Book Review


In the mid-1930s John J.C. Wu (Wu Jinxiong) once asserted that the constitutional limitations of individual freedoms were legitimate, and as opposed to the American and European experience, the emancipation of the individual should come second to saving the nation and the Chinese nationality from being “oppressed and trampled upon”.¹ This assertion not only describes a belief that China as a nation was in need of salvation, but also makes use of a language that only some decades earlier was unavailable to Chinese scholars. *International Law as World Order in Late Imperial China* tells of how this belief and means to express its ideas were developed through focusing on the intellectual history of international law in China in the period from post-Opium War to the very end of the Qing Dynasty in 1911. The author proposes that this may be done by showing how international law was “translated, interpreted and received … as a theoretical framework for conducting international relations, and how a … discourse on questions related to China’s role and identity in international relations developed from and within the theories of international law”.

The main discussion in the latter chapters of the book under review alternates between broader descriptions of the contemporary intellectual discourse on the role and function of international law and the narrower question of the lexical development in China. However, we are initially introduced to the distinction between the traditional “Chinese World Order” under the tributary system and the creation of a new world outlook as perceived through the framework of international law (ch.1). The importance of this distinction lies in how China was forced to give up its image as a superior state engaging in trade with inferior vassal states in confrontation with the European belief that such a system was treating principally equal states on an unequal basis, and that this was an unfair condition for continued trade (pp. 8, 9). Under the traditional Chinese system inter-state relations largely rested on the affirmation of a status hierarchy through regular

tributes paid to the emperor, as such negating the idea that relations between states would be conducted between equal and sovereign states within the framework of international law. Although this notion has been challenged with regard to *inter alia* references to international law in 17th century trade negotiations and the bilateral treaties concluded between the Qing-rulers and the Russian Empire in the 17th and 18th century, the author finds little evidence that international law made a lasting impression in China “beyond the direct implications of the regulations stipulated in the agreements” (p. 39). This situation lasted in general until the mid-19th century and the imposition of the “unequal treaties” by the Western powers. These treaties forced the Qing government to open up further to trade and allow the establishment of more concession areas, aggravating the problem of extraterritoriality in legal proceedings, effectively tipping the balance in the unequal relationship from the superiority of the Chinese Empire to Western dominance – all within framework of international treaties and law.

This discussion is juxtaposed with a description of the development of international law in Europe eventually leading to international law as a Western discipline covering both Western and Eastern practices (ch.2). Taking a starting point of Wight’s International Theory and the assertion that international law is “commonly conceived as an interplay between [political theory and diplomatic practice]” (p. 23), the author discusses the development of international law as a theoretical discipline. Despite China’s earlier diplomatic experience, the coupling of legal practice with political theory was largely native to a European discourse on international law, and as such the “disciplinary domain of the international thought … was entirely unknown to China prior to 1947” (p. 27). According to Svarverud, the Chinese experience shaped by the creation of the large “supranational” states” between the 6th and 13th century precluded the development of an East-Asian theory of international relations as was seen among the numerous smaller states in Europe. Instead, the development of a *jus gentium* – a law of the nations – during the Middle Ages and the later theories of international law and international relations as described by e.g. Grotius, Hobbes and Montesquieu leading up to the works of Vattel and Wheaton was only later introduced into the intellectual discourse in China, but their ideas were to have great influence on the development of the native discourse in international law in China.

At this point it is worth reminding ourselves that this work is an intellectual history of the linguistic and conceptual adoption of the international law framework. Neither the question of the applicability of international law to China nor the content and scope of treaty law as such fall within the discussion. What we are presented with, however, is a fascinating description of how “international law” as a concept was formulated and defined among Chinese scholars. However, such discourse relies on the existence of a lexicon able to express these ideas, and by the middle of the 19th century this language was not available to the Chinese literati.