A LINGUISTIC APPROACH TO LATE QING CHINA'S ENCOUNTER WITH INTERNATIONAL LAW

Mingqian Li*

Table of Contents

* Mingqian Li, Associate Professor, East China University of Political Science and Law.

A LINGUISTIC APPROACH TO LATE QING CHINA'S ENCOUNTER WITH INTERNATIONAL LAW

Mingqian Li

Abstract

The encounter of late Qing China with modern international Law witnessed the attempt of the Western powers to force open Imperial China with material power backed by the language of the law. By conducting an in-depth textual analysis of the translation of selected words or expressions in international law-related texts during China's intercourse with Western powers, this paper intends to reflect on the linguistic characteristics of the terms and expressions deployed in these texts and provides a linguistic perspective on how Chinese were imposed with legal concepts and institutions familiar to Europe and America, how contemporary Chinese elites, suffering from aggression and oppression, were influenced by the introduction of international law and repositioned their epistemology and mindset when China was forced into a different world system, how the translators overcame the language barriers and intellectual challenges to respond to the political, legal, cultural as well as ideological gap. These linguistic characteristics bear profound implications for the historical encounter of late Qing China and international law.

Keywords: Late Qing China; International Legal History; Translation

I. INTRODUCTION

The encounter with international law by late Qing China (1840–1911) is a key event in the history of international law.[1] There has been rich thought-provoking research on China's entrance into the family of nations in the late Qing period.[2] Earlier studies pay much attention to how the elites of the late

[1] *See* Jean D'Aspremont & Binxin Zhang, *China and International Law: Two Tales of an Encounter*, 34 LEIDEN J. INT'L L. 899 (2021).

[2] *See, e.g.*, IMMANUEL C. Y. HSÜ, CHINA'S ENTRANCE INTO THE FAMILY OF NATIONS: THE DIPLOMATIC PHASE, 1858–1880 (1968); Richard S. Horowitz, *International Law and State Transformation in China, Siam, and the Ottoman Empire During the Nineteenth Century*, 15 J. WORLD HIST. 445 (2004); RUNE SVARVERUD, INTERNATIONAL LAW AS WORLD ORDER IN LATE IMPERIAL CHINA: TRANSLATION, RECEPTION AND DISCOURSE, 1847–1911 (2007); J. P.C. Chan, *China's Approaches to International Law since the Opium War*, 27 LEIDEN J. INT'L. L. 859 (2014); Hungdah Chiu, *The Development of Chinese International Terms and the Problem of Their Translation into English*, 27 J. ASIAN STUD. 485 (1967); Lydia H. Liu, *Legislating the Universal: The Circulation of International Law in the Nineteenth Century*, *in* TOKENS OF EXCHANGE: THE PROBLEM OF TRANSLATION IN GLOBAL CIRCULATIONS 127 (Lydia H. Liu ed., 1999) ; LIN XUEZHONG (林学忠), CONG WANGUO GONGFA DAO GONGFA WAIJIAO: WANQING GUOJIFA DE CHUANRU, QUANSHI YU YINGYONG (从万国公法到公法外交：晚清国际法的传入、诠释与应用) [FROM LAW OF NATIONS TO THE PUBLIC LAW DIPLOMACY: THE IMPORTATION, INTERPRETATION, AND USE OF INTERNATIONAL LAW IN THE LATE QING] (Shanghai Guji Chubanshe (上海古籍出版社), 2019); TIAN TAO (田涛), GUOJIFA SHURU YU WANQING ZHONGGUO (国际法输入与晚清中国) [THE IMPORT OF INTERNATIONAL LAW AND LATE QING CHINA] (Jinan Chubanshe (济南出版社), 2001); Li Chen, *Universalism and Equal Sovereignty as Contested*

Qing applied international legal rules which they learned from the *Elements of International Law* translated by William A.P. Martin (his Chinese name is 丁韪良 Ding Weiliang, but hereinafter referred to as Martin) to diplomatic practice[3], or offer a historical account of Martin's translation process[4], or depict the development of international law education in late Qing China.[5] Among these works, Lydia Liu's *The Clash of Empires: The Invention of China in Modern World Making* presents a study of concepts of civilization and sovereignty through the perspective of translation.[6] One of her arguments is that the colonial structure of power hegemonized the semantic choice. It has offered sights into the centrality of translation to international relations and prods us to ponder the efforts of building "hypothetical equivalencies" in translingual practices.[7]

Since Lydia Liu's landmarking work, increasing literature on late Qing China and international law concerns more of this "semiotic turn" and has led to an appreciation of a linguistic approach to investigate unequal treaty practices.[8] For example, Hu Qizhu and Jia Yongmei, focusing on the translation of the Treaty of Nanking, provide an analysis of John R. Morrison's (马儒翰) relationship with the First Opium War and point out that translation involves political issues without the so-called "neutral" attitude, *e.g.*, when it comes to the choice of translators.[9] Wang Hongzhi, based on a case study of Wang Tao (王韬), a translator participating in the translation of Western literature from a very early stage in the late Qing period, presents an examination of the initial collisions and contradictions of traditional Chinese thoughts with imported Western ideas with numerous concrete details[10] and points out that the trans-

Myths of International Law in the Sino-Western Encounter, 13 J. HIST. INT'L. L. 78 (2011); Lai Junnan, *Sovereignty and "Civilization": International Law and East Asia in the Nineteenth Century*, 3 MOD. CHINA 282 (2014).

[3] *See* TIAN, *supra* note 2.

[4] *See* Fu Deyuan (傅德元), *Ding Weiliang* Wanguo Gongfa *Fanyi Lanben Ji Yitu Xintan* (丁韪良《万国公法》翻译蓝本及意图新探) [*W.A.P. Martin's Translation of* Elements of International Law*: The Original Version and His Intent: A New Investigation*], 1 ANHUI SHI XUE (安徽史学) [ANHUI J. HIST. STUD.] 45 (2008).

[5] *See* He Qinhua (何勤华), *Zhongguo Jindai Guoji Faxue De Dansheng Yu Chengzhang* (中国近代国际法学的诞生与成长) [*The Rise And Development of International Law Study in Modern China*], 4 FAXUEJIA (法学家) [THE JURIST] 49 (2004),

[6] *See* LYDIA H. LIU, THE CLASH OF EMPIRES: THE INVENTION OF CHINA IN MODERN WORLD MAKING (2006).

[7] *See id.*, chaps. 4 & 6 (2006)

[8] *See* QU WENSHENG (屈文生) & WAN LI (万立), BU PINGDENG YU BU DUIDENG: WANQING ZHONGWAI JIU YUEZHANG FANYI SHI YANJIU (不平等与不对等：晚清中外旧约章翻译史研究) [UNEQUAL TREATIES AND NON-EQUIVALENT TRANSLATIONS] (The Commercial Press (商务印书馆), 2021).

[9] *See* Hu Qizhu (胡其柱) & Jia Yongmei (贾永梅), *Fanyi De Zhengzhi: Ma Ruhan Yu Diyi Ci Yapian Zhanzheng* (翻译的政治：马儒翰与第一次鸦片战争) [*The Politics of Translation: J. R. Morrison and the First Opium War*], 4 ZHEJIANG SHEHUI KEXUE (浙江社会科学) [ZHEJIANG SOC. SCI.] 86 (2010).

[10] *See* Wang Hongzhi (王宏志),*"Maishen Shiyi" De Wangtao: Dang Chuantong Wenshi Dangshang Le Yizhe* ("卖身事夷"的王韬：当传统文士当上了译者) [*Wang Tao Serving the Barbarian: When a Traditional Man-of-Letters Became a Translator*], 2 FUDAN XUEBAO (SHEHUI KEXUE BAN) (复旦学报(社会科学版)O) [FUDAN J. (SOC.SCI. ED.)] 25 (2011).

lation is also about politics and often plays a vital role in the negotiation of territorial issues. Furthermore, Ji Yaxi and Chen Weimin, authors of *Foreigners and Modern Unequal Treaties* and *Modern China Translators*, elaborate on the relations between translators and unequal treaties and highlight the role of translators.[11] However, there are relatively fewer concerns about the relations between the translated terms and their contexts during the encounter with international law by the late Qing. Thus, the contexts where those terms and expressions were formed and the interaction between the contexts and the usage of specific terms is to be further explored.

Language not only plays an important role in promoting communication, but also reflects social facts, establishes discourse framework, and produces social order. Language does not exist in a vacuum but must be understood in a certain context. Inspired by Lydia Liu's fascinating analysis and the above-mentioned works, this paper focuses on the linguistic practices based on the translated texts on international law in the second half of the 19th Century, including classic translated international legal works and bilingual treaty documents, in which Chinese knowledge of modern international law was produced, applied and disseminated. It aims to examine the linguistic characteristics of the translated words and display the rationale that the context plays an important part in shaping these words, thereby reflecting on the complexities arising out of China's entrance into the family of nations.

During the encounter with international law, through translation or even rewriting, some imported concepts popular among the European states were accepted as universal standards and values applied to all, thus establishing the legality and legitimacy of Euro-centric international law; and some concepts were transformed, in the sense of attitudes, from neutral to positive/negative, accommodating the mentality of the Qing Emperor and government officials. Meanwhile, some content was discarded or hidden with intentions and some were modified to satisfy specific needs and fit contemporary context. On some occasions, the conceptual changes from the original language to the target language could be understood as products of power politics, while in some cases, it may just reflect the natural engagement of two completely different kinds of languages, responding to epistemological differences. I would like to illustrate these features with the select translated words in *Elements of International Law* and *Introduction to the Study of International Law*, both translated by Martin,[12] and terms in the bilingual Sino-western treaties.

[11] *See* JI YAXI (李压西) & CHEN WEIMIN (陈伟民), LAIHUA WAIGUOREN YU JINDAI BUPINGDENG TIAOYUE (来华外国人与近代不平等条约) [FOREIGNERS IN CHINA AND MODERN UNEQUAL TREATIES] (Xueyuan Chubanshe (学苑出版社), 2007).

[12] China's earliest formal engagement with international law dates back to the translation and publication of *Wanguo Gongfa* (*Elements of International Law*) in 1864 by Martin. After serving in Tong Wen Guan (同文馆) as the General Supervisor, with the help of his Chinese colleagues, Martin also translated Theodore Dwight Woolsey's *Introduction to the Study of International Law* (the first English version was published in 1860 and the Chinese version was published in 1878), Johann Kaspar Bluntschli's *Das Moderne Völkerrecht der Civilisieten Staten als Rechtsbuch dargestellt* (the German version was published in 1868 and the Chinese

When the language of European international law was imported into late Qing China and acquired by the intellectuals and government officials, they had to accept the international law knowledge of European origin, and what's more important, the social meaning this kind of language conveys. Thus, the primary task of translators in late Qing China is to establish equivalency and bridge the gap between the competing intellectual traditions with their own understanding of international law.

However, establishing equivalency between different intellectual traditions always runs up against obstacles, because all linguistic practice is accompanied by difficulties to find a common foundation in linking different languages, institutions, values, and cultures.[13] During this communicative activity, context, which can be divided into linguistic context and non-linguistic context, plays a decisive role in the process of producing meaning. The goal of translation is supposed to pursue the maximum equivalence and thus restore the original context where the meaning was produced, to convey the semantic meaning of the original language in the targeted language. This process of context recreation in terms of historical, political, and ideological aspects, forms the setting for linguistic practices and determines the effect of translated texts. Late Qing China's encounter with international law is no exception. Whether being an idea, a type of culture, a set of norms, or a series of texts, international law was received by China through translation.

In the following sections, through the analysis of selected terms used in the translated international legal works and a series of treaties signed by the Qing government with contemporary powers, features of the translated words will be explored with a focus on the impact of contextualization. Furthermore, this paper endeavors to present that these features have not only witnessed how the rules and norms of Eurocentric international law order are accepted as universal and moral with binding force, but also offered a perspective on how the translation practices both linguistically and conceptually accommodated the indigenous culture, institutions, and mindset, shaped China's interpretation of international law and formed the ideological basis to influence its future diplomatic practices.

II. TRADITIONAL CHINESE SOURCES BEING THE SEMANTIC REFERENCE

One main linguistic feature of the translated international legal works in the late Qing period is that traditional Chinese historical resources were used to establish a corresponding terminological basis, as a set of Chinese lexica was needed in the translation to convey the new "sense" or "meaning." Given that

version in 1879) and William Edward Hall's *Treatise on International Law* (the English version was published in 1880 and the Chinese version in 1903). For details, *see* Zhiguang Yin, *Heavenly Principles?: The Translation of International Law in 19th-century China and the Constitution of Universality*, 27 EUR. J. INT'L. L. 1005 (2016).

[13] *See* LYDIA H. LIU, TRANSLINGUAL PRACTICE: LITERATURE, NATIONAL CULTURE, AND TRANSLATED MODERNITY – CHINA, 1900-1937, xvi (1995).

on most occasions there are no words in the target language that directly correspond to the original language, to establish the commensurability between principles of modern international law and traditional Chinese discourse on diplomatic practices, efforts were made in the formulation of neologisms by borrowing or calquing from traditional Chinese sources.[14]

Western knowledge had already begun to enter China in the 17th century, by way of translation and books written by Jesuit missionaries.[15] Translation methods were valued in their translation of foreign books on science and technology into Chinese. In the 19th century, there was more discussion on the approaches to translating foreign literature. For example, John Fryer (傅兰雅), Xu Shou (徐寿), and Zhao Yuanyi (赵元益) proposed the famous three principles of translation based on their own translation experiences: first, to search for the corresponding Chinese terms in traditional books or the translation works from late Ming Dynasty to early Qing Dynasty; second, to coin new terms using adding Chinese radicals to existing words, or paraphrase the imported terms when there are no equivalent terms; third, to summarize the newly translated terms and compile them into lists for future references.[16] Jin Guantao also pointed out that when it comes to expressing the newly imported concepts, most of the translations were carried out in a way that gave new meanings to existing Chinese words, to match the modern concepts from the West with the original Chinese terms.[17] This is especially the case when it comes to the import of new ideas which are unfamiliar to the targeted culture. Therefore, traditional Chinese thinking, discourses, and language practices were deemed as a semantic reference framework.

The Chinese translation of late Qing treaties takes a similar approach in adopting traditional terms for lexical innovations and loans to integrate the imported knowledge into the local language.[18] Usually, when a treaty is negotiated and concluded in more than one language, translation is especially crucial because, if left uncontrolled, it may lead to serious misunderstandings and even significant differences in the texts. Most of the late Qing treaties were composed in the English language and stipulated that in case of any discrepancies, the English version shall prevail. Sometimes, even the Chinese translations of the treaties were in charge of foreigners. For example, the

[14] *See id.*, at 1–40.

[15] *See* Iwo Amelung, *Naming Physics, The Strife to Delineate a Field of Modern Science in Late Imperial China*, *in* MAPPING MEANINGS THE FIELD OF NEW LEARNING IN LATE QING CHINA 384 (Michael Lackner & Natascha Vittinghoff eds., 2004).

[16] *See* Fu Lanya (傅兰雅) [John Fryer], Jiangnan Zhizao Zongju Fanyi Xishu Shilüe (江南制造总局翻译西书事略) [*A Brief Report on Translating Western Works at the Kiangnan Arsenal*], *in* ZHONGGUO JINDAI CHUBAN SHILIAO CHUBIAN (中国近代出版史料初编) [A PRELIMINARY COLLECTION OF HISTORY OF MODERN CHINESE PUBLISHING] 9, 16 (Zhang Jinglu (张静庐) ed., 1953).

[17] *See* JIN GUANTAO (金观涛) & LIU QINGFENG (刘青峰), GUANNIAN SHI YANJIU: ZHONGGUO XIANDAI ZHONGYAO ZHENGZHI SHUYU DE XINGCHENG (观念史研究：中国现代重要政治术语的形成) [A STUDY IN THE HISTORY OF IDEAS: THE FORMATION OF IMPORTANT POLITICAL TERMS IN MODERN CHINA] 12 (2010).

[18] *See* Rune Svarverud, *The Formation of a Chinese Lexicon of International law 1847–1903*, *in* MAPPING MEANINGS THE FIELD OF NEW LEARNING IN LATE QING CHINA 507 (2004).

Chinese version of the Treaty of Nanking (南京条约) was finished by John R. Morrison, who served as the Chinese Secretary and Interpreter to the Superintendents of the Trade of British Subjects in China.

Translators of treaties tended to search for relevant Chinese terms and consider their equivalence or resemblance to foreign terms. On that basis, they would endeavor to use these Chinese traditional terms to translate foreign ones. Even the titles of treaties were translated as *Lice* (例册), *Zhangcheng* (章程), and *Hehao* (和好), besides *Tiaoyue* (条约). For another instance, Article I of the Treaty of Nanking stipulated that "[t]here shall henceforward be Peace and Friendship between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of China, and between their respective Subjects, who shall enjoy full security and protection for their persons and property within the Dominions of the other," where "persons and property" from the English text was translated as "*shenjia*" (身家).[19] In the Chinese cultural and linguistic context, *shenjia* was referred to mean oneself and his/her family, family property, or family origin. Although it does not include personal property, such translation ensured that the readers in the late Qing Dynasty would be less unfamiliar with alien words. Furthermore, a number of other traditional Chinese expressions were applied for analogy in the translated international legal works. For example, "neutrality" was translated as *juwai* (局外), "balance of power" as *junshi* (均势), and "jurisdiction" as *guanxia* (管辖). Quite a few terminologies adopted by other texts related to international law contributed to the understanding of modern international law on the basis of the existing Chinese knowledge framework.

Since it is especially challenging when there is no standard to follow or local terminologies to convey the sense in a Western linguistic context to Chinese readership, the translation tends to infuse the existing Chinese concepts with the translators' understanding of Western international law. One case in point is Martin's translation of "natural law" as *Xing Fa* (性法). *Xing* (性) is a core concept in Neo-Confucianism with the meaning of human nature.[20] In Chapter One of *Elements of Law of Nations* by Henry Wheaton on the sources of international law, it reads that "[t]he term Natural Law is here evidently used for those rules of justice which ought to govern the conduct of men, as moral and accountable beings, living in a social state, independently of positive human institutions, or as is commonly expressed, living in a state of nature."[21] It has been translated as "其所谓'性法'者，无他，乃世人天然同居，当守之分，应称之为天法……"[22] (Literally, it means that "the so-called *Xing Fa* or

[19] *See* Qu Wensheng (屈文生), *Zaoqi Zhongying Tiaoyue De Fanyi Wenti* (早期中英条约的翻译问题) [*Translation Problems in Early Sino-British Treaties*], 6 LISHI YANJIU (历史研究) [HIS. RES.] 86 (2013).

[20] *See* RUJIA WENHUA CIDIAN (儒家文化辞典) [DICTIONARY OF CONFUCIAN CULTURE] 321 (Xu Xinghai (徐兴海) & Liu Jianli (刘建丽) eds., 2000).

[21] *See* HENRY WHEATON, ELEMENTS OF INTERNATIONAL LAW 35 (1855).

[22] *See* HUI DUN (惠顿) [HENRY WHEATON], WANGUO GONGFA (万国公法) [ELEMENTS OF INTERNATIONAL LAW] 67 (W.A.P. Martin (丁韪良) trans., China Univ. of Pol. Sci. & Law Press (中国政法大学出版社) 2004).

the Law of Xing is nothing else but what people shall obey when they live together naturally, which should be called the Law of Heaven.")

Likewise, in Martin's translation, *Xing*, *Human Nature,* and other Cheng-Zhu School (程朱理学 or 性理学) terminologies such as *Qing Li* (情理), *Xing Li* (性理) and *Tian Dao* (天道) were deemed to be the foundation to build the commensurability for the analogy to Nature and Natural Law in the European context. *Li* (理), which is also a core Chinese concept used in many philosophical and religious contexts, is another word appearing with high frequency. Based on *Li*(理), both *Yi Li* (义理) and *Li Yi* (理义) were adopted to denote "justice" or "moral claims". And in Martin's translation, *Li* (理) was employed to refer to general principles.[23] As mentioned before, *Xing* in the traditional Chinese context particularly means human nature, so *Xing Fa* (性法) is deemed to be generally applied to all humans and takes a moral implication. Hence, the commensurability established between Natural Law and *Xing Fa* (性法), between general principles and *Li* (理), subconsciously highlighted the moral aspects of the Law of Nations and its universality.

Therefore, it is evident that traditional Chinese classics have provided a lot of intellectual resources for the importing of the knowledge of international law. By these expressions previously referring to the underlying rationale and order of nature in traditional Chinese philosophical literature, the translated terms not only increased its acceptance and legitimacy among the Chinese elites but also paved the way for building universality and morality through the language.

III. IN SEARCH OF UNIVERSALITY

Central to seeking parallels between Western international legal concepts and traditional Chinese notions is the establishment of the generality and universality of international law. One of the instances is the adoption of the term *Gong Fa* (公法), which means rules and norms applied to all, to refer to the Law of Nations.

Around the 19th century, the "European identity" of international law began to show prejudice and arrogance over "the others" based on the European superiority of race, culture, and religion.[24] The exclusivity of European international law and the differences from other regions were transformed into the unequal application of international law. For example, James Lorimer linked "civilization" with the law of nations and confined the law of nations to European countries. He believed that barbaric countries would never be recognized by European countries.[25] When discussing the issue of international legal personality, Oppenheim pointed out that non-Christian countries

[23] *See id.*, at 72, 73 & 79.

[24] *See* Arnulf Becker Lorca, *Eurocentrism in the History of International Law*, *in* THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW (Bardo Fassbender & Anne Peters eds., 2012).

[25] *See* Gerry Simpson, *James Lorimer and the Character of Sovereigns: The Institutes as 21st Century Treatise*, 27 EUR. J. INT'L L. 431 (2016).

such as China, South Korea, Siam, and Persia are fundamentally different from Christian countries and it is impossible to have international contacts with these non-Christian governments and people who would not be able to understand international law.[26] William Edward Hall, a well-known scholar of international law, also believed that "barbaric" and "semi-civilized" countries should be excluded from the scope of international law, and international law only applied to countries that had inherited European civilization.[27]

The 19th century witnessed massive European expansion into the rest of the world. The emphasis on the European characteristics of international law at this time is not limited to the exclusivity of the legal system. Instead, international law is gradually used to establish the legitimacy for the conquest and invasion by European countries in the process of colonial expansion into non-European regions. The vast non-European regions were portrayed as groups "naturally unsuitable for lack of civilization" to join the family of nations but just objects to be colonized or lucrative markets to be occupied.[28] In this sense, European international law has moved beyond the regional legal system in the geographical sense and has become a benchmark to the membership of the family of nations, a discourse serving the needs of colonial activities, and a standard for the rest of the world to follow.

Against this background, the primary task of the introduction of modern Western international law into late Qing China is to build the universality of European international law. On the other hand, believing in that the acceptance of European international law is of great necessity to achieve independence and gain equal status in the international community, intellectuals and scholars in the late Qing dynasty gradually advocated the importance of following the Law of Nations.[29] In any case, comparing and combining indigenous intellectual resources with Western international law has become a usual practice, which could be seen by examining the languages in the translated international legal works.

By reading the *Elements of Law of Nations* written by Henry Wheaton and translated by Martin, the late Qing China elites were informed of a new world order and global consciousness. The world map was printed with the eastern and western hemispheres and the names of the continents and oceans indicated in Chinese. More importantly, in his Chinese translation, Martin transformed

[26] *See* Joachim von Elbe, *The Evolution of the Concept of the Just War in International Law*, 33 AM. J. INT'L L. 665 (1939).

[27] *See* MARTTI KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960, 81–82 (2002).

[28] *See* TURAN KAYAOĞLU, LEGAL IMPERIALISM: SOVEREIGNTY AND EXTRATERRITORIALITY IN JAPAN, THE OTTOMAN EMPIRE, AND CHINA 148 (2010).

[29] With the development of newspapers as the new media, quite a few articles related to the introduction of international law were published. For example, "Hunan Newspaper" (湘报, Xiang Bao) and the "Chinese Progress" (时务报, Shi Wu Bao) published several articles discussing China's diplomatic issues from the perspective of international law. *See* SHI WU BAO (时务报) [CHINESE PROGRESS] (JING HUA SHU JU (京华书局) 1967).

the exclusiveness and closeness of European international law in the 19th century into a discourse of universality, thus fitting into the traditional Chinese Confucian worldview.[30] To perform the civilizing mission of the West and promote the universalization of international law, Martin linked the expression and concepts with the viewpoints of the Gongyang School (公羊学) that "there is international law during the Spring and Autumn Period."[31] Martin himself also wrote *International Law in Ancient China* in which he claims that "Chinese international law" flourished in the Spring and Autumn Period. It is from the history of the Spring and Autumn Period that Martin collected and analyzed many cases about the alliance, treaty practices, and sending envoys, which were regarded as proofs of the existence of international law in China.[32]

Emphasizing universality also means overcoming indigenous language resistance at the textual level and thereby establishing the supposed equivalence between English and Chinese. From this point of view, the language feature examined above plays an important role here. As aforementioned, to bridge the cultural, ideological, political, and legal gap, and achieve the compatibility between late Qing China and international law, Martin adopted the expression of *Gong Fa* (公法) to denote "international law" when translating the title of Wheaton's *Elements of International Law.* This is a very important usage as *Gong* (公) in traditional Chinese understanding means universal application and public good. Especially when *Gong* (公) was infused with *Li* (理) denoting justice and the inherent reasons, it embarked on rational and moral claims for all and thus was reckoned as universal.

Since the translation of *Elements of Law of Nations* as *Wanguo Gongfa* (万国公法, literally "Public Law Applicable to All the Nations"), "Gong Fa" (公法) was systematically introduced and extensively used. During the translation of *Introduction to the Study of International Law* (公法便览, literally "Introduction to *Gong Fa* or Public Law") by Theodore Dwight Woolsey, Martin defined "Gong Fa" as the rules held by the states to conduct communication and intercourse. It is a type of law (Fa) that must be followed; And it is *Gong* because it represents the public good, not the monopoly of any individual state (in Chinese translation, it reads "公法者, 邦国所持以交际者, 谓之法者, 各国在所必遵, 谓之公者, 非一国所得而私焉").[33]

Gradually, the Chinese accepted the concept of *Gong Fa* (公法) to interpret the Western concept of international law and believed that *Gong Fa* would satisfy their demands for justice and their appeal for the public good. At the time of the massive introduction of Japanese legal concepts by students

[30] *See* Fu, *supra* note 4.

[31] *See* Jin Yao (金瑶), *Dongfang Guojifa Puxi de Chongxin Faxian* (东方国际法谱系的重新发现) [The Eastern International Law Pedigree: An Academic History Research Traced Back to Ancient China], 7 SHEHUI KEXUE QIANYAN (社会科学前沿) [ADVANCES IN SOC. SCI.] 1164 (2018).

[32] *See* W.A.P. MARTIN, THE LORE OF CATHAY, OR THE INTELLECT OF CHINA 427 (1901).

[33] Wu Erxi (吴尔玺) THEODORE DWIGHT WOOLSEY, GONGFA BIAN LAN FANLI (公法便览·凡例) [INTRODUCTION TO THE STUDY OF INTERNATIONAL LAW] 11 (W.A.P. Martin (丁韪良) trans., 4th ed., Tong Wen Guan (同文馆), 1877).

studying in Japan, the meaning of the term *Gong Fa* changed again. In the Japanese context, *Gong Fa* refers to the law that defines public relations.[34] Since then, *Gong* (公) is used to emphasize "public" and "public power" in Chinese academia. However, there is no doubt that the expression of *Gong Fa* greatly promoted Chinese elites' acceptance of international law as the term *Gong* (公) recognized Confucian epistemology, drawing on traditional Chinese intellectual resources.

The International law discourse of late Qing China developed under the tradition of *Gong Fa* has greatly influenced the understanding of international law by the Chinese intellectual elites for several decades, many of whom embraced the expressions in the *Wanguo Gongfa* and other translation works from the West and thus understood international law as a righteous "divine principle" and "moral claims."[35] That is to say that the practice of establishing universal applicability of international law is also accompanied by a moralization of international law.[36]

IV. BUILDING MORALITY

Establishing equivalence between the modern international law words and the traditional Chinese concepts not only contributes to the realization of the universality of international law, but also strengthens the moralist understanding of international law in late Qing China.

Take the translation of Theodore Dwight Woolsey's *Introduction to the Study of International Law* as an example. When introducing the essential powers of states and their rights and obligations, Woolsey wrote that "[a] State is a community of persons living within certain limits of the territory, under a permanent organization, which aims to secure the prevalence of justice by self-imposed law."[37] However, in the Chinese translation "夫人民居有定界，而制有定法，以除暴安良，如是者，谓之国，"[38] other than the elements of territory, persons, and organizations, a traditional Chinese term "除暴安良" (*Chu Bao An Liang*) with moral implications were inserted. Literally, it means to suppress evil and promote the good. In some sense, it could be comparable to the "prevalence of justice", but its usage often has a strong moral implication. When defining independence, Woolsey pointed out that no other state may interfere with the exercise of a state's rights and sovereign powers without any

[34] *See* JIN & LIU, *supra* note 17.

[35] *See* Wang Zhongjiang (王中江), Shijie Zhixu Zhong Guojifa De Daodexing Yu Quanli Shenying (世界秩序中国际法的道德性与权力身影) [The Morality of International Law in the International Order and Its Power], 3 TIANJIN SHEHUI KEXUE (天津社会科学)[TIANJIN SOC. SCI.] 122–23 (2014).

[36] *See* Maria Adele Carrai, *The Politics of History in the Late Qing Era: William A. P. Martin and a History of International Law for China*, 22 J. HIST. INT'L L. 269 (2020).

[37] *See* THEODORE D. WOOLSEY, INTRODUCTION TO THE STUDY OF INTERNATIONAL LAW 49 (1864).

[38] *See* Wu Erxi (吴尔玺) [THEODORE D. WOOLSEY], GONGFA BIAN LAN, DIYI ZHANG (公法便览·第一章) [INTRODUCTION TO THE STUDY OF INTERNATIONAL LAW, FIRST CHAPTER] 105 (W.A.P. Martin (丁韪良) trans., 4th ed., Tong Wen Guan (同文馆), 1877).

just cause.[39] While in the Chinese translation, not only was the aforementioned information conveyed, but it also emphasized that interference with other states' exercise of rights and sovereign powers contravenes generally acknowledged principles (公理, *Gong Li*).[40] The expression of *Gong* (public) repeats in the translated work, which is a very important indicator for the interpretation of international law as universal and binding to all. When Woolsey was discussing that international law preserves an entire indifference to forms of government, he put it as "[e]very state is in its eye legitimate."[41] However, this sentence was translated as "公法视同一律，各国皆予以正名." (Literally, "*Gong Fa* treats all countries the same and they are thereby justified.") [42] By this Chinese translation, it is international law that justifies the equality of states. The Chinese "Zheng Ming" (正名) originates from Confucian classics, referring to legitimize and justify. Its deployment promotes the understanding that international law is the guarantee of equality of states, and puts more weight on the moral fiber of international law.

In the Introductory Chapter of *Introduction to the Study of International Law,* the origin of International Law is clarified. It reads that "[n]ations …differ from the individual men of a state, in that… They have, as states, a common nature and destination, whence an equality of rights arises. And hence proceeds the possibility of *a law between nations* which is just, as expressing reciprocal rights and obligations, or just as expressing a free waiver of the rights which are by all acknowledged, and which may also embody by mutual agreement rules defining their more obvious claims and duties, or aiming to secure their common convenience and welfare."[43] These sentences are no more than a factual statement with no intention to impose any compulsory rules. However, in Martin's translation, they were construed as "邦国之与庶人所同者，则系遵理义而行. 若悖理义，即为取祸之门……利不可负之理义."[44] Literally, it means that the common part the states and individual person share is that they both have to abide by "moral principles" (*Li Yi*, 理义). Otherwise, disaster will follow… Making a profit should not be at the cost of moral principles. By contrast, it can be observed that Martin's translation of this part is not only inequivalent, but also incorporated with his own understanding of the relationship between international law and morality (to some extent, the translation even contradicts the original meaning). Obviously, this move is to build the morality of international law by fusing "moral principles," the traditional Chinese dominant philosophy that governs people's life, with the binding force of international law.

[39] *See* WOOLSEY, *supra* note 37, at 50.
[40] *See* WOOLSEY, *supra* note 38, at 107.
[41] WOOLSEY, *supra* note 37, at 54.
[42] WOOLSEY, *supra* note 38, at 111.
[43] WOOLSEY, *supra* note 37, at 18 (italics in original).
[44] *See* WOOLSEY, *supra* note 38, at 80.

Moral principles (*Li Yi*, 理义) appeared with a high frequency in Martin's translation. By applying the language of Chinese ethics and building a number of semantic neologisms for conveying the idea of international law, the translated concepts, and more importantly, the ideas conveyed by the expressions in these translated international law works, were increasingly embraced by the Chinese elites. They thus saw international law as a set of righteous and moralized rules applied universally and equally.[45] On the other hand, it also prevented the Chinese elites from realizing the European colonial expansion and power politics at that time. This further led to the inability of the intellectuals and government officials of late Qing China to use international law discourse in a more pragmatic manner to protect and pursue national interests. On the contrary, they were inclined to idealize international law as a moral obligation supposed to be followed by everyone.

The moralist discourse hence became the overall epistemic framework for Chinese intellectual elites to understand international law for several decades. As they saw it, international law "carries the principle of heaven," *i.e.*, international law is based on the highest justice and morality. These elites embraced the expressions in the *Wanguo Gongfa* and other translation works and believed that international law is a set of righteous "divine principles." Take a few examples, Zheng Guanying (郑观应) deemed that international law is aligned with natural justice and morals. So did Li Hongzhang (李鸿章). He commented that international law is the public law that shall be complied with by all nations, which could bring peace and order.[46] Owing to the conceived similarities shared between international law with the "Principles of Heaven" (天道) and morality, late Qing elites often resorted to international law as the highest ground to justify their arguments and actions. For instance, the diplomat Zeng Jize (曾纪泽) is known to have often read and made frequent use of *Wanguo Gongfa* and other Martin's later international law translations during his term as envoy to England, France, and Russia during 1878–1886.[47] On several occasions, he invoked international law to defend late Qing China's interests.[48]

V. INTENTIONAL DISCREPANCY

Other than featuring universality and morality, there is another linguistic characteristic in the international legal translation in late Qing China: the discrepancy intended by the translators. Sometimes, to denote foreign terms imply something unique within Western cultures, the cultural, ideological, and historical factors would be taken into consideration. Consequently, what seems to

[45] *See* Wang, *supra* note 35, at 122–23.

[46] *See* Yang Zewei (杨泽伟), *Jindai Guojifa Shuru Zhongguo Jiqi Yingxiang* (近代国际法输入中国及其影响) [*The Entering of Modern International Law into China and Its Implications*], 21 FAXUE YANJIU (法学研究) [CHINESE JOURNAL OF LAW] 122 (1999).

[47] *See* TIAN, *supra* note 2, at 125–26.

[48] *See* ZENG JIZE (曾纪泽), ZENG JIZE RIJI (曾纪泽日记) [ZENG JIZE DIARY] (Yuelu Shushe (岳麓书社), 2013).

be obvious mistakes nowadays might have been the exact intention of translators in specific temporal and spatial contexts.

Take the English word "court" as an example. In the present legal linguistics, it is translated into *Fayuan* ("法院"). However, in the *Treaties and Agreements with and Concerning China* compiled by the China Customs Press, the corresponding translations for "court" are respectively Yamen ("衙门"), Government Office ("官"), or Hall of the Government Office ("公堂") (See Table 1).[49]

TABLE 1. THE CHINESE TRANSLATIONS OF "COURT"

Treaties	English expression	Chinese expression
The Treaty of the Bogue (善后事宜清册附粘和约, also虎门条约) (1843)	the English Courts of Justice	英官
Chefoo Convention (烟台条约, also 滇案条约 or 芝罘条约) (1876)	a Supreme Court	承审公堂
	a Mixed Court	会审衙门
Treaty of Commerce and Navigation: Additional Clauses (续议通商行船条约) (1902)	British Courts	英国公堂
	Chinese Courts	中国公堂

Was the lack of judicial branches in ancient China accountable for the translation of "court" into an administrative organ? As a matter of fact, as early as in the Xia (夏) Dynasty, there has been a judicial post of Chief Justice (大理). During the Western Zhou (西周) period, there have already been judges (司寇), who were specifically responsible for judicial trials. Henceforth, there is a long history of standing judicial organs in dynastic China. There were Law Enforcement (廷尉) during Qin (秦), Han (汉), and the North and South Dynasties (南北朝); Ministry of Justice (刑部) and Court of Judicial Review (大理寺) during Tang (唐) and Song (宋); High Court of Justice (大宗府) and Ministry of Justice (刑部) in the Yuan (元) Dynasty; and Ministry of Justice (刑部), Chief Surveillance Office (都察院), and Court of Judicial Review (大理寺) during Ming (明) and Qing (清). The administrative organs had not always monopolized the judicial power, though the emperors were entitled to the supreme judicial authority. Admittedly, at the local government, the chief executive exercised such authority.[50]

[49] *See* ZHONGWAI JIU YUEZHANG DAQUAN (中外旧约章大全) [TREATIES AND AGREEMENTS WITH AND CONCERNING CHINA] (General Administration of Customs of China (海关总署) ed., China Customs Press (中国海关出版社), 2004).

[50] *See* Yu Zhong (喻中), *Cong "Xingzheng Jianli Sifa" Dao "Sifa Jianli Xingzheng": Woguo "Sifa-Xingzheng" Guanxi Moshi De Bianqian* (从"行政兼理司法"到"司法兼理行政": 我国"司法—行政"关系模式的变迁) [*From "Administration in Charge of Judiciary" to "Judiciary in the Charge of Administration":*

Such kinds of judiciary structure have also had influences on our current social lives; expressions such as "对簿公堂" (confronting someone in a court of law) can be seen everywhere. Just as Vermeer once said, "[i]t is the intended audience, the anticipated recipient of the translated text, who is the most significant factor to determine the purposes of translation."[51] By present standards, it may be inappropriate to link the judicial courts with the executives in this way. Nevertheless, such translation was the precise reflection of traditional Chinese legal practices, which was certainly helpful for the target audience to approve, accept and abide by the treaties.

Moreover, there is another set of terminology translations, which appears to be improper, but is of reasonable choice under specific historical circumstances. For instance, Article II of the Treaty of Nanking stipulated that "His Majesty the Emperor of China agrees that British Subjects, with their families and establishments, shall be allowed to reside, for the purpose of carrying on their Mercantile pursuits, without molestation or restraint at the Cities and Towns of Canton, Amoy, Foochow, Ningpo, and Shanghai, and Her Majesty the Queen of Great Britain, etc., will appoint Superintendents or Consular Officers, to reside at each of the above-named Cities or Towns, to be the medium of communication between the Chinese Authorities and the said Merchants, and to see that the just Duties and other Dues of the Chinese Government is hereafter provided for, are duly discharged by Her Britannic Majesty's Subjects."[52] The "superintendent" was translated into *Ling Shi* (领事), which is presently referred as "consul"; and the "consul officer" was translated into *Guan Shi* (管事官), which does not fit into any official ranks but means some official in charge of managing affairs. Interestingly, such expressions of terminology equivalence were also adopted in the General Regulations for Trade and Tariff at the Five Ports (五口通商章程, 1843) and the Treaty of the Bogue (1843). In both of the treaties, the superintendent was used to be the equivalent of consul ("领事"), while consul/consulate was translated as *Guan Shi* (管事官) (See Table 2 *infra*). According to Wang Hongzhi, John R. Morrison, the translator all along, had intentionally altered the translation of "superintendent" as *Ling Shi* (领事). Despite its current meaning being closely related to supervision, the term assumed the function of diplomats during the times of early Sino-British contact.[53]

Changes in the Model of "Judiciary-Administration" Relations in China], 6 QINGHUA FAXUE (清华法学) [TSINGHUA L. J.] 19 (2012).

[51] CHRISTIANE NORD, YI YOU SUO WEI: GONGNENG FANYI LILUN CHANSHI (译有所为: 功能翻译理论阐释) [TRANSLATION AS A PURPOSEFUL ACTIVITY: FUNCTIONALIST APPROACHES EXPLAINED] 15 (Zhang Meifang (张美芳) & Wang Kefei (王克非) trans., Foreign Language Teaching and Research Press (外语教学与研究出版社) 2005).

[52] In Chinese, this Article provided that "自今以后，大皇帝恩准英国人民带同所属家眷，寄居大清沿海之广州、福州、厦门、宁波、上海等五处港口，贸易通商无碍；且大英国君主派设领事、管事等官住该五处城邑，专理商贾事宜，与各该地方官公文往来."

[53] *See* Wang Hongzhi (王宏志), *Nanjing Tiaoyue Zhong "Lingshi" Fanyi De Lishi Tanxi* (《南京条约》中"领事"翻译的历史探析) [*Rethinking the Translation of "Superintendent" in the Treaty of Nanking*], 3 ZHONGGUO FANYI (中国翻译) [CHINESE TRANSLATION] 31, 36 (2015).

I agree with Wang's analysis, yet believe that the translation of "superintendent", whose liberal meaning is a business and commercial supervisor (商务监督), as *Ling Shi* (领事, consul) had something to do with the attitude of late Qing government towards the West before the outbreak of the Opium War. At that time, the late Qing claimed itself to be the Celestial Empire, whose officials often threatened Western countries with shutting down foreign trade with them, to demonstrate its authority and control over foreigners. For example, in response to the English consul, Lin Zexu (林则徐) wrote "…You must fully comprehend that the rules and regulations of your country shall be subject to the Code of Qing empire. Since your country relies heavily on trade and commerce, you will be permanently forbidden to trade within the territory of our empire in case of any violation of the Qing Code. In that circumstance, the economic breakdown of your country will be your fault. Will you be able to take all that blame?"[54]

The superintendents in China were established by the British government in 1833 and were designated to be directly in charge of trade with China. On the other side of the story, the late Qing government, who restrained trade rather than took it seriously, supposed that these "superintendents" were merely the head of foreign merchants who had come to seek commercial profits, similar to the general managers (*Da Ban*, 大班) of the earlier time.[55] Therefore, the late Qing government did not spare a second glance at these "superintendents." Considering this, there is highly a possibility that the translator intentionally altered the translation of "superintendent" to *Ling Shi* (Consul), forcing the late Qing government to change its previous prejudice against superintendents and hold these supervisors who oversaw commercial business in the Far East in high regard.

TABLE 2: THE CHINESE TRANSLATIONS OF "SUPERINTENDENT" AND "CONSUL" IN TREATIES

Treaties	English expression	Chinese expression
Treaty of Nanking (1842)	superintendent	领事官
	consular officer	管事官
General Regulations of Trade and Tariff at the Five Ports (1843)	consul	管事官
	consulate	
The Treaty of the Bogue (1843)	superintendent of trade	领事官

[54] Lin Zexu (林则徐), *A Reply to Charles Elliot* ("英夷义律于封港后递禀求诚由 己亥十一月十一日附批"), *in* XIN JI LU (信及录), CHINESE TEXT PROJECT, https://ctext.org/wiki.pl?if=en&chapter=676583&remap=gb.

[55] *See* CHOUBEI YIWU SHIMO (TONGZHI CHAO) (筹备夷务始末·同治朝) [PREPARATION FOR THE BARBARIAN BUSINESS (TONGZHI REIGN)] 17 (Zhonghua Book Company (中华书局), 1965).

Treaty of Tientsin: Additional Articles (天津条约续增条款) (1868)	consul	领事官
Chefoo Convention (1876)	consular officers	领事官

There were also blatant additions and omissions in the translation. For instance, the Sino-French Convention of Peking (中法北京条约, 1860) was the culmination of the Second Opium War. Article VI of its Chinese texts provided that, "…[t]he French missionaries shall have the right to rent or buy land, construct buildings as they wish." There is, though, no counterpart provision for it in the French version of the treaty. It turns out to be the French missionaries, taking advantage of their position and their hosts' lack of rudimentary foreign language skills, to include a clause that contributed to legalizing the purchase of estates for the establishment of churches and developing their missionary enterprise in China.[56] Another example involves the Angell Treaty (中美续修条约, or 安吉立条约, 1880). When Anson Burlingame (蒲安臣) was appointed as the Envoy Extraordinary and Minister Plenipotentiary to lead the Chinese diplomatic mission to the United States, he had once been appointed to sign the so-called Burlingame Treaty (namely, 中美天津条约续增条款, or 蒲安臣条约, 1868) to encourage Chinese immigration to enter the United States. However, other politicians soon objected to the treaty, and hence President Rutherford B. Hayes authorized James Burrill Angell to re-negotiate the treaty in 1880. According to this treaty signed on November 17, 1880, the US government held the right to "amend or to suspend" Chinese immigration policy. While in the Chinese version, "suspended" was intentionally omitted to prevent disagreement from the Qing government. Soon, a series of Chinese Exclusion Acts were passed to forbid Chinese laborers to work in America.[57]

If we had a word-for-word comparison of the treaties signed by the late Qing China and the Western countries, it will not be difficult to find many inconsistencies and differences between the Chinese texts and the English texts. Indeed, terminology discrepancy is a by-product of cultural exchanges, which is inevitable or even intentional. Nevertheless, what matters more are the reasons behind the discrepancy and its influences. During late Qing China's encounter with international law, many factors contributed to the discrepancies,

[56] *See* Wang Zhongmao (王中茂), *Jindai Xifang Jiaohui Zaihua Gouzhi Dichan De Falü Yiju Ji Tedian* (近代西方教会在华购置地产的法律依据及特点) [*The Legal Basis and Characteristics of Property Acquisition by the Western Churches in China in Modern Times*], 1 SHIJIE ZONGJIAO YANJIU (世界宗教研究) [WORLD RELIGION STUD.] 96 (2004).

[57] *See* Cao Xinqun (曹新群), Meiguo Zhengfu Huagong Zhengce De Yanbian (1868–1894) (美国政府华工政策的演变 (1868–1894)) [The Evolution of Chinese Laborer Policy of the U.S. Government (1868–1894)] (2007) (M.A. thesis, Shandong University) (CNKI).

of which the most significant ones are cultural considerations, political decisions, and historical practices.

VI. RECONCILING TRANSLATION WITH THE PREVAILING MINDSET

An interlingual transaction between a source language and a target language involves more than a language transfer. To cross the language barrier, the translated words need to be accepted by the targeted readership culturally, intellectually, and ideologically. Under some circumstances, there are semantic changes or alterations of emotional coloring.

Along with the colonial expansion of European countries in the 19th century, the prevalent treaty practice had gradually been extended to the non-European regions. Through negotiating and concluding treaties with these countries, Western rules were disseminated, and the lexicon of modern international law was dispersed and applied in these countries. The contact between European international law and China is a specific example. The critical years from 1839 to 1844 witnessed the opium controversy developing into a war between the United Kingdom and the Qing Empire, resulting in the epochal Treaty of Nanking. It is a watershed moment in the encounter between China and international law and marked the end of the First Opium War. (1839-1842).[58] Gradually, treaties had become a regular legal form of exchange between China and the West. The total amount of nations, which China had signed unequal treaties with, has always been controversial. Scholars have also proposed that since the Treaty of Nanking (1842), China had successively signed up to one thousand unequal treaties with twenty-one nations.[59] These treaties had once poked into every crease and crevice of the politics, economy, military, diplomacy, judiciary, and culture of China, establishing a massive and hideous system of coercion and subversion. However, the late Qing government which was stuck to its Celestial Empire position, believed that everything and everyone is "under" heaven, and territorial cession and a huge number of payments are insignificant to the dishonor of the Qing emperor.

A typical case is that some commonly used neutral English words were translated in such a way that would seem a tribute had been given to the late Qing Emperor. For example, in Article II of the Treaty of Nanking, the verb "agrees", indicating that the two heads of state had reached an agreement, was translated into *En Zhun* ("恩准"), which means permission graciously granted from his majesty. From this translation, it is clear that the Chinese version aggrandizes the term to evoke a false sense that the late Qing Emperor is bestowing gifts to his inferiors. In a similar pattern, in Article IX, regarding the amnesty and act of indemnity to the Chinese who had contact with the British,

[58] *See* Tang Chi-hua, *China-Europe*, *in* THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW 701 (Bardo Fassbender & Anne Peters eds., 2012).

[59] *See* LIANG WEIJI (梁为楫) & ZHENG ZEMIN (郑则民), ZHONGGUO JINDAI BU PINGDENG TIAOYUE XUANBIAN YU JIESHAO (中国近代不平等条约选编与介绍) [SELECTION AND INTRODUCTION TO UNEQUAL TREATIES IN MODERN CHINA] 9 (1993).

the original expressions of "agrees to" and "engages to" are translated into *En Zhun* (恩准) and *Jia En* (加恩). This kind of translation greatly changed the underlying emotions. So, it will not be difficult to find that the supposed neutral translations are not only partial in some cases but also can be considered rewriting of the original, which perhaps reflected Qing's mindset.

In the Confucian view of international relations, the world is a whole and there is a hierarchical system of constituents with China as its center. In addition, the Chinese had developed a superiority complex, in particular to culture, over her neighboring peoples, who were labeled as *Yi* (夷, barbarians). Such notions had a direct impact on the Sino-foreign exchanges. The tribute system gradually formed, with formalities meant to reflect and reinforce a distinctly Confucian and hierarchical order.[60] Any requirements to visit the emperor and establish diplomatic relations with the Qing government were regarded as an act of subordination. In Qing Dynasty, countries that wanted to establish relations with China had to respect a set of rules and etiquette, and pay homage to the Qing emperor. Thus, in the 17th and 18th centuries, Westerners were all regarded as barbarians, and anything related to the West was systematically dubbed as "barbarian," such as barbarian thieves, barbarian ladies, barbarian customs, and so on.[61] This mentality remained unchanged in the 19th century, even when Qing was defeated in the first Opium War and forced to pay reparations though the self-righteous idea of being "Celestial" was not surrendered.

In the eyes of the Qing court and its officials who conducted diplomacy in accord with the lines of Confucius, the concession of territory, extortion, and damage to its jurisdiction were of lesser importance compared to stopping the defiance of barbarians. They believed it was imperative to take measures to secure the pride and self-esteem of the Celestial Empire, to prevent foreign diplomatic agents from visiting Beijing, and to make barbarians show reverence to the Qing Emperor.[62] Therefore, the overriding priority in concluding treaties was to maintain the position of superiority, however symbolic, over the barbarians. In this case, the translation of "agree" as "grant graciously permission" (恩准) is the result of showing respect to the Chinese emperor, the so-called "Son of Heaven" (天子), and recognition of the glory of this Celestial

[60] *See* Jacques deLisele, *China's Approach to International Law: A Historical Perspective*, 94 ASIL PROC. 267, 273–74 (2000).

[61] *See* Qu Wensheng (屈文生), *Zhonguo Falü Shuyu Duiwai Fanyi Mianlin De Wenti Yu Chengyin Fansi—Jiantan Jinnian Lai Woguo Falü Shuyu Yiming Guifan Hua Wenti* (中国法律术语对外翻译面临的问题与成因反思——兼谈近年来我国法律术语译名规范化问题) [*Reflections on the Problems and Causes of Translations of Chinese Legal Terminology: A Discussion on the Standardization of Legal Terminology in China in Recent Years*], 6 ZHONGGUO FANYI (中国翻译) [CHINESE TRANSLATION] 68, 68–75 (2012).

[62] *See* Tian Tao (田涛), *Wanqing Guoji Fa Shuru Shulun* (晚清国际法输入述论) [*A Discourse on the Importation of International Law in the Late Qing Dynasty*], 6 TIANJIN SHEHUI KEXUE (天津社会科学) [TIANJIN SOC. SCI.] 99 (1999).

Empire. While we cannot say the translated term is the equivalent choice, it did represent the mindset of the Qing government.

That is why despite facing a huge indignity during negotiation, late Qing representatives of the Treaty of Nanking made no objections and instead reported to the Emperor that the treaty was a prized gift to remove the barbarians' military threat at such a small price. Both the Qing Emperor and ministers were eager to get the negotiation done as soon as possible and expulse the foreign nations out of China. In 1860, Emperor Xian Feng (咸丰) wrote in an edict that "[r]ecently the barbarian bid defiance to Qing and caused disturbance to the capital city. Although treaties have been reached, the implementation is not easy. I was worried about the suffering of the people, so I decided to look at the big picture and agreed to what they requested. […] Governors serving at borders should try to contain them within the treaty systems with no external effects."[63] In this context, entering into treaties is simply a temporary expedient whilst the content of treaties is not their top concern.

Thus, the language of treaties was often neglected. Despite the late Qing's belief that it was the "Celestial Empire" and that the Chinese language was superior to European languages – even to label them as "barbarian language," "gibberish" and "ghost talk,"[64] it became apparent that with the growing number of unequal treaties, the need for linguistic skills was increasingly urgent. Hence, foreigners who claimed to be familiar with foreign issues and capable of speaking Chinese and other languages were usually entitled to the chance to take part in major diplomatic affairs directly, and dominated the late Qing's diplomatic stage, almost controlling every treaty's negotiation and translation. For instance, the British undertook the article drafting in the negotiation of the Treaty of Nanking whilst Morison translated the Chinese version from English. What Qi Ying (耆英), the chief representative for the Qing court, and other ministers did was simply copy the draft and submit it to the Emperor.[65] In other words, the Qing government handed over the entire role of translation to its opponent, and thus completely lost the diplomatic initiative.

On the Chinese part, it was not the case that no one in the country understood the so-called "Barbarian language". Before the first Opium War,

[63] *Junji Dachen Ji Yanhai Ge Dufu Fuyin Deng Tiaoyue Ji Jing Tongxing Gesheng Shinan Zaiyou Biangeng Zhuo Tuowei Jiayu Xixin Chouban Shangyu* (军机大臣寄沿海各督抚府尹等条约既经通行各省势难再有变更著妥为驾驭悉心筹办上谕) [*A Royal Edict to Governors in the Coastal Provinces on Carefully Implementing the Treaties as It Has Been Signed and Cannot be Changed*], *in* 5 DI'ERCI YAPIAN ZHANZHENG (第二次鸦片战争) [THE SECOND OPIUM WAR] 276 (Association of Chinese Historians (中国史学会) ed., Shanghai People's Press (上海人民出版社), 1978).

[64] Wang Hongzhi (王宏志), *Diyi Ci Yapian Zhanzheng Zhong De Yizhe* (第一次鸦片战争中的译者) [*Translators in the First Opium War*], *in* FANYI SHI YANJIU (翻译史研究) [STUDIES IN THE HISTORY OF TRANSLATION] 82 (Wang Hongzhi ed., Fudan University Press (复旦大学出版社), 2011).

[65] *See* HU QIZHU (胡其柱) & JIA YONGMEI (贾永梅), *Fanyi De Zhengzhi: Ma Ruhan Yu Diyi Ci Yapian Zhanzheng* (翻译的政治：马儒翰与第一次鸦片战争) [*The Politics of Translation: J. R. Morrison and the First Opium War*], 4 ZHEJIANG SHEHUI KEXUE (浙江社会科学) [ZHEJIANG SOC. SCI.] 86 (2010).

international trade was commonplace in the Guangzhou area and the usage of English grew there. A new profession emerged specializing in English translation and its practitioners were called *Tongshi* (通事).[66] However, they were stigmatized with collusion, so this occupation was quickly viewed as being without prestige, though the Opium Wars amplified the need for foreign language skills.[67] On some occasions, these *Tongshi* were even at serious risk. After participating in treaty negotiations, they were conveniently used as scapegoats by the Qing government to cover their own poor decisions and weaknesses. A *Tongshi* named Bao Peng (鲍鹏), the translator for Qi Shan (琦善), was such an unfortunate case. After Qing lost the Opium War, Qi Shan was treated as a traitor and was severely punished by the Emperor. One of his charges is hiring Bao Peng as the translator.[68] Since then, during negotiations for the Treaty of Nanking, Treaty of Bogue, Treaty of Wanghia (望厦条约), Treaty of Tientsin (天津条约), and Treaty of Peking, the representatives of Qing gave up the right to involve their own nationals and relied on foreign translators to represent them at the negotiation table besides doing the translation work.

The world view of the Qing court and their perception of treaties are the underlying reasons why the Qing court lacked the capability to offer their Chinese version of the treaties, but had to rely on third parties or even their rivals from the opposite side of the negotiating table to provide drafts. Its polar opposite, the Western nations, paid great attention to the issue of language. As early as 1840, Lord Palmerston ordered in a confidential letter to Charles and George Elliot to "[…] adhere to English forms of expression; and in order to prevent any future doubts, any questions which may arise as to the correct interpretation of the Treaty, must be determined by the English version."[69] In addition, the Treaty Respecting Commercial Relations, etc., signed by and between late Qing and the United Kingdom (namely, the Mackay Treaty, 中英续议通商行船条约), stipulates that "[t]he English and Chinese texts of the present Treaty have been carefully compared, but in the event of there being any difference of meaning between them, the sense as expressed in the English text shall be held to be the correct sense." The United Kingdom, being one of the leading powers, was exploiting each opportunity to expand its interests. The value that they placed on language during creating treaties finally brought the late Qing great indignation and other humiliating concessions that humbled China's spirit.

---

[66] *See* Wang, *supra* note 68.

[67] *See* YANG GUOQIANG (杨国强), SHUAISHI YU XIFA: WANQING ZHONGGUO DE JIUBANG XINMING HE SHEHUI TUOSUN (衰世与西法：晚清中国的旧邦新命和社会脱榫) [THE DECLINING AGE AND THE WESTERN APPROACH: OLD STATES, NEW DESTINIES, AND SOCIAL DETACHEMENT IN LATE QING CHINA] 155 (Zhonghua Shuju (中华书局), 2014).

[68] *See* Wang, *supra* note 68, at 96–113.

[69] *Lord Palmerston to the Plenipotentiaries (Admiral G. Elliot and Captain C. Elliot) Appointed to Treat with the Chinese Government*, No. 1 (Feb. 20, 1840), *in* HOSEA BALLOU MORSE, THE INTERNATIONAL RELATIONS OF THE CHINESE EMPIRE 630 (1910).

The very first problem to overcome in any intercultural exchange is the language barrier, which is especially the case for Sino-West intercourse. Although the series of treaties seem to satisfy all the formal requirements of modern international law with the titles containing Truce, Peace, Commerce, Alliance, Mutual Assistance, and so on, during the negotiation and signing of those treaties, Western countries had monopolized the power of languages and fought over linguistic issues, endeavoring to take advantage of late Qing.[70] On the other hand, the late Qing government was more concerned with the "insubordination of foreigners," so, they tried to satisfy other countries' "requirements and thus pacify the foreigners." Their traditional idea of the "Celestial Empire" had blocked their visions, while their linguistic incompetence crippled them in diplomatic relations. For instance, "[t]he Imperial commissioners", Pottinger observed, "declared their readiness to sign and seal the Treaty at once, and without further explanation."[71] And "[n]one of the critical examination into phrases or expressions, so keenly canvassed and suspiciously viewed by European diplomatists, occupied a moment of their attention. All their anxiety, which was too obvious to be concealed, was centered upon the one main object – our immediate departure."[72] However, the serial signing of unequal treaties only sheltered the late Qing government from military threat temporarily; what they hadn't anticipated was that their stalling tactics would cause them endless trouble, which exactly enable Western powers to achieve their goals.

VII. CONCLUSION

The series of treaties signed by the late Qing has provided a legal framework for the foreign presence in China. Through these treaties, an ever-increasing number of so-called "treaty ports" were opened to foreign trade and exempted foreigners from Chinese law by granting them extraterritoriality and consular jurisdiction. Qing was forced to pay vast sums of money as compensation and a range of other national humiliations that humbled Qing's sovereignty were imposed.[73] And the deepening interaction between China and the West has witnessed the growing intentions of Western countries to legitimatize the not-so-legal military and trade actions using international law. Therefore, the translated terms in late Qing treaties and international law works aimed not only to produce legal terms to convey the concepts of Western legal systems and international law systems, but also to persuade, or even force, the late Qing to yield to the normative rules established in the Western world and regard Western rules and their understandings of international law as guiding principles. The linguistic features of the translated terms are influenced by

[70] *See* JI & CHEN, *supra* note 11, at 70.

[71] *Quoted from* JULIA LOVELL, THE OPIUM WAR: DRUGS, DREAMS AND THE MAKING OF CHINA 238 (2011).

[72] GRANVILLE G. LOCH, THE CLOSING EVENTS OF THE CAMPAIGN IN CHINA 172 (1843), *quoted from* JULIA LOVELL, THE OPIUM WAR: DRUGS, DREAMS AND THE MAKING OF CHINA 238 (2011).

[73] *See* LI YUMIN (李育民), JINDAI ZHONGWAI TIAOYUE GUANXI CHULUN (近代中外条约关系刍论) [MODERN TREATY RELATIONS BETWEEN CHINA AND FOREIGN STATES] 173 & 181 (2011).

historical contexts and practical factors. Therefore, analyzing the language usage in late Qing treaties and the translated classical works helps to understand the encounter of the late Qing Dynasty with international law from different angles.

Back in late Qing China, the Western powers used treaties to force China to open the market and trade with other countries.[74] During the negotiation and conclusion of treaties, because of the lack of qualified and competent local translators, the translation of the treaties fell to foreign translators who knew the Chinese language and were sometimes even appointed as diplomats by the Qing court. Every time the opposite side proposed a draft concerning rights and obligations, the representatives of the Qing could do nothing but a *pro forma* discussion of the wording.[75] Thus, the import of the international legal lexicon into the Chinese legal system is not always built on a sound understanding of cultural differences. During the negotiations of the Treaty of Nanking, the Treaty of Tientsin, and the Treaty of Peking, the Western parties benefitted a lot from the translation of the treaties due to Chinese ignorance of foreign languages.[76] It is unthinkable that a nation would conclude treaties merely to confer privileges and benefits onto other countries, especially by relying on foreign nationals to carry out the negotiation and translation of detailed provisions. However, that is the case in the international legal history of late Qing China.

The linguistic approach proposed in this article intends to offer an alternative perspective to examine late Qing China's encounter with modern international law of "European origin." Specifically speaking, expressions with strong moral and universal implications were utilized to translate a set of rules originally just regulating the interactions among European states. To achieve that, late Qing intellectuals looked to Chinese historical experience and classical resources for inspiration. Although linking international law with traditional Chinese philosophical understanding of righteousness may change the original intention of the author and even cause misunderstanding for late Qing elites in the nature and function of international law, the efforts to search for similarities and parallels between international law and classical Chinese intellectual tradition cannot be overlooked. It is a rational choice for these translators given the specific cultural consideration and historical context. The characteristics of the terminology chosen in the translated international law works and treaties reflected their efforts to achieve the commensurability of languages during legal and cultural encounters.

---

[74] *See* Robert Heuser, *China and Developments in International Law*, 4 J. HIST. INT'L L. 142 (2002).

[75] *See* Wang Hongzhi (王宏志), *"Maishen Shiyi" De Wangtao: Dang Chuantong Wenshi Dangshang Le Yizhe* ("卖身事夷"的王韬: 当传统文士当上了译者) [*Wang Tao Serving the Barbarian: When a Traditional Man-of-Letters Became a Translator*], 2 FUDAN XUEBAO (SHEHUI KEXUE BAN) (复旦学报(社会科学版)) [FUDAN J. (SOC. SCI. ED.)] 25 (2011).

[76] *See* JI & CHEN, *supra* note 11, at 225–330.