The Final Splendour of an Aged Empire: Chinese Thought on International Law in the early Twentieth Century

Ping Yi*

Until the late nineteenth century, the history of international law was remarkably Eurocentric. In the early twentieth century, however, a number of Chinese intellectuals examined and demonstrated existence of international law through the Spring and Autumn and Warring States Period in China. They used international law as a symbol of civilisation to express a gesture of resistance toward the Western imperial oppression and cultural invasion. In this way, Chinese intellectuals hoped to maintain, publicise, or even resurrect China’s rich cultural tradition in a global order governed by the West. Their endeavour represented an important variable in the European imperialist expansion process and constituted political interaction with western ideas to create a truly universal discourse. Unfortunately, most of their efforts have almost been forgotten. What the readers could perceive from these faded writings are not only academic assertions, but also the final splendour of an aged empire.

Keywords
Ancient Chinese international law, Civilisation, Chinese intellectuals, Spring and Autumn and Warring States Period, Wanguo Gongfa

* Associate Professor of International Law at Peking University (PKU), China. LL.B./LL.M.(PKU), LL.M. & Ph.D.(U. Tokyo). ORCID: http://orcid.org/0000-0001-5534-962X. The author may be contacted at: yiping@pku.edu.cn / Address: Room 203, Law School Building, Peking University, 5 Yiheyuan Road, Haidian District, Beijing, China 100871. DOI: http://dx.doi.org/10.14330/jeail.2016.9.1.02
I. Introduction

Basic ideas and principles of modern international law originated in Europe. This European international law was introduced widely through colonial expansion under imperialism to Asia, Africa and Latin America.¹ With their eventual ‘acceptance,’² European international law finally became a universally applicable global norm.³ Nineteenth century was indeed the time of “a widening of European international law.”⁴

In China, however, this process of ‘widening’ was faced with serious obstacles due to her long history and cultural traditions. Deep roots in the “Hua-Yi 華夷(Sino-centrism) distinction” established complex attitudes toward the alien (Western) world order. In the beginning, Chinese intellectuals tried to understand this unfamiliar European idea in the traditional sense including the Confucian conceptual framework. They tried to connect Chinese traditions to Western theories. In the end, however, European international law failed to supplant conventional Chinese legal culture. Instead, the Chinese spirit was embedded in the understanding of European international law; this combination allowed for the dissemination of international law in China.⁵

In the early twentieth century, ideological and cultural collision between (East) Asia and the West were fast escalating to a peak. Many intellectuals at the time

---

¹ The “non-European regions” refer to countries and regions other than those in Europe and the US before the twentieth century. In 1836, the American international law scholar Henry Wheaton, for the first time, included the United States and European countries in the “civilized and Christian” world of international law. See H. Wheaton, ELEMENTS OF INTERNATIONAL: WITH A SKETCH OF THE HISTORY OF THE SCIENCE, vol. I, 11 (London: b. Fellowes, 1836). The notion of ‘the West,’ as appears below, also mainly refers to Europe and the United States at that time, including the origins of Western states - Ancient Greece and Rome.

² As stated hereinafter, the ‘acceptance’ of European international law by non-European countries did not amount to blind imitation.

³ Until the middle of the nineteenth century, many international law textbooks with widespread impact were still titled “European international law.” See, e.g., G. F. von Martens, EINLEITUNG IN DAS POSITIVE EUROPÄISCHE VÖLKERRECHT AUF VERTRÄGE UND HERKOMMEN GEGÜNDET (Göttingen: Den Johann Christian Dieterich, 1796); A. W. Heffter, DAS EUROPÄISCHE VÖLKERRECHT DER GEGENWART (Berlin: E.H. Schroeder, 1844); J. L. Kleeber, DROIT DES GENS MODERNE DE L’EUROPE, (Paris: Guillaumin, 1861: Nouv. éd., rev.).


⁵ Many scholars in the last few decades pointed out this from different perspectives. See P. A. Cohen, DISCOVERING HISTORY IN CHINA: AMERICAN HISTORICAL WRITING ON THE RECENT CHINESE PAST (1984); SATO SHINICHI, MODERN CHINA’S INTELLECTUALS AND CIVILISATION (Tokyo: University of Tokyo Press, 1996); RUNE SYVARERUD, INTERNATIONAL LAW AS WORLD ORDER IN LATE IMPERIAL CHINA: TRANSLATION, RECEPTION AND DISCOURSE, 1847-911 (2007); XUE ZHONG LING, FROM LAW OF NATIONS TO DIPLOMACY THROUGH INTERNATIONAL LAW (Shanghai: Shanghai Classics Press, 2009); JUNNAN LAI, INTERNATIONAL LAW AND THE LATE QING DYNASTY (Shanghai: Shanghai People Press, 2015), etc.