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NEITHER *LI* NOR LAW:  
AN ANALYSIS OF THE LATE QING CHINA'S OVERSEAS  
SETTLEMENTS

Yan Liyuan\*

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*Abstract*

*According to the traditional narrative of modern Chinese history, an important feature of the semi-colonial and semi-feudal society in the late Qing Dynasty was that foreign settlements or concessions were set up in China under "unequal treaties." But Chinese settlements on the Korean peninsula (1884-1913) under treaties in the late Qing Dynasty were seldom mentioned. As a matter of fact, with the expansion of Russia and Japan, the late Qing Government sought to strengthen the traditional Sino-Korean relations through treaties from the perspective of European international law. However, the traditional Sino-Korean relationship was based on the East Asian Dian-Li (典礼, Grand Ritual), which is quite different from European international law in essence. In the traditional East Asian world order, as long as the tributary or vassal State complied with the Bin-Li (宾礼, Guest Ritual), it had considerable autonomy and independence. On the contrary, the dependent or protectorate state had non-complete sovereignty according to European international law. Consequently, the late Qing government could not succeed in its attempt, because of the fundamental conflicts between the East Asian Dian-Li and the European international law.*

*Keywords:* Chinese Settlements in Korea; *Li*; International Law

I. INTRODUCTION

The academic research on the issues of the legal history of settlements or concessions often focused on the leased areas established by the great powers in China and seldom paid attention to the fact that the late Qing also set up overseas settlements on the Korean Peninsula.<sup>1</sup> It was extremely inconsistent with the bad image of the semi-colonial and semi-feudal society in the late

<sup>1</sup> See He Jiangfeng (贺江枫), *Chaoxian Bandao De Zhongguo Zujie—Yi 1884 Zhi 1894 Nian Renchuan Huashang Zujie Wei Ge'an Yanjiu* (朝鲜半岛的中国租界—以1884 至1894 年仁川华商租界为个案研究) [*China's Settlements on the Korean Peninsula—A Case Study of the Chinese Merchants' Settlement in Incheon, Korea from 1884 to 1894*], 1 Shi Lin (史林) [Historical Review] 26 (2012); Shin Kawashima (川岛真), *Chaoxian Bandao De Zhongguo Zujie* (朝鲜半岛的中国租界) [*Chinese Settlements on the Korean Peninsula*], in 2 ZHONGHUA MINGUO SHI YANJIU SANSHI NIAN 1972–2002 (中华民国史研究三十年) [THIRTY YEARS OF THE RESEARCH ON THE HISTORY OF THE REPUBLIC OF CHINA (1972–2002)] 745 (Social Sciences Academic Press (社会科学文献出版社), 2008).

Qing, and even controversial to some extent.<sup>2</sup> In the view of the revolutionary narrative, establishing overseas settlements was deadly wrong. While, from the perspective of legal history, it was an inevitable transitional phase that China was torn between *Li* (礼, Ritual) of the Chinese world order and the law of European international order, before the order of global international law was established.<sup>3</sup> Then how to interpret the late Qing's overseas settlements objectively from the perspective of the history of international law was particularly important.

In the late Qing Dynasty, Zongli Yamen (总理衙门, 1861-1901) and later the Ministry of Foreign Affairs (外务部, 1901-1911) were established to deal with foreign affairs. At the same time, the Board of Rites (礼部, Li-Bu) had been involved in the affairs of the feudatory (藩部), the tributary (属国), and Western diplomacy until it was changed into Dian-Li Yuan (典礼院) in 1911. So, in the foreign relations of late Qing China, the traditional tributary rules led by the Board of Rites were intertwined with the international legal rules dominated by Zongli Yamen and later the Ministry of Foreign Affairs, especially in the relations with the tributary States.<sup>4</sup> At the same time, after Japan defeated China in the Sino-Japanese War (甲午战争, 1894-1895) and then defeated Russia in the Russo-Japanese War (1904-1905), the Sino-Korean treaty relationship in the late Qing Dynasty, especially the problems of Chinese

<sup>2</sup> See KEY-HIUK KIM, *THE LAST PHASE OF THE EAST ASIAN WORLD ORDER: KOREA, JAPAN, AND THE CHINESE EMPIRE, 1860—1882*, 348-49 (1980); KIRK W. LARSEN, *TRADITION, TREATIES, AND TRADE: QING IMPERIALISM AND CHOSŌN KOREA, 1850-1910*, 72-94 (2008); YUANCHONG WANG, *REMAKING THE CHINESE EMPIRE: MANCHU-KOREAN RELATIONS, 1616-1911*, 176-214 (2018).

<sup>3</sup> See *THE CHINESE WORLD ORDER: TRADITIONAL CHINA'S FOREIGN RELATIONS* (John King Fairbank ed., 1978); MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960* (2004); RUNE SVARVERUD, *INTERNATIONAL LAW AS WORLD ORDER IN LATE IMPERIAL CHINA TRANSLATION, RECEPTION AND DISCOURSE, 1847-1911* (2007); *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* (Bardo Fassbender & Anne Peters ed., 2013).

<sup>4</sup> See Quan Hexiu (权赫秀), *Wanqing Duiwai Guanxi Zhong De Yige Waijiao Liangzhong Tizhi Xianxiang Chuyi* (晚清对外关系中的“一个外交两种体制”现象刍议) [A Study on the “One Diplomacy Two Systems” in the Late Qing Dynasty's Foreign Relations], 4 *ZHONGGUO BIANJIANG SHIDI YANJIU* (中国边疆史地研究) [CHINA'S BORDERLAND HISTORY AND GEOGRAPHY STUDIES] 70 (2009); Quan Hexiu (权赫秀), *Chaogong Yu Tiaoyue De Jinzhang Guanxi — Yi Oumei Lieqiang Yu Riben Dui Zhong Han Chaogong Guanxi De Taidu Bianhua Wei Zhongxin* (朝贡与条约的紧张关系——以欧美列强与日本对中韩朝贡关系的态度变化为中心) [*The Strained Relations Between “Paying Tribute” and “Treaty”—Centering on the European and American Powers' Attitude Change on China and South Korea's Tributary Relations*], 6 *LIAOCHENG DAXUE XUEBAO* (SHEHUI KEXUE BAN) (聊城大学学报(社会科学版)) [J. LIAOCHENG UNIV. (SOC. SCI. ED.)] 1 (2013).

Settlements on the Korean Peninsula (1884-1913) were highly related to Japan. And one of the root causes of the establishment of settlements on the Korean Peninsula for late Qing China was the border trades under the traditional patriarchal relations between China and Korea, which were obviously different from the settlements established by foreign powers on the Korean Peninsula.

Concerning late Qing China's settlements in Korea, the main records of China were entitled "concessions in Korea" (朝鲜租界), while Japan recorded relevant events with the keywords of "settlements of the Qing Dynasty" (清国居留地),<sup>5</sup> although both terms ("concessions" and "settlements") were translated as *Zu-Jie* (租界) during Qing Dynasty.<sup>6</sup> However, strictly speaking, concessions were leases occurred between countries. One country's government leased areas to a foreign government for management, and the foreign government subleased them to their emigrants. And settlements were leasing relations of individuals. These areas were demarcated by the government of one country, in which aliens were allowed to rent lands from landowners of the country separately, and the administrative jurisdiction of these whole areas remained with the country.<sup>7</sup> It should be noted that the concession or settlement was different from the Leased Territory (租借地). The former was where a country demarcated a certain area or trade port within its territory as the residential area of foreign merchants. The latter was where one country temporarily ceded some of its land to another country for use, especially for military strategy.<sup>8</sup>

<sup>5</sup> See Archives of Concessions in Korea (朝鲜租界), Diplomatic Archives of the Institute of Modern History, Academia Sinica, Taipei; Settlements of the Qing Dynasty (清国居留地), National Archives of Japan Center for Asia Historical Records.

<sup>6</sup> See MIN-CH'EN T.Z. TYAU, THE LEGAL OBLIGATIONS ARISING OUT OF TREATY RELATIONS BETWEEN CHINA AND OTHER STATES 58-59 (1917).

<sup>7</sup> See Liu Jingkun (刘敬坤) & Deng Chunyang (邓春阳), *Guanyu Woguo Jindai Zujie De Jige Wenti* (关于我国近代租界的几个问题) [*Some Issues Concerning Concessions in Modern China*], 2 NANJING DAXUE XUEBAO (ZHEXUE, RENWEN KEXUE, SHEHUI KEXUE BAN) (南京大学学报(哲学, 人文科学, 社会科学版)) [J. NANJING UNIV. (PHIL., HUMAN. & SOC. SCI. ED.)] 22 (2000).

<sup>8</sup> See WAIJIAO DA CIDIAN (外交大辞典) [A COMPREHENSIVE DICTIONARY OF DIPLOMACY] 705-706 (Wang Zhuoran (王卓然) & Liu Danda (刘达人) eds., Zhonghua Book Company (中华书局), 1937); Wang Liming (王立民), *Shi Lun Zhongguo Zujie Yu Zujiedi Qüyu Fazhi De Chayi — Yi Shanghai Zujie Yu Weihaiwei Zujiedi Qüyu Fazhi De Chayi Wei Li* (试论中国租界与租借地区域法制的差异——以上海租界与威海卫租借地区域法制的差异为例) [*A Comparison of the Regional Legal Systems between the Foreign Concessions and the Leased Territory: Focusing on the Difference Between the Foreign Concessions in Shanghai and the Weihaiwei Leased Territory*], 1 XIANDAI FAXUE (现代法学) [MODERN LAW SCIENCE] 17 (2017).

As with the Qing settlement in Korea, the late Qing's rented areas on the Korean Peninsula were defined by the treaty documents of governments between China and Korea. The Korean government was responsible for the management in the designated areas and China was only responsible for cooperation. So the late Qing's leased areas on the Korean Peninsula mixed the nature of settlements and concessions, and were more like settlements than concessions. Another proof is that the “朝鲜仁川济物浦各国租界地图” was translated as the *Plan of the General Foreign Settlement at Chemulpo*, which includes the Chinese Settlement, the Japanese Settlement and the General Foreign Settlement in the National Archives of Japan<sup>9</sup> at the Japan Center for Asian Historical Records.

This paper aims to discuss the actual and embarrassing situations of Chinese settlements on the Korean Peninsula which were established by Sino-Korean treaty documents according to international law. The late Qing government which wanted to resolve the traditional Sino-Korean tributary crisis had failed due to the conflict between European international law and East Asian *Dian-Li* (典礼).<sup>10</sup> Different from the late Qing which emphasized the *Yi* (义, Morality and Justice) of the Chinese world order, Japan directly occupied the whole Korean Peninsula by Force (力, Li) of the European international law order. The different results led to the contradictory assessment of international law from absolute compliment to complete denouncement during the development of the global international legal order.

## II. VITAL *DIAN-LI*: PREFERENTIAL TREATMENT TO VASSAL STATES

The treaty documents of Sino-Korean commercial relations involved the general commercial treaty, regulations concerned with border trade, contracts for the Chinese settlements, etc. These treaty documents were all reached in the form of European international legal terms, but their contents actually followed the principle of “preferential treatment to vassal States” (优待属邦) according to the Chinese *Li*. The Qing government sent commissioners who acted as the consul general or envoy to handle business affairs and Chinese settlements in Korea, but did not use the expression of “Consul General” or “Envoy” which is widely used in European international law practice to emphasize the traditional suzerain-vassal relations. In this part, I will outline the treaty system between Qing China and Korea from the perspective of *Dian-Li*. And I will show how the “preferential treatment to vassal States” was persistently highlighted and how China valued the importance of the title addressing each other.

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<sup>9</sup> See The Case of Settlements of Powers and China in Korea (朝鲜ニ於ケル各国及清国居留地整理一件), 1912, National Archives of Japan: B12082573700. There were similar maps at Seoul National University. See also WANG, *supra* note 2, at 172.

<sup>10</sup> The norms of *Dian-Li* will be discussed in Part V, Section A.

### A. *The Commercial Treaty of 1882*

The treaty relations between China and Korea began with the Sino-Korean Commercial Treaty (商民水陆贸易章程, or 朝清商民水陆贸易章程) signed in Tianjin in 1882. According to the treaty, Korea was required to report its treaties previously concluded with the Western powers to the Qing court. And the self-proclaimed “King” (国王) of Korea should submit a Chinese copy of the above-mentioned treaties signed in the name of the “Great Monarch” (大君主) to the Emperor of the Qing Dynasty, and especially send a section of the declaration of Korea to China separately, in return for “the emperor’s favor of vassals” (皇上绥靖藩服之恩).<sup>11</sup>

At the beginning of the Sino-Korean Commercial Treaty of 1882, it reads that “Korea has been the Qing’s vassal State for a long time and it is vital for *Dian-Li*. All the issues have been fixed and there is no need to negotiate for a change. However, as all the powers are trading by sea now, it is advisable to open the country on the coast, so that merchants and ordinary people of both our countries could trade with each other by sea and share benefits. And so should the rules of Sino-Korean boundary trades on the land vary according to the circumstances. Nevertheless, the commercial treaty signed herein demonstrates China’s preferential treatment to the vassal State, namely Korea, and the most-favored-nation clause for other powers shall not apply to the present case.”<sup>12</sup> Obviously, in this treaty, there was a clear distinction between the vassal States (属邦) and the so-called “friendly nations” (与国). And Korea was China’s vassal State and the European powers were China’s “friendly nations.” Qing China particularly added a clause to emphasize the intention of “preferential treatments to vassal States” (优待属邦) to prevent other powers invading relevant interests by invoking the principle of “most-favored-nation treatment.”

At the same time, the last clause, Article IX, further provides that: “If there is a need to revise the content of the treaty in the future, the Minister of Beiyang and the King of Korea shall consult at any time and the revision of the content shall be approved by the Emperor.”<sup>13</sup> It can be seen that the King of Korea was

<sup>11</sup> See QINGJI ZHONG RI HAN GUANXI SHILIAO (清季中日韩关系史料) [HISTORICAL MATERIALS OF CHINA-JAPAN-KOREA RELATIONS IN THE QING DYNASTY] 1412 (The Institute of Modern History of Academia Sinica ed., 1972).

<sup>12</sup> “朝鲜久列藩封, 典礼所关, 一切均有定制, 毋庸更议. 惟现在各国既由水路通商, 自宜亟开海禁, 令两国商民一体互相贸易, 共沾利益, 其边界互市之例, 亦因时量为变通. 惟此次所订水陆贸易章程系中国优待属邦之意, 不在各与国一体均沾之列.” See 1 ZHONGWAI JIU YUEZHANG HUIBIAN (中外旧约章汇编) [COMPILATIONS OF TREATIES, CONVENTIONS, ETC. BETWEEN CHINA AND FOREIGN STATES] 404–405 (Wang Tieya ed., SDX Joint Publishing Company (三联书店) 1957).

<sup>13</sup> “第八条, 以后有须增损之处, 应随时由北洋大臣与朝鲜国王咨商妥善, 请旨定夺施行.” *Id.*, at 407.

not equal to the Chinese Emperor, as Beiyang Minister of Qing China who was in charge of foreign affairs had the authority to negotiate the contents of the treaty with the King of Korea and the Emperor of Qing China are superior to both of them. Clearly, the essential purpose of the Sino-Korean Commercial Treaty of 1882 was to preserve the traditional suzerain-vassal relations between China and Korea.

### *B. Border Trade Regulations*

To solve the hindrance of border trade between China and Korea, the Sino-Korean Commercial Treaty (1882) adjusted the arrangement. Its Article V stipulated that “the border trade in areas like Yizhou (义州), Huining (会宁), Qingyuan (庆源) have long been undermined under the administration of border officials. Now the inhabitants of our two countries’ border areas could trade freely at any time in Zhamen (柵门) and Yizhou along the Yalu River (鸭绿江), and Hunchun (珲春) and Huining along the Tumen River (图们江) as the new trade ports.”<sup>14</sup> This provision could maintain and expand the border trade between China and Korea.

In the second year, the Regulations on the Trade of Frontiers in Mukden and Korea (奉天与朝鲜边民交易章程) and the Regulations on the Trade of Merchants in Jilin and Korea (吉林朝鲜商民贸易地方章程) were concluded, and both of them emphasized the purpose of China’s “preferential treatments to the vassal State.” Article I of the former regulation stipulated that “the land border trades are originally preferential treatments to China’s vassal States and designated for the people in the frontiers, which is different from seaports trades. The permission of traveling on land at any time is only granted to border merchants of Mukden province and Korea, and other countries were excluded from this benefit.” And Article VIII of the regulation especially emphasized that “Korea’s act of paying tribute to Beijing was vital to *Dian-Li* in those years. All the tributes were not taxed as usual.” The Regulations on the Trade of Frontiers in Mukden and Korea particularly dealt with the title when both parties refer to each other, Article XXIV of it clearly stated that when the newly established land border market of Zhongjiang (中江) and the local government officials meet with events which need to negotiate, the communication documents should follow the usual convention (体制). Korea shall respectfully address China as the “Celestial Empire” (天朝, or 上国). Even if it is an ordinary document, it should also follow the original convention (成宪) and cannot pen ‘Middle [State]’ or ‘East [State]’ etc., to address China. On the other side, border officials in Mukden province shall refer to Korea as the “Kingdom

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<sup>14</sup> “第五条，向来两国边界如义州、会宁、庆源等处，例有互市，统由官员主持，每多窒碍。兹定于鸭绿江对岸柵门与义州二处，又图们江对岸珲春与会宁二处，听边民随时往来交易。” *Id.*, at 406.

of Korea” (朝鲜国) or “Your Honorable Country” (贵国) as a sign of preferential treatment.”<sup>15</sup>

The Regulations on the Trade of Merchants in Jilin and Korea have a similar standing. At the beginning of the regulation, it reads: “Korea has been a vassal State and performed duties of paying tribute conscientiously for a long time. It was China’s preferential treatment to its vassal State Korea, by changing the past restrictions of the frontier trades to allow for trade at any time. The draft of the Regulations had nothing to do with the trade regulations between China and the great powers.” Article XVI of the regulation made a similar emphasis on the norms of the title as Article XXIV of the Regulations on the Trade of Frontiers in Mukden and Korea mentioned above.<sup>16</sup> These emphases on preferential treatment to the vassal state and the norms of the title addressing each party are further proofs of China trying to consolidate the traditional suzerain-vassal relations between China and Korea.

### C. Regulations of Chinese Settlements

If those aforementioned border trade treaties were late Qing China’s initial attempts to strengthen the Sino-Korean traditional border mutual trade in the form of international law, then the Chinese settlement regulations signed in the following few years had been completely incorporating the international law rules. The Regulations of Chinese Merchants’ Residential Demarcation in Incheon Port (仁川口华商地界章程), the Prepared Regulations of Chinese Merchants’ Residential Demarcation in Pusan (会拟釜山华商地界章程) of 1884,<sup>17</sup> the Regulations of Chinese District Expand to Samrichae (三里寨扩充华界章程) of 1887,<sup>18</sup> the Provisional Regulations of Chinese Merchants’ New Residential Demarcation in Wonsan Port (元山口华商新界暂拟章程) of

<sup>15</sup> “第一条，边界陆路交易原系天朝优待属国，专为边民而设，与各海口岸通商情事不同，所准随时往来，仅指奉省之与朝鲜边界商民而言，其他国家不在此例。

[...]

“第八条，当年朝鲜入京朝贡，典礼攸关，一切恪遵定例，贡物例不征税。”

[...]

“第二十三条，中江新设关市及地方官遇有交涉事件，来往文书应遵体制，朝鲜必须尊称‘天朝’或称‘上国’字样，即属寻常文移亦当遵循成宪，不得率书‘中’、‘东’等字，有违定制。至奉省边界官员则称‘朝鲜国’或称‘贵国’字样，以示优待。” *Id.*, at 418–22.

<sup>16</sup> “朝鲜久列藩封，勤修职贡，今于两国边界改互市旧例为随时交易，系中国优待属邦之意，拟立吉林朝鲜贸易章程，与各国通商章程两不相涉。” *Id.*, at 444–47.

<sup>17</sup> See QUAN HEXIU (权赫秀), JINDAI ZHONGHAN GUANXI SHILIAO XUANBIAN (近代中韩关系史料选编) [SELECTED DOCUMENTS ON THE SINO-KOREAN MODERN RELATIONS] 23–24 (2008).

<sup>18</sup> See Kuochong Renchuan Huashang Zujie (扩充仁川华商租界) [The Expansion of the Chinese Merchants’ Settlement in Incheon], 1887, Archives of the Institute of Modern History of Academia Sinica in Taipei: 01-41-019-04.



1888,<sup>19</sup> and other relevant articles on the Sino-Korean settlements constituted the treaty system of the late Qing Dynasty's overseas settlements on the Korean Peninsula. These regulations were mainly to lay down issues such as the scope of the settlements near the port, the assessment of land price, and the collection of taxes.

In addition, Qing China had also installed telegraph wiring in ports like Busan and Wonsan where Chinese settlements were located. The signing of the Contract of Sino-Korean Land Telegraph Line Agency Contract (中国代办朝鲜陆路电线合同) of 1885, Busan Telegraph Line Treaty (釜山电线条约) of 1886,<sup>20</sup> and Wonsan Telegraph Line Treaty (元山电线条约) of 1891<sup>21</sup> entitled China with the rights to franchise the main telegraph line in Korea within a certain period, which safeguarded Sino-Korean traditional relations through the commercial existence.

Subsequently, the Regulations of Dispatching Officials to Handle Korean Commercial Affairs (派员办理朝鲜商务章程) stipulated the Commerce Commissioner's titles, duties, staffing, diplomatic treatments, its relations with the Minister of Beiyang, as well as the term, assessment, salary and related expenses of the relevant subordinates in Korea.<sup>22</sup> To be specific, the General

<sup>19</sup> See Yuanshan Fushan Huashang Zujie Dijia Juan (元山、釜山华商租界地价卷) [A Scroll of the Land Price of Chinese Settlements in Wonsan and Busan], 1888-1894, Archives of the Institute of Modern History of Academia Sinica in Taipei: 01-41-019-03; See also, Quan Hexiu (权赫秀), *Cong Liangze Xin Shiliao Lai Kan Wanqing Shiqi Zhongguo Zai Chaoxian Yuanshan De Shili* (从两则新史料来看晚清时期中国在朝鲜元山的势力) [A Study of Chinese Forces in Korea Wonsan in Late Qing Times Based Two New Historical Materials], 1 ANHUI SHIXUE (安徽史学) [HISTORY RESEARCH IN ANHUI] 70 (2014).

<sup>20</sup> See Wang, *supra* note 14, at 469-70, 504 & 558.

<sup>21</sup> See Quan Hexiu (权赫秀), *Hanguo Cang 1891 Nian Zhong Chao Yuanshan Dianxian Hetong Yuanben Ji Qi Jiazhi* (韩国藏 1891 年中朝元山电线合同原本及其史料价值) [A Study on the Original Text of Wonsan Telegraph Line Contract Between China and Korea in 1891 and its Historical Value], 3 ANHUI SHIXUE (安徽史学) [HISTORY RESEARCH IN ANHUI] 27 (2010).

<sup>22</sup> “一、由北洋大臣扎派总办朝鲜各口商务委员。二、总办委员到朝鲜后，应照议定章程与朝鲜官和衷办理。三、朝鲜民房卑狭，无可租购，汉城、元山、釜山三处拟各处建委员公馆一所，以崇体制。四、总办委员与分办委员公文往来，总办用扎行，分办用申呈。遇有紧要事件，亦可由分办径禀北洋大臣衙门，以期迅速。五、总办、分办委员与朝鲜官员公文往来，自其政府统理衙门以下，均用平行照会，与各国公使、领事照会，均用华文，亦可附用洋文。六、遇朝鲜公会各国公使，朝鲜为中国属邦，中国总办委员为宾中之主，应坐于朝鲜官主位之上。七、各口商民有控告案件，由委员遵照奏定贸易章程第二条，秉公分别办理。八、支领俸薪，总办委员月给银四百两；分办委员月给银三百两、二百两不等；总办处翻译月给银一百二十两、一百两不等；分办处翻译月给银一二十两不等。九、三年一任，由北洋大臣考核劳绩奏奖。十、往来船价，公馆租

Commerce Commissioner in Korea (驻韩总办商务委员) mainly dealt with China's commerce and related foreign affairs in Korea, which were equivalent to the "Consul General" or "Envoy." The commerce commissioner's authority to handle the cases of Chinese commercial complaints at all ports in Korea was similar to the "consular jurisdiction". However, it can be seen that China was still reluctant to use the special diplomatic titles according to modern international law, as its main purpose remained to maintain the traditional relationship between China and Korea.

### III. UNSAVED DIAN-LI: THE DIFFICULT SITUATIONS IN THE SETTLEMENTS

According to the treaty documents between late Qing China and Korea, the largest settlement of all three Chinese settlements in Korea was in Incheon, and the other two were in Busan and Wonsan. Nonetheless, there have been so many difficulties to maintain the newly expanded Chinese settlement in the Samrichae of Incheon. Because China was not the only country that set up settlements in Korea. So were Japan, the United States, the United Kingdom, and other European powers. In Samrichae, China not only needed to negotiate with Korea on the maintenance of public roads, but also have to deal with Japan on roads and houses, as well as other powers on the settlement border. At this point, the late Qing government had joined in the great game of international relations among the great powers on the Korean Peninsula. In this part, I will elaborate on the reality of the Chinese settlement.

#### A. *Foreign Settlements on the Korean Peninsula*

As noted previously, Chinese Merchants' settlements on the Korean Peninsula (1884–1913) mainly consisted of three settlements, respectively in Incheon, Busan, and Wonsan. These settlements were further confirmed in the Regulations of Chinese Settlements in Incheon, Busan, and Wonsan<sup>23</sup> signed by Qing China and Japan in 1910 after Japan completely colonized Korea and

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资及公会、公宴一切公件，随时核实动用报销。十一、所需经费在各关出使经费项下动支。十二、陆路设立关卡，另由北洋大臣会商奉天、吉林将军就近选派地方官员办理。” See 3 QING SHILU DEZONG YI HUANGDI SHILU (清实录·德宗毅皇帝实录) [RECORDS OF THE QING DYNASTY, THE EMPEROR DEZONG] 133–35 (Zhonghua Book Company (中华书局), 2008). See also Quan Hexiu (权赫秀), *Chen Shutang Zai Chaoxian De Shangwu Lingshi Huodong Yu Jindai Zhong Chao Guanxi* (陈树棠在朝鲜的商务领事活动与近代中朝关系 (1883 年 10 月-1885 年 10 月)) [*Chen Shutang's Commercial Consular Activities in Korea and the Modern Sino-Korean Relations (Oct. 1883 – Oct. 1885)*], 1 SHEHUI KEXUE YANJIU (社会科学研究) [SOC. SCI. RES.] 155 (2006).

<sup>23</sup> See The Regulations of Chinese Settlements in Incheon, Busan, and Wonsan (仁川釜山及元山清国居留地規程), 1911, National Archives of Japan: B13090915100.

terminated by the Agreement on the Abolition of Chinese Settlements in Korea<sup>24</sup> in 1913.

Before Korea was annexed by Japan, Japan signed the settlement treaties of Busan in 1877, Wonsan in 1881, and Incheon in 1883, shortly after the Treaty of Ganghwa in 1876 with Korea.<sup>25</sup> In 1884, Korea signed the Regulations of Settlements of Chemulpo in Incheon with four countries including Japan, Great Britain, the U.S.A., and China.<sup>26</sup> But there were only three settlements in Incheon, that is, the Chinese Settlement including the old and new areas, the Japanese Settlement including the old and new areas, and the General Foreign Settlement. The Chinese settlement in Incheon was only one of the three settlements, which did not receive any preference. On the contrary, its operation was subjected to various restrictions in practice.

### *B. The Chinese Settlement in Incheon*

The Chinese settlement in Incheon was too small and needed further expansion. But it could not be expanded nearby because the settlement neighbored the General Foreign Settlement, thus another suitable siting was needed. For this reason, the Regulations of the New Expansion of Chinese Settlement in Samrichae of Incheon (三里寨新扩华界章程) was concluded in 1887.<sup>27</sup> There are ten clauses in the Regulations. The regulations determined the specific location of the expanded settlement. Included was a map with boundary marks. As with the land auction and taxation for the expanded settlement, the Regulations of Chinese Merchants' Residential Demarcation in the Incheon Port of 1884 should apply. However, the maintenance of the newly expanded Chinese settlement in the Samrichae did not run smoothly.

Due to the unfavorable drainage of the road in Samrichae, there were many difficulties in moving through the mire during the heavy rain. Therefore, the Chinese merchants in Incheon planned to build a road directly from Samrichae to the well-built road of General Foreign Settlement in 1890, which was called the "Sino-Korean public road project." But the implementation of the project required substantial funds to compensate for the demolition of the Koreans' thatched cottage and repair the aqueducts in the Chinese settlement. According to the previous convention, it was the Korean government that was responsible to build the road at the time when the port opened. For some reason, it had not been built for years. In the end, the Zongli Yamen's officials who were in charge of Incheon trade affairs in Korea negotiated with the supervision commissioner of Korea and tried to raise funds to repair the road. Per the plan,

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<sup>24</sup> See Wang, *supra* note 14, vol.2, at 958.

<sup>25</sup> See The Case of Settlements of Powers and China in Korea, *supra* note 9. However, these treaties of settlements between Japan and Korea did not mean anything after the Japan-Korean Merger Treaty was signed in 1910.

<sup>26</sup> See QUAN, *supra* note 19, at 27–31.

<sup>27</sup> See The Expansion of the Chinese Merchants' Settlement in Incheon, *supra* note 20.

the expenditure for the road would be repaid by depositing funds and the annual tax which Chinese merchants paid to the Korean government. And the compensation for the Koreans' thatched cottage and the expenditure for repairing the canal would be collected from Chinese merchants by the Board of Directors of Chinese Merchants.

Nevertheless, things did not go well. In 1891, Koreans whose cottages were to be demolished for the construction of the road made a permanent lease contract with the Japanese. China needed to exchange notes with Japanese consular officers for the demolishment. At the same time, China was informed that the Regulations of General Foreign Settlement in Inchon also applied to Shawei Island (沙尾島) when Chinese merchants were planning to install boundary markers on it, though the map of the General Foreign Settlement did not include the island. So there was another tough negotiation for China.<sup>28</sup>

### C. Chinese Merchants in Settlements

Besides those settlements in Incheon, Busan, and Wonsan mentioned above, according to Article IV of the Sino-Korean Commercial Treaty (1882), Chinese merchants had the right to set up broker houses in Seoul which later developed into a Chinese settlement. But strictly speaking, China had not set up a settlement in Seoul.

In 1894, Yuan Shikai (袁世凱) reported to the Court the overall status of Chinese commercial existence in Seoul, Incheon, Busan, and Wonsan as of 1893, which was the last official survey before the Sino-Japanese War. The statistics showed that, in Seoul, there were 141 shops owned by Chinese nationals and 1254 merchants doing business valued at 35 million *Liang* (兩) of silver; in Incheon, 117 Chinese shops and 711 Chinese people; in Busan, 21 shops including 2 large-scale shops, 9 medium-size shops, and 10 small-size shops, as well as 142 merchants; in Wonsan, 10 Chinese shops which engaged in the business of silks, foreign goods, and groceries, and 75 Chinese merchants there.<sup>29</sup>

This marked the peak of the development of Chinese settlements on the Korean Peninsula for the late Qing Dynasty. In the next year, the Sino-Japanese War broke out. With the defeat of China, Japan strongly intervened in the Korean administration, which led to the gradual suspension of Chinese merchants' operations in these settlements. It was contrary to China's original intention of maintaining the order of *Li* and the traditional Sino-Korean relationship by using the Law of European International Order.

<sup>28</sup> See *id.*

<sup>29</sup> See HISTORICAL MATERIALS OF CHINA-JAPAN-KOREA RELATIONS IN THE QING DYNASTY, *supra* note 13, at 3276–77.

#### IV. THE REPEAL OF *Dian-Li*: THE GAME BETWEEN CHINA AND JAPAN

China abolished the “tributary *Dian-Li*” between China and Korea, and recognized Korea as an independent state in the Treaty of Shimonoseki (马关条约) between China and Japan in 1895. But China did not establish formal diplomatic relations with Korea, namely the “Korean Empire,” until 1899. Due to the annexation of Korea by Japan in 1910, formal diplomatic relations between China and Korea lasted only about ten years (1899–1910). During the period from 1895 to 1913, the situation of China’s settlements on the Korean Peninsula perfectly reflected the differences in the use of international law by China and Japan. China was stuck between the justice of the Chinese *Li* (道义) and the force of European international law. While, Japan pursued the idea of “departing from Asia for Europe” and put the force of European international law into good use.

##### A. *The Commercial Treaty of 1899*

After the defeat of China in the Sino-Japanese War of 1894-1895, Korea changed its official name to the “Korean Empire” in 1897. China re-negotiated the *Commercial Treaty: Customs Tariffs* (通商条约: 海关税则, or 韩清通商条约) with the Korean Empire in Seoul in 1899. The treaty includes fifteen clauses with one supplementary provision on customs tariffs and annulled the Sino-Korean Commercial Treaty (1882) signed before the Sino-Japanese War. The first paragraph of the Sino-Korean Commercial Treaty of 1899 reads that “the Great Qing Empire and the Great Korean Empire would always be friendly to each other. The merchants and the people of the two countries were all protected and favorably treated. If one country encountered unfairness and contempt, the other would provide with help of making good mediation to show the friendship and mutual concerns between the two States.”<sup>30</sup> The treaty indicated Qing China’s recognition of the Korean Empire, and the traditional suzerain-vassal relation between China and Korea no longer existed. Subsequently, China and Korea began to exchange envoys and established modern international diplomatic relations.<sup>31</sup>

This transformation was related to the change in the strength of China and Japan on the Korean Peninsula after the Sino-Japanese War, because Article I of the Sino-Japanese Shimonoseki Treaty required the Qing government to

<sup>30</sup> “嗣后大清国、大韩国永远和好，两国商、民人等彼此侨民，皆全获保护优待利益，若他国遇有不公轻蔑之事，一经照知，均须相助，从中善为调处，以示友谊关切。” See Wang, *supra* note 14, vol.2, at 910.

<sup>31</sup> See QINGJI ZHONGWAI SHI LING NIANBIAO (清季中外使领年表) [CHRONOLOGY OF THE CHINESE AND FOREIGN AMBASSADORS AND CONSULS IN THE QING DYNASTY] 40 & 70 (The First Historical Archives of China (中国第一历史档案馆) & the Department of History of Fujian Normal University (福建师范大学历史系) eds., Zhonghua Book Company (中华书局), 1970).

confirm Korea as an independent state and abolished the traditional suzerain-vassal relations between China and Korea.<sup>32</sup> During the negotiation process, Li Hongzhang (李鸿章) tried to change this paragraph as follows: China and Japan shall jointly recognize and guarantee that Korea is an independent neutral State. Both States will terminate all the arrangements that hinder the autonomy and independence of Korea.<sup>33</sup> Clearly, Li Hongzhang aimed to bind Japan with obligations and constrain Japan's future behavior. Regarding Li Hongzhang's proposal, there was a precedent to follow. The Sino-Japanese Treaty of Tianjin (中日天津会议专条, 1885) stipulated that "[i]n the event of a major incident in Korea in the future, if China and Japan, or either of the two countries, intend to deploy troops, they should first notify each other through diplomatic channels. When the incident is appeased, the troops shall be withdrawn and no longer stationed there."<sup>34</sup>

However, it was no longer in 1880s. Japan had become quite assertive since its victory in the Russo-Japanese War in 1904-1905. Hence, Japan refused Li Hongzhang's proposal straightforwardly and replied with no explanation: "As the Japanese plenipotentiary sees it, Article I shall stay the same as the previous provision set forth in the draft agreement that was submitted to the plenipotentiary minister of China before."<sup>35</sup> In the end, the obligation to assure Korea as an independent state was only bestowed on China. Japan was off the hook. As a result, China lost the most important tributary state Korea and China's traditional world order of *Tianxia* (天下) came to an end. The "tributary *Dian-Li*" had disintegrated.

### B. The Japanese Harassment of Chinese Merchants

Chinese merchants in China's Korean settlements had been often harassed by the Japanese. It became worse after the Sino-Japanese War. Take Incheon as an example, as previously noted, there were the Chinese Settlement, the Japanese Settlement, and the General Foreign Settlement in Incheon. Chinese merchants in Incheon had to request the British Consul-General and Consul of the General Foreign Settlement to protect them and their business when they could not bear Japanese harassment and bullies. They even petitioned the

<sup>32</sup> See Wang, *supra* note 14, vol.1, at 624; see also 2 ZHONGWAI JIU YUEZHANG DAQUAN (中外旧约章大全) [TREATIES, CONVENTIONS, ETC. BETWEEN CHINA AND FOREIGN STATES] 590 (China Customs Press (中国海关出版社), 2007).

<sup>33</sup> See ZHONGRI YIHE JI LÜE (中日议和纪略) [A SKETCH OF SINO-JAPANESE NEGOTIATION] 136 (Wenhai Press (文海出版社), 1968); See also Ni Gai Riben Heyue Digao (拟改日本和约底稿) [the Draft for Revising the Sino-Japanese Peace Treaty] (The Institute of Oriental Culture, University of Tokyo).

<sup>34</sup> "将来朝鲜若有变乱重大事件, 中日两国或一国要派兵, 应先互行文知照, 及其事定, 仍即撤回, 不再留防." See Wang, *supra* note 14, vol.2, at 465.

<sup>35</sup> See A SKETCH OF SINO-JAPANESE NEGOTIATION, *supra* note 36, at 445.

Minister of Zongli Yamen to merge the Chinese Settlement with the General Foreign Settlement, because it was so difficult to maintain the independent operation of the Chinese Settlement owing to Japanese oppression.<sup>36</sup>

After the Sino-Japanese War of 1894–1895, Chinese merchants in Incheon monthly paid 100 silvers to the General Foreign Settlement for employing foreign police officers to keep the peace in the Chinese settlement. Nonetheless, due to the provocation of the Japanese employees, Chinese merchants in the settlement had to hire the Chinese to patrol the streets after 1897. At the same time, the Chinese merchants in the settlement placed a special emphasis that police officers from the Japanese Settlement were not permitted to enter Chinese houses and arrest criminals in the Chinese Settlement.<sup>37</sup> It can be inferred from these facts that, unlike other great powers' settlements, the Chinese settlements on the Korean Peninsula could not be maintained though they were established in the name of international treaties.

Liang Qichao (梁启超) divided the process of Korea's downfall into three phases in his *A Brief History of the Decline and Fall of Korea*.<sup>38</sup> In the first phase, Korea was subjugated to China and Japan. In the second phase, Korea was subjugated to Japan and Russia. In the third phase, Korea was completely subjugated to Japan. For Qing China's settlements on the Korean Peninsula, there were two vital events: the Shimonoseki Treaty concluded after the Sino-Japanese War in 1895, and the Portsmouth Treaty after the Russo-Japanese War in 1905, which validated Liang Qichao's view. With two great powers battling with each other, there was little room for the feeble Qing China to maintain its rights according to the Sino-Korean treaties.

### C. China's Settlements Negotiation with Japan

After the Russo-Japanese War, the Japan-Korea Treaty of 1907 made Korea a protectorate of Japan. At the same time, the late Qing Government withdrew its envoys from Korea. The Qing Court hadn't authorized the Ministry of

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<sup>36</sup> See Wu Litang and Other Chinese Merchants Living in Korea's Petition to Merge the Chinese Settlement with the General Foreign Settlement (寓朝华商吴礼堂等稟请在朝鲜租界与各国联合为一录送查酌核办), 1895, Archives of the Institute of Modern History of Academia Sinica in Taipei: 01-25-044-01-008.

<sup>37</sup> See Korea's Multiple Request to Send Envoys to Negotiate Treaties Refused and Chinese Merchants in the Old and New Settlements of Incheon Ordered to Hire Chinese Patrols to Avoid Japanese Interference (朝鲜屡欲遣使立约已告断不能行又仁川华商新旧租界已令自行雇华丁巡守以免日人作梗), 1897, Archives of the Institute of Modern History of Academia Sinica in Taipei: 01-25-049-01-051.

<sup>38</sup> See Liang Qichao (梁启超), *Chaoxian Wangguo Shi Lue* (朝鲜亡国史略) [*A Brief History of the Decline and Fall of Korea*], XIN MIN CONG BAO (新民丛报) [NEWSPAPER FOR THE NEW NATIONS], vol. 3, no. 5-6 (1904).

Foreign Affairs to establish the consul general in Seoul until the next year.<sup>39</sup> In 1910, Japan forced Korea to sign the Japan–Korea Annexation Treaty which made Korea a colony of Japan. Korea could no longer be a high contracting party of any treaty, so the bilateral relation between China and Korea changed into the bilateral relation between China and Japan. Consequently, Midori Komatsu (小松绿), the Foreign Superintendent Officer of the Japanese Governor's House and Ma Tingliang (马廷亮), the Chinese Consul General of Korea, concluded the Regulations of Chinese Settlements in Incheon, Busan, and Wonsan (仁川、釜山及元山清国租界章程), in February 1910.<sup>40</sup>

The Regulations is made up of 14 clauses. Article II of the Regulations stipulates that the lands of the settlements shall be permanently leased to the people of Qing China. If the settlements are abolished by the agreements between Japan and Qing China in the future, all the lands of the settlements shall be incorporated under the jurisdiction of Korea and the right of perpetual lease would be changed into the right of ownership. Article IX of the Regulations provides that roads, bridges, ditches, and the like in the settlements shall be managed by the Chinese Consular Officers and maintained by the Chinese people living in the settlements, which is different from the previous convention. At the same time, Japan sent a note to the Chinese Government, saying that all the police powers in the settlements of Incheon, Busan, and Wonsan shall remain the same, and the assistance of Korean police officers should be agreed between consular officers and governors.<sup>41</sup> The Chinese settlements on the Korean Peninsula came to an end when China and Japan signed the Regulations of the Agreement on the Abolition of Chinese Settlements in Korea in 1913.

#### V. THE DIVERGENCE BETWEEN *LI* AND LAW: CHINA VERSUS JAPAN

Chinese traditional *Dian-Li* advocates vassal states' autonomy, and both parties in the order of *Dian-li* abided by basic moral principles and maintained peaceful relations with each other. However, behind European international law lies the reality of power politics. Japan embraced European international law and abandoned Chinese *Li* after the Meiji Restoration. As a result, Japan colonized the Korean Peninsula. Unlike Japan, China who insisted on the principles of *Li* did not try to annex Korea through European international law.

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<sup>39</sup> See CHRONOLOGY OF THE CHINESE AND FOREIGN AMBASSADORS AND CONSULS IN THE QING DYNASTY, *supra* note 34, at 30.

<sup>40</sup> See The Transcription of the Newly Signed Regulations of Chinese Settlements in Incheon, Busan, and Wonsan (新订仁川、釜山、元山租界膳本), 1910, Archives of the Institute of Modern History of Academia Sinica in Taipei: 02-35-055-01; The Case of Settlements of Powers and China in Korea, *supra* note 9.

<sup>41</sup> See *id.*



The different choices China and Japan made reveal the contradiction between *Li* and European international law.

#### A. *The Justice of Dian-Li*

Tributary *Li* (朝贡礼) was an important symbol of the traditional Sino-Korean relationship, which was specified in the *Libu Zeli* (礼部则例, Precedents of the Board of Rites). *Libu Zeli* in the Daoguang Court consists of 202 volumes and the issues about Tributary-Investiture and Envoys-Merchants range from volumes 171 to 187. These issues, together with the weddings and funerals of the royal family members, and the imperial examinations, were all managed by the Board of Rites. The officials who were responsible for the tributary *Li*, took *Bin-Li* seriously and did not interfere in the internal affairs of the vassal States. As *Qing Shigao* (清史稿, The Draft History of the Qing Court) recorded, “As the *Book of Songs* extols ‘having guests’ and *Zuozhuan* notes ‘making friends with neighbors,’ regardless of vassal States or friendly countries, invite them and all the visitors are guests. I am the host and will do everything in accord with *Bin-Li*.”<sup>42</sup> The *Bin-Li* in the 43rd volume of the *Great Qing Tongli* (大清通礼, Comprehensive Rites of the Great Qing) composed during the Qianlong Court included how to deal with tributes from foreign countries, investitures and gratitude gifts for foreign countries. And it stated that “the Tributary *Li* requires that the vassal States should regularly send the tributary envoys with the tributes and gifts to the imperial capital.”<sup>43</sup> It can be seen that the vassal States should obey the tributary *Li* when they came to the imperial capital of the Great Qing. The traditional suzerain-tributary relations were also the *Li* of the host-guest (主客, Zhu-Ke).<sup>44</sup>

Behind the order of host-guest is the mutually acceptable principle of “Shi Da Zi Xiao” (事大字小) between China and vassal States. “Shi Da Zi Xiao” means that smaller states shall serve for the great powers and in return, the great powers shall take care of the smaller according to *Li*.<sup>45</sup> Both the service of smaller States and the caress of greater powers need to observe the trust (信, Xin) and benevolence (仁, Ren) of *Li* respectively. *Zuozhuan* (左传) lay down

<sup>42</sup> “夫诗歌‘有客’，传载‘交邻’，无论属国、与国，要之，来者皆宾也。我为主人，凡所以将事，皆宾礼也。” See *Bin-Li*, in 91 QING SHIGAO (清史稿) [THE DRAFT HISTORY OF THE QING DYNASTY] 2673 (Zhao Erxun (赵尔巽) ed., Zhonghua Book Company, 1998).

<sup>43</sup> “朝贡之礼，凡四夷属国按期修职贡，遣其陪臣，贡表文方物来朝。” See *Bin-Li*, in 43 DA QING TONG LI (大清通礼) [COMPREHENSIVE RITES OF THE GREAT QING] (block-printed edition of the 21st year of Qianlong era, i.e. the year of 1756).

<sup>44</sup> See Yan Liyuan (颜丽媛), *Guoji Li Fa Guan: Qingdai Zhongguo De Chaogong Yu Tiaoyue* (国际礼法观：清代中国的朝贡与条约) [*The Conception of International Li-Law: Tributes and Treaties in the Qing Dynasty*], 1 NANDA FAXUE (南大法学) [NANJING UNIV. L. J.] 85 (2021).

<sup>45</sup> See ZUO ZHUAN (左传) 1506 (Yang Bojun (杨伯峻) ed., Zhonghua Book Company, 1990).

this principle as “[i]t is trust that the smaller states serve the greater ones, and it is benevolence that the greater powers protect the smaller ones. If the smaller states abandon the greater ones, they are not trustworthy; and if the greater powers attack the smaller ones, they are not benevolent.”<sup>46</sup> In the late 19th century, Yu Gil-jun, a Korean politician and thinker, explained the traditional Sino-Korean relations and the international relations between Korea and other countries through the concept of the “Dual System” (两截体制). To China, Korea was a vassal State; to other countries, Korea was subjugated by European international law.<sup>47</sup> This concept also showed that the tributary relations between these two countries are not subordinate.

What the European public international law in the 19th century and the Chinese traditional *Dian-Li* have in common is that they both had a set of conceptions of civilization. The European countries used Christianity as the criterion to distinguish civilized countries, semi-civilized countries, and barbaric countries. China divided the world into *Hua* (华) and *Yi* (夷) by the standard of Confucianism. As the supreme rulers of the Qing Dynasty were the Manchu minority in the Central Plains, they advocated that “the world has been united, then the *Hua* and *Yi* are families” (天下一统, 华夷一体).<sup>48</sup> So when the late Qing Dynasty used the discourse of *Hua-Yi*, she had already counted herself as *Hua* and referred to the European powers as *Yi* in foreign relations. That is to say, the position of *Hua-Yi* can change over time.

### B. The Force of International Law

Japan had the closest relationship with China in the Han and Tang Dynasties and was a vassal State of Ming China. Although Qing inherited the tributary system and the vassal States from Ming, Japan was not a vassal State to the Qing Court. At that time, Japan had begun to lock up its country and did not establish a tributary relationship with Qing. During the Meiji era, Japan broke its maritime embargo and began to engage with Qing China according to the rules of international law. On September 13, 1871, China and Japan signed the mutually beneficial Provisions and the Regulations of Trade and Commerce: Customs Tariff. It was replaced by the Treaty of Shimonoseki signed in 1895 after the Sino-Japanese War.

<sup>46</sup> “小所以事大，信也；大所以保小，仁也。背大国，不信；伐小国，不仁。” *Id.*, at 1644–45.

<sup>47</sup> See YONGKOO KIM (金容九), *SHIJIEGUAN CHONGTU DE GUOJI ZHENGZHIXUE—DONGYANG ZHI LI YU XIYANG GONGFA* (世界观冲突的国际政治学——东洋之礼与西洋公法) [THE CLASH OF WORLDVIEWS IN INTERNATIONAL POLITICS—THE EASTERN LI AND WESTERN PUBLIC LAW] (Quan Hexiu (权赫秀) trans., China Social Sciences Press (中国社会科学出版社), 2013).

<sup>48</sup> See DA YI JUE MI LU (大义觉迷录) [AWAKENING TO THE GRAND JUSTICE], vol.1 (block-printed edition of Shizong (Yongzheng)).

Before the Sino-Japanese War of 1894-1895, the Imo Military Revolt of 1882 and the Gapsin Coup of 1884 broke out successively. Both China and Japan sent troops to Korea. Qing China with more advantages only maintained the existing traditional Sino-Korean relation through the treaties and did not seek to take further actions. While, when Japan obtained a favorable position on the Korean Peninsula, it immediately forced China and Korea to dissolve the traditional patriarchal relationship step by step under the pretext of making Korea an independent country in the sense of international law. Soon after, Korea was turned into Japan's protectorate and then Japan's colony bound by European international law.

We can trace the roots of this difference back to the introduction of international law in China and Japan. As early as 1864, Zongli Yamen had supported W.A.P. Martin, an American missionary, to translate Henry Wheaton's book *Elements of International Law*. However, Martin's translation focused on making an analogy to traditional Chinese Confucianism. His translation emphasizes natural law and justice and tries to evade the dog-eat-dog characteristics of European international law at that time. Martin's translation diffused to Japan in the following year.<sup>49</sup> Four years later, the Japanese re-translated the original work of Henry Wheaton and published it in 1869.<sup>50</sup> It was until the late Qing Dynasty lost Ryukyu, Korea, and other important vassal States and then signed the Boxer Protocol of 1901 (辛丑条约) that the Chinese began to question European international law as the law of the jungle: "If you recalled the Eight-Nation Alliance's devastation to our capital and the fall of Ryukyu and Korea, how could the so-called International Peace Conference and international law be reliable?"<sup>51</sup>

### C. Different Choices of China and Japan

As Japan was not the leading country in the traditional East Asian world order and thus would not be stuck in the conflict between the Chinese *Li* and European international law. That's why, after the Meiji Restoration, Japan rapidly westernized its laws and accepted the reality that powerful countries abuse weak countries, and international law legitimizes it. Soon Japan stepped into the phase of "Treaty Revision" (条约改正, 1868-1911).<sup>52</sup> It appears that

<sup>49</sup> See the reprint copy of the Chinese translation of *Elements of International Law*: WANGUO GONGFA (万国公法) (1865) (The Historiographical Institute, University of Tokyo).

<sup>50</sup> See the Japanese translation of *Elements of International Law*, BANKOKU KOUHOU YAKUGI (萬國公法譯義) (1869) (The Library of Institute for Advanced Studies on Asia, University of Tokyo).

<sup>51</sup> See *Shijie Dashi: Wanguo Gongfa He Zai* (世界大事: 万国公法何在) [*World Affairs: Where is the Law of Nations*], 16 BAN XINGQI BAO (半星期报) [SEMIWEEKLY] 25 (1908).

<sup>52</sup> See KAORU IOKIBE (五百旗頭薫), JÖYAKU KAISEISHI: HÖKEN KAIFUKU HENO TENBÔ TO

the Japanese “Treaty Revision” was more successful than China’s endeavor to abolish the “unequal treaties” (1902-1943).<sup>53</sup> But fundamentally, it brought about disastrous consequences for Japan. As Japan embraced European international law without any reflection, Japan chose a path of aggression and expansion, which brought endless calamities to its Asian neighbors. By contrast, China critically reflected on the force of European international law from the perspective of the traditional Chinese *Li* and came up with the concept of “unequal treaties” without adopting a militaristic approach.

Late Qing China did try to make use of Western international law to maintain the traditional Sino-Korean relationship. China even established three settlements in Korea through international legal treaties. From the Regulations of Chinese Merchants’ Residential Demarcation in the Incheon Port of 1884 to the Agreement on the Abolition of Chinese Settlements in Korea of 1913, the history of the Chinese settlements on the Korean Peninsula spanned nearly three decades. However, the norms of European international law contradict those of Chinese *Li*, which cannot be reconciled. Chinese *Li* means getting along with neighboring countries by benevolence and trust, while, European international law implies competition and conquest among countries. Thus, it is impossible for the late Qing Dynasty to maintain the traditional Sino-Korean suzerain-vassal relationship through international law, only to accelerate its breakdown, which offered Japan a chance to step in.

## VI. CONCLUSION

Different from the previous negative attitude towards Vietnam, Ryukyu, and other vassal States, the late Qing Dynasty tried to use international law to save the traditional Sino-Korean suzerain-vassal relationship. Qing China signed a series of treaties with Korea and even established settlements on the Korean Peninsula like other great powers, which as a matter of fact, goes against the traditional Chinese principle of non-interference in the internal affairs of the vassal State. Despite that, Korea was still a relatively independent country in the traditional suzerain-vassal relationship with China under *Bin-Li* between the host and the guest. Nonetheless, in the end, it became a colony of Japan under the norms of European international law. The different results for Korea imply that European international law at that time was only a tool of colonization rather than a set of equal rules for all nations.

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NASHONARIZUMU (条約改正史：法権回復への展望とナショナリズム) [MEIJI TREATY REVISION: THE PROSPECT FOR A UNIFIED JURISDICTION AND NATIONALISM] (Yuhikaku Publishing (有斐閣), 2010).

<sup>53</sup> See OSAMU TAKAMIZAWA (高見澤磨) & KEN SUZUKI (鈴木賢), TYUUGOKU NI TOTTE HOU TOWA NANI KA: TOUCHI NO DOUGU KARA SHIMIN NO KENRI E (中国にとって法とは何か：統治の道具から市民の権利へ) [WHAT IS LAW FOR CHINA: FROM THE INSTRUMENT OF GOVERNANCE TO CIVIL RIGHTS] (Iwanami Shoten (岩波書店), 2010).

From the perspective of global history, it can be found that the duration of the Qing Dynasty (1644-1912) overlaps with European history from the Peace of Westphalia to the Vienna system (1648-1914) before the First World War. Almost at the same moment, the East Asian world order based on *Li* finally formed and the European international legal order emerged. If the former is an ideal order, then the latter is a realistic one. In the world order of *Li*, Qing China as the Celestial Empire gave preferential treatment to the vassal States, which created long-term peace in East Asia. By contrast, the European countries fought against each other and concluded numerous treaties after the war, but only achieved a short period of peace. Today, although international law is no longer a legal tool to colonize other countries, *realpolitik* persists in the international community. Henceforth, it is urgent to reform international legal rules. Chinese traditional norms of *Li* can be one of the intellectual resources. For example, the powerful countries should give preferential treatment to small and weak ones, and refrain from the threat or use of force.