



Historiographies of International Law from a Chinese Perspective

Résumé : Un objectif de l'histoire mondiale émergente du droit international est d'élargir son champ d'application pour tenter de surmonter l'eurocentrisme. Dans ce contexte, la Chine, non seulement en tant que puissance mondiale émergente qui peut influencer la création des principes normatifs fondant le futur ordre mondial, mais aussi en raison de son histoire du droit international, offre une contre-téléologie au récit classique du progrès du droit international, compris comme une science. Cet article présente un résumé critique et une analyse des approches d'une sélection de chercheurs chinois à l'histoire du droit international. Les débats actuels semblent être étroitement liés à une nouvelle conception de la modernité qui ne correspond pas à la conception occidentale. La perspective chinoise, en ce sens, peut aider à élargir l'histoire du droit international, en particulier lorsque cette histoire prétend être mondiale.

Abstract : One objective of the emerging global history of international law is to broaden its scope in an attempt to overcome Eurocentrism. In this context, China, not only as an emerging global power that can influence the creation of the normative principles grounding the future world order, but also with its history of international law, offers a counter-teleology to the classic progress narrative of international law understood as a science. This article presents a critical summary and analysis of the approaches of a selection of Chinese scholars to the history of international law. The current debates seem to be closely linked to a new conception of modernity that does not correspond with the Western conception. The Chinese perspective, in this sense, can help broaden the history of international law, especially when that history claims to be global.

I. China within the 'historiographical,' 'postcolonial,' and 'global' turns in the history of international law

1. In recent decades, the history of international law has attracted the attention of a growing number of academics and lawyers. Its shortcomings, reported by the jurist Lassa Oppenheim at the beginning of the twentieth century but then ignored by several generations of functionalists, seem to have at last been eliminated by the so-called historiographical turn¹. The new interest in international legal history is related to the current time of crisis, the sense of uncertainty generated by the collapse of the Cold War order, and the recent establishment of the 'war on terror' doctrine dictated by US hegemony. For many jurists, if developments in international law over the last three decades—particularly after the September 11, 2001 attacks on the US—did not necessarily put an end to the cosmopolitan project that so far characterized the modern history of international law, they certainly indicated an important turning point. Historians and jurists have therefore started to look at the history of international law to find causes and possible responses to current issues, or to read events in continuity with a new liberal teleology aimed at

¹ M. Craven, « Introduction : International Law and its Histories », *Developments in International Law, Volume 58 : Time, History and International Law*, ed. M. Craven and M. Fitzmaurice, Leiden, Brill, 2006 ; G. R. Bandiera Galindo, « Martti Koskenniemi and the Historiographical Turn in International Law », *The European Journal of International Law*, 16, 3, 2005.

transforming the international legal and political order into a global order, where the classic sovereignty paradigm is outclassed by humanitarian progressivism².

2. Despite its millennial civilization and its global rise, China and the histories of international law produced by Chinese jurists and historians seem marginal within this historiographical turn and within Western academic circles specifically. On the one hand this is not surprising: as yet, in China there are no real schools or consolidated currents of thought that deal with international legal history³. On the other hand such a lack of reference to China is unjustified, given the presence of a 'Chinese' perspective on international law, and the role Chinese jurists have played in the development and universalization of international law, especially since the beginning of the twentieth century⁴.

3. The precise objective of this article is to give a first and general response to these historiographical shortcomings. By presenting a critical summary and analysis of a selection of Chinese scholars and their approaches to the history of international law, it aims not only to provide readers with a general sense of some of the current Chinese debates on the subject, but also hopes to offer new insights for reflection in light of two other turns within the field in recent decades: the postcolonial turn and the global turn. Authors adopting a postcolonial perspective tend to challenge traditional scholarship that sees international law as a progressive science and an intrinsically European project. Taking into account colonial and imperial legacies, these writers have rethought the history of international law as something more fragmented and less scientific, pointing out the relationship between what is considered a science and the ideological apparatus underpinning it. The Third World Approaches to International Law (TWAIL) movement is an important example of this postcolonial turn⁵. TWAIL critiques neoliberal international law and its homologous progress narrative, aiming to expose what lies beyond the rhetoric of humanitarian cosmopolitanism while legitimizing alternative approaches and histories of international law, namely those of Third World countries. In particular, it emphasizes the experiences and the histories of colonized peoples, and the way in which Western countries used international law as an instrument of power and subjugation⁶. Antony Anghie, professor of law at the University of Utah and a key TWAIL representative, looks at international law's relationship to imperialism from a historical perspective in his

2 M. Koskeniemi, « The History of International Law Today », *Rechtsgeschichte* (2004). Today in particular the major proponents of the humanitarian progressivism in the field of international law are David Held and Richard Falk, who promote a global democratic constitutionalism. D. Held and A. McGrew (eds), *The Global Transformations Reader: An Introduction to the Globalization Debate*, Cambridge, Polity Press, 2003; R. A. Falk, *The New States and International Legal Order, Recueil des Cours, Volume II*, Leiden: A. W. Sijthoff, 1966.

3 Kang Dan has recently criticized the fact that China is not properly discussed in the histories of international law. Kang Dan 康丹, « Guojifa de lishi jieshi, ping "guojifa shi lun" 国际法的历史解释, 评“国际法史论” », *Jinan xuebao zhixue shehui ban* 暨南学报, 哲学社会科学版, 7, 2012, p. 156–160, p. 160.

4 The Chinese perspective emerges for instance in manuals of international law written by influential Chinese jurists starting from the late Qing Dynasty. In the past five years, apart from two sections dedicated to China in *The Oxford Handbook of the History of International Law*, an article by international law professor Yang Zewei about the integration of Confucianism with international law and a review of one of his books about the history of international law appeared in the *Journal of the History of International Law*. The *European Journal of International Law* also published an article by Chinese scholar Cai Congyang on China's new role as a great power in shaping international law. See S. Kawashima, « China », in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law*, Oxford, Oxford University Press, 2012; C. Tang, « China – Europe », *The Oxford Handbook of the History of International Law*, ed. B. Fassbender and A. Peters, Oxford, Oxford University Press, 2012; Z. Yang, « Western International Law and China's Confucianism in the 19th Century. Collision and Integration », *Journal of the History of International Law / Revue d'histoire du droit international*, 2, 13, 2011, p. 285–306; Guo Ran, « Review Essay, International Law in China, Past and Present: Study on the History of International Law », *Journal of the History of International Law* 14, 2012, p. 147–156; C. Cai, « New Great Powers and International Law in the 21st Century », *European Journal of International Law* 3, 24, 2013.

5 M. Mutua and A. Anghie, « What Is TWAIL? » *Proceedings of the Annual Meeting American Society of International Law*, 94, April 5–8, 2000, p. 31–40.

6 TWAIL emerged originally at Harvard University in the 1990s, and has gradually expanded without however becoming a major trend. Representative scholars include: R.P. Anand, A. Anghie, and B. S. Chimni. See B. S. Chimni, « Third World Approaches to International Law: A Manifesto », *International Community Law Review* 8, 2006, p. 3–27. See also A. Anghie, B. Chimni, K. Mickelson, and O. Okafor (eds.), *The Third World and International Order: Law, Politics and Globalization*, Leiden, Martinus Nijhoff Publishers, 2003; M. Toufayan, E. Tourme-Jouannet, and H. Ruiz Fabri (eds.), *Droit international et nouvelles approches sur le tiers-monde: entre répétition et renouveau*, Paris, Société de législation comparée, 2013.

book *Imperialism, Sovereignty and the Making of International Law* (2004), pointing out its enduring imperial nature⁷. *Gentle Civilizer of Nations* (2000), by Martti Koskenniemi, a leading exponent of critical legal studies, constitutes one of the most influential contributions to the discipline of international legal history. Also espousing the postcolonial turn, the book shows how international law was born out of an impulse to civilize; the reality of colonial and imperial interests betrayed not only nineteenth-century professionals' enthusiasm for cosmopolitanism, but more broadly the liberal project that sought to promote the ideal of international law's primacy over international politics. Along similar lines is *Origini di una Scienza, Diritto internazionale e colonialismo nel XIX secolo* (2012), an important contribution by legal historian Luigi Nuzzo that shows how the relationship between nineteenth-century international law and Western colonialism was articulated through time and space⁸.

4. The 2012 *Oxford Handbook of the History of International Law*, edited by Bardo Fassbender and Anne Peters and destined to have a strong impact on the discipline, reflects this postcolonial sensitivity; one of its preoccupations is overcoming Eurocentrism⁹. The handbook sets out to be an example of how to construct a global legal history by going beyond narratives that conceive of international law as a mere *droit public européen*. The global turn supported by the book is intended as an answer to the denunciations expressed by the postcolonial turn—not only broadening the scale of history by including voices and experiences that are often neglected, but also stressing connections across spaces and how these eventually contributed to international law's development, going beyond traditional container-based paradigms such as that of the nation state¹⁰. Arnulf Becker Lorca's recent work can be read within the same turn; *Mestizo International Law 1842–1933* (2014) aims to be a global intellectual history of international law, showing its hybrid origins and influence by non-Western or semi-peripheral states and lawyers¹¹.

5. Although the *Oxford Handbook of the History of International Law* seeks to expand the history both temporally and spatially by including non-European experiences, narrated in the form of 'encounters,' what the authors look for in non-Western experiences are the categories and dogmas of modern international law as originally born and developed in Europe. This risks maintaining Europe as the main historical subject, as the place where international law originates, while other experiences and histories, such as the Chinese, seem to be simple variations of a European grand narrative. This legitimizes a cognitive horizon that seems to have become universal over the course of the nineteenth century, and that remains deeply influenced by what Lorca defines as 'the center'; this was and continues to be identified with the liberal West and some of its categories, such as today's rule of law, democracy, human rights, and capitalism¹². Thus the history of international law, no matter how global, appears at least in part condemned to take on a Eurocentric perspective, especially if—in a global space and time—the meeting between international law and other realities is taken for granted, as part of an inevitable process of integration of non-Western experiences within the progress of international law¹³.

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

8 L. Nuzzo, *Origini di una Scienza, Diritto internazionale e colonialismo nel XIX secolo*, Frankfurt am Main, Klostermann, 2012.

9 B. Fassbender and A. Peters are respectively professor of international law at the University of St. Gallen, and professor of public international law at the University of Basel and director of Heidelberg's Max Planck Institute for Comparative Public Law and International Law. B. Fassbender and A. Peters, *The Oxford Handbook of the History of International Law*, Oxford, Oxford University Press, 2012. The same global perspective also guides the *Journal of the History of International Law*. E. Tourme-Jouannet and A. Peters, « The Journal of the History of International Law : A Forum for New Research », *Journal of the History of International Law / Revue d'histoire du droit international* 16, 1, 2014, p. 1–8.

10 For global history as a critique to forms of container-based paradigms see S. Conrad, *What is Global History?*, Princeton, Princeton University Press, 2016, p. 4.

11 A. B. Lorca, *Mestizo International Law 1842–1933*, Cambridge, Cambridge University Press, 2014.

12 This is not to condemn the validity of concepts because of their genealogy. Despite their universal acceptance, however, the risk is that they continue to be unilaterally defined.

13 For instance, as observed by Nuzzo, the handbook perpetuates the dogmatic division in 'epochs,' assigning this task to German jurists. L. Nuzzo, « La storia del diritto internazionale e le sfide del presente », *Quaderni fiorentini per la storia del pensiero giuridico moderno*, 42, 2013, p. 682, note 3. See also M. Koskenniemi, « Histories of International Law : Dealing with Eurocentrism », *Rechtsgeschichte*, 19, 2011, p. 152–176, p. 175–176.

6. For these reasons, as part of the endeavor to overcome Eurocentrism but also as an intellectual exercise, it is interesting to look at China. Chinese legal historians' perceptions of international legal history, both in the colonial context to which their country was subjected and in its current re-emergence as a global economic power with a view to the future development of the world order, can potentially act as a counter-teleology of liberal narratives. Chinese jurists and historians do argue about the history of international law in the light of new discourses around modernity and global history. These debates have often been triggered by Chinese authors living and working outside of mainland China but maintaining close ties with it. Accepting the universality of the normative framework provided by international law, they tend to emphasize China's contribution to its development, reflecting the nascent Chinese desire to influence the creation of future global norms. In this sense, such a perspective may favor a more comprehensive reading of the history of international law, especially when that history claims to be global.

II. Chinese perspectives on international legal history : four strategies for provincializing Europe

7. China used to manage its foreign relations through the so-called tribute system¹⁴. Although the analytical framework provided by the tribute system, *chaogong tixi* 朝贡体系, is not fully satisfying in its description of the complex set of rules that regulated relations between the Middle Kingdom and neighboring countries, it is still helpful in highlighting how pre-modern China adopted a different normative system from the West. International law was introduced into China only during the First Opium War (1839–1842), when Lin Zexu (林則徐) (1785–1850), the Guangdong governor appointed by the Qing Government to deal with opium-trade-related controversies with Britain, asked imperial interpreter Yuan Dehui (袁德輝) to translate passages from European lawyer Emer de Vattel's *Le Droit des gens* (1758). The translation, not yet systematic, was included in Wei Yuan's influential *Haiguo Tuzhi* (Atlas and Description of the Countries beyond the Seas) published in 1847¹⁵. It was only after the Second Opium War (1856–1860) that the first systematic translation of international law into Chinese, made by US protestant missionary William Alexander Parsons Martin, was introduced to China; Chinese diplomats started to adopt its conceptual and linguistic framework as a reference.¹⁶ A government body in charge of more 'modern' foreign relations, the Zongli Yamen (总理衙门), was established in Beijing in 1861, complementing the Ministry of Rites (Libu 礼部) and the Lifan Yuan (理藩院), previously the sole

14 Traditionally, an important study of the Chinese tribute system, although very much criticized and in many ways outdated today, is that of historian John K. Fairbank, whose scholarship on Chinese foreign relations and the tribute system have strongly influenced studies of Chinese foreign relations. See J. K. Fairbank and S.Y. Teng, « On the Ch'ing Tributary System », *Harvard Journal of Asiatic Studies* 6, 2, June 1941, p. 135–246; J. K. Fairbank (ed.), *The Chinese World Order, Traditional China's Foreign Relations*. Cambridge MA, Harvard University Press, p. 196. See also M. Rossabi, *China among Equals : The Middle Kingdom and its Neighbors*, Berkeley, University of California Press, 1982; M. Mancall, *China at the Center : 300 years of Foreign Policy*, New York, Free Press, 1984. For more recent and discursive interpretations of the tribute system see : D. C. Kang, *East Asia Before the West : Five Centuries of Trade and Tribute*, New York, Columbia University Press, 2010; D. C. Wright, *From War to Diplomatic Parity in Eleventh-century China : Sung's Foreign Relations with Kitan Liao*, Leiden, Brill, 2005; S. Suzuki, *Civilization and Empire : China and Japan's Encounter with European International Society*, London, New York, Routledge, 2009; T. Hamashita, *China, East Asia and the Global Economy : Regional and Historical Perspectives*, London, Routledge, 2008.

15 F. Masini, « The Formation of Modern Chinese Lexicon and Its Evolution Toward a National Language : The Period from 1840 to 1898 », *Journal of Chinese Linguistic Monograph Series*, 6, 1993, p. 18–20. The *juan* 52 of the 1847 edition of *Haiguo Tuzhi* contains a selection of articles by the barbarians on Chinese affairs (*Hua shi Yi yan lu yao*, 華事夷言錄要), a short essay on trade (*Maoyi tongzhi* 貿易通志), and the translation of few articles from *Les Droit des gens* 各國律例 by Emmerich de Vattel, translated as Hua Daer 滑達爾. In Wei Yuan 魏源, *Haiguo Tuzhi : Shiyi zhi changji yi zhiyi*, 海國圖志 : 師夷之長技以制度 [Atlas and Description of the Countries beyond the Seas], Zhengzhou, Zhong zhou guji chubanshe, 1999, p. 3031–3038.

16 H. Wheaton and W. A. P. Martin, *Wan guo gong fa* 万国公法, Taipei, Zhongguo guo ji fa xue hui, 1998.

body in charge of foreign relations. With the exception of those late-Qing-period literati who, following Martin's suggestions, held that China already had a proto-international law at the end of the Zhou dynasty (475–249 BC), and those who focused on the unequal treaties and other colonial aspects of international legal practice in China, most Chinese scholars and jurists accepted Western accounts of the history of international law. This assumed the classical periodization that saw, for example, the 1648 Peace of Westphalia as the starting point of modern international law, and an overarching teleological narrative based on the notion of national sovereignty¹⁷.

8. Today an increasing number of Chinese scholars question the Eurocentrism of these narratives. In current Chinese approaches to the history of international law, it is possible to identify at least four interrelated strategies used to assert Chinese subjectivity, relativizing the universality of an international law understood as a mere *droit public européen*. The first focuses on the hybridization of the meaning of some key concepts of international law once transplanted into China. This strategy opposes those viewing China as a passive object of Western domination ; it emphasizes China's role as an agent influencing and complicating the meaning of transplanted legal concepts. The second strategy provincializes Europe and international legal history, seeing the latter as one possible normative framework that can accommodate a variety of uses. In particular, these authors show that international law was used by a particular group, the Western powers, to legitimize their colonial rule. If the precedence of European history is recognized, in the sense that modern international law first emerged in Europe, the Western account is not necessarily the most realistic or objective, as it reflects only one possible use and interpretation of international law¹⁸. A third strategy, linked to the second, reduces international law to a label used to describe the principles and laws that have governed the relations between states, regardless of the historical and geographical context in which they were used. These authors discuss the presence of an international law, *guojifa* 国际法, in the Warring States and the Spring and Autumn period of the Western Zhou Dynasty (770–256 BC). A fourth strategy, perhaps the most radical, attempts to emancipate China from being used as a source of secondary data to prove or disprove histories that see Western international law as necessary to a universal normative order. These authors focus instead on the normative order that preceded the introduction of international law in China, opposing the view that the Chinese tribute system was the polar opposite of a 'proper' or 'modern' legal and political culture.

9. With regard to the first strategy, several authors look at how Chinese scholars appropriated the language and conceptual framework of international law and at the role played by Chinese lawyers and diplomats in its development from the late nineteenth century. The work of Rune Svarverud and Lydia Liu, for instance, in looking at the language of international law, emphasizes how translation has proven to be a far from neutral process ; it is an active appropriation in which the gradual legitimization of a new word and concept in a given host language takes place in an arena characterized by constant political and ideological struggles between conflicting interests. Thus a translated term acquires a hybrid meaning within the host language, rather than a perfect equivalence¹⁹. Here, Chinese jurists and internationalists, far from being passive recipients of European standards, appear to be active players in the forums in which international law was created, such as at the early Hague Conventions, often providing different understandings of European standards and contributing to a real internationalization and universalization of international law. Here I must mention the historian Tang Qihua, educated in Taiwan and the United Kingdom, and Deng Ye, a researcher at Beijing's prestigious Chinese Academy of Social Sciences. Both have shed new light on the Republican period, which much of the historiography reduces to a chaotic period of division, by focusing on Chinese lawyers' role in the formation of the League of Nations and later of the United Nations²⁰. Tang Qihua and Deng Ye emphasize how Republican-period Chinese jurists gave a different

17 For Chinese Maoist attitudes toward the history of international law see J. Delisle, « China's Approach to International Law : A Historical Perspective », *Proceedings of the Annual Meeting, American Society of International Law*, 94, April 5–8, 2000, p. 267–275, 272 ; P. C. W. Chan, « China's Approaches to International Law since the Opium War », *Leiden Journal of International Law* 27, 04, December 2014, p. 859–892.

18 M. Koskeniemi, *Histories of International Law : Dealing with Eurocentrism*, cit., p. 170–175.

19 L. H. Liu, *Translingual Practice, Literature, National Culture and Translated Modernity : China, 1900–1937*, Stanford, Stanford University Press, 1995, p. 26

20 C. Tang, *China – Europe*, cit.; Tang Qihua 唐启华, *Bei feichu bu pingdeng tiaoyue zhebi de beiyang xiu yue shi* 被'废除不平等条约'遮蔽的北洋修约史 (1912–1928) [The abrogation of unequal treaties : The obscured history of the diplomacy

interpretation of international law, promoting the interests of the nascent Republic of China. Historians Lin Xuechong, a researcher at the City University of Hong Kong, and Tian Tao, professor of Chinese history and culture at Tianjin Normal University, work along similar lines of enquiry. They have published work that deals with the introduction of international law at the end of the Qing Dynasty, highlighting the ways in which Chinese thinkers and reformers hybridized Western concepts. Tian Tao provides a history of key concepts of international law, for instance, noting not only how they deviated from Western formulations, but also how there were variations among Chinese authors.²¹ It is also worth noting those scholars opposed to the legal nihilism resulting from legal orientalism, which denied the existence of Chinese law prior to the transplantation of Western legal institutions. In this sense the ongoing impact of the work produced by Philip Huang, emeritus professor at the University of California, Los Angeles, and the International Society for Chinese Law and History, directed by Chen Li, professor at the University of Toronto, have greatly contributed to the development of Chinese legal history studies.²²

10. Within the second strategy, very much connected to the first, international law is treated as a framework that can be used to support different, if not opposing, claims. One example lies in the unequal treaties of the nineteenth and early-twentieth centuries. On the one hand, the Western powers legitimized those treaties, and the subsequent limitation of China's sovereignty, through an interpretation of international law grounded on the 'standard of civilization'. On the other hand, Chinese jurists simultaneously used international law as a platform to assert China's new international subjectivity, emphasizing the principles of equality and sovereignty. In line with Gerrit Gong's 1984 work *The Standard of Civilization in International Society*, Liu Wenming, professor of Global History at Beijing's Capital Normal University, has criticized how Western powers' projection of the standard of civilization onto international law created a hierarchy that placed European powers in a superior position to justify their imperialistic behavior in China.²³ Similarly, in the recent book *Unequal Treaties and China*, CASS Institute of Modern History president Wang Jianlang emphasizes how Chinese use of international law differed from Western uses, with the unequal treaties affecting its reception in China and thus current Chinese behavior in international society²⁴. Renowned Chinese jurist Wang Tiewa also adopted this

of treaty revision of the Beijing government (1912-1928)], Beijing, Shehui kexue wenya chubanshe, 2010 ; Tang Qihua 唐启华, *Minguo chunian Beijing zhengfu xiuyue waijiao zhi mengya* 民国初年北京政府“修约外交”之萌芽, 1912-1918, [*The origin of the treaty revision diplomacy of the Beijing Government at the beginning of the Republican Period, 1912-1918*] », *Wenshixue bao* 文史学报, 28, June 1998 : 118-143 ; Tang Qihua 唐启华, « Qingmo min chu zhongguo dui haiya baohe hui zhi canyu 清末民初中国对“海牙保和会”之参与 » [Chinese attitudes toward the Hague Conferences in the period between the end of the Qing and the beginning of the Republican Era], *Guoli zhengzhi daxue lixue bao* 国立政治大学历史学报, 23, May 2005, p. 45-90 ; Deng Ye 邓野, « Bali hehui Zhongguo juyue wenti yanjiu 巴黎和会中国拒约问题研究 [An analysis of issue of the Chinese rejection of the treaty at the Paris Conference] », *Zhongguo shehui kexue* 中国社会科学, 2, 1986, 131-146.

- 21 Lam Hok-Chung 林學忠, *Cong wangguo gongfa dao gongfa waijiao* 从万国公法到公法外交 [From the Law of Nations to International Diplomacy], Shanghai, Shanghai Guji Chubanshe, 2009 ; Tian Tao 田涛, *Guo ji fa shu ru yu wan Qing Zhongguo* 国际法输入与晚清中国, Jinan Shi, Jinan chu ban she, 2001. I should also mention the conceptual history of important political and legal terms provided by Jin Guantao : Jin Guantao 金观涛, *Guannianshi yanjiu : Zhongguo xiandai zhongyao zhengzhi shutu de xingcheng*, 观念史研究 : 中国现代重要政治术语的形成 [A research into conceptual history : The formation of important political terms in China], Beijing, Falü Chubanshe, 2010. An interesting work that looks at the linguistic aspects is R. Svarverud, *International Law as World Order in Late Imperial China, Translation, Reception and Discourse*, Leiden, Brill, 2007.
- 22 Chen Li, « Law, Empire, and Historiography of Modern Sino-Western Relations : A Case Study of the Lady Hughes Controversy in 1784 », *Law & History Review*, 27, 1, 2009, p. 1-53 ; Chen Li, « Universalism and Equal Sovereignty as Contested Myths of International Law in the Sino-Western Encounter », *Journal of the History of International Law* 13, 1, 2011, p. 75-116 ; Chen Li, « Legal Specialists and Judicial Administration in Late Imperial China, 1651-1911 », *Late Imperial China*, 33, 1, June 2012, p. 1-54 ; P. Huang, *Code, Custom, and Legal Practice in China : The Qing and the Republic Compared*, Palo Alto, Stanford University Press, 2001 ; P. Huang, *Civil Justice in China : Representation and Practice in the Qing*, Palo Alto, Stanford University Press, 1996.
- 23 Liu Wenming 刘文明, *19 shijimo ouzhou guojifa zhong de "wenming" biao zhun* 19 世纪末欧洲国际法中的“文明”标准 [The Civilization Standard of International Law in 19th Century Europe] », *World History, Shijie lishi* 世界历史, 1, 2014. G. W. Gong, *The Standard of Civilization in International Society*, Oxford, Oxford University Press, 1984.
- 24 Wang Jianlang, *Unequal Treaties and China*, Silkroad Press, 2015. See also Liu Limin 刘利民, *Bu ping deng tiao yue yu Zhongguo jin dai ling shui zhu quan wen ti yan jiu* 不平等条约与中国近代领水主权问题研究, Changsha, Hunan ren min chu ban she, 2010 ; D. Wang, *China's Unequal Treaties : Narrating National History*, New York, Lexington Books, 2008 ; D. Wang, « Redeeming a Century of National Ignominy : Nationalism and Party Rivalry Over the Unequal

strategy in his essays for the *Collected Courses of The Hague Academy of International Law*: he explored China's contributions to the development of international law by looking at Chinese usage, focusing in particular on the five principles of peaceful coexistence, which Wang considers the greatest Chinese contribution to the discipline. Wang is a major point of reference in Chinese legal scholarship, and has strongly influenced important Chinese jurists such as Xue Hanqin and Jia Bingbing²⁵. Professor Li Chen's *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* and Phil C.W. Chan's *China, State Sovereignty and International Legal Order* are two other volumes significant to the second strategy. The authors both look at sovereignty as a tool legitimately interpreted, negotiated, and contested by Chinese diplomats and jurists, and how this type of sovereignty interacted with the international legal order²⁶.

ii. The third strategy, which can be considered an extension of the second, further relativized the meaning of international law by using it as a label to define the principles and laws governing relations between political entities²⁷. The history of international law is detached from the history of Europe, and forced to become universal through projecting categories specific to European history, with some lack of historical accuracy, into different times and spaces. This is how we find international law in Ancient China. The above-mentioned US missionary W.A.P. Martin originally suggested this idea at the end of the Qing period²⁸, but it was also supported by important jurists during the Republican period, such as Zhou Gengsheng and, more recently, Wang Tiewa and Xue Hanqin, in their handbooks of international law²⁹. This can be read as an attempt to validate China's role in the history of a normative order that was foreign to it until quite recently, and that was initially imposed upon it. The cost of this strategy appears to be a wholesale rewriting of history, which ends by perpetuating legal orientalism. It is in fact an act of self-orientalism, in that it attempts to force the complex history of China and its pre-modern normative order into Western categories that are not themselves questioned, but instead validated and assumed to be necessary. Edinburgh University legal historian Stephen Neff, in his *Justice among Nations: A History of International Law* (2014), has embraced this approach. In attempting to write a global history of international law, he ascribes its origins to China's Warring States period: because that was when there was a first systematic writing of international relations, that was when international law first appeared as an intellectual discipline. If China contributed this almost mythical origin of international law, then the rest of the history, at least until recently, has been driven by European powers³⁰. Yet Neff, like other scholars who try in good faith to include the Chinese past within the history of international law, fall into the trap of forcing categories that are not, per se, necessarily universal into other histories. This is like trying to find the origins of the tribute system as an intellectual discipline in Europe.

Treaties, 1928-1947 », *Twentieth-Century China*, 30, 2, 2004, p. 72-100.

25 Wang Tiewa, « International Law in China: historical and contemporary perspectives », *Recueil des cours*, 2, 1990, 195-370; Wang Tiewa, « Zhongguo yu guojifa-lishi yu dangdai 中国与国际法—历史与当代 [China and international law: past and present] », *Zhongguo guoji baokan* 中国国际法报刊, 70, 1991.

26 P. C. W. Chan, *China, State Sovereignty and International Legal Order*, Leiden, Brill Nijhoff, 2014.

27 See for example Hong Junpei 洪鈞培, *Chun qiu guo ji gong fa* 春秋國際公法, Shanghai, Zhonghua shu ju, 1939; Sun Yurong 孙玉荣, *Gu dai Zhongguo guo ji fa yan jiu* 古代中国国际法研究, Beijing Shi, Zhongguo zheng fa da xue chu ban she, 1999; Huai Xiaofeng and Sun Yurong 懷效鋒, 孫玉, *Gu dai Zhongguo guo ji fa shi liao* 古代中國國際法史料, Beijing, Zhongguo zheng fa da xue chu ban she, 2000; Xu Chuanbao 徐傳寶, *Xian Qin guo ji fa zhi yi ji* 先秦國際法之遺跡, Shanghai, Xu Chuanbao, 1931; Yi Ping 易平, « The View of Early 20th Century Chinese Intellectuals on Ancient China's International Law », *Peking University Law Journal*, 2, 2, 2014; Yi Ping 易平, 被遗忘的话语——20 世纪初期中国学者严重的中国古代国际法 », *中国国际法年刊*, 2014.

28 W. A. P. Martin, « Traces of International Law in Ancient China, » *Chinese Recorder and Missionary Journal*, 13-14, 2012.

29 Wang Tiewa 王铁崖, *Guojifa* 国际法 [International Law], Beijing, Falü Chubanshe, 1995; Wang Tiewa, « International law in China: historical and contemporary perspectives », *Recueil des cours*, 2, 1990, p. 195-370; Wang Tiewa, « Zhongguo yu guojifa-lishi yu dangdai 中国与国际法—历史与当代 [China and international law: past and present] », *Zhongguo guoji baokan* 中国国际法报刊, 70, 1991; Xue Hanqin, « Chinese contemporary perspectives on international law: history, culture and international law », *Recueil des cours / Académie de droit international*, 355, 2011, p. 41-234; Zhou Gengsheng 周更生, *Guo ji fa* 国际法 [International Law], Beijing, Shangwu yinshuguan, 1976; Zhou Gengsheng 周更生, *Guojifa dagang* 国际法大纲 [A manual of international law], Shanghai, Shangwu yinshuguan faxing, 1929.

30 S. Neff, *Justice Among Nations: A History of International Law*, Cambridge MA, Harvard University Press, 2014, p. 21.

12. The fourth strategy gives credit to the Chinese normative system as it existed before the introduction of international law, showing that China, within the order of the *tianxia* and the tribute system, was not peripheral or semi-peripheral. Rather, it was the rest of the world that was peripheral to China. This strategy partly breaks away from the view that even the most critical analysis of modern international law from a global historical perspective cannot escape (parochial) European categories. It is the strategy advanced by scholars, such as international relations scholar Zhao Tingyang, who are recovering the *tianxia* system. Huadong Normal University professor and Shanghai-based intellectual and historian of modern China Xu Jilin, and Beijing Tsinghua University law professor Xu Zhangrun are also crucial here. By focusing on the nation and adding *guojia* 国家 or *jiaguo* 家国 to the term *tianxia* 天下, their work attempts to mitigate the imperial potential contained within Zhao's project. In a lecture given in Shanghai in January 2013, Xu Jilin argued that the new rise of Chinese civilization might be the most important event in twenty-first-century world history. The biggest issue for him is whether China is ready to take up such a responsibility, especially as he feels that so far it has risen economically but not as a civilization. For him, China's path is open to various possibilities, one being to follow the new Tatungism, *xintianxia zhuyi* 新天下主义, coordinating the universalism of modern civilization with the particularity of Chinese culture³¹. Xu has also discussed the double roots of modern China: on the one hand the idea of the nation state, *guojia*, on the other the universalist idea of *tianxia*, China as a world civilization, in which different ethnicities and religions are unified under one sovereign rule. For Xu, these double trajectories, dictated by national aspirations and by the universalistic tendency promoted by the *tianxia*, are necessarily intertwined, and their combination is likely to determine China's future identity in what he defines as *guojiatianxia* 国家天下³². Xu Zhangrun has proposed the ancient idea and rhetorical argument of *jiaguotianxia* 家国天下 as an alternative to the latent imperialism contained in the new doctrines of Tatungism. He describes *jiaguotianxia* as a structure of civilization that works through the gradually enlarging encirclement of the most basic and fundamental social structure, the *jia*, family, with the *guo*, nation, and then with the *tianxia*, world. This structure provides a way to organize public space from the individual to the world, without falling into imperial structures³³.

13. In more practical terms, Chinese international jurists have attempted to recover the normative value of the *tianxia* worldview and the tribute system before the introduction of international law. This is the case, for instance, for Jia Bingbing, Tsinghua international law professor, and Gao Zhiguo, senior researcher and executive director of the China Institute of Marine Affairs; in order to support China's historical sovereign right in the South and East China Seas, they point to the value of its ancient relationship with neighboring countries pre-1935 and Chinese 'sovereign' activities in those waters. Such rights are grounded in the belief that the history of the tributary relationship between China and the tributary states is a valuable source of normativity, functionally equal to that established through international law³⁴.

III. In search of a modern identity: China back at the center of historical narratives

³¹ See lecture given in Shanghai on January 30, 2013 by Xu Jilin (许纪霖), « Xin tianxia xhuyi – shijie lishi de zhongguo shike 新天下主义——世界历史中的中国时刻 [New Tatungism–The China era in world history] », available at <http://www.chinalecture.com/lecture/play9786.html>.

³² Xu Jilin (许纪霖), « Guojia renting yu jia guo tianxia 国家认同与家国天下 [National identity and National Tianxia] », *Huadong shifan daxue xuebao zhe sheban* 华东师范大学学报哲社版, 4, 2014.

³³ Xu Zhangrun (许章润), « Lun 'jiaguo tianxia' – duiyu yi weida gudian hanyu xiuci yili neihan de wenhua zhengzhi xue chanfa, 论“家国天下”——对于这一伟大古典汉语修辞义理内涵的文化政治学阐发 [On the 'jiaguotianxia' – An explanation of the cultural and political elements of the connotation of this great classical Chinese rhetorical principles] », *Xueshu yuekan* 学术月刊, October 2015.

³⁴ Zhiguo Gao and J. Bingbing, « The Nine-Dash Line in The South China Sea: History, Status, and Implications », *The American Journal of International Law*, 107, 2013, p. 98.

14. The histories of international law written by Chinese authors go hand in hand with a substantial reinterpretation of modernity and its classical categories, and indeed would not have been possible outside of it. Recent debates in China on the history of international law and global history reflect a sense of crisis that, like in the West, is tied to the end of the Cold War and to the collapse of its world order. The fall of the Soviet Union created an ideological vacuum in China, which prompted many Chinese scholars to question the ideology that has legitimized the autocracy of the Chinese Communist Party since the foundation of the People's Republic of China (PRC) in 1949. In the last three decades, the Party has also had to manage a country that has become a world economic power. Globalization and partial liberalization of the economy, begun by Deng Xiaoping in the late 1970s, have engendered an unprecedented material growth that has transformed China into a major power.

15. Since the Opium Wars (1839–1842, 1856–1860), which marked China's entrance into the European family of nations and the beginning of its modern history, Chinese intellectuals have often found a way to articulate a modern Chinese identity outside of China's borders, first in Western models and then in Soviet ideology. In Chinese histories written in the twentieth century, modernity often seems to start with the Western Enlightenment. Chinese authors idealize this period as the golden age of world civilization. China's enlightenment is seen as beginning only after the turning point of the nationalist, anti-traditionalist May Fourth Movement of 1919, which allowed China to move away from its traditional culture and become a modern sovereign nation³⁵. Or, for those embracing Soviet ideology, a new model for modernization was found in the Soviet Union. Unsurprisingly, the first histories of international law in China were diplomatic histories of Europe, such as *The Franco-Prussian War* and *A Concise History of France* by late-Qing philosopher Wang Tao (王韜, 1828–1897)³⁶. Unlike most Western historiography, in which the non-Western world often plays a marginal role, in China modern history has been given a narrative that places great emphasis on other regions of the world and their achievements in the modernization process, deemed a model for China itself.³⁷ Today, whether their answer to crisis is a return to imperial internationalism, Third World approaches, or Asian-centric studies, Chinese historians and intellectuals are rediscovering their own tradition, questioning the relationship between the sense of Chineseness and modernity³⁸. International law has often been perceived in China as a Western product. Apart from during the first decades of the PRC—when, in the name of proletarian internationalism, it was dismissed as a bourgeois—international law has been often tied to an imposed non-autochthonous modernity³⁹. In order to give a Chinese perspective to the history of international law, it is first necessary to question the category of modernity, so as to create narratives in which modernization does not only correspond to Westernization, but in which Chinese history may deviate from Western expectations and where international law's development can be open to different interpretations and histories.

16. Over the past two decades, tied in part to China's growing global influence, a shift can be seen in the historical approach of many Chinese scholars⁴⁰. Applause for the West as a global model has declined, while the Western Enlightenment has been historicized and Western values relativized, no longer conceived as universal or as the ultimate goal of an inevitable modernization process.⁴¹ Debates on China's

35 See for example J. R. Levinson, *Confucian China and its Modern Fate: A Trilogy*, Berkeley, University of California Press, 1968; E. S. K. Fung, *The Intellectual Foundations of Chinese Modernity, Cultural and Political Thought in the Republican Era*, Cambridge, Cambridge University Press, 2016.

36 Wang Tao 王韜, *Pu Fa Zhan jiyao* 普法战纪辑要: 四卷 [The Franco-Prussian War], Guanzhou:, Guanzhou chubanshe, 2008.

37 D. Sachsenmaier, *Global Perspectives on Global History, Theories and Approaches in a Connected World*, Cambridge, Cambridge University Press, 2011, p. 183.

38 See for instance Zhang Xudong 张旭东, « Quanjihua shidai de zhongguo wenhua fansi: women zenyang zuo zhongguoren? 全球化时代的中国文化反思: 我们现在怎样做中国人? », *Zhonghua dushu bao* 中华读书报 7, 17, 2002.

39 H. E. Wushang 何戊双 and M. A. Qun 马骏, « Pipan Chen Tiqiang zai guojifa fangmian de fandong guandian 批判陈体强在国际法方面的反动观点 [A Criticism of the Reactionary Viewpoint of Ch'en T'i-Ch'iang on the Science of International Law], *Zhengfa Yanjiu*, 6, 35, 1957.

40 D. Sachsenmaier, *Global Perspectives on Global History*, cit., p. 198.

41 Xu Jilin describes this phenomenon as the development of historicism starting in the 1990s. Xu Jilin, « Pushi wenming, haishi zhongguo jiazhi? Jin shi nian zhongguo de lishi zhuyi sichao 普世文明, 还是中国价值? 近十年中国的历史主

future and its influence on a new world order have been accompanied by the rediscovery of Chinese tradition, as the ‘national studies fever’ (*guoxuere* 国学热) of the 1990s proves. These studies, focused on national culture and tradition, were driven by questions such as what it means to be Chinese today and how to connect the past with the path to future development. The secular trend that led Chinese scholars to look at non-native models has been challenged by the increasingly widespread idea that multiple modernities exist, and should all be included in a new global history⁴². If twentieth-century Chinese versions of global history were grounded in Eurocentric assumptions about modernity’s epicenter and saw China as a stagnant civilization, today many Chinese historians do not accept the view that Europe created modernity and global history. This process has gone hand in hand with the emergence of historicism, especially in circles of the New Left. Historicism, according to which there is no rational essence that can be made universal but only particular histories read through the lens of nation states, does indeed support the way in which Chinese ‘values,’ ‘ways,’ and ‘characteristics’ are being affirmed today⁴³.

17. It follows that modernity—at the normative level too—is increasingly no longer understood as Westernization. Europe is no longer the only creator of international law, and modernity has been de-Europeanized. Accordingly, international law and its history should be able to include the Chinese experience and perspective.⁴⁴ As mentioned above, some Chinese legal historians have argued that since the late Qing period China has contributed to the development of the history of international law, revealing its colonial side either by hybridizing the meaning of key concepts of international law and contributing to its development during the First and Second World Wars, or by using the framework provided by international law for different purposes, as in the case of the unequal treaties. As modernization becomes a global phenomenon separated from Western models, international law is placed in a global history that does not lead necessarily to a Westernization of values, but rather to a reality made up of multiple modernities and, as such, open to a plurality of values.⁴⁵ For this reason, some Chinese authors consider legitimate what is seen to be a Chinese ‘deviation’ from human rights, the rule of law, liberal models of development, and a certain vision of sovereignty. In fact, this new vision of multiple modernities aspires precisely to avoid China being seen as an exception or deviation from a unitary teleology. These authors regard its history and normative development as ‘normal’ in a multipolar world within which different civilizations coexist harmoniously.⁴⁶

18. Looking at current debates on history, modernity, and the future development of international law, the following sections present some of the responses from key Chinese scholars to the sense of crisis caused by globalization and China’s rise. The first narrative of international law, which receives the most support from political elites, focuses on the category of national sovereignty. This is the case for historian Yang Zewei and his state-centric metanarrative of international legal history. A second response, which seeks to go beyond the Westphalian order, envisages a return to the pre-modern Chinese legal order. Philosopher and political scientist Zhao Tingyang, for example, rediscovers the Chinese tradition and proposes some of its conceptual elements as a new contribution to the global normative order. A final response reads the history of China, and indirectly also that of international law, by transcending the dichotomies of state versus empire and of treaties versus tribute system or *tianxia*. As we will see, New Left historian Wang Hui

义思潮, *Kaifang shidai* 开放时代, 5, 2010, p. 66–82.

42 D. Sachsenmaier, *Global Perspectives on Global History*, cit., p. 204. Taiwan-based historian Sun Ge, like Wang Hui, provincializes the West and its modernity. Sun Ge 孫歌, *Zhuti lunshu de kongjian: Yazhou lunshu zhi liang nan* 主体论述的空间: 亚洲论述之两难, Nanchang, Jiangxi jiaoyu chubanshe, 2002. For this approach to international law see Xue Hanqin, « Meaningful Dialogue Through a Common Discourse: Law and Values in a Multi-polar World », *Asian Journal of International Law* 1, 2011, p. 13–19.

43 Xu Jilin, « Pushi wenming, haishi zhongguo jiazhi ? », cit.

44 See also Wang Zonglai and Hu Bin, « China’s Reform and Opening-up and International Law », *Chinese Journal of International Law*, 9, 2010, p. 193–203. These scholars, in line with legal historians, looked to the period after the economic opening of China in 1978, and at how China has used and developed international law in various areas.

45 D. Sachsenmaier, *Global Perspectives on Global History*, cit., p. 204, 228.

46 Yang Zewei 杨泽伟, *Zhuquan lun: Guojifa shang xhuan wenji ji qi fazhan queshi yanjiu* 主权论: 国际法上主权问题及其发展趋势研究 [On sovereignty: a research on the issue of sovereignty in international law and its developments], Beijing, Beijing daxue Chubanshe, 2006, p. 218–219.

offers an interesting perspective in this regard, although it currently remains rather marginal in Chinese debate.

IV. Yang Zewei and a sovereign-centered metanarrative

19. Many Chinese accounts of the history of international law, but also global history, remain strongly state-centric. For example, Professor Yu Pei, former director of the CASS Institute for Global History, deals with global history by defending state-centric narrations instead of focusing on connectedness between nations, and the same is true in the recent campaign of the National Commission for Education, where it was declared that history should serve the nation.⁴⁷ Important Chinese professors of international law such as Wang Tiewa, Xue Hanqin, and Jia Bingbing are attached to a national or patriotic perspective⁴⁸. For these authors, the history of international law in China is linked to its becoming a sovereign state, capable of fully asserting its new international subjectivity and abolishing unequal treaties. In this great narrative, China, from being the victim, is a shaper of international law; from being an outsider in the family of nations and colonized by others, it becomes a full subject not only contributing to the creation of international law, but also safeguarding the supreme value of sovereignty, one of the five principles of peaceful coexistence that officially govern its foreign relations⁴⁹. One reason justifying this state-centric historiography is the rejection of what many Chinese authors consider a new Western imperialism, which, in promoting global individual rights in the name of a common humanity, often manipulates international law and its history in its own favor.

20. In Chinese scholarship, a recent contribution to the history of international law comes from Yang Zewei, professor of international law at the University of Wuhan, namely in his *A Macro-history of International Law* (2001) and *A Study on the History of International Law* (2011)⁵⁰. Contrary to postmodernist trends, Yang, in continuity with Marxist historiography, seeks a metanarrative that puts international law's development alongside the evolution of international society, and supports a progressive history of international law by dividing it into four periods: the origins, which run from ancient times to the Peace of Westphalia; the modern period, which begins with the Peace of Westphalia and ends in 1914; the late modern era from 1914 to 1945; and the contemporary period, from 1945 to today. To these periods he adds a separate time and space of international law, finding elements of it in ancient Chinese history. Accordingly, after the Warring States Period, characterized by the presence of sovereign states and international law, China started to decline under dynastic imperial rule, until its resurgence as a sovereign nation in the nineteenth century, thanks to a sort of re-appropriation of modern international law. As already discussed, this reading of history does present a series of problems, imposing categories foreign to Chinese tradition.

21. Yang's history tries to be universal and global, ultimately promoting a vision of a multipolar world in which China will play a leading role. These efforts do not seem to be purely historical, since his stated aim

47 D. Sachsenmaier, *Global Perspectives on Global History*, cit., p. 218–219. See also Cai Tuo, ed., *Chinese Perspectives on Globalization and Autonomy*, Leiden, Brill, 2012, chap. 9, 10.

48 See also Wang Tiewa, *International Law in China*, cit.; Wang Tiewa, *Zhongguo yu guojifa-lishi yu dangdai*, cit.; Xue Hanqin, *Chinese Contemporary Perspectives on International Law*, cit.; Jia Bingbing, « A Synthesis of the Notion of Sovereignty and the Ideal of the Rule of Law: Reflections on the Contemporary Chinese Approach to International Law », *German Yearbook of International Law*, 53, 2010, p. 11–61. In this regard see also A. Carlson, « On being a sovereign during a time of increased interdependence », *Handbook of China's Foreign Relations*, ed. S. Breslin, London, Routledge, 2010. Also T. G. Moore, discussing globalization in China, has observed how despite the fact that China is increasingly an active actor of international society, the primacy of the sovereign state is still dominant. T. G. Moore, « China and Globalization », *East Asia and Globalization*, ed. S. S. Kim, Oxford, Rowman and Littlefield, 2000, p. 113.

49 For Wang Tiewa, and for later Chinese international jurists, the five principles of peaceful coexistence were a major Chinese contribution to the development of international law. Wang Tiewa, *International Law in China*, op. cit., p. 263–287.

50 Yang Zewei 杨泽伟, *Hongguan guojifa shi* 宏观国际法史 [A Macro-history of International Law], Wuhan, Wu han da xue chu ban she, 2001.

is to shed light on the trajectory of the future in order to influence it. While the neoliberal trend considers state sovereignty outdated, Chinese authors' histories of international law tend to reaffirm it.⁵¹ It is thus not surprising that Yang dedicated an entire book to the principle⁵². By using the classic categories of the traditional historiography of international law⁵³, he promotes a sovereign-centered teleology that opposes those who see the state as an impediment to the development of the market and those who consider Chinese bureaucracy and obsession with sovereignty as obstacles to moral and humanitarian progress⁵⁴. The history narrated by Yang remains anchored to the Peace of Westphalia, as the beginning of modern international society and international law.

V. A utopian Sinocentric metanarrative : the return to the empire and the ideal of *tianxia*

22. China's identity crisis over the past two decades has led many Chinese authors to rethink and rediscover their own cultural traditions, which remain marked by the Cultural Revolution and Maoism. Faced with China's rapid material growth, many thinkers have begun to talk about a 'Chinese time' *zhongguo shike* 中国时刻, or 'the rise of China,' *zhongguo de xingqi* 中国的兴起, identifying its starting point in the year 2008. From this date, China's economic growth should be paired with its increased global, political, and normative influence. Although not the most popular approach, but of great interest for potential developments in Chinese foreign policy and attitudes toward international law, is the rediscovery of the idea of *tianxia*⁵⁵. The system of *tianxia*—which literally means 'all under heaven' and metaphorically indicates the world at large—is a worldview that supported China's centrality in the universe and that determined its foreign relations in the Imperial era, starting with the Zhou dynasty. *Tianxia* defined imperial sovereignty on the grounds of a cosmology of correspondences between the earthly and heavenly orders. The Chinese emperor, or Son of Heaven (*Tianzi* 天子), thanks to the mandate of heaven (*tianming* 天命), was the emperor not only of China but of the whole world, because he was able to restore the natural order of things. His centrality also determined the complex tribute system of rituals that regulated the relations of China, center of the world and top of the hierarchy, with surrounding countries, which, considered peripheral and less civilized, had to pay regular tributes as a form of recognition of the universal imperium of the Chinese emperor⁵⁶.

51 In the West, at least two aims motivated a renewed interest in the history of international law : resurrecting the cosmopolitan project by correcting the mistakes of the past, and breaking with the past to form an international law that places more emphasis on individuals, the universal affirmation of human rights, and liberal reforms by removing barriers imposed by the traditional Westphalian sovereignty. M. Koskenniemi, *The History of International Law Today*, cit., p. 5.

52 Yang Zewei 杨泽伟, *Zhuquan lun - guojifa shang de zhuquan wenti ji qi fazhan qushi yanjiu* 主权论—国际法上的主权问题及其发展趋势研究, Beijing, Beijing Daxue chuban she, 2006.

53 See D. Armitage, « The International Turn in Intellectual History », *Rethinking Modern European Intellectual History*, ed. D. M. McMahon and S. Moyn, New York, Oxford University Press, 2014, p. 232-252 ; T. Duve, « European Legal History—Global Perspectives », Working paper for the Colloquium « European Normativity – Global Perspectives » (Max Planck Institute, September 2-4, 2013), *Max Planck Institute for European History Research Paper Series*, 2013-06.

54 See for instance Yang Zewei, « Western International Law and Chinese Confucianism in the 19th century. Collision and Integration », *Journal of the History of International Law*, 13, 2011, p. 285-306.

55 A. Carlson, « Moving Beyond Sovereignty ? A brief consideration of recent changes in China's approach to international order and the emergence of the *tianxia* concept », *Journal of Contemporary China*, 1, 2011 ; J. T. Dreyer, « The 'Tianxia Trope': will China change the international system ? », *Journal of Contemporary China*, 2015 ; Zhang Feng, « Rethinking the Tribute System : Broadening the conceptual horizon of Historical East Asian Politics », *Chinese Journal of International Politics* 2, 4, 2009.

56 J. K. Fairbank, *The Chinese World Order : Traditional China's Foreign Relations*, Cambridge MA, Harvard University Press, 1968 ; J. L. Hevia, *English Lessons : The Pedagogy of Imperialism in Nineteenth-century China*, Durham, Duke University Press, 2003.

23. In the rediscovery of *tianxia*, of particular interest is the abovementioned philosopher Zhao Tingyang, a researcher at the CASS. His 2005 work *The System of Tianxia* has played a substantial role in disseminating and popularizing the idea of *tianxia* as a Chinese contribution to a new world order.⁵⁷ Zhao uses this traditional notion to promote a new way of thinking about the world and global problems. His political theory departs from the limited Westphalian approach in that its starting point is no longer the sovereign state but the world, *shijie* 世界⁵⁸. In his view, the problem of difference is resolved through the transformation (*hua* 化) of the multitude of sovereign states into a united world, that conceives of itself as a unit⁵⁹. Thanks to the example of its skillful Confucian-Leninist leadership, China is implied to be the country capable of leading this transformation by moral example. Zhao's work has been criticized as lacking textual and historical accuracy, but also, as international relations professor of at the London School of Economics William Callahan has noted, because the rhetoric of *tianxia* is fundamentally based on an absolute distinction between a moral China and an immoral West, which could potentially justify an imperial projection of China⁶⁰. Here it is interesting to note that the Chinese historiographical narratives of the twentieth century were characterized by the dichotomy between the world, *shijie*, and China, 中国 *zhongguo*. The former was the world outside of China, toward which the latter aspired in its desire for modernization; China was seen as a backward and closed country which had to quickly move forward with modernization and join the world (*zouxiang shijie* 走向 世界)⁶¹. The *shijie* mentioned by Zhao and the new wave of tianxism (*xin tianxia zhuyi* 新 天下 主义) departs from such conceptions. The world is no longer just outside and does not correspond to the West. On the contrary, it is also Chinese, and the biggest threat is of becoming too Chinese.

24. This vision sets itself apart from both state-centric narratives, like those of Yang Zewei, and those searching for the impossible presence of a modern international law in ancient China. Zhao Tingyang is not interested in proving the existence of international law in ancient China; rather, he goes beyond the Westphalian system and gives full legitimacy to Chinese tradition, which for him provides a workable philosophy for creating a new world order and may thus contribute to resolving the crisis of authority created by sovereignty. In his reading of history, the order and the 'Pax Sinica' generated by the *tianxia* and the hierarchical system of the tribute were brutally interrupted by Western imperialism and the imposition of the Westphalian order on China. The lack of a supreme authority in current international society engenders a Hobbesian state of *bellum omnium contra omnes*, war of all against all, which escapes the authority of the UN; for Zhao, the UN is made up of sovereign states advancing their individual interests. In his view, this mechanism should be replaced by a world government grounded on the idea of *tianxia* and a Confucian-Leninist elite, able to make reforms directed at solving world problems through a world perspective. International law would then become just a small parenthesis in the global history of normative orders.

25. Zhao Tingyang aims to write a history of the world normative order from a Chinese perspective, rediscovering in its cultural roots a tradition that provincializes European international law. Ultimately this would lead to the replacement of the Westphalian order with an order that, beyond the ideal of *tianxia datong* 天下大同, harmonious world, may conceal China's imperial aspirations. Although there are differences between *tianxia* and empire—translated into Chinese from the Japanese language at the end of the Qing Dynasty as *diguo* 帝国—they are closely related and complementary. Historian Wang Gungwu stresses that imperial rule was characterized by conquest and control over territory, often through use of force, while *tianxia* was an idea linked to the art of government and to the enlightened philosophy of Confucius. It is promoted as the philosophy of a universal moral value and as a standard of civilization through which to decide who is part of the civilization contained within the Pax Sinica and

57 Zhao Tingyang 赵汀阳, *Tianxia tixi : shijie zhidu zhixue daolun* 天下体系 : 世界制度哲学导论 [The world system : An introduction to a world system philosophy], Nanjing, Jiansu jiaoyu chubanshe, 2005.

58 Zhao Tingyang, *Tianxia tixi*, cit., p. 4, II.

59 Zhao Tingyang, *Tianxia tixi*, cit., p. 13.

60 W. A. Callahan, « Chinese Vision of World Order », *International Studies Review*, 10, 2008, p. 749–761, p. 754.

61 Wang Mingming, « All Under Heaven (*tianxia*), Cosmological perspectives and political ontologies in pre-modern China », *HAU : Journal of Ethnographic Theory*, 2, 2012, p. 337–383, p. 339.

who is not.⁶² However, *tianxia* was historically used to justify the expansion of the Chinese empire, often through use of force, and its main characteristic was unfixed boundaries—boundaries in a constant process of expansion. This was precisely the vision of *tianxia*, which also meant the world, the civilized world identified with China; the art of government promoted by *tianxia* was necessary to give a concrete structure to the empire.⁶³ Whether Chinese authors will tie their vision of *tianxia* to respect for the principles of equality and sovereignty, or whether Zhao's vision corresponds to a return to empire, remains to be seen. Either way, it acts as a counter-teleology to both those who promote sovereignty as the *telos* of history and the neoliberal post-sovereignty theories, which certainly do not envision a return to empire.

VI. Beyond the state/empire dichotomy : a historical reading by Wang Hui

26. A recent contribution to Chinese historiography comes from Wang Hui, a representative of the New Left and professor in Chinese history and literature at Qinghua University. He is an influential critic of neoliberalism and of the consequences major economic reforms have produced in China. *The End of the Revolution*, a collection of articles published between 1994 and 2007 and translated into English, provides the reader with a summary of his thought about modernity, nationalism, and democracy.⁶⁴ Of particular interest is the recent translation into English of his *China, from Empire to Nation-state*, part of his masterpiece *The Rise of Modern Chinese Thought*.⁶⁵ In it, Wang looks at the history of China from the Song Dynasty (960–1279) to the present day, questioning the meaning of many of the assumptions and categories of modernity. He opposes the idea of a universal path to modernity that originated exclusively in the West, and the related belief that Chinese culture is an obstacle to modernization; he sees the collapse of the Qing and its cultural patterns at the beginning of the twentieth century as essential to Chinese modernization. He shows that reading Chinese history through Western categories fails to properly account for it. For instance, important Chinese traditional categories that continue to affect China's version of modernity, including in its normative aspects, such as *tianli* 天理, or heavenly principles, are completely neglected in Western historiography. The use of the conceptual dichotomy of state versus empire, for Wang, limits understandings of modern China. Chinese history can only be misunderstood if it is looked at simply as a transformation of the Middle Kingdom from empire to sovereign state. He concludes by saying that it is impossible to answer the question of whether China was and is an empire or a nation state⁶⁶.

27. In *The Rise of Modern Chinese Thought* (Xian dai Zhongguo si xiang de xing qi 现代中国思想的兴起), Wang deconstructs the way the West has conceptualized Asia. Challenging the universality of the concept of the nation state as a criterion to read universal history, he redeems traditional Chinese culture and its categories as 'proto-modern.' He suggests that modern elements, such as state centralization, economic domination, and aspects of nationalism, can be found as early as the Song Dynasty. In this sense, the classical dichotomy of tradition versus modernity does not hold because they are interdependent. Wang also seeks to rehabilitate elements of the Chinese tradition overlooked by current historical narratives⁶⁷. His is not an effort to re-traditionalize China, but to reconnect certain 'proto-modern' traditional Chinese elements with modernity⁶⁸. This approach arguably turns out to be the Achilles' heel of Wang's theory, as the deconstructed modernity, made up of moments of Chinese proto-

62 Wang Gungwu, « Wang Gungwu on Tianxia », *The China Story*, 2013.

63 Y.-K. Wang, *Harmony and War : Confucian Culture and Chinese Power Politics*, New York, Columbia University Press, 2011, p. 1–2, 21.

64 Wang Hui, *The End of the Revolution : China and the Limits of Modernity*, London, Verso, 2011.

65 Wang Hui, *China from Empire to Nation State*, tr. Michael Gibbs Hill, Cambridge MA, Harvard University Press, 2014.

66 Wang Hui, *The End of Revolution : China and the Limits of Modernity*, London, Verso, 2011, p. 132.

67 Wang Hui 汪晖, *Xian dai Zhongguo si xiang de xing qi 现代中国思想的兴起*, Beijing, Sheng huo, du shu, xin zhi san lian shu dian, 2004.

modernity and modern alternatives, results in categorizations that become vague to the point of meaningless⁶⁹.

28. In an essay on Tibet (*The Tibetan Issue East and West : Orientalism, regional ethnic autonomy, and the politics of dignity*), Wang offers his perspective on international law in relation to his ideas of modernity and history. Without being distorted, the history of international law, as well as modern history, should give an account of alternative models that draw their inspiration from the past. According to Wang, Tibetan claims to independence are the result of orientalism and Western political strategies aimed at creating tensions within China. His view is that the Chinese claim over Tibet is not completely illegitimate. It is grounded in the fact that China's current sovereignty was built on a system of pre-existing forms of political and religious orders, like that of tribute, which cannot by themselves be condemned as backward or anti-modern. Indeed, they must be reconsidered not only to reconstruct international legal history in China, but also to better understand China's current vision of sovereignty⁷⁰.

29. The same principle applies to the island of Okinawa. To Wang, Okinawa plays a key role in the history of international relations, being a problem not only for Asia, but also for the United States, reflecting much deeper historical and geopolitical dynamics. According to Chinese imperial reports, Okinawa, known as the Ryukyu Kingdom, was under China's control and could not be classified within the framework of international law—at least not until the Japanese occupation of 1876. In Wang's view, the change of rule and government in Ryukyu cannot be described only in terms of relations between states, as they relate to the transformation of the basic principles governing relations between political entities and communities in the East Asian region. To Wang, these changes are not only the result of the alteration of the hegemonic positions of China and Japan, but also of a transformation of the normative order in Asia. Japan's domination could not have taken place within the tribute system ; it had to adopt the new nationalist-imperialist order legitimized under international law. If we do not understand the scope of this rupture and transformation, he argues, we cannot understand the modern history of Okinawa, the Sino-Japanese War of 1894, the loss of Taiwan, the colonization of the Korean Peninsula, the foundation of the Manchukuo, and the political-military logic of the Greater East Asia Co-Prosperity Sphere imagined by Japan. If the new regulatory framework adopted international law, we must still refer to the vision of the world that preceded it in order to understand it. Although the tribute system collapsed and the Ryukyu Kingdom no longer exists, its geo-historical position continues to be a historical problem for Asia. Given the fact that sovereign relations do not exist in isolation and cannot be unilaterally put into effect by a single national entity, the ambiguity around the issue of Okinawa is inevitable. To make sense of this problem, it is necessary to embrace the perspective of international legal history and China's internationalization, but also the history of the normative order that preceded it and influences its reception⁷¹.

30. Wang believes these different normative orders can also be understood through semiotics. The power struggles in Asia at the end of the Qing Dynasty and in the Republican period were not only struggles between countries but between competing systems of symbols and other international standards. The contrast between the tribute system and international law can also be seen at the symbolic level. This clash took place in Tibet, for example, where Britain, in order to open the area up to trade and exploitation, signed a series of treaties with Nepal, Bhutan, and Sikkim. This led to a re-rationalization of relations between Great Britain and Tibet through the new symbolic system of international law⁷².

68 Wang Hui, *Xian dai Zhongguo si xiang de xing qi*, op. cit. This is also discussed by D. Sachsenmaier, *Global Perspectives on Global History*, cit., p. 209.

69 For a critical response to Wang Hui see Zhang Yongle, « The Future of the Past », *New Left Review*, 62, 2010.

70 In Wang Hui, *The Politics of Imagining Asia*, Cambridge MA, Harvard University Press, 2011.

71 In Wang Hui, *The Politics of Imagining Asia*, cit.

72 Wang mentions this when discussing Lydia Liu's *The Clash of Empires*. Vedi Wang Hui 汪晖, « Diguo de chongtu, huo diguo zhuyi shidai de chongtu ? 《 diguo de huayu zhengzhi 》 zuoyanhui shang de fayan 帝国的冲突，或帝国主义时代的冲突？《 帝国的话语政治 》座谈会上的发言 », *Dushu* 读, 1, 2010, available at <http://wen.org.cn/modules/article/view.article.php/1862>.

31. Ultimately, Wang criticizes Eurocentrism by promoting a new awareness of Asia, freeing China from categories that hamper a deeper understanding of its history. This view clearly has repercussions on the history of international law, in which China has to find its own narrative and logic, linked to its own traditions. It should not replicate Western histories, but must take into account the past and the proto-modern categories that China already possesses.

VII. China and a global history of normative orders

32. The histories and strategies used by some of the authors presented here are only part of a thick and complex story, which cannot be identified through one single perspective of a unitary China. What do all these debates tell us about China, a global history of international law, and Eurocentrism? Every culture produces a particular perspective on how its 'world' is normatively or legally regulated. At the same time, it departs from its own unique perspective when narrating historical events. Existing histories of international law are often charged with Eurocentrism; an equivalent process may happen if the Chinese perspective is taken to extremes. Histories of international law produced by Chinese scholars could eventually be seen as Sinocentric, as the issue of subalternity is always around the corner. The subalternity discussed by one of the fathers of subaltern studies, Dipesh Chakrabarti, when he showed how Indian, Kenyan, and Chinese histories 'tend to become variations on a master narrative that could be called the history of Europe,' could be reversed, and a history of international law from a Chinese perspective could well become a variation of another, competing master narrative called 'the history of China'⁷³. A global perspective would then appear to be the solution, but only if it does not assume the dogmatic belief rooted in the idea of identifiable historical truth. Global history inevitably consists of multiple perspectives because there is always, no matter how global our aspirations, a particular point of view from which we project an image of the world. In other words, a global history cannot aspire to impartial totality. It must be the collection of a set of diverse institutions and perspectives.

33. There is another issue concerning a global history of international law. International law has long aspired to become universal, or global, but has become so only recently, in the course of the twentieth century, through contributions from and confrontations with non-Western countries. In this sense an interesting approach that comes from sociolegal research is one that looks at the so-called global-local interactions of normative orders, pointing out how global normative rules influence local legal systems, and how these latter, through processes of reinterpretation and adaptation, inform the development of global norms in a dialectical way⁷⁴. However, creating a global history of international law today risks projecting into its past a universality or 'globality' that was not actually there, and reading other experiences as a function of international law and its development. If the present of international law is global, the past was not, and the future is not necessarily global either. For this reason, a global history of international law can neither claim to treat everything in an exhaustive way, nor can it aspire to futurability. There is no law of globalization in international law, but its current globalization can be read in its history. Although we can talk about a non-negotiable core of modernity, reflected for instance in certain values promoted by international law, we cannot take it for granted, and reflecting on China in relation to this can be both a stimulus and a challenge. In this sense, it would be interesting not only to write a global history of the so-called tribute system, which, unlike international law, died out in the globalization process. Yet perhaps the only way to really rid ourselves of Eurocentrism would be to write a

73 D. Chakrabarti, « Postcoloniality and the Artifice of History : Who Speaks for "Indian" Pasts ? », *Representations*, 37, Special Issue : Imperial Fantasies and Postcolonial Histories, Winter 1992, p. 1-26, p. 1.

74 An author who has recently adopted this approach to the study of China and the introduction of international law is Stefan Kroll. See S. Kroll, « The Emergence and Transformation of International Order : International Law in China, 1860-1949 », *Asian Perspective*, 37, 2013, p. 31-52.

global history of normative orders rather than of international law. This would frame international law as a normative order in a broader spatial and temporal perspective.

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