented the British captain from following Japanese orders for the ship to stop. This would allow Japan to argue that the Chinese troops took control of the British vessel, and thus the *Kowshing* was not a neutral ship immune from belligerent acts under international law. Suematsu observed that this was 'convenient' for Japan.[12] Suematsu compiled an official report of the incident with these testimonies in mind, and by 2 August, the Japanese government had the official story of what happened.[13] In the final report published on 10 August, Suematsu declared that 'it is beyond all doubt, from all the facts now in our possession, that no impartial critic will ever pronounce that [Naniwa's] action was wrong.'[14] It is of note here that the Japanese report relied only on testimony by the Japanese captain, German guest, and the British captain and omitted the Chinese perspective.[15] As the Chinese were insisting that the sinking was against international law,[16] the omission of their voice in the final report

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[12] Suematsu to Mutsu, 2 August 1894, telegram, 718 in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 12 *Gunkan Naniwa Koushingou Gekichin Ikken,* 357.
[13] Howland 2008, 678.
[14] Suematsu, 31 July 1894, 'Reports relating to the "Kow-shing Affairs,' report, 6594/454(i) in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print.* Part I*, From the mid-nineteenth century to the First World War.* Series E, *Asia, 1860-1914.* Volume 4, *Sino-Japanese War, 1894*, 267-270. The Japanese version is Suematsu 1894, 10.

It is interesting to note the difference in nuance between the original report and the official translated report sent to the Earl of Kimberley. The official translated report says, 'It is not within the sphere of my duty here to discuss the merit of the action of the "Naniwa" from an international law's point of view; it is beyond all doubt…' This gives the impression that Suematsu was not considering the matter from the perspective of international law. However, the Japanese report says, 'This report is not the place where I should discuss whether the Naniwa was right or wrong upon the view of international law; however, this must be said: given the facts of what happened, no impartial critic will declare that the action was inappropriate. ' In other words, the emphasis is on Suematsu's belief that the report was not the best place to delineate the debates surrounding the legality, but he did declare up front his belief that impartial judges will believe Japan to be in the right.
[15] Howland 2008.
[16] Ibid.

reveals the extent to which Japanese leaders sought to portray themselves as having abided by international law.

As the Japanese leaders finalized their view of what had happened, they began their efforts to convince the great powers that the sinking of the *Kowshing w*as consistent with international law, drawing on legal knowledge and experts at hand. In one of the earliest instances of this, Aoki ordered Alexander von Siebold – a highly-valued *yatoi* of the Ministry of Foreign Affairs[17] – to meet with Francis Bertie, the assistant under-secretary of the Foreign Office, in London and to convince him that Japan need not assume any responsibility for the *Kowshing* incident.[18] Son of a famous German *yatoi* Philipp Franz von Siebold,[19] Alexander von Siebold was a trusted figure in the Japanese government and in constant contact with leading statesmen such as Aoki, Ito, and Inoue Kaoru.[20] He had worked for the British legation in Japan from 1861 to 1870, was employed by the Ministry of Foreign Affairs in 1870, and was the Secretary to the Japanese Legation in Berlin when the *Kowshing* incident occurred. Siebold's experience in these diplomatic circles had made him well versed in international law. Faced with the livid Bertie, Siebold argued that Japan had abided by international law with regards to both the lack of declaration of war and the sinking of a vessel belonging to a neutral power. For the former, he emphasized that:

[17] Plutschow 2007, 200-1.
[18] 'Eikoku Shousen Koushingou Gekichin no Koto,' 1894 in Japan Center for Asian Historical Records, National Archives of Japan, 86. Also see Kajima 1976, 163.
[19] Philipp Franz von Siebold was an educator but not a legal advisor. Plutschow 2007.
[20] Ibid.; Lokowandt 2000, 446.

> 'all modern authorities, especially English authorities on International Law, declare that no formal declaration is required – that the mere declaration of an intention to proceed to extremities is sufficient.'[21]

He pointed to how clearly the Japanese government expressed this intention to proceed to extremities should the need arise. Before the *Kowshing* incident, it had requested the British Minister to inform China that Japan would consider any dispatch of Chinese troops to Korea as a hostile action: as China dispatched troops regardless, a state of war emerged between China and Japan, and sinking the *Kowshing* became legal under the laws of war. In expressing the intention in this manner, Siebold argued, the Japanese government had followed international law more clearly than some of the European powers had done in the past:

> 'Mr. バ[Bertie] will remember that the letter which the French Chargé d'affairs presented in 1870 in Berlin to Bismarck on the commencement of the German-French war merely declared that the French Government would take such step to protect their rights as they considered necessary. The Japanese Government went farther than this…'[22]

Japan, in other words, was practicing international law in a manner equal to, if not better than, some European powers. As for the treatment of a neutral vessel, Siebold argued that

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[21] 'Summary of conversation between バロン・アレキザンドル・シーボルド[Baron Alexander Siebold] and ミストル・バルチー [Mr. Francis Bertie] on the 7th August, 1894,' 7 August 1894, record, 723 in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 12 *Gunkan Naniwa Koushingou Gekichin Ikken,* 361.

The Japanese summary is found in 'Eikoku Shousen Koushingou Gekichin no Koto,' 'Eikoku Shousen Koushingou Gekichin no Koto,' 1894, in Japan Center for Asian Historical Records, National Archives of Japan, 86-96.

[22] 'Summary of conversation between バロン・アレキザンドル・シーボルド[Baron Alexander Siebold] and ミストル・バルチー [Mr. Francis Bertie] on the 7th August, 1894,' 7 August 1894, record, 723 in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 12 *Gunkan Naniwa Koushingou Gekichin Ikken,* 362.

Kowshing was not neutral because it was carrying soldiers and ammunition and because the British had no real control onboard:

> 'By the laws of war, the belligerents have a right to stop neutral vessels which are carrying contraband of war. I suppose you admit soldiers and ammunitions are contraband.'[23]

> 'The evidence of Mr. Von Hannecken, Captain Golloway and the Captain of the Naniwa goes to prove that the Captain of the Kow-shing was no longer in command, he was a prisoner in the hands of the Chinese….The ship was therefore, although perhaps flying the British flag, no longer in British possession for the representative….Thus the Captain of the Naniwa was fully justified in taking such military measures as were necessary to overcome the resistance of a ship manned and held by a hostile armed crew.'[24]

Although the full content of the conversation is unavailable, the dialogue presented in the Japanese and English records illustrates Siebold outdebating every point that Bertie raised. Siebold's invocation of authorities of international law in defending Japan's actions was particularly powerful. Although he does not cite specific names in his conversation with Bertie or anywhere else (including in his recounting of the conversation in his diary[25]), works by Japanese legal scholars around the time suggest that the Japanese were well acquainted with British scholars Hall, Phillimore, and Hale, as well as Woolsey, Wheaton, Bynhershoek, Vattel, and Ward, who all argued that a formal declaration of war was unnecessary.[26] Siebold in this regard forcefully illustrated how clearly Japan understood and practiced international law. Aoki was pleased by Siebold's performance,[27] and Bertie

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[23] Ibid., 363.
[24] Ibid., 364.
[25] Siebold 1999.
[26] Masao 1898. See for example Phillimore 1883, Chapter 5.
[27] Aoki to Mutsu, 12 August 1894, telegram, 724 in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 12 *Gunkan Naniwa Koushingou Gekichin Ikken,* 367.

begrudgingly reported this back to the Foreign Office, though expressing his doubts as to whether the empirical evidence supported the Japanese argument.[28]

Japanese leaders and experts received significant boost to their case when two titans in the international law community, Professors John Westlake at the University of Cambridge and Thomas Erskine Holland at the University of Oxford, repeated Japan's arguments in their letters to *The Times.* In the letters published on 3 and 7 August, respectively, Westlake and Holland emphasized that (1) *Kowshing* was not a neutral ship and (2) a formal declaration of war was unnecessary and there was a *de facto* state of war between China and Japan before the *Kowshing* was sunk. In their view of the former, the *Kowshing* 'was a transport in the Chinese service, and therefore a belligerent if China was a belligerent.'[29] Indeed:

> 'the *Kow-shing* was clearly part of a hostile expedition, or one which might be treated as hostile, which the Japanese were entitled, by the use of all needful force, to prevent from reaching its destination. The force employed seems not to have been in excess of what might lawfully be used….'[30]

As for the declaration of war, Westlake invoked the historical argument that many wars have begun without a formal declaration: 'To begin war without a declaration is a bad habit, which has nevertheless found its way for centuries past into the practice of nations.'[31] Holland agreed: 'It is trite knowledge, and has been over and over affirmed by

[28] F.L. Bertie, 9 August 1894, memorandum, 6594/277 in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print.* Part I*, From the mid-nineteenth century to the First World War.* Series E, *Asia, 1860-1914.* Volume 4, *Sino-Japanese War, 1894*, 112.
[29] Westlake 1894.
[30] Holland 1894.
[31] Westlake 1894.

courts, both English and American, that a war may legally commence with a hostile act on one side, not preceded by declaration.'[32] While 'it is true that the commencement of war *de facto* is only valid in international law as between the parties to the war so commenced,' it did not apply in this case as *Kowshing* could not be considered neutral.[33]

One does wonder why Westlake and Holland supported Japan's position.[34] Records do not suggest that Japanese officials bribed Westlake and Holland in some way, as they did with foreign newspapers to make the coverage of the incident more pro-Japanese.[35] Neither did Westlake and Holland support Japan because they thought Japan was 'civilized' in the abstract sense. As Holland put clearly in the letter, they were strictly focused on legal arguments:

> 'I have…confined my observations to the legal aspects of the question, leaving to others to test the conduct of the Japanese commander by the rules of chivalrous dealing or of humanity.'[36]

The best explanation seems to be, then, that both Westlake and Holland genuinely believed that Japan had a solid understanding of international law and ability to act in accordance with it. For years before the incident, they were in close contact with Japanese legal scholars such as Suematsu Kencho and Kaneko Kentaro in international legal organizations such as the International Law Association (ILA) and Institut de Droit

[32] Holland 1894.
[33] Westlake 1894.
[34] After the British public was outraged by the affair, and Westlake and Holland were slandered by some press as 'recreant doctors of law' and 'backsliding jurists' for presenting legal arguments in favor of Japan. Holland 1898, 127.
[35] Aoki to Mutsu, 4 August 1894, telegram, 720 in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 12 *Gunkan Naniwa Koushingou Gekichin Ikken,* 358.
[36] Holland 1894.

International (IDI).[37] They had listened to Japanese members testify to their country's progress in learning international law in the ILA from 1878 onwards; they had witnessed the IDI admit Japan as one of its members in 1892 on the basis that Japan had produced reputable scholars of international law.[38] Westlake and Holland thus believed in Japan's knowledge and ability to practice international law.

By the end of August 1894, the argument made by Suematsu and Siebold, and supported by Westlake and Holland, had gained sufficient legitimacy and helped calm international anger over the *Kowshing* incident. A significant factor was that Suematsu's argument was accepted by the British Naval Court hearing in Shanghai on 20 August.[39] The Court ruled that the Naniwa's actions were justified and the British Admiral Fremantle advised the British government to not hold Japan responsible for the sinking.[40] The Court's ruling indicated that Japan had the ability to defend itself with international law. Japan's arguments, transmitted through Westlake and Holland, were also discussed in prominent international law journals such as the 1894 *Revue générale de droit international public* and gained a sympathetic audience.[41] The Japanese government averted an international crisis.

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[37] Howland 2008, 685.
[38] Howland 2016, 41, 28.
[39] 'Eikoku Shousen Koushingou Gekichin no Koto,' 1894, in Japan Center for Asian Historical Records, National Archives of Japan, 86.
[40] Ibid; Mutsu to Aoki, 20 August 1894, telegram, 728 in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 12 *Gunkan Naniwa Koushingou Gekichin Ikken,* 380-1.
[41] See Pillet and Fauchille 1894, particularly from page 464 onwards. Also see Ariga 1896b, 218.

Although the Japanese government successfully engaged in narrative-building to defend the *Kowshing* incident as legal, the incident was a jolting wake-up call for the government. It demonstrated how easily Japan could be accused of not following international law and how much such accusations could delegitimize Japan's claims of having mastered international law. To prevent making another consequential mistake, the Japanese government put forth two measures of forward-looking mistake-correcting. First, it provided the military with manuals on international law written by prominent Japanese publicists. The most influential manual was Ariga's *Bankoku Senji Kouhou* (*Just Law of All Nations in Time of War*), which summarized key treaties from the 1864 Geneva Convention to the 1874 Declaration of Brussels; introduced works of publicists such as Phillimore, Hall, and Martens; and demonstrated how each concept of international law would be applied on the ground.[42] Other manuals included Hara Takashi's *Rikusen Koho* (*Public Law of Land Warfare*), which was Hara's translation and commentary to the manual 'The Laws of War on Land,' drafted by Gustave Moynier and unanimously adopted by the Institut de Droit International (IDI) at Oxford on 9 September 1880.[43] Second, the government assigned eminent legal scholars Ariga and Takahashi to advise the army and the navy, respectively. Remaining as advisors until the end of the war, they played a key role in shaping military conduct and defending it when it was subjected to international condemnation.

[42] Ariga 1894.
[43] Bankokukouhoukai 1894.

Despite these efforts, Japan did make one more highly visible and consequential mistake. It is to this discussion to which we now turn.

4.2. The Port Arthur Massacre and Immediate Aftermath

On 24 November 1894, the Japanese army stormed Port Arthur and slaughtered nearly all the Chinese that they could find. After five days of slaughter, more than 1,500 Chinese people were presumed dead, and the few survivors were forced into harsh labor.[44] The massacre initially had minimal reporting abroad,[45] but it provoked international outrage after James Creelman of the *New York World* published a sensational 'eyewitness' report on 20 December.[46] Scathing foreign press continued as European and American journalists published more eyewitness accounts in newspapers such as *The Times.*[47] These reports offered a shocking account: those who Japan massacred were innocent civilians.

The Japanese government feared damage to its national interests and international reputation. The massacre had occurred in the midst of Japan's negotiations with the U.S. on a new treaty that would abrogate extraterritoriality, a goal that the Meiji government

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[44] Howland 2007, 195; Hall 1904, 401.

[45] *The Times* was one of the earliest, but its coverage was meager. On 26 November *The Times* reported the massacre in one sentence, 'Great slaughter is reported to have taken place.' Subsequent coverage occurred until December, but compared to the aftermath of the *Kowshing* incident, there was far less emphasis on the incident. For example, see *The Times* 'The War in the East' 26 November 1894; 29 November 1894; 8 December 1894.

The reaction from other press was muted as well. *The Pall Mall Gazette,* an evening newspaper in Britain, mentioned the massacre in passing. In France, *Le Temps* and *Le Journal des debats politiques et litteraires* also left the massacre as merely mentioned. See Paine 2003, 213.

[46] James Creelman, 20 December 1894, 'The Massacre at Port Arthur,' *New York World*.

[47] 'The Taking of Port Arthur,' 8 December 1894, *Japan Weekly Mail.*

deemed a national priority for decades.[48] The *World's* report argued that Japan was undeserving of this abrogation, and Japanese leaders feared that the incident may bring 'harm' to the negotiation process. [49] Beyond the specific fate of the treaty, Japanese leaders dreaded the damage to Japan's international image as a law-abiding state. Foreign Minister Mutsu lamented that 'Port Arthur may destroy Japan's honor if nothing is done' and vowed to 'tak[e] measures essential to the reputation of the empire.'[50]

Led by Mutsu, the Japanese government launched a defense of the massacre based on its knowledge of international law, particularly the Geneva Convention and laws on land war. Their purpose was not to deny that condemnable 'excessive violence' had occurred, for they had accepted it, but rather that this violence was still in accordance with international law.[51] The government's arguments were three-fold. First, Japan had killed combatants, not civilians. The civilian inhabitants had left Port Arthur a few days before the Japanese army came in.[52] Instead, the massacred were Chinese soldiers in civilian clothes, as evidenced by how 'almost all the corpses were found to wear some Chinese military dress inside the outer garments.'[53] As these were combatants, Japan had the right to shoot and kill them. Second, in accordance with the Geneva Convention, Japan had treated wounded Chinese prisoners as well as it did its own soldiers. Mutsu emphasized that '[a]bout 355

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[48] For more on abrogation of unequal treaties, see for example Okagaki 2013.

[49] Mutsu to Nabeshima, 15 December 1894, telegram, 941 in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 18.7 *Nisshin Sensou Kankei Zakken, Ryojunkou Sentou Kankei Zakken,* 609.

[50] Ibid; Paine 2003, 214. *The Times* 'The War in the East' 19 December 1894; 'The Port Arthur Atrocities' 1 February 1895.

[51] Ibid.

[52] Mutsu to Kurino, 16 December 1894, telegram, 943 in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 18.7 *Nisshin Sensou Kankei Zakken, Ryojunkou Sentou Kankei Zakken,* 610.

[53] Ibid.

Chinese prisoners taken at the fall of Port Arthur [were] kindly treated and being brought to [Tokyo].'[54] This, they argued, revealed Japan's commitment to international law. Finally, Japan's action must be understood in context of Chinese acts. On the way to Port Arthur, the Japanese Army saw 'fearfully mutilated bodies of Japanese prisoners[,] some of whom [were] burnt alive and some crucified.'[55] China, which had not acceded to the Geneva Convention, had thus acted in a deplorable manner and provoked the Japanese into engaging in excessive violence.[56] By not killing civilians and treating Chinese prisoners well in such a circumstance, the Japanese commendably 'preserved discipline.'[57] With these three arguments, the government portrayed Japan as a law-abiding state and condemned the foreign accounts as exaggerated and sensational.[58] Mutsu telegraphed Japan's defense to the *World* and Press Association and ensured that Japanese Ministers in Britain, U.S., Russia, France, Italy, and Germany knew the arguments.[59]

These arguments met a relatively sympathetic international audience. From the French Military Attaché to most reporters, foreigners agreed that given the terrible way in which the Japanese soldiers were mutilated, Japan's actions were understandable as a fit of rage and a momentary lapse from an otherwise consistent record of observing international

[54] Ibid.
[55] Ibid.
[56] Ibid. Also see Holland 1898, 117.
[57] Ibid.
[58] Mutsu to Japanese Ministers in Britain, U.S., Russia, France, Germany, and Italy, 28 December 1894, notice, 945 in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 18.7 *Nisshin Sensou Kankei Zakken, Ryojunkou Sentou Kankei Zakken,* 611; Paine 2003, 214.
[59] Ibid.; Ibid.

law.[60] As *The Times* reported, most 'agree[d] that the excesses were committed, but say that they were excusable, and that they have had their parallels in the best European armies.'[61] Understanding also emerged that Creelman's original report was a gross exaggeration of the truth, and the passage of the new treaty between Japan and the U.S. appeared guaranteed.[62] However, Japan was not yet fully absolved from blame, since the international legal community had not weighed in on the righteousness of Japan's actions in the massacre's immediate aftermath as it did after the *Kowshing.* The bulk of Japan's task in convincing the legal community occurred after the war ended, and it is to this post-war narrative-building to which we now turn.

4.3. After the War: Ariga and Takahashi Defend Japan

After the end of the war, Japan began a years-long effort to globally cement the view that Japan had been a law-abiding state throughout the war. For this purpose, the Japanese government relied on Ariga and Takahashi as two leading publicists to build this narrative and to defend Japan's actions on both land and sea. By the turn of the 20th century, Ariga and Takahashi wrote seminal works in French, English, and German to forcefully defend the *Kowshing* incident and the Port Arthur massacre and overall to illustrate Japan's scrupulous adherence to international law throughout the war.

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[60] P.H. Le Poer Trench to Earl of Kimberley, 20 December 1894, despatch, 6665/39 in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print.* Part I*, From the mid-nineteenth century to the First World War.* Series E, *Asia, 1860-1914.* Volume 5, *Sino-Japanese War and Triple Intervention, 1894-5,* 33.

[61] *The Times* 'The War in the East' 19 December 1894; 'The Port Arthur Atrocities' 1 February 1895; Paine 2003, 214.

[62] Paine 2003; Mutsu to Kurino, 18 December 1894, telegram, 944, in *Nihon Gaiko Bunsho* Volume 27, Part 2, Section 18.7 *Nisshin Sensou Kankei Zakken, Ryojunkou Sentou Kankei Zakken,* 610-1.

4.3.1. Overall Adherence

The first work to appear was Ariga's 1896 treatise, *La Guerre Sino-Japonaise au Point de Vue du Droit International.* Writing in French himself, Ariga outlined all the tenants of laws of war on land – such as the treatment of the injured, requisition of supplies, and the establishment of Red Cross hospitals. He then painstakingly followed the details of how Japan fulfilled these obligations on the battlefield in different instances.[63] For instance, Ariga narrated, the Japanese army gave medical aid to injured Chinese civilians, soldiers, and captives; distributed food; protected civilian buildings; provided reasonable compensation for those in occupied territories; did its best to prevent public health crises like cholera and smallpox, and gave adequate attention to the protection of the nationals and property of neutral states.[64] In writing the book, Ariga secured the support of Paul Fauchille, the well-respected director of the *Revue générale de droit international public.*[65] In writing the preface, Fauchille echoed how consistently Japan had abided by international law, stating, for instance, that the Army 'always treated well the Chinese who became their prisoners and 'never refused help or care to its injured or diseased enemies.'[66] The comprehensiveness with which Ariga gave proof of Japan's overall adherence and the support from such a respected figure in the international legal community rendered his work highly authoritative.

[63] Ariga 1896a. Also see Howland 2007, 187.
[64] Ariga 1896a, particularly Chapter 4, which discusses the treatment of prisoners of war and the care for the injured through the Red Cross Hospitals.
[65] Fauchille 1896, viii.
[66] Ibid.

Meanwhile, Takahashi put forth a similar narrative in his 1899 English treatise, *Cases on International Law during the Chino-Japanese War*. Being employed by the government to compile the official history of the war,[67] Takahashi carefully laid a clear case of how Japan abided by international law throughout the war. As he noted, Japan

> 'had the wounded prisoners as well nursed as her own men. She treated all prisoners with the utmost generosity. She governed the people of the occupied districts well, and set at liberty many thousand combatants, who surrendered at Wei-hai-wei. We will not venture to enumerate such instances because they are too numerous.'[68]

Noting that his friend Ariga had 'fully treated' matters of land war in his book,[69] Takahashi focused most on Japan's maritime conduct, discussing prize law cases such as the *Kowshing* and focusing on how Japan 'acted consistently with the law of nations in carrying on hostilities, in maintaining her own rights and in discharging her duties towards neutrals.'[70] Although his work was much less comprehensive than Ariga's, *Cases* quickly attained authoritative status for two reasons.[71] First, Takahashi secured support from the titans Holland and Westlake, whom he befriended in Britain after the war as he came to Europe to further his expertise in international law.[72] Holland and Westlake reviewed Takahashi's book drafts, provided advice, and wrote the preface and introduction, respectively.[73] Calling Takahashi 'my friend' and having 'exceptional claims to speak with authority upon the subject,' Holland lent legitimacy to Takahashi's arguments with regards

[67] Holland 1899, v.
[68] Otsuka 1969; Takahashi 1899a, 3-4.
[69] Takahashi 1899b, viii.
[70] Ibid., vii.
[71] Takahashi 1899a; Howland 2007, 187.
[72] Yi 2013, 52; Howland 2008, 685.
[73] Takahashi 1899b, viii-ix.

to Japan's conduct, and Westlake agreed wholeheartedly.[74] Second, Takahashi distributed the book widely. In 1900, Takahashi published in German a collection of Western scholars' remarks on his treatise.[75] The same year, Takahashi submitted *Cases* to the 19th annual conference of the ILA, where he was the Japanese representative at the time.[76] As a prolific writer, Takahashi published works in influential law journals as well, such as the 1898 article in the *Law Quarterly Review* titled 'Application of International Law During the Chino-Japanese War.'[77] These measures raised the international profile of Japanese narratives of the Sino-Japanese War.

4.3.2. Defense of the Kowshing Incident

Both Ariga and Takahashi defended the *Kowshing* by declaring that a state of war existed without a formal declaration of war and that *Kowshing* was not a neutral ship. In doing so, they emphasized the arguments that Suematsu, Siebold, Holland, and Westlake made in the immediate aftermath of the war. For the first argument, both Ariga and Takahashi declared that '[a]ccording to the modern idea of International Law, a declaration is not necessary for the state of war,' with Ariga citing Phillimore's *Commentaries upon International Law* as an example.[78] Although Ariga and Takahashi disagreed on when precisely the state of war emerged – for Ariga it was two days before the sinking, for Takahashi it was a few hours before the sinking – the point, they maintained, was that Japan sank the *Kowshing* in a

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[74] Holland 1899, v; Westlake 1899, xvi.
[75] Lai 2014, 300. The German book is *Äusserungen Über Völkerrechtlich Bedeutsame Vorkommnisse Aus Dem Chinesisch-Japanischen Seekrieg Und Das Darauf Bezügliche Werk*. Takahashi 1990.
[76] Lai 2014, 300.
[77] Takahashi 1898.
[78] Takahashi 1899a, 27-8; Ariga 1896a, 17. Ariga cited Chapter 5 of Phillimore's work. Phillimore 1883.

state of war as justified by international law.[79] As for the second argument, Takahashi cited the works on prize law by authorities Holland and Sir Godfrey Lushington and the Japanese prize law to argue that the *Kowshing* was not a neutral ship.[80] As he put it, 'any vessel in the service of the enemy's government as transport, even though her employment was the result of duress, was to be detained as hostile,' and that 'if the enemy's vessels were unfit to be sent to the port of adjudication, the commander was to *sink* the vessels after taking the crew, the ship's papers, and the cargo if possible, into his ship.' [81] Thus, Takahashi argued, 'all the steps taken by [Japan's] commander were quite in accordance with the Japanese prize law and at the same time with the law of nations.'[82] Ariga agreed: citing F. de Martens' *Traité de droit international,* Ariga justified the sinking in terms of legitimate defense and national conservation that a state is entitled to have under international law.[83] Through this forceful defense, Ariga and Takahashi marshaled and demonstrated knowledge of international law, both in terms of the scholarship's broad trends and of specific works by prominent foreign publicists. That Ariga and Takahashi were supported by Fauchille, Westlake, and particularly Holland as the foremost authority on prize law strengthened their justifications.

[79] Ariga attributed the start to China's dispatch of troops to Korea, and Takahashi to a naval clash a few hours before the sinking that became known as the Battle of Fengdao. Ariga 1896a, 12-16; Takahashi 1899a, 46.
[80] Takahashi 1899a, 11-12.
[81] Ibid, 46-7. Emphasis original.
[82] Ibid.
[83] Ariga 1896, 19.

4.3.3. Defense of the Port Arthur Massacre

Similarly to the *Kowshing*, both Ariga and Takahashi emphasized and developed the justifications made in the immediate aftermath of the massacre. Claiming their authority as witnesses to the incident,[84] they emphasized three points: that the Japanese Army did not kill civilians, that it treated Chinese prisoners well, and it was incensed by China's mutilations of its prisoners.[85] The first constituted their main argument and primarily justification. Ariga noted that of the 1500 bodies in civilian clothes that he witnessed, only two were women, and that the vast majority were young men.[86] This led him to believe that the dead had been Chinese soldiers who had been firing upon the Japanese from inside houses.[87] Takahashi lent support to this narrative, claiming that the dead were 'all combatants' and that there were only 'very few instances where non-combatants were killed by stray shots.'[88] Nearly all combatants had left Port Arthur a month before the battle, and the fact that 'the uniform of the Chinese soldier is a kind of overcoat, and when it is taken off he looks just like a civilian' contributed to the foreign reporters' mistaken assumption that Japan had killed civilians.[89] Revealingly, Takahashi cited American publicist T.J. Lawrence in defending the massacre. Takahashi suggests that while the majority of the massacred were combatants, international law condones killing even non-combatants who resist an invader. As he notes:

> '[Lawrence] says: "An inhabitant of an occupied district who cuts off stragglers, kills sentinels, or gives information to the commanders of his country's armies,

[84] Takahashi 1899a, 4.
[85] For example, Ariga 1896a, 86-7; Takahashi 1899a, 3-4.
[86] Ariga 1896a, 80-1.
[87] Ibid., 88.
[88] Takahashi 1899a, 4.
[89] Ibid., 4, 6 (footnote 1).

> may be, and probably is, a high-souled and devoted patriot; but nevertheless the laws of war condemn him to death, and the safety of the invaders demands that they be carried out in their full severity.'"[90]

Studies of the Port Arthur massacre hardly mention Takahashi's invocation of Lawrence, but this reveals both Takahashi's knowledge and the extent to which he sought to justify the killing in terms that the foreign community might understand. By painstakingly arguing that Japan did not kill civilians and discussing other cases of Japan's discipline such as the treatment of Chinese prisoners in accordance with the Geneva Convention, Ariga and Takahashi suggested that Japan had not breached international law at all.

Contrary to the *Kowshing* incident, foreign publicists did not accept all of Ariga and Takahashi's arguments. They accepted that Japan was provoked by mutilated bodies and that Japan did treat Chinese prisoners well; however, they did not accept that the killed were all combatants and condemned the massacre as 'hideous' and 'detestable.'[91] Nevertheless, the publicists ultimately absolved Japan from blame by noting both its forward-looking mistake correcting and Japan's otherwise impeccable record of abiding by international law. For instance, Holland stressed that Japan demonstrated impressive commitment to international law in the subsequent capture of Wei-hai-wei, dismissing Chinese troops and foreign noncombatants in safety.[92] In this sense, Japan had corrected its mistake by changing its behavior back to its competent standard, and the Port Arthur massacre could be understood as a terrible but momentary lapse in Japan's record. [93] James

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[90] Cited in Ibid., 6 (footnote 1).
[91] Hall 1904, 400-1 (footnote 1); Holland 1898, 118-9.
[92] Holland 1898, 119.
[93] Ibid., 119.

Atlay, in editing Hall's treatise, agrees: 'the scrupulous anxiety shown by Japan on every other occasion throughout the war to conduct its operation in harmony with the laws of humanity has been accepted in condonation of a solitary though deplorable lapse into savagery.'[94] In sum, Ariga and Takahashi exploited and demonstrated knowledge of international law by defending the Port Arthur massacre and had some of their arguments accepted by the publicists. Despite the partial success, Japan's forward-looking correction and strong record of simple compliance saved Japan's place in the community of practice of international law, when a similar mistake made by a less experienced practitioner may have resulted in immediate expulsion from international society.

4.4. Publicists' Recognition: Japan Ranks with Europeans and Americans

By the turn of the 20th century, prominent publicists confidently ranked Japan alongside the Europeans and Americans, pointing explicitly to Japan's practice of international law in the Sino-Japanese War for their justifications. If the publicists had only referred to Japan's acceptance of international law and willingness to abide by it in gaining high ranks – in other words, Japan's *disposition* for compliance – they might have lent credence to the English School's argument that passive socialization-and-conformity approach grants entry into international society. However, they go beyond this dispositional language to highlight Japan's *ability* to materialize such compliance and note their acceptance and condonation of the *Kowshing* incident and the Port Arthur massacre. This, then, reveals the importance of the agential and granular understanding of the practice of international law. Japan's

[94] Hall 1904, 400-1 (footnote 1).

masterful performance of mistake-correcting was crucial for this endeavor, both to demonstrate the extent of Japan's knowledge and to safeguard Japan's position in the community of practice.

Reflecting on Japan's position in international society, Westlake remarked in 1899 that 'Japan presents a rare and interesting example of the passage of a state from the oriental to the European class.'[95] A key factor that drove Japan's transition was that 'in her recent war with China she displayed both the disposition and *in the main the ability* to observe western rules concerning war and neutrality.'[96] Written in the context of an introduction to Takahashi's work, this points to Japan's effective overseeing of almost 100 cases of prize law during the war, and most particularly to its conduct and justifications of the *Kowshing.*[97] The significance of the *Kowshing* was not lost on other publicists, either. For instance, Oppenheim noted how 'the action of the Japanese was in accordance with the rules of International Law' in the 'case of the *Kow-shing*:*'* the fact that Japan was deemed to have been in the right stems directly from its masterful defense and acceptance by the international legal community.[98]

Moving to the land war, Holland commends Japan's conduct in the war:

> '[W]ith the lamentable exception just mentioned [Port Arthur massacre], the conduct of the operations of war by the Japanese seems to have been *in accordance*

[95] Westlake 1899, xvi.
[96] Ibid. Emphasis added.
[97] Takahashi 1899a.
[98] Oppenheim 1912, 114.

> *with the best European practice*, and with the Proclamation addressed to the army on April 22, 1894, by Count Oyama.'[99]

Two matters are noteworthy here. The first is Holland's emphasis on Japan's impeccable record in complying with international law. He justifies Japan's sinking of *Kowshing* as legal, emphasizes that Port Arthur was an exception, and notes Japan's exemplary performance at Wei-hai-wei.[100] These reveal the utility of thinking about Japan's rise through the ranks not only through simple compliance but also through masterful performance in that Japan justified itself. The second is Holland's emphasis on ability over disposition. He raises the particular example of Japan's commitment to the Geneva Convention. Japan did not merely demonstrate disposition to treat wounded and diseased enemy soldiers. Instead, it had the ability to actualize this compliance meticulously and to high standard:

> 'Many ladies of high rank have qualified in it as nurses, it has thousands of subscribers, and it possesses fine hospitals at Hiroshima, Osaka, and Tokio [Tokyo], where such of the Chinese wounded as could be moved so far received every kindness and the best medical attendance.'[101]

For Holland, these contributed to Japan's 'accession…to the law or "concert" of Europe.'[102]

Fauchille in 1866 reflects these points on by outlining in detail how Japan abided by international during the war. For instance, Japan always treated Chinese prisoners well, protected noncombatant lives and property, and feeding people of the occupied

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[99] Holland 1898, 116-7. Emphasis added.
[100] Ibid, 116-129.
[101] Ibid., 128.
[102] Ibid., 114. Emphasis added.

territories.[103] In other words, Japan was respected as a practitioner of international law, as these conducts 'showed that the Japanese government *knows how* to apply the principles of civilization.'[104]

Finally, James Atlay, the editor of Hall's authoritative textbook *A Treatise of International Law* summarized these sentiments well in the 5th edition (1904), the first edition to be published after Hall's death in 1894. He confidently declared that '[t]he right of Japan to rank with the civilised communities for purposes of international law is now clearly established.'[105] The reasons were clear. It was partly about Japan's simple compliance: '[p]reviously to the war of 1894, she had acceded (in 1886) to the Geneva Convention, and to various "universal conventions" as to weights and measures, posts, telegraphs, and the like.'[106] But what was decisive was that '[d]uring the course of hostilities against China…she adhered scrupulously, with one terrible exception, to the recognised laws of war, and attained a high standard in the care of her own troops, the treatment of the wounded enemies, and of the civil population generally.'[107]

In sum, by the turn of the 20th century, these prominent and well-respected publicists recognized Japan to have ranked alongside Europeans and Americans in international society based on Japan's practice of international law in the Sino-Japanese War. While

[103] Fauchille 1886, viii.
[104] Ibid., vii-viii.
[105] Sentenced added to W.E. Hall's A Treatise on International Law by James Beresford Atlay, the editor of the 5th edition. Hall 1904, 42.
[106] Ibid.
[107] Ibid.

they noted Japan's previous record as a regular practitioner, such as the accession to the Geneva Convention or to universal conventions, they drew their assessment overwhelmingly from Japan's conduct during the war. By engaging in forward- and particularly backward-looking mistake-correcting, Japan successfully convinced the publicists that it had been faithful to international law. Hence, Japan attained social recognition to have ranked alongside the Europeans and the Americans.

4.5. Conclusion

This chapter illustrated how Japan became a master practitioner of international law during the Sino-Japanese War by exploiting its knowledge to correct mistakes and to protect national interests and international reputation. Japan persuaded the publicists that it abided by the law in the war, and by the turn of the 20th century, publicists had clearly ranked Japan alongside the Europeans and the Americans in international society. In analyzing this process, the chapter shone the spotlight on individuals – such as Suematsu, Siebold, Ariga, and Takahashi – and revealed the dynamic engagement between them and prominent international counterparts, such as Holland, Westlake, Hall, Fauchille, and Bertie. In this regard, the chapter revealed that masterful practice, not simple compliance, helped Japan reach the core and presented a more granular and agential narrative of Japan's rise than what has conventionally been in the scholarly literature.

Chapter 5:

Conclusion

How did Japan's use of the practice of international law shape its position in international society between 1853 and 1905? The present study addressed this question by examining how Japan rose through the ranks of international society by becoming a master practitioner of international law. Through its investigation, the study achieved the two objectives that it delineated at the beginning: (1) to present a theoretical integration of the English School and the practice literature in IR, and (2) to analyze Japan's rise as a case study.

5.1. Summary

In Chapter 2, the thesis critically analyzed the existing English School and practice literature and presented my theoretical contribution. Specifically, I integrated the English School and practice literature to conceptualize international society as a *universal yet stratified community of practice of international law.* I delineated my conceptualization of three stages of a practitioner – novice, regular, and master – based on the cumulative criteria of background knowledge and rule acceptance, simple compliance, and the ability to exploit the rules for national interests and international reputation, particularly through mistake-correcting. With regards to mistake-correcting, I distinguished between forward-looking mistake-correcting (in which a practitioner acknowledges the mistake, assumes responsibility, and acts differently in the future) and backward-looking mistake-correcting

(in which a practitioner engages in narrative-building to portray the mistake as having been a compliant act all along). A practitioner rises through the ranks of international society by moving up the three stages. In indicating when the practitioner reached a particular stage, I revealed the important but so far understudied role of prominent publicists as key recognizers.

Chapter 3 proceeded to the empirical section of the thesis. I investigated the process by which Japan transitioned from a novice practitioner under the Tokugawa regime (1853-68) to a regular practitioner in the first few decades of the Meiji government (1868-1894) through the attainment of high background knowledge, high rule acceptance, and simple compliance. In examining this transition, I shed light on the specific individuals and resources that Japan used for learning, which included diplomatic representatives in Japan (particularly Townsend Harris); publicists' treatises (such as Martin's translation of Wheaton's *Elements of International Law*, among many); officials and students who studied abroad (such as Nishi and Tsuda's study in the Netherlands, the Iwakura Mission, and Suematsu and Ariga's studies of law in Britain and Germany/Austria, respectively); and foreign legal advisers (such as Smith, Le Gendre, and Denison).

Finally, Chapter 4 revealed how Japan became a master practitioner during and after the Sino-Japanese War (1894-1905) through mistake-correcting. The two mistakes I examined – the sinking of the British steamship *Kowshing* and the Port Arthur massacre – threatened to damage Japan's national interests with regards to the abrogation of unequal treaties and

Japan's international reputation. Japan engaged in forward-looking mistake-correcting by providing the military with textbooks on international law and assigning eminent publicists Ariga and Takahashi as legal advisors to the Army and Navy. With respect to backward-looking mistake-correcting, I first analyzed how Japanese leaders and foreign legal advisors such as Suematsu, Siebold, and Mutsu presented legal arguments to defend the *Kowshing* incident and the Port Arthur massacre during the war. I then elucidated how Ariga and Takahashi forcefully defended the mistakes after the war by writing seminal works in French, English, and German and painstakingly detailing how Japan's conduct in the two mistakes and in the war overall was justified by international law. By presenting arguments based on international law, these Japanese leaders influenced foreign practitioners' opinions and successfully cemented the image of Japan as having been faithful to international law all along. I concluded the chapter by examining the publicists' writing at the turn of the 20th century. I demonstrated how eminent publicists such as Holland, Westlake, Fauchille, and Atlay confidently ranked Japan alongside the European and American powers in international society and justified it by pointing explicitly to Japan's conduct and practice of international law during the Sino-Japanese War.

5.2. Findings

Three findings emerged from the study. First, with regards to theory, the study discovered that my conceptualizations of international society, master practitioner, and the role of publicists were fruitful in filling analytical gaps within the English School and the practice literature. For the English School, my approach helped address the persistence of the

socialization-and-conformity narrative over how non-Europeans interacted with international society and the lack of full engagement with the practice of international law. The orthodox English School, represented by scholars such as Bull, Watson, Suganami, and Gong, had portrayed non-Europeans as passive students diligently meeting the standard of civilization and buried its grounding in the practice of international law under the more abstract notion of civilization. The revised English School, whose scholars included Suzuki, Okagaki, and Howland, still largely emphasized Japan's socialization into international society and conformity to international law and stopped short of engaging with the practice literature. As a result of the lack of engagement with the notion of practice, both orthodox and revised Schools, with the exception of Bull's remark, spoke of recognizers at the abstract level of Western powers. In this intellectual landscape, my conceptualizations elevated international law to the forefront of international society and deconstructed recognizers to a more individual level. Meanwhile, the practice literature offered key insights into the notions of practice, community of practice, competence, and background knowledge. However, with regards to its understanding of master practitioner, the literature overlooked what mastery entails in a social space in which (1) there are not multiple 'ways of doing things' among which practitioners can claim authority and (2) social recognition from the top is necessary to become a master practitioner. The alternative that the literature offered of mistake-correcting was illuminating but incomplete. My conceptualization of master practitioner added a new dimension to the literature's understanding of mastery and developed the notion of mistake-correcting further.

Second, as a combination of the theoretical and the empirical, the thesis found that Japan's attainment of high status in international society became possible through masterful practice, not simple compliance. Chapter 3 demonstrated that between the 1870s and 1890s, Japan was a regular practitioner that actively practiced international law in its foreign policy. Whether it be issuing declarations of neutrality, winning international tribunals, or joining international legal organizations, Japan's high background knowledge, rule acceptance, and simple compliance were evident. However, publicists' writings at that time revealed that Japan was not considered to be ranking with the Europeans and the Americans, even if its progress was impressive. As Chapter 4 revealed, this recognition only came after Japan successfully defended its mistakes and convinced the community that it had been faithful to international law throughout the Sino-Japanese War.

Third, empirically, the thesis found that Japan's process of learning and practicing international law was much more active and agential than the English School literature had made it out to be. Under the Tokugawa regime and particularly the Meiji government, Japan imported, translated, and extensively studied key foreign treatises of international law; learned the importance and applications of international law firsthand from diplomats staying in Japan; and sent officials and students abroad to gain knowledge of international law. The Meiji government in particular is noteworthy for hiring scholars and practitioners from abroad to serve as legal advisors to help navigate issues in foreign policy that pertained to Japan's international legal status, until the Japanese leaders and students could

attain sufficient education to replace these advisors. Firmly believing in the scheme's value since 'it takes longer to get a Japanese educated abroad than to engage a foreigner ready-made,'[1] the Meiji government offered hired foreigners salaries that sometimes surpassed those of Japanese ministers and spent up to a third of government expenditures in this scheme. As discussed above, Chapter 4 revealed that key leaders, legal advisors, and publicists such as Suematsu, Siebold, Ariga, and Takahashi played essential roles in driving Japan's masterful practice and attainment of recognition. They fought at the forefront of the barrage of international criticisms regarding Japan's violations of international law in the *Kowshing* and Port Arthur incidents and used their background knowledge to preserve Japan's national interests and international reputation. These historical details on Japan's rise restore the active and agential roles of individuals that have been all too subsumed in the English School.

5.3. Contributions to IR

This study matters to IR. Through its findings, the study made three contributions to the discipline. First, the thesis refined the English School understanding of international society by emphasizing the role of international law and the agential narrative of practice. By linking the notions of international society and community of practice of international law that scholars such as Bull, Watson, Suganami, Gong, Suzuki, Okagaki, and Howland had hinted at but stopped short of making, the thesis pushed the English School to forcefully engage with the practice of international law and agency. Second, through the

[1] Chamberlain 1905, 183.

distinction between simple compliance and masterful performance, the thesis added insight to the English School that attaining high status was more difficult than what it traditionally suggested. Simple compliance only accorded general membership in the community of practitioners insofar as it was done by competent yet regular practitioners. Attaining higher status required a more active, masterful move where the practitioner exploited knowledge of international law to correct mistakes and to preserve national interests and international reputation. Finally, the thesis brought a historically-grounded and empirically-rich account of Japan's rise to IR. In doing so, the thesis contributed to the concerted effort by both recent English School scholars and IR in general to bring agency and perspectives of non-European entities to the discipline, not least through the Global IR movement. As 19th century Japan has often been studied in the IR literatures of the English School and various other paradigms, from neorealism to Correlates of War project and the status literature,[2] recovering historical details also adds value to the critical examination of these works and development of future works.

While the specific contributions were to the English School and agency, it is my hope that the thesis spoke to IR scholars outside the English School through its core themes of hierarchy and practice. By adding practice of international law as an aspect of international stratification, the thesis added to the substantial literature in IR on the criticisms of the long-held assumption of anarchy and examination of hierarchy based on material power, race, gender, class, neo-colonialism, and norms, among others. Additionally, the analytical

[2] Mearsheimer 2001; Singer and Small 1966; Larson and Shevchenko 2010.

tool of practice has garnered increasing attention in recent years as a key lens to explain the macro, structural picture in IR. It is hoped that the thesis revealed the utility of adopting this lens for analysis of various phenomena in IR beyond international society.

5.4. Future Research

Inevitably, this study is far from a comprehensive account, and many future avenues for research remain. For the sake of space, three such avenues are discussed here.

The first and perhaps most intuitive avenue is to use this study's theoretical approach to analyze other non-European entities that sought to join and rise through the ranks of 19th century international society. Given the centrality of legal positivism and the place of international law as the supreme rules governing relations between states, non-European entities had little choice but to learn and practice international law as members of international society.[3] Nevertheless, the outcome of such learning and practicing was very different among the non-Europeans, with Japan attaining high status but others, such as China, Siam, and the Ottoman Empire, never achieving the same. In this regard, scholars could use the practice lens to investigate how the practice or lack thereof of international law played a role in determining the position of different non-European entities in international society. Their findings would not dismiss the salience of alternative explanations such as material power, great power interests, the role of civilization, and

[3] See among others Bull 1977; Navari 2011.

many others; instead, the findings would assume their place among these explanations and enrich the scholarly understanding of these entities as a whole.

This leads to the second avenue of future research: scholars could integrate the practice literature into the broader IR literature. As practice scholars have maintained, the lens of practice is not inherently bound to any particular paradigm and thus could be used by scholars on different sides of the paradigmatic divide. For instance, scholars could conceive of the practice of war or the practice of balance of power, which would contribute to the refinement of realist thought, or the practice of certain norms, which could shed insight within constructivist and norm literature. More than this, however, scholars could use the lens of practice to help *bridge* this divide. The notion of practice transcends traditional dichotomies such as agency and structure or the ideational and the material because practice is both at the same time. Practice as an act is performed by individuals but is structured by and exists only in the community of practice; meanwhile, practice as a specific act is embodied in the material world, but practice is ideational insofar as meaning must be attributed to the material act for the act to become a practice.[4] In this regard, 'as soon as one looks into practices, it becomes difficult, and even impossible, to ignore structures (or agency), ideas (or matter), rationality (or practicality), [and] stability (or change).'[5] Hence, by using the lens of practice, scholars could not only refine each theoretical paradigm, but also bring a different understanding to IR as a whole.

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[4] Adler and Pouliot 2011a, 15.
[5] Ibid., 5.

Finally, scholars who are particularly interested in Japan may find it fruitful to embark on a more detailed and long-spanning study of Japan's rise through the lens of practice. This study's key focus has been to distinguish between novice, regular, and master practitioners and how Japan reached each stage through the attainment of background knowledge and rule acceptance, simple compliance, and ability to exploit the rules to protect national interests and international reputation through mistake-correcting. I distinguished between the three stages for analytical leverage. While these ideal-types are useful and shed much insight, further studies could consider these stages as phases in a spectrum: a practitioner may have different levels of background knowledge, rule acceptance, or simple compliance even within one stage, and this calls for the examination of further historical details. Additionally, further studies may note that a practitioner does not necessarily progress smoothly from one phase to another. One example may be World War II, in which Japan undermined its status in the community of practice of international law by committing war crimes and flagrant breach of international law.[6] Therefore, to gain an even deeper understanding of Japan through the lens of the practice of international law, studying Japan at a more granular level and through a longer span of history could bring much insight.

5.5. Conclusion

Non-European entities' rise through the ranks of international society was dynamic and complex, and there has been much effort to uncover it. The present study has contributed

[6] See for example Coen and Totani 2018.

to this endeavor by integrating the English School and the practice literature to conceptualize international society as a universal yet stratified community of practice of international law, as well as by revealing how Japan rose through the ranks by becoming a master practitioner of international law. The insights from the English School, practice literature, and historical details of Japan's rise remain rich with possible avenues for research, and further studies through such avenues appear to be a rewarding pursuit for IR.

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Exhibitions

‘Jousetu Tenji’ Exhibition. Ministry of Foreign Affairs of Japan.

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