



Between Adoption and Resistance: China's  
Efforts of 'Understanding the West',  
the Challenges of Transforming Monarchical  
Legitimacy and the Rise of Oriental  
Exceptionalism, 1860–1910

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## 10.1 INTRODUCTION: CHINA'S EFFORTS OF 'UNDERSTANDING THE WEST' AND THE MISSING VISION FOR REFORMING THE QING EMPIRE, 1860–1910

When China was invited to take part in The Hague Peace Conference of 1899, the Imperial Court under Empress Dowager Cixi had only one question—what is in it for us? The Court questioned the Foreign Ministry, the *Zongli Yamen*, and the envoy to The Hague in great detail about the benefits for the Empire and for the Manchu dynasty: 'Does China have to take part in this? Can we gain any benefit from it?'<sup>1</sup> The correspondence between the Court, the *Zongli Yamen*, and the plenipotentiary envoy, Yang Ru, to The Hague reveals that China's efforts of 'understanding the West' were designed to identify direct benefits if Western concepts should be adopted and framed for Chinese politics. The memorials to the throne further point towards a 'Great Wall of Prejudices' and misconceptions about the mechanisms of European political, diplomatic, and symbolic interaction that strongly influenced the way in which Qing China meandered around the topic of active 'Westernisation' since the 1840s, without a coherent and proper cause.<sup>2</sup>

From the late eighteenth century onwards, but more specifically from the turmoil and crisis of the Empire as it emerged from the Taiping Rebellion in the early 1860s until the end of the Qing dynasty, China followed a utilitarian approach to adopting Western concepts in order to strengthen the Confucian Empire. Chinese administrative and intellectual elites were eager to understand Western definitions of the international system, statehood, and society, as well as political and social rights. However, they were less eager to adopt those and included them in a reform plan for the Chinese Empire that looked for a middle ground between Western forms and Chinese content that would support the existing imperial legitimacy. Most transfers imitated Western forms of politics to adhere to an international, Euro-centric standard, but the contents were radically transformed for domestic purposes.<sup>3</sup> As in the case of the reforms to the Geneva Conventions discussed in The Hague in 1899, the Chinese delegate Yang Ru argued 'China cannot be the only country that runs counter to the

<sup>1</sup> *Qingji waijiao shiliao* (2015), Vol. 140, 18. The volume pagination of the original 1934 edition is used.

<sup>2</sup> Gustave Moynier to W.A.P. Martin, Geneva 30 April 1885, in *Archives du Comité International de la Croix Rouge* [ACICIR], *Personel Gustave Moynier* [PGM], Box 14, fols. 109–110. See more general: Reeves (2005), 64–93.

<sup>3</sup> No one, not even from the reformers wanted a whole Westernization of the country in the late nineteenth century. Chevrier (1989), 97.

current trend of politics'.<sup>4</sup> However, China questioned the rationale of restricting its own means of warfare by adhering to the propositions made in The Hague, and tacitly ignored the conventions while publicly consenting to the forms of diplomacy with humanitarian goals.<sup>5</sup>

To capture the relationship between 'foreign examples', their transfer from the constructed 'West' to China, and the changes of concepts when adopting and implementing them, this study utilises the approach of strategic 'framing'.<sup>6</sup> Benford and Snow have shown that concepts and practices are not transferred by individuals and collective actors free of purpose, but that the act of transfer follows the rationale of 'who benefits how from a transfer'.<sup>7</sup> Although this concept about different social nuances of communication between 'sender' and 'receiver' is not new, this conceptual framework helps heuristically to identify the mechanisms of cultural transfer. Thus, research has shifted from studying mere similarities between social and political aspects of two or more countries, and has abolished the naïve idea that by studying social, political, or national 'images' of one country in another country's discourse, one would understand the dialectic of adoption and resistance in the transfer and purposeful framing of foreign concepts and practices.<sup>8</sup> In the context of importing and exporting ideas, goods, and even sets of normative institutions and practices, the Chinese elites as the main actors are identified as a sometimes eager, sometimes reluctant, yet always active receiver and importer of European ideas.

Two questions emerge from this observation: (1) What purpose did different Chinese elites have to import and adopt Western concepts? and (2) How did those elites—conservative or reforming—frame and alter Western imports in a Chinese context to make them usable in a contested process to reform Qing China? These questions also address the diversity of actors, namely the Chinese administrative and intellectual elites who could shape the 'West' towards supporting or undermining the legitimacy of the Confucian order. The adoption of European elements regarding state and society had the potential to facilitate or speed up the waning of the imperial power. Thus, the aim of this study is to contextualise the transfer of Western concepts within the reform discourses of the late Qing Empire.

<sup>4</sup> *Qingji waijiao shiliao* (2015), Vol. 140, 18.

<sup>5</sup> *Qingji waijiao shiliao* (2015), Vol. 140, 18, 20.

<sup>6</sup> See Paulmann (2004), 169–196.

<sup>7</sup> Benford & Snow (2000), 611–639.

<sup>8</sup> Muhs, Paulmann, & Steinmetz (1998); Paulmann (1998), 649–685.

## 10.2 LITERATURE REVIEW—CHINA'S 'MANIFEST DESTINY' AND THE LOST LEGACY OF A HARMONIOUS WORLD ORDER REVISITED

The literature on the influence of the 'West' and foreign ideas in China and on Chinese-Western encounters in the late Qing dynasty is vast.<sup>9</sup> The scholarship has argued in detail the complexities of conceptual transfer in international relations, and concepts of state, society, and rights; however, it appears that, predominantly, the Chinese people's 'sole aim [was...] to make use of Western technology'.<sup>10</sup> Scholars during the self-strengthening movement, such as Feng Kuei-fen in 1861, brought it to a simple formula: 'What we then have to learn from the barbarians is only the one thing, solid ships and effective guns'.<sup>11</sup> However, the transfer of political concepts is much more complex than a simple copy of technology, as recent scholarship has highlighted. The context of many adoptions of European ideas related to the basic understanding that Chinese elites thought of a dichotomy of the Chinese essence as opposed to European utility of basic concepts in state, society, governance, and international relations. This dichotomy of *t'i-yong* was dominant in judging Western ideas against the yardstick of a Confucian Imperial Order and of the Chinese civilisation as the alleged crown of human development over time.<sup>12</sup> Orthodox Chinese historiography has marked the historical necessity of Chinese modernisation by adopting 'Western' elements during the 'imperialist period' of the 1840s to the 1940s to sketch the rising national and popular 'resistance' against the bourgeois, imperialist foreign domination.<sup>13</sup> Here the 'West' serves the purpose of radically transforming China by abolishing the 'feudal' Qing Empire and eventually the 'bourgeois' Republic with modernising means.

<sup>9</sup> See for example the classical account in Wang (1966).

<sup>10</sup> Ch'en (1969), 3–4.

<sup>11</sup> Feng Guifen, 'On the Manufacture of Foreign Weapons' (1861), quoted as in: Têng & Fairbank (1979), 52–54, 53.

<sup>12</sup> Ch'en (1969), 4; Liang Qichao, 'Die Evolution Chinas in den letzten 50 Jahren' (1922), quoted as in Lei (2009), 17.

<sup>13</sup> Osterhammel (2014), 52.

Modernising with Western forms served a necessary function in history towards the formation of the People's Republic of China in 1949.<sup>14</sup>

This crude materialist orthodoxy overlaps with new narratives about the continuity of a Chinese manifest destiny spanning from the Empire to the People's Republic. Interestingly, the moral dichotomy between 'bad' European imperialism and 'good' Chinese nationalist resistance has recently taken a turn towards considering the 'West' as the greater evil by brushing over the 'feudal' legacy of the Empire. The invention of ethnic 'Chineseness' as the essence of the Chinese Empire supersedes the ideological conflicts between the 'feudal' Empire and the Communist People's Republic. Recent contributions overemphasise the potential benefits of an imagined benevolent Chinese world order under the Qing Empire that was destroyed by the imperial expansion and dominance of European powers, Japan, and the United States of America.<sup>15</sup> Other historians have focused on the international regional system of China in Asia in the early nineteenth century and on the foreign invasion of mighty European concepts like international law, statehood, and civil society. They have depicted the 'forced' learning of European concepts as key to the destruction of a harmonious regional system in which Imperial China was both the core and the guardian for peaceful coexistence.<sup>16</sup>

In these narratives, the Qing Empire is framed as a peaceful and benevolent, disinterested and harmonious giant. This narrative bears striking similarities to the recent Chinese Belt and Road Initiative (BRI).<sup>17</sup> By tracing the origins of the BRI back into the early nineteenth century, the ideological differences between Empire and People's Republic give way to an ethno-centric narrative of harmonious progress under a Chinese Han shepherd with Manchu overtones. The damage was supposedly done by the European Imperial powers who forced the benevolent international giant China into a Euro-centric system on the terms of the imperial powers that pressed into East Asia with might and modernising concepts. This rather dubious and naïve narrative implies that the BRI is reinstating the

<sup>14</sup> Osterhammel (2014), 53; Troeltsch (1922), 756, 765.

<sup>15</sup> Zhao (2015), 961–982.

<sup>16</sup> Carty & Nijmann (2018). Many of the Chinese contributions on China in this recent prominent essay collection highlight this.

<sup>17</sup> See the invention of Zhang Qian's mission to the West in 138 BCE as a 'mission of peace and friendship' and not as a repeated attempt to secure Xinjiang as a vassal tributary state. Speech by Xi Jinping (2013), Nazarbayev University, Astana, 7 September 2013.

manifest destiny of China and its central role in global politics from the point in time around 1840, where the course of Chinese history diverted from its teleological course in the Marxist or Hegelian sense, through the intervention of European imperial interests. This type of scholarship appears to support the history of Chinese exceptionalism as an—only temporarily interrupted—eternal mission for global harmony.

This article addresses the problem of BRI-related narratives of the past to question the assumption that Qing China in fact provided a viable solution for a peaceful world order in the nineteenth century that was suppressed by the Europeans. Furthermore, it criticises the hidden ideological agenda that global harmony will flourish anew under the BRI in the twenty-first century with historical legitimisation. Chinese elites actively longed to import Western concepts to reform, transform, or revolutionise China until 1911. Yet, it remains unclear why so much of their purposeful efforts to understand and adopt Western concepts failed to translate into a comprehensive transition of the Qing Empire to counter the West.

This article, far from proposing to offer new sources or fundamentally question previous findings, argues that the process of learning from the ‘West’ was complex and competitive as to the purposes of how to reform the Chinese order of governance. Different actors would contest the ‘Chinese World Order’ when identifying and adopting specific ‘Western’ elements.<sup>18</sup> However, the biggest problem was the lack of coherent alternative visions and blueprints for a comprehensive reform of China to substitute the Qing world order based on Confucian traditions.<sup>19</sup> The internal struggle between competing world orders that juxtaposed the Qing order against the well-being of country and people has contributed to the dilemma of the Qing reform period and made purposeful adoptions of Western concepts much more complicated.<sup>20</sup> Yet, it would be erroneous to assume that the Manchu government only knew the alternatives between strict conservation of the Confucian order and Western modernisation.<sup>21</sup>

<sup>18</sup> Fairbank (1968), 12.

<sup>19</sup> Svarverud (2007), 45; Kayaoğlu (2010), 13.

<sup>20</sup> The Imperial Edict of 29 September 1898 condemned the 100-Day Reforms as treason because they substituted the preservation of the Great Qing Order with the preservation of China. Ch’en (1969), 6.

<sup>21</sup> Smith (1994), 285; Spence (1990), 140.

The efforts of Western conceptual transfer are regrouped anew around the following questions: who transferred, what was transferred, how was the transferred element adopted, and for which specific purposes was the transfer framed, and at times, altered? Knowledge exchange between Europe and Asia did not work as a one-way street where imperial and expansive European senders met wilfully obedient Chinese receivers. Chinese elites outside of or within the imperial hierarchy actively sought out aspects of ‘Western’ knowledge in international relations, constitutional and social politics, and the human rights discourse that would potentially help to reform the Qing Empire. The end of reform was and remained contested until the end of the Empire and reached from a defensive modernisation of technical means to a comprehensive revolution of the very basis of the imperial monarchy. All reforms (no matter the aim) that comprised transfers shared the problem of domestic framing. In order to be adaptable, the context or even the very meaning of Western concepts needed to be changed so that they would fit in a Chinese understanding of being the exceptional Middle Kingdom and the First Empire in the East and ultimately, the Centre of the Civilised World. Emphasising this particular worldview of Chinese exceptionalism, the *Zongli Yamen* claimed in 1899 that ‘the treaties and declarations concluded [in The Hague] all aim at clarifying regulations of the West, which are different from China’s laws and traditions’.<sup>22</sup> China was eager to adopt forms and discourses to satisfy the formal aspect of adhering to a Western standard while it aimed at including the function of these concepts into a distinctly exceptional Chinese interpretation of the world.<sup>23</sup>

In conclusion, this imperial project ultimately failed because it relied on the overly-optimistic assumption of a strong and equal China facing the Western powers that mirrored the history of the Qing dynasty from the late seventeenth century until the 1820s. Given the shrinking power of China, and the Manchu dynasty in particular; with a view to the European powers after 1840, this led to massive problems, failed transfers, and wilful misunderstandings.<sup>24</sup> Unlike the omnipresent example of Japan that wilfully adopted Western forms to strengthen its own modernising imperial project after 1870, China faced the challenge of lacking

<sup>22</sup> *Qingji waijiao shiliao* (2015), Vol. 140, 20.

<sup>23</sup> See for example Eyffinger (1999), 137–138; Eyffinger (2008), 7–46.

<sup>24</sup> Chang (2014), 287, 329.

a coherent defensive modernisation project that is backed by all parts of the imperial hierarchy in which different aspects of ‘the West’ could be included, transformed, and framed. Transfers of ‘Western’ concepts that would have any chance of implementation had to strengthen the imperial monarchic legitimacy of the Qing order. However, many transfers of the ‘West’ led to conclusions that had a reforming or revolutionary potential of undermining this very legitimacy. This tension around the purposes of ‘framing’ Western conceptual transfers opened the field for contested discourses about purposeful adoptions of the ‘West’ that claimed to offer a coherent blueprint for a future China.

### 10.3 WESTERN AND CHINESE VISIONS OF WORLD ORDER

In the beginning there was Prince Kung (Gong). The strong impetus on ‘Understanding the West’ as a model for Chinese defensive modernisation started with the so-called ‘self-strengthening movement’ under the *Tongzhi* Restoration in 1861/2. Prince Kung was the leading figure to order and consolidate the Empire after the Taiping Rebellion and other uprisings in the north and central provinces had brought China and the Manchu dynasty to the edge of extinction in the 1850s and early 1860s.<sup>25</sup> His programme was built upon the idea that in order to match the Western powers and to strengthen the Chinese Empire, it had to learn from the ‘West’.<sup>26</sup>

The *Tongzhi* programme to understand the ‘West’ has been judged ambivalently by historians because, ultimately, China did not modernise in the way Japan did under the Meiji Restoration around the same time.<sup>27</sup> The efforts to ‘imitate’ European knowledge and institutions were judged as either too timid or simply a failure. However, these verdicts do not take into account the purpose of the Chinese attempts to incorporate ‘Western’ forms. Unlike the revolutionary creation of modern Japan under the

<sup>25</sup> Osterhammel (2014), 547–551.

<sup>26</sup> Kuo & Liu (1978), 491–542, 493f.; Chu & Liu (1994); Pong (1994), pp. 299–311; Imperial Memorial, January 13, 1861 [‘The New Foreign Policy of January 1861’] and Feng Guifen, ‘On the Adoption of Western Knowledge’ (1861), quoted as in Têng & Fairbank (1979), 47–49, 51.

<sup>27</sup> Sun (2013).



Meiji era, the *Tongzhi* reforms and subsequent attempts from above constituted an essentially conservative programme to elevate the status of the Confucian Manchu monarchy. In essence, late Qing diplomacy and domestic politics were contested sequences of resistance and adaption to the 'West' that were at odds with the prevalent chauvinistic 'othering' of non-Chinese states, empires, and traditions of thought. Those foundations, stemming from the traditional tributary system and the worldview of superiority of the Middle Kingdom, were supposed to be reinforced rather than questioned. The rationale of 'understanding the West' was not a radical way of reform, but a deeply conservative enterprise to reinforce traditional monarchic legitimacy.

The fiction of Chinese superiority regarding every 'other' nation remained valid throughout the nineteenth century. The Chinese defeats in the two so-called 'Opium Wars' of 1840–1842 and 1858–1860 resulted in the increasing power of European states and established a Euro-centric international law of nations as the 'rules of the game' in international relations.<sup>28</sup> These new political developments triggered a Chinese reaction to become an active receiver of Western ideas after the Treaty of Tientsin 1860. Prince Gong initiated a new Foreign Ministry (*Zongli Yamen* or *Tsung-Li Ko-Kuo Szu-Wu Ya-men*) that imitated European practices of diplomacy and mirrored *prima facie* government responsibilities for international relations.<sup>29</sup> While this institution superseded the old Court Office for Tributary affairs, the *Zongli Yamen* remained an ambivalent institution between Court responsibilities and hierarchies, although it displayed notions of representing a 'state' as a sovereign institution. However, the *Zongli Yamen* was far from being the central ministry of foreign affairs (the *Wei Wu Pu* was established only in 1901) and fought for influence within the Court hierarchy under the sovereign emperor. European scholars have had difficulties describing the exact nature of the *Zongli Yamen* because it exemplified the lack of a sovereign Chinese state according to the European 'norm' and the multiplicity of competences in foreign policy that ultimately depended on the individual decision of the emperor as the ultimate source of power, authority, and sovereignty.<sup>30</sup> While the European state embodied sovereignty in a legitimate power monopoly

<sup>28</sup> See Bluntschli (1874), 444.

<sup>29</sup> Banno (1964), 219–236; Meng (1962), 5–26; Zhang (1991), 3–16.

<sup>30</sup> Tsai (1983), 1.

located in an abstract body politic, this embodiment of plenipotentiary power lay with the Chinese Emperor as a person. Thus the body politic was identical with the body natural and not conceptually separated into two bodies.<sup>31</sup>

This ambivalent nature of the *Zongli Yamen* as a Foreign Ministry and a Court Office became apparent already in the name. ‘The Office in Charge of the Affairs of All Nations’ (the official translation of the *Zongli Yamen*) mirrored the former ‘Board in Charge of Tributary Nations’ (*Li Fan Yuan*) and alluded with the use of ‘Li’ to the fact that the Foreign Office only gradually changed in dealing with different types of barbarian nations.<sup>32</sup> Prince Kung adhered to the idea that the *Zongli Yamen* mirrored the Chinese worldview of *Tiānxià* (天下) (‘All under One Heaven’) with the Chinese Emperor and his heavenly mandate (*tiānmìng*, 天命) at the centre of international affairs. The Prince insisted that China had its own laws, notably the Qing code, and therefore would not integrate itself into the system of ‘Western’ international law.<sup>33</sup> The adoption of a quasi-Foreign Office simply served as a useful tool ‘of considerable value for defence against the West’.<sup>34</sup> Prince Kung stressed, much to the liking of the administrative Court hierarchy, that Confucianism was autarkic and isolated as it presented a whole world order and did not need Western learning.<sup>35</sup> In the same sense, the *Tongwen Guan* (同文館, College of Combined Learning) was founded in 1861 as a school for translations in order to understand European writings on International Law to counter the West.<sup>36</sup>

Under the guidance of the American missionary-turned-social scientist W. A. P. Martin, Henry Wheaton’s *Elements of International Law* served as the primary source for training the officers in the *Zongli Yamen*.<sup>37</sup> However, the translation blurred, rather than highlighted, the differences

<sup>31</sup> For the separation of body natural and body politic see Kantorowicz (2016).

<sup>32</sup> Ching (1901), 251–254.

<sup>33</sup> ‘Prince Kung’s Discovery of International Law’ (1864), in: Têng & Fairbank (1979), 97–99.

<sup>34</sup> Fairbank (1968), 2; Têng & Fairbank (1979), 97.

<sup>35</sup> Fairbank (1968), 2; Tsai (1983), 1–2; Cheung & Fung (2018), 331; Carty & Tan (2018), 439.

<sup>36</sup> Covell (1978), 169–198.

<sup>37</sup> Covell (1978), 167–178; Svarverud (2007), 62, 66; Têng & Fairbank (1979), 98. See Wheaton (1864).

between Chinese legal thought and natural law that formed the foundations of European international law discourses since Vattel and Grotius.<sup>38</sup> Further, the translation seemed to support the compatibility of European law with Chinese perceptions of the world. The transfer did not aim at internalising or altering the normative foundations of the Qing Code as the basic law for the domestic, and ultimately Confucian, world order.<sup>39</sup> Rather, the study of European classics was encouraged as useful ‘examples’ for learned arguments with the ‘eloquent’ foreigners to contest the might of the European powers in East Asia.<sup>40</sup>

This instrumental use of European International Law is mirrored in the legal discourse pursued by the institutions responsible for the lines of foreign policy. Chinese foreign policy from the 1860s to the 1890s depended on an active role of the *Zongli Yamen* that showed a remarkable mixture of competence and complete amateurism in charge of affairs. Yet, China was by no means powerless or inflexible when it came to negotiating complex nuances of sovereignty and treaty rights.<sup>41</sup> The *Zongli Yamen* forged relations to the new emigration centres and resolved problems of the Coolie trade with the Americas rather competently. The learning process of adopting Western norms occurred smoothly when it served a direct Chinese purpose, as the Cuban mission in the early 1870s shows.<sup>42</sup>

However, China acted in an amateur manner towards the European Concert of Power in the 1860s and 1870s. Due to a lack of modern embassy and envoy relations, ‘friendly’ foreigners like the American, Burlingame, were recruited by the Imperial Court to carry out foreign missions to revise the commercial treaties on behalf of the Empire.<sup>43</sup> Yet Burlingame used his European tour to St. Petersburg, Berlin, and London from 1867 to 1868 to talk about American interests in Europe rather than about Chinese questions abroad.<sup>44</sup> The German envoy to

<sup>38</sup> Cheung & Fung (2018), 316–326.

<sup>39</sup> Cheung & Fung (2018), 329–332.

<sup>40</sup> Feng Guifen, ‘On the Manufacture of Foreign Weapons’ (1861) in Têng & Fairbank (1979), 53.

<sup>41</sup> Martínez-Robles (2016), 729–740.

<sup>42</sup> Ng (2014), 39–62.

<sup>43</sup> Foster (1903), 263, with the Imperial Edict of November 1867 in English translation that gives plenipotentiary powers to Burlingame.

<sup>44</sup> Yü (1981), 152–153.

Peking, Rehfués, informed the Prussian Chancellor and Leader of the North German Confederation, Otto von Bismarck ‘the whole mission appeared to be more an American than a Chinese, because the negotiations [of Burlingame] mainly served the interests and goals of the United States [of America]’.<sup>45</sup> Learning from these failed attempts to enter negotiations on treaty revisions, from the 1870s onwards the Chinese Court started to send envoys like Kuo Sung-T’ao to London to learn European forms of diplomacy, attend expert conferences on international law, and become accustomed to the practices of European diplomacy that bookish studies in Peking simply could not convey to the ardent disciples in international affairs.<sup>46</sup> Kuo Sung-T’ao reported from London in 1878 that ‘since the [Europeans’] knowledge and their strength are both pre-eminent, we must study ways of dealing with them’.<sup>47</sup>

This semi-integration of China in international practice is reflected in the late nineteenth century concepts of international law. China considered itself exceptional and the ‘Centre of the Civilised World’, with the European ‘barbarians’ from the fringes of the ‘Oriental Civilised World’ pressing with might into East Asia.<sup>48</sup> Meanwhile, European powers were eager to consider China a viable partner in trade and commerce but were increasingly weary as to the future political relations with the Empire. Doubts prevailed whether China could be considered an equal member of the Euro-centric international system because the Empire did not share the normative and moral basis of European international law.<sup>49</sup> Wheaton’s assumption in his *Elements of International Law* that the morals of international law were based on Christianity found its way into the definitions of ‘civilisation’ as the main yardstick for full membership of the international system.<sup>50</sup> ‘The progress of civilization, founded on Christianity, has gradually conducted us to observe a law analogous to this in our

<sup>45</sup> Rehfués to Bismarck, Peking 18 January 1870, quoted as in: Yü (1981), 154–155.

<sup>46</sup> International Association for the Reform and Codification of the Law of Nations (1879), 209. See also Frodsham (1974).

<sup>47</sup> Kuo’s Journal, Entry 2 January 1877, in Frodsham (1974), 43.

<sup>48</sup> Hodgkin (1923), 69 on the Reform Edict of 1898; Liu (2004), 31–69, 33–35; Liu (1999), 127–164; Lei (2009), 37–39.

<sup>49</sup> Svarverud (2007), 61, 66.

<sup>50</sup> Liu (1999), 129, 141.

intercourse with all the nations of the globe, whatever may be their religious faith, and without reciprocity on their part'.<sup>51</sup> Europeans identified religiously defined, yet universally promoted, morals and rational modernisation as the backbone of civilisational progress in history.<sup>52</sup> China, as much as the Ottoman Empire and other African and Asian 'states', did not match this ideology of shared and progressive values that lay at the normative heart of late nineteenth century European internationalism: 'The Law of European Nations has itself always been exceptional in its application to Mahommedan [sic!] and other non-Christian nations'.<sup>53</sup> To play an active and equal part in international relations, non-European states were expected to adopt moral and political criteria of 'civilisation' as defined by the European powers. The purposeful adoption of Western norms and institutions in Japan worked towards this international recognition since the late 1860s.<sup>54</sup> China's rhetoric and practice of exceptionalism and half-hearted adoption of forms was perceived in Europe with doubt and concern.<sup>55</sup> China was seen as the searching apprentice who needed more guidance, especially in its ignorance of international humanitarian law and the Geneva Conventions of 1864, 1887, and 1899 as the new international gospel of civilisation.<sup>56</sup>

The defeat against Japan, manifest in the Treaty of Shimonoseki 1895, hit China in its assumption of international superiority to the core. Chinese elites actively looked for explanations of how the long-time inferior brother nation, Japan, was able to defeat the Chinese Empire, and found ample reasons in the rapid Western modernisation of their neighbour. After 1895, Chinese diplomats looked both to the European nations and to the successful apprentice Japan to understand the West and how to use the lessons presented by Japan for Chinese purposes that would go beyond superficial learning of forms and technicalities. Students returning

<sup>51</sup> Liu (1999), 140–141.

<sup>52</sup> Koskenniemi (2001), 131–135; Anghie (2004), 32–114; Oberleitner (2013), 275–294, 286.

<sup>53</sup> Twiss (1892), 267; Twiss (1879–1880), 301; Bluntschli (1870), 17–19.

<sup>54</sup> Käser (2016), 16–32.

<sup>55</sup> Reeves (2005), 63–93, 71. See Gustave Moynier to W. A. P. Martin (Peking), Geneva 30 May 1873, in: *ACICR Ancient Fond [AF]* 03/05.1/01-02; Moynier to Martin, Geneva 30 April 1885, in: *ACICR, P GM*, Box 14, fols. 109–110.

<sup>56</sup> Moynier to Dr. Peck of Tientsin, Geneva 6 October 1894, in: *ACICR AF* 03/05.1/03.

from Japan brokered their Japanese understanding of the West in China, and their translations of Western thought from Japanese were much more appreciated in China than the rather pedantic translations by the missionaries. However, the reforming fractions among Court officials and within the intellectual and administrative elites engaged in multifarious and diverging reform discourses that did not define an overarching coherent concept in which ways China would adopt and make use of learning from the West. While intellectuals like Kang Youwei praised The Hague Conferences and China's recognition as equal member state of the conference as a new Confucian world order of peace, more critical contemporaries looked out for a way of adopting European standards to counter European efforts of 'dominating the nations beyond Europe' on the basis of international law.<sup>57</sup>

The watershed moment for China in its attempts to utilise the West in order to boost the Chinese standing in the international system came in 1899. The domestic 100-Day 'Reforms' had been suppressed, and it left the Empire in a state of disorientation. The 'Reformers' had used the rhetoric of learning from the West to implement radical changes in the imperial structure of power, yet had been crushed by the Empress Dowager.<sup>58</sup> The conference at The Hague offered another chance to encounter the West and implement reforms that had the potential to increase China's standing with a view to the European powers.<sup>59</sup> The Court recognised the huge chance and agreed to take part, yet with a cautious eye to the immediate application of the specific results. While the great powers negotiated on the ban of warfare and its atrocities and thus provided the rhetoric for civilisation in international diplomacy, China very much looked at the direct gains of the debates, conventions, and treaties that seemed to hamper and restrict the free exercise of power in times of war.<sup>60</sup>

The Court, and the *Zongli Yamen* in particular, were not concerned with the question of how liberal internationalism was shaping the world order by adding a layer of civilising rhetoric on power politics. The Court 'misunderstood' the West to the extent that China would neither use

<sup>57</sup> Liang Qichao, 'Congratulations' (1901), quoted as in Tao (2018), 347.

<sup>58</sup> Chang (2014), 237–246.

<sup>59</sup> Reeves (1998), 80–84; Reeves (2005), 75–76; Eyffinger (1999), 137–138.

<sup>60</sup> *Qingji waijiao shiliao* (2015), Vol. 140, 18.

nor adopt the civilising efforts of benevolent and humanitarian internationalism. China failed to see that around 1900, nations could elevate their status in the international order through showing or rhetorically staging benevolent humanitarianism. The Qing Empire missed out on this genuine opportunity in the aftermath of The Hague Conference. Despite persistence from the delegate Yang Ru, China failed to sign the revised Geneva Conventions as they appeared to ‘restrict’ the free and sovereign decision over the *ius ad bellum* and the *ius in bello*. China remained within the conservative and traditional thinking that might of arms and direct benefits for the Empire within the traditional order would determine the fate of the Empire, and not the politics of softer rhetoric to turn humanitarianism into an outward-looking, benevolent, and universal cause. For Chinese officials in Court, the Middle Kingdom, with its military power was still the exceptional centre of the civilised world that would only subscribe to international rules if the material gains of treaties could strengthen China’s power position.<sup>61</sup> The European idea that benevolent internationalism and humanitarian politics would supplement the status of a nation and eventually become the crown of the edifice of a system of civilised states was completely misunderstood and thus ignored.<sup>62</sup> Similarly, the atrocities conducted by parts of the imperial army and renegade troops from the ‘Boxers’ that were supported by the Imperial Court added to the European impression that China did not want to adhere to the yardstick of civilisation or to learn from the West, and thus could not be regarded as equal partner of the civilised world.<sup>63</sup> In the international system, China was not eager to understand the emerging changes in ‘soft’ power but tried to adopt piecemeal direct benefits into its traditional order while the contradicting Confucian interpretation of international relations remained the yardstick.<sup>64</sup> Thus, the competing visions of world order resembled a dialogue of the deaf divided by the ‘Great Wall of Misunderstandings’, yet with the more powerful position resting with the European powers to influence the Chinese Empire after 1900.

<sup>61</sup> *Qingji waijiao shiliao* (2015), Vol. 140, 20.

<sup>62</sup> Fried (1908), V, 32–33.

<sup>63</sup> Svarverud (2007), 66, 70. See already Moynier to Peck, Geneva 6 October 1894, ACICR AF 03/05.1/03.

<sup>64</sup> *Qingji waijiao shiliao* (2015), Vol. 140, 18 and Vol. 141, 4.

It remained a dilemma that the source of authority, the Imperial Court, had no concerted reform plan for China in which Western concepts could be framed or integrated. The 100-Day Reform was a short-lived adventure that contributed more to discrediting the ‘West’ in China than it would actually have adopted and framed Western principles.<sup>65</sup> The most obvious case of a complete lack of genuine understanding of European International Law occurred in early 1904 at the beginning of the Russo-Japanese War in Manchuria. China hoped to stay neutral in the conflict despite the war being fought on Chinese territory, but it could not actively protect its civilians (mostly migrant workers from Shandong and local families) under international law.<sup>66</sup> For that, China would have had to sign the Geneva Convention and be a recognised member state in order to send its own Red Cross personnel and hospitals for disaster and distress relief of civilians on the battlefield.<sup>67</sup> It appears that during the Boxer Uprising after The Hague conference, China simply had forgotten to sign the Geneva Conventions, and the Court had assumed that the public consent of its envoy in 1899 and the Court’s approval later that year had been enough to gain international protection.<sup>68</sup> Thus, the direct use of Western principles dictated and dominated its adoption in China, and the apparent misunderstanding of the West also coined the lack of adoption and transfer into a system that lacked a coherent plan of how to integrate and use the West for purposes of reforming Imperial China.

Humanitarianism as a principle of politics was not new to China, yet its application as a tool for power rivalry in the international system was. This was totally at odds with a strict hierarchy of tributary states that was not subject to rivalry and change. Although ‘Li’ and ‘Ren’ (benevolence) as the new yardstick for civilisation could be seen as the common centre of both universalist traditions, the implications of acknowledging the

<sup>65</sup> Chang (2014), 287–289.

<sup>66</sup> International Committee of the Red Cross to Prince Kang (President Wei Wu Pu), Geneva 13 January 1904, *ACICR AF* 03/05.1/05; Fairbank (1975), II, 1405; *Report of the International Red Cross Committee of Shanghai, 1904–1906* (1906), 1–3.

<sup>67</sup> *Qingji waijiao shiliao* (2015), Vol. 140, 18: China did not want to treat enemies if ‘there is warfare taking place on China’s territory’, but forgot about treating their own civilians.

<sup>68</sup> *Qingji waijiao shiliao* (2015), Vol. 140, 18; Correspondence between the ICRC, the reformed Foreign Office of China [Wei Wu Pu] and Prince Qing, Geneva 11 and 13 January 1904 and Peking 3 April 1904, *ACICR AF* 03/05/05-08 and 03/05.1/05. See Reeves (2005), 82–84.



superiority of the ‘i’ (barbarians) from Europe strongly hampered the purposeful adoption of Western principles.<sup>69</sup> The general dilemma stemmed from the fact that Chinese elites did not have a coherent vision of the purpose and benefits of implementing these new forms of politics in Chinese international policies. Unlike in Japan, where the domain of foreign policy was closely linked to the strengthening and legitimacy of a newly designed Imperial Hierarchy, China developed in its chaos of competencies, actors, and discourses with no single coherent plan on how to purposefully and strategically adopt elements of Western, European international law into an outward-looking reforming vision of the Empire. Thus, the cultural transfer triggered a patchwork of discourses with contradicting adoptions of Western ideas, while displaying a growing resilience to the ‘West’ in discourse, form, and content after 1900.

China and its elites did not have a coherent vision of how to shape the international order on its own terms by adopting and utilising legal concepts from the West that could serve as sources of recognition, international prestige, and ultimately power. Around 1900, China finally moved from ‘obscurity to distrust in international matters’ and lost its equal standing in the international community.<sup>70</sup> China found itself in the awkward position after it had gambled away most of the international esteem that Yang Ru had gained in The Hague in 1899. Empress Dowager Cixi tried to embark on a comprehensive reform of the Empire to secure the stability of the country and the legitimacy of the monarchy against rising nationalism and anti-Manchu sentiments. At the core of this delayed reform was the transformation from Empire to state.

#### 10.4 SERVING THE STATE—WESTERN CONCEPTS OF STATE AND SOCIETY IN CHINA

China’s encounters with the West were due to the European presence in East Asia. After 1842, Great Britain and France, but increasingly also Germany, Italy, and other countries, embarking on the trading route to China, pushed with might into the former Chinese sphere of influence. While in the international arena, China reluctantly accepted elements of international law into their own concept of world order, the rhetoric of

<sup>69</sup> Hsü (1960), 111; Yin (2016), 1005–1023; Li (2016), 2274–2291.

<sup>70</sup> Svarverud (2007), 66.

incompatibility and Chinese exceptionalism remained much stronger in the organisation of domestic political settings. This is related to the conservative and stabilising purposes for which the Chinese officials aimed at adopting foreign concepts in the domestic arena.

In essence, the Chinese and Japanese reform efforts starting in the 1860s were completely different from the start. China's adoption of Western concepts was meant to stabilise and strengthen the Empire; Japan's adoption was meant to legitimise the revolutionary imperial monarchy established under the Meiji. Japan followed the high route to adopting European state structures to legitimise a strong, centralised imperial monarchy with a civil and military administration focused on its monarchical centre.<sup>71</sup> This revolutionary and strong programme drove Japanese experts to select and broker different European concepts of state and society, administration, and citizenship.

The Chinese *Tongzhi* reforms stemming from the necessity of consolidating a deeply weakened China after 1860 were not designed to transform the Empire into a centralised state with a new centre in need of a different legitimacy. On the contrary, the reforms under Prince Kung aimed at including Western forms where a direct function of rendering China strong and more competitive was assumed, but they were conservative and anti-revolutionary in nature. The basic structure of an Empire led by the Manchu dynasty, and the dual rule of Manchu and Han officials in important posts, remained untouched. In essence, Western learning was supposed to help China modernise in form and technologies, while retaining the monarchic legitimacy of the dynasty. This proved almost impossible and made the purposeful transfer and useful framing of Western ideas increasingly difficult.

Japan was eager to implement the European concepts of state and society into its reformed monarchy in order to modify Japanese society from feudal kinship relations into a society of individual subjects guided and bound together by the imperial state. By contrast, China, until 1900, had no direct interest in taking up the dual nature of state and society to transform its imperial structure in a way that offered elements of a modern state, while relying mostly on the dynastic legitimacy of the Manchus

<sup>71</sup> See Käser (2016), 17–19, 26–27; Osterhammel (2014), 831–833, 889–894; Hill (2013), 134–158.

facing an increasing Han nationalism within the Empire.<sup>72</sup> Efforts after 1895, and 1901–1902 were piecemeal and limited, although the recurrent rhetoric and Cixi’s reform edicts after 1895 mirrored Chang Chih-Tung’s book *China’s Only Hope* to adopt Western practical knowledge in order to stabilise and strengthen China internally.<sup>73</sup>

However, Chinese intellectuals were eager to understand how European states actually worked and what could be learned from their structures for a direct application or implementation under the assumption of Chinese Imperial exceptionalism. The constituent for the European concept was the dialectic dualism of state and society as outlined in Hegel’s *Principles of Law*.<sup>74</sup> Here the state as the objective manifestation of sovereignty encountered the abstract objectivity of all social interests that manifested itself in the concept of the bourgeois society. This dualism, essential for Habermas’ development of the public sphere as the discursive manifestation of bourgeois society, aimed at providing a progressive synthesis that would result out of conflicts between state and society. Those conflicts were located in the parliament as the legislative and executive arena of responsible government, with the government as the state on one side and the representatives of society on the other. This system, which found its essence in the French July monarchy under Guizot and in the German pre-revolutionary constitutions until 1848, fascinated Chinese intellectuals who wanted to conceptualise relations among subjects and between subjects and the Imperial Court to overcome the omnipotent role of the Emperor as the personal embodiment of state and society.<sup>75</sup>

Active reception and purposeful implementation of European concepts of state and society thus remained fractioned as the dominant powers for reform discourses—the Court and the administrative elites—were rather disinterested in ‘Westernising’ the imperial monarchy. At least until the turn of the century, European concepts of state and society were superficially digested under the maxim of ‘*t’i-yong*’ to keep the essence of Chinese exceptionalism, while looking for the practical usefulness of Western concepts. However, conceptually and theoretically, Chinese intellectuals like Liang Qichao provided the basis for a transition of

<sup>72</sup> Osterhammel (2014), 583–584, 588.

<sup>73</sup> Chang (1900), 59–61; Hogdtkin (1923), 65, 68; Chang (2014), 329–331.

<sup>74</sup> Hegel (1991), 220–221, §§ 182–184.

<sup>75</sup> Habermas (1991); Rosanvallon (1985). For China see Rowe (1990), 309–329.

China from Empire to state that would come about in the 1900s and 1910s.<sup>76</sup> Their main interest focused on the translation of what actually constituted a state, and how to categorise this in Chinese terms. Again, it appears that the watershed moment for the turn from intellectual curiosity about the ‘barbarian West’ towards purposeful adoption of concepts of state and society came with the aftermath of the lost Sino-Japanese war of 1895. Intellectuals like Liang Qichao claimed the Chinese Empire in its internal structure as ‘uncivilised’ and ‘degenerate’ and called for a belated, yet comprehensive modernisation of the Empire according to Western models of the state.<sup>77</sup> The traditional legitimacy of the imperial monarchy based on Confucianism lost its strength among intellectual circles that looked for alternative systems of organising and legitimising China’s public order in the following decade.<sup>78</sup>

Facing the challenges following the defeat of 1895 against Japan and the establishment of new territorial colonies on Chinese soil, Chinese intellectuals thought to transform the universal Empire into a modern nation state along the lines of German state theory that called for the three principles of territorial sovereignty (*Staatsgewalt*), clearly defined territorial borders (*Staatsgebiet*), and a territorial population (*Staatsvolk*). This turn towards modernisation of state and society along European lines was by no means a wilful evolution, but followed patterns of a rather forceful adoption of European, or more specific, German concepts and patterns to counter imperial claims of European powers in China.<sup>79</sup> Chinese, as well as Japanese thinkers, were highly interested in defining what actually was a modern state and how was it ‘invented’ in European terms. Due to the widespread popularity of the Swiss-German international legal scholar, Johann Caspar Bluntschli, the German concept of the state became the norm.<sup>80</sup> Bluntschli’s concept of a state and the transition from Empire to nation state were not simply adopted as a German blueprint for Chinese problems, but indicated possibilities for a radical reform by conceptualising the state in the Empire. Bluntschli argued that

<sup>76</sup> Metzger (2005), 16–23.

<sup>77</sup> Liang Qichao, ‘On the Promotion of Legal Sciences in China’ (1896), quoted as in Lei (2009), 17.

<sup>78</sup> Lei (2009), 19–25; Chang (1987).

<sup>79</sup> Lei (2009), 18; Metzger (2006), 33, 35–39.

<sup>80</sup> See especially Bluntschli (1868); Lei (2009), 44.

the state was an organic formation with different parts relying on each other and performing essential functions. Instead of an overwhelmingly powerful Emperor, in the way that the people comprised civil society and assembled in parliament served the state, similarly, the Emperor was the first servant of the state and equal to the people.<sup>81</sup>

The position of the Emperor as subject to the state and the well-being of the people was revolutionary for Chinese imperial thought. Yet, the idea promoted by Bluntschli that the state was a living organism with both the people and the Emperor adopting functional parts in this organism fit well into Chinese imaginations of politics. However, if practised similarly as in the Japanese Meiji Constitution in 1889, the adoption of the German state concept and its application to the Empire would mean to undermine the Chinese Emperor as the centre and substituting him for an abstract state. Thus, the Emperor was bound by a written constitution as *ultima ratio* in politics.<sup>82</sup> Qichao, as well as Wang Tao, in his reflections on the Franco-Prussian War (1886) argued that progress in European society depended upon a dialogue of ruler and ruled, of Emperor and People, of top and bottom within a contractual agreement of a constitution that represented the idea of the abstract state.<sup>83</sup> Mirroring German liberal reform writings around 1900, the emperor and the people should form a unity to serve the state. Qichao's most revolutionary idea that the people and the state would in essence be identical completely undermined the heavenly mandate of dynastic Manchu legitimacy.<sup>84</sup> Thus, adopting European concepts—the specific liberal German traditions of an organic unity of people and state—meant in essence a revolution of the Empire to the extent that the traditional monarchic legitimacy would either transform into a constitutional monarchy or vanish altogether. This revolutionary challenge to imperial legitimacy in Qichao's writings led to their marginalisation until after the Revolution. Translations and adoptions of German public law concepts revolutionised Chinese thinking about constitutionalism and democracy after 1911. Ultimately, this late adoption of

<sup>81</sup> Lei (2009), 48, 66–89.

<sup>82</sup> See Articles 1, 4 and 5 of the Meiji Constitution (1889) commented with a view towards the German tradition of the state: *Die Verfassungsurkunde für das Kaiserreich Japan (Deutsche Übersetzung)* (1890), 3.

<sup>83</sup> Wang T'ao, *Pu-Fa zhanji* (Hong Kong: n.p., 1886), quoted as in: Lei (2009), 42; Cohen (1987).

<sup>84</sup> Naumann (1917), 3–14. See Stråth (2008), 171–183.

revolutionary statehood compared to the legitimacy of the Qing Empire helped with forming the Communist foundations of the People's Republic as an abstract state.<sup>85</sup> However, before 1911 adopting the vital concept of the German state was essential to question the legitimacy of the old Chinese order. The cultural transfer of the 'West' in this realm proved revolutionary.

It was similarly revolutionary to suggest that the people as part of the state would constitute a more politicised civil society by free associations. Traditionally, the Emperor ordered the society in a hierarchical way through a decree from above and through privileges. Max Weber's observations on the lack of an active civil society in China proved by and large true.<sup>86</sup> The establishment of civil society associations and the adoption of European models of associationalism as an expression of a reform-oriented civil society found its strict limits in the belief that reforming and ordering society for benevolent purposes and the benefit of the people was connected to an official, imperial mandate.<sup>87</sup> The 'heavenly mandate' of a benevolent shepherd ordered the imperial hierarchy to change and improve social conditions. Society itself was not to order itself for social or political purposes nor entitled to do so. Chinese benevolent and relief associations, springing up during the crises of the 1870s, 1890s, and 1900s, were by and large organised by wealthy citizens who had exercised or were exercising mandates within the Imperial Order, either as *Taotais* of the local communities or imperial magistrates. The foundation of the Chinese branch of the Red Cross Society in Shanghai in 1904 to help with the social repercussions of the Russo-Japanese war for the Chinese in Manchuria was no exception. Shen Dunhe, a wealthy Shanghai merchant, formed the Chinese executive committee in exercising his imperial mandate as *Taotai* for the Shanghai port.<sup>88</sup> Exercising humanitarian help for others was part of civil life, yet unlike in Europe since the late eighteenth century where it was located as part of 'bourgeois' citizen duties, in China it remained—similar to early modern Christian traditions of the

<sup>85</sup> Lei (2009), 285. See more general Chang (1968), 143–184.

<sup>86</sup> Weber (1951); Rowe (1990); Osterhammel (2002), 71–108.

<sup>87</sup> For the European roots of associationalism as the bourgeois expression of civil society in the nineteenth century, see Herren (2004), 24–25, 43.

<sup>88</sup> *Report IRCSS* (1906), 1–2, 19; Richard (1916), 263–266; Fairbank (1975), II, 1044; *Shenbao* (Shanghai), 4 and 10 March 1904, *North China Herald* (Shanghai), 15 and 22 April 1904.

duties of Christian authority—a moral obligation attached to the offices in the imperial hierarchy. Ultimately, the pastoral overlord and its offices were bound to provide charity and care for people in need to uphold the monarchical legitimacy.<sup>89</sup>

### 10.5 WHOSE RIGHTS? CONFUCIAN VALUES OF COMMUNITY CONTESTING INDIVIDUAL HUMAN RIGHTS

One of the most contested discourses when encountering, adopting, and translating European traditions was how to react to the concept of civil and individual rights. In the *'t'i-yong'* tradition of keeping the Chinese essence while adopting useful Western elements, intellectuals calling for reform tried to locate civic rights in Confucian ideology. Thus, the 'West' could appear in essence as a copy of already existing Chinese thought in practice.<sup>90</sup> He Qi and Hu Liyuan explained in the 1890s in their pamphlet, *True Interpretation of New Policies*, that Confucian goals, and especially the interpretation of 'civil rights' by Mencius, appeared to have much in common with Western concepts by referring mostly to the English tradition of liberties.<sup>91</sup> In 1898, the Hunan scholar Pi Xirui claimed that the European policy of philanthropy and charity that made its way to East Asia in the forms of the Red Cross, orphanages, and hospitable foundations all embodied the Confucian *Ren* or benevolence.<sup>92</sup>

The main impetus of such analogies was to frame Western concepts of civil rights and legal order in Chinese terms so as to make the integration of principles easier. However, the contested discourses about integrating civic rights often resulted in denying the necessity of a major reform of the Confucian order. The majority of the literature around 1900 tried to legitimise the Chinese way of resilience to reform and of resistance to individual rights rhetoric with the Chinese classics. Perhaps the most cited

<sup>89</sup> Chang (2014), 329, 395.

<sup>90</sup> Tao (2018), 340.

<sup>91</sup> He Qi and Hu Liyuan, *Xinzheng Zhenquan (The True Interpretation of New Policies)* (Hong Kong: Scientific Review Publishing House, 1901), 6, quoted as in Tao (2018), 340.

<sup>92</sup> Pi Lumen, 'Xuezhang Nanxuehui Dijiuji Jiangyi (by Senior Pi Xirui)', in: *Xiang Bao* (Hunan Daily, 1898), Changsha, no. 57. Quoted in Tao (2018), 340–341.

text to uphold the community traditions of the Qing society is the Confucian comment on the ‘Spring and Autumn Annals’ reflecting Lu state’s history of the pre-Warring State Period (722–481 BCE).<sup>93</sup> The history was interpreted as a possible source for a generic reform of the Chinese Empire, as it could provide guidance on morals, as well as a fundamental code for State governance and individual duties and obligations. However, texts like these stress individual duties towards communities—family, society, the Empire—rather than individual positive or negative liberties that would follow the rationale of natural law theory that entitled the individual against the state or society.

The alternative was to frame citizenship as a set of moral obligations towards the Empire, similar to Japan. Drawing on the idea of individual rights and duties of subjects in the Prussian and German Imperial constitutions, the Japanese Meiji constitution of 1889 outlined less the rights, than the civic obligations of the modern Japanese subject.<sup>94</sup> Duties and moral obligations also formed the core of the associations of civil society in Japan.<sup>95</sup> While many Chinese intellectuals were fascinated by the Japanese experience, this idea of individualism in duties (or rights) ran counter to the reforming principles of constitutionalism as promoted by Qichao and Tao in the 1880s and 1890s that argued for a comprehensive reform of state and society. A reformed imperial monarchy would rely on the organic evolution of a dialogue between the people as a collective entity and the monarch. Yet, while Qichao relied to some extent on more radical interpretations of *Spring and Autumn*, the main idea remained that civic rights of the individual in society ran counter to a Confucian ethic of kinship and family obligations. They would contradict a Chinese tradition that reform of society would emanate from a pastoral power embodied in imperial decrees from above.<sup>96</sup>

In the end, the idea of individual rights and liberties did not strike a chord with Chinese administrative elites—neither before nor after 1911. Chang Chih-Tung severely attacked the idea of ‘liberty’ promoted by

<sup>93</sup> See Martin (1882), II.2, 71–78, 72, 75–76.

<sup>94</sup> *Die Verfassungsurkunde für das Kaiserreich Japan* (1890), 5–7 (articles 18–32 on the rights and duties of Japanese subjects/citizens).

<sup>95</sup> Käser (2016), 18, 24.

<sup>96</sup> For an application of Foucault’s Concept of ‘Pastoral Power’ Zhang et al. (2018), 784–803.



Republican reformers in the late 1890s as being ‘absolute’ and questioning the imperial legitimacy. Instead of individual liberty, China could only be made strong against the ‘foreign nations’ by ‘uniting ourselves under the imperial dignity and power’.<sup>97</sup> The English idea of positive liberty, in particular, would only serve the purpose of undermining the Manchu dynasty. Further, the concept of negative liberty, as indicated by the continental tradition of catalogues of rights and duties of the citizen (following the French declaration of the Rights of Man and Citizen of 1789), would equally bind the heavenly monarch and undermine its pastoral mandate for the people and the state.<sup>98</sup> In Japan, monarchical legitimacy, as well as individual civic duties and rights, were bound to the positivist document of the Meiji Constitution. In China, neither monarchical legitimacy nor individual rights or duties were legalised through a positivist covenant. Changes in the concept of individual rights deriving from any other authority than the imperial mandate (in the form of privilege) would undermine the existing order.

While those more abstract liberties would potentially threaten the imperial monarchy, the Emperor exercised his pastoral and omnipotent power on behalf of his subjects to protect specific rights of groups, especially of Chinese sojourners and emigrants. It was part of the Emperor’s duty to take care of the individual and collective rights of Chinese overseas, and that practice can be traced in international agreements starting in the 1860s.<sup>99</sup> The Report on the Condition of Chinese Coolies in Cuba from 1874 expresses the detailed consideration of social rights of Chinese workers, yet not as rights derived from a natural law order, but as deeds granted by the benevolent pastoral power of the Emperor on their behalf.<sup>100</sup> Similarly, the 1904 Convention on indentured labour with Britain enumerates social rights and conditions to be fixed by contract before emigration would be granted. However, the agreement negotiated by the Emperor does not indicate specific individual rights or liberties indicated as inviolable. The daily working hours, rates of wage, and

<sup>97</sup> Chang (1900), 61.

<sup>98</sup> Lei (2009), 46–49, 223–258.

<sup>99</sup> Kuo Sung-T’ao to the Earl of Derby, London, 2 January 1878, in: Frodsham (1974), Appendix no. 3, 188–189 on the Chinese interpretation of consuls to ‘protect the interest of its nationals residing in other countries.’ See also Chang (2014), 329, 395.

<sup>100</sup> *Report of the Commission sent by China to Ascertain the Condition of Chinese Coolies in Cuba* (1876), 1–92, especially 6–17, 22–26.

modes of payment, and even the nature of the indenture were open to negotiation. They related to the needs of the family, which the migrant workers tackled.<sup>101</sup> Thus, the social rights framework and its protection fell under imperial care, yet not the duty to ensure individual rights and procedures for granting them in the domestic sphere.

The question of human and social rights remained problematic in the transition from the Empire to the Republican era. After 1919, the International Labour Organisation (ILO) in Geneva seriously questioned China in its adoption of international standards of social rights. Countering the normative standard of working hours upon the request of the ILO, the Chinese Republican government countered the adoption of ‘Western standards’ with the rhetoric of Chinese exceptionalism: ‘We find ourselves unable to accept the principle of a weekly rest day because tradition and custom in China are not the same as in Western countries’.<sup>102</sup> The rise of nationalism in China also facilitated the rhetoric of exceptionalism as a way to counter European dominance and assumed social imperialism. In this transition from an imperial to a democratic legitimacy, China left out the people as active citizens with rights and duties in the Western tradition. Human rights as individual liberties, both positive and negative, were not adopted but denied and ‘othered’ in terms of anti-foreign sentiments and imperialism after 1900. This cultural practice of ‘othering’ forms a legacy that runs through the Republic to the People’s Republic as the imagined shepherd of harmonious society changed from Emperor to Party Rule.

## 10.6 CONCLUSION—CONTESTED ORDERS OF GOVERNANCE IN THE LATE QING CHINA AND THE ‘OTHERING’ OF THE ‘WEST’

China’s efforts to convey a peaceful and benevolent model of foreign investment in the BRI rely on how it frames its past visions of regional and global world order. The narratives provided to position late Qing China as a benevolent regional hegemon with a peaceful vision of global order

<sup>101</sup> *Convention respecting the employment of Chinese labour in British colonies and protectorates*, May 13, 1904 (1921), 478–482, 480 (Art. VII).

<sup>102</sup> Chinese Presidential Decree 225, 29 March 1923. *International Labour Office, Official Bulletin* VIII (1924), 49, and the Director General of the ILO, Albert Thomas (1924), 47–49. See Mueller (2018).

and a harmonious society of patrimonial values to give people a sense of belonging support the new vision of China. China was not the benevolent hegemon providing harmonious relations who suffered the imperial submission of the European powers and their import of Westernisation that is at the core of Chinese narratives against the West. The historical analysis shows that Chinese approaches to the ‘West’ between the 1840s and 1911 need to be understood as ambivalent attempts to resist the simple copy of European political and legal forms while adopting diverse aspects of European states and societies to forge a defensive modernisation in China. The ambivalent efforts to come to terms with the West resulted from a lack of coherent reform concepts into which Western elements could be implemented and usefully adopted. The result is a broken legacy of failed attempts to broker the West in different forms of technology while ignoring or actively resisting its political essence as being useful to Chinese politics or society.

Samuel Moyn’s claim that ideas are not universal seems obvious.<sup>103</sup> In the specific context where Asian actors adopt European ideas under the powers of discourse and influence in the nineteenth century, the purposes of adoption and transformation on the side of the active importers matter as they reconfigure the ‘West’.<sup>104</sup> In the case of the late Qing China, the adoption and implementation of European concepts proved rather difficult, but it was the Chinese people who actively sought a way to implement aspects of European ‘civilisation’ into the Chinese system of governance. The main problem that Chinese importers of ideas faced was that many elements that were identified as beneficial for modernising China were fit to undermine or destroy the very legitimacy of the imperial monarchy. Most aspects proved to bear revolutionary potential for the Chinese Empire: abstract sovereignty, the universal equality in international relations based on a public moral of Christian values, the concept of the state that was the source of the Emperor’s legitimacy, government and opposition of an assembled society in the parliament, and finally, the concept of individual rights derived from the state as sovereign to limit the power of the Emperor. Every one of these concepts would have challenged the Empire in its very foundations if implemented. Therefore

<sup>103</sup> Moyn (2013), 187–204.

<sup>104</sup> Bayly (2004), 240; Conrad (2013), 22–3; Osterhammel & Petersson (2005), 96, 101.

‘implementing the West’, even with adoptions to the Chinese context, proved revolutionary.

The key to analysing China’s actions in regard to the transfer and adoption of Western concepts lies in establishing the different contexts of discourses and power struggles in which ideas presented as universal by the West were frames and implemented into Chinese political and social thought. Referring to Japan’s discourse of refurbishing the revolutionary enterprise of the Meiji Empire, one can argue that China struggled with the transfer of revolutionary ideas into what was essentially a conservative and gradual reformist context of the late Qing dynasty. Instead of questioning the fundamentals of the Empire, state, and society, as well as the legitimacy of the dynasty, the efforts of ‘understanding the West’ were oriented towards a mere utilitarian inclusion into practical reforms, and thus remained on a conceptual level of reform sketchy and scattered at best. Scholars have argued that there was no need to adopt Western concepts while the Confucian order was still working. The limits and problems of the Manchu dynasty in exercising authority over a disintegrating Empire shows that this was wishful thinking in 1890, as much as it is in current scholarship with a legitimising mission towards the BRI. However, the bigger obstacle towards radically adopting Western concepts and superseding older structures of the Empire and the society and of legitimacy and allegiance was the apparent lack, among both the court and other officials and intellectuals, of an overarching vision for a future order of the Empire that would integrate transformed elements of the ‘West’.

The absence of an alternative concept of political order to transform the late Qing China contributed to its rapid demise after 1900. The patchwork of discourses on ‘adopting the West’ (whether in useful forms, technologies, or in content and essence) needed a vision that presented a compromise between the Imperial Court, administration, and intellectuals. Instead, the discourse on reform in the late Qing China was dominated both by the absence of the ‘West’ and by its wilful misunderstanding when the ‘West’ and ‘Civilisation’ are placed among the common enemies of people and monarchy to secure the fragile status quo of the Manchu legitimacy that faded in 1911. The rise of the discourse of Chinese exceptionalism, by framing modernisation in terms of successful anti-imperial resistance against the European powers and as defence of Chinese essence against Western forms, has its roots in the discourse on the purpose of adopting the ‘West’ in the late Qing China.

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