Chapter 1

How Did Two *Daos* Perceive the International Differently?

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It has been argued that through the appropriation of international law East Asian countries were admitted to the European international society. Although the topic itself has been relatively well investigated, the question as to why China's entry into the international society lagged behind that of Japan has not been comprehensively addressed in Anglophone International Relations (IR) (for recent investigations, see Suzuki 2009; Lorca 2014; Ringmar 2012). By contrast, this question has puzzled East Asian intellectual historians for quite some time (Satō 1977; Maruyama 1992; Kin 1995; Yoshida et al. 2010; Shū 2011). Inspired by international political sociology, this chapter readdresses this puzzle by linking these two debates from a slightly different point of view. It does so by taking Masao Maruyama's (1961: 39–41; 2006: 216–17) claim seriously that institutions require an ethos (*seishin*) to be activated in a society. If the international society has expanded from Europe globally, as IR theory (most notably the English School) posits, the process would have turned the globe monolithic, ignoring what L. H. M. Ling (2014) calls "multiple worlds." This chapter therefore asks how an institution forged out of an ethos is interpreted and activated through another ethos, in order to be perceived as "shared" among diverse ethe. It argues that international society cannot be perceived as a mere expansion of the European term, but is a product of different imaginations. To give evidence to this argument, this chapter takes a comparative genealogical approach by examining scholarly texts during this period, aiming to recover the spatiotemporal conditions.

A QUASI SOLIDARITY?

The first book on international law in East Asia was the Chinese translation of *The Elements of International Law* published in Beijing in 1864. Originally published in 1836, this book, written by the American diplomat Henry Wheaton, experienced remarkable success in East Asia. In the same year that the Chinese translation became available, it was brought to Japan and translated in 1865 (Tanaka 1991). In these translations, many Confucian notions were used to describe Western conceptions, helping readers to comprehend these foreign terms more easily (Ōkubo 2010: 159). Japanese readers understand Chinese characters, therefore, they can read the same text. However, their comprehension of the content was distorted, as they read the Chinese ideograms as Japanese *kanji* (Tsuda 1984; Katō 1991), which often differ in meaning from the Chinese original. As such, although En Shū (2011) is right in saying that this book was not just a translation but "burdened with a role as a medium to fusion two totally different worldviews," it was not just two worldviews—of the West and the East—but much more as this chapter will demonstrate.

Concerning the question of ethos and institution, this chapter examines social imaginary, which was evoked by the term "international" among people living in two different spaces during the same period. Considering the work of George Lawson and Robbie Shilliam (2010: 75), we argue that, while different forms of social life can exist, traveling ideas attain a "quasi" social solidarity across borders. This solidarity is buttressed by each social imaginary that rests upon each domestic context. Its focus is, therefore, domestic continuities rather than change in the international, but that buttresses the international transformation.

The intensifying debates on non-Western IR open the invitation to look into the conception of the "international" outside of Europe (Bilgin 2016). Recent contributions suggest that there has been a qualitatively different world order in East Asia from the European territorial order. Yaqing Qin (2016) proposes a relational theory of world politics inspired by Chinese thought, while Erik Ringmar (2012) argues that Sino-centric and Tokugawa systems were more relational than territorial, which suggests comparing the systemic difference among different orders. By contrast, we want to consider *different relations* in respective societies, instead of arguing which one provides a more relational outlook. In doing so, we reinvestigate the unquestioned universality of the international as a common space of analysis. By examining Chinese and Japanese debates around the appropriation of international law, we propose another way of understanding the complexity of the international as a space in which different forms of the social, rather than different systems, are imagined. In their contribution,

Gunther Hellmann and Morten Valbjørn (2017) call a renewed attention to the "inter" as a space, stating that much attention in IR debates have been paid to the national. By contrast, we demonstrate a different possibility of envisaging the "international" by pointing out that the differences are not civilizational, regional, or national, but communal. By explicating the two examples, we propose the need of a thorough reconceptualization of the international, by not only historicizing the international but *at the same time* spatializing it.

ETHOS AND SOCIAL IMAGINARY

In *Thought in Japan*, Maruyama (1961) explores the "issue of ethos (*seishin*) in institution" by discussing Japan's *kokutai* (interpreted as national polity, sovereignty, or body politic). He, arguing that it is in this malleable notion of *kokutai* that modernity was easily connected to premodernity in Japan, directs attention to the fact that economic and political institutions are largely considered to be "universal," even by scholars promoting cultural plurality. This is because its historicity is ignored (Maruyama 1961: 40–41). Although the modern Japanese state was modelled after the modern European state system in the late nineteenth century, the history of the term *kokutai* dates back at least to the beginning of the century. The term *kuni*, which means state in Japan and composes part of the notion *kokutai*, can even be traced back to China's Warring States Period (403–221 BC) (Ogawa 1928). Treated as a mechanism, the state as an institution has been considered to be evidence of modernity. However, once the state as a concept had started to travel, spreading out globally from Europe, what happened to its meaning when used in a specific context? To understand this neglected point, as Maruyama (1961) asserts, institutions, particularly those which incorporate political and ethical elements, must be understood in totality.

Maruyama's inquiry can be related to recent critics of the rise of social theories in IR. Patricia Owens (2015) criticizes the "obsession with things 'socio"' in IR and states that the fundamental issue of such theory is "whether the concepts and analytical tools that emerged in a specific historical and political context are adequate for addressing *that context*." This question requires us to consider "the historical and political origins of social forms of governance and thought" (Owens 2016: 451, emphasis in original). The notion of socialization in Europe is a "product of a political and ideological crisis in liberal capitalist governance" (Owens 2015: 658). In this respect, most of social theory is a mere product of a particular European context. Then, to understand the "true" international, the fact that

there must have been other variants of the social has to be acknowledged. Here, the comparison of Japan and China on international law is intriguing given that, as this chapter explicates, the conception has been inscribed with various meanings as it is contextualized in different situations due to its complex historical trajectory.

For this purpose, this chapter relies on insights of Japanese intellectual history, in which the difference of the historical relations between public and private in Japan, China, and the West have been compared. The notion of public (公) is important for this study because international law was translated as 万国公法. The literal retranslation into English is "the public law among thousands of nations." In the two countries, this has brought up the association of the state as private. The Japanese historian Hiroshi Watanabe (2010) begins with the exploration on the relation between the two in the West. In the *Oxford English Dictionary*, the term "public" is defined as the opposite of "private," which pertains to "the people of a country or locality." Watanabe directs our attention to three points. First, "public" fundamentally means ordinary people and therefore the conceptual structure is bottom-up. Second, in this conception, public and private coexist, retaining each distinctive territoriality. Third, as the aforementioned definition implies, "public" denotes a group of people. Hence, the realm has externality.

Next, Watanabe defines Chinese private and public in the Ming-Qing era. First, *koh* (公、public) has no substantial referent object. In this respect, its conceptual structure is not explicit. Second, despite its apparent malleability, *koh* is singular and universal. If different "publics" come into conflict, one of them must be *shi* (私), that is, private. Therefore, third, public and private cannot coexist, but the two are in conflictual rather than oppositional relation.

Finally, in Edo Japan, *ohyake* (おほやけ、public) and *watakushi* (わたくし、private) are essentially conceived in a vertical relation, in which *watakushi* is embedded in *ohyake*. Private and public cannot coexist in the same horizontal arena, however, the relation between the two has no explicit borders but indicates only vague territoriality. Public includes many multiple privates. For these reasons, any group of people can be public. Public can be invaded by private but not vice versa. The relation indicates power relations with the public as the stronger and greater and private as the weaker and smaller (Watanabe 2010). Thus, public does not indicate people but "authority."

As indicated elsewhere (Rösch and Watanabe 2017), similar points are being made by Michel Foucault during his lectures in Japan in 1978. He argued that Confucianism in Asia functioned analogously to Christianity in Europe. However, while Christianity's pastoral power rested on individual

promises of salvation in the afterlife, Confucianism promotes a this-worldly essentialism. While Confucianism aimed to stabilize the society as a whole by clarifying the rules imposed on the society, Christianity tried to subject each individual (Foucault 2007: 161). Confucianism, therefore, defined "practices between the state, society, and individuals, whilst reflecting on the world order" in Asia. Defining it as "the state as philosophy," he maintained that in European history, it was only after the French Revolution when this type of state appeared (Foucault 2007: 145–46). Maruyama (1961: 41–42), on whose study on Confucianism Foucault relied in his lectures, argued that while in Chinese Confucianism natural law had a normative and contractual character, in Japan, loyalty and gratitude were stressed, rendering its authority (public) context-dependent.

This divergence of three societies is epitomized in the notion of heaven. Ryū Shōsan (2006: 67–69) claims that the "divergence of Western and Eastern philosophy appeared first and foremost on the knowledge of 'heaven.'" He argues that while Catholic heaven, connoting God as the Creator, composes a distinct realm in opposition to the present world, Chinese heaven, by contrast, exists at the intersection of "religion, politics, observation, and mathematics, and people and notion of the world." Thus, there is only one heaven; its substance has no form and therefore no externality. It contains everything and its influence on humans is continuous, even unconscious. Thus, as Foucault claims, Confucian heaven represents a this-worldly value, as found in contemporary debates of "All-under-heaven" (*tianxia*, 天下). To illustrate, Tingyang Zhao (2006: 30) argues that *tianxia*, which is "very close to the *Idea* of empire," means "an institutional world" of the social that "consists of both the earth and people," whose viewpoint is a "world-wide-viewpoint." By contrast, in Edo Japan, the same term exclusively meant the shogunal sphere of influence, which largely matched the geographical area of Edo. Although the emperor, who lived in Kyōto, was called the "child of heaven" (*tenshi*, 天子), it did not mean that the shogun was under the emperor's influence or vice versa. Rather, the relation of the two was left ambiguous (Watanabe 2010: 58–59). The above points enable us to highlight the divergent appropriations of international law in the two countries in relation to the association of the social as the space of its enforcement. European international society was, together with the state as its component, a foreign idea for Asians in the nineteenth century. In addition, the society was, and still is, an unobservable institution. In the course of comprehension, it was each of the collective imaginations of the social that played a significant role.

Suzi Adams (2015) identifies ten trends in recent debates of social imaginaries. Of them, seven are of our interest. First, the emphasis of the social aspect of imagination. Second, imagination is "authentically creative rather

than as merely reproductive or imitative." Third, the shift from imagination to social imaginary pronounces that from reason to varieties of rationalities. Fourth, social imaginaries indicate meaning as social but not reducible to intersubjectivity. The analysis of social imaginaries highlights the "trans-subjective aspect of socio-cultural activity." Fifth, the analyzation of cultures as "open." Sixth, a posit society is a "political institution," stressing "the *situated* nature and *collective* forms of interaction." Seventh, it "does not reduce analyses of social formations and projects of power to normative considerations alone" but to address the question on "political." Then, it is social imaginaries, or in Maruyama's words, ethos that customize/localize the ready-made institutions.

As demonstrated in the following section, it was not until the notion was comprehended in reference to local notions that the international was successfully localized in China and in Japan. Moreover, although both local referent notions were ostensibly similar Confucian-derived notions, their meaning slightly, yet crucially differentiated: while Japanese intellectuals understood the international in a relativist formula, the Chinese tried to consider the same notion in a universalist formula.

PERCEPTIONS OF THE INTERNATIONAL IN JAPAN AND CHINA

The Elements of International Law was translated by the American Presbyterian missionary William Martin, known as 丁韙良. In the book, the term international law was translated as *bankoku kōhō* (万国公法). Albeit not being the only source of knowledge of international law for Asians, it was undeniably their most important one. As stated, our interest is not the translation of the text per se, but how the notion of international was interpreted by particular ethe. Still, given its significance, a brief explanation is necessary. The translation was supported by the Zongli Yamen (総理衛門), an imperial Chinese government body in charge of foreign policy, providing several translation assistants to Martin. Since China had lost the Opium War in 1842, its government had an urgent need to increase its knowledge of international law as a way to negotiate with Europeans (Katō 1991; Zhang 1991; Shū 2011). In addition, Martin himself had an intention to use the book for his missionary activity (Zhang 1991). Despite these intentions, and given various limitations and challenges non-expert translators in the nineteenth century could face, it has been stressed that the translation as the final product was sufficiently faithful to the original (Zhang 1991; Shū 2011). Related to the question as to why Japan, the country that had learned from China for centuries and belonged to the Sinocentric world order, was

able to surpass China, some have argued that Japan played out *Realpolitik*, while China overlooked the brutal reality of world politics (Suzuki 2009). Some also stress geographical and/or cultural factors (Kin 1995; Ringmar 2012). Watanabe (2010: 372) emphasizes that encounters in nineteenth-century East Asia between the West and the East were such that "everyone tried to rely on their own 'righteousness.'" This question of righteousness was viewed on how people ought to act in reference to their own political practices and less on whether they behaved properly in relation to each other, assuming that there was no uniform objective criterion of righteousness among the aliens. In addition, having no lingua franca, interactions were slow with many interruptions and obstacles. Although contemporary IR tends to emphasize Western arrogance trying to impose its self-claimed universal value, the fact was that in not knowing each other, everyone believed what each other judged as right had to have universal validity not necessarily because they thought they were more civilized than others, but because it was the only criterion they could rely on (Satō 1977; Watanabe 2010). In this respect, issues each actor faced were reflexive, rather than dialogical.

This reflexive tendency was stronger in East Asia where diplomatic relations among states had not really been formalized. Pluralistic multicultural relations among voluntarily formed regions developed economically, whereas "political" ties were loose and more cultural and symbolic. In addition, these political ties were less hierarchical, as they were contingent on each actor's interpretation (Hamashita 1999: 8). In this normative (and rather practical) order called *Hua-yi* (華夷), strict distinctions between "international" and "domestic," as seen in modern international law, did not exist because regional relations were generally characterized as an extension of the domestic central power framework. By and large, this central power was China, but each actor exerted its own "central power" domestically and to weaker neighbors (cf. Hamashita 1999; Onuma 2000; Sun 2007). In short, it was neither "the international system" in a European sense nor a rigid hierarchical order of states but a loose polycentric order among diverse communities. Because of this lack of formality, imaginations played a significant role. As further expounded below, the crucial difference of the two assimilation processes was that while China's inquiry revolved around the question of universality, it was relativism that buttressed Japan's quick assimilation.

China

Although Martin's translation was published in 1864, historical cases indicate that the first encounter between China and international law occurred

much earlier. In signing the Treaty of Nerchinsk (1689), there was already a practice of international law recorded between the Qing and Russian empires (Sebes 1961). The difference between such practices and China's later adoption of international law, according to Yin (2016), is that before the nineteenth century, the principle of international law was only used when the government deemed that the other party was not familiar with Confucian jurisprudence. The Qing firmly believed that the Chinese imperial legal system had the flexibility to incorporate any foreign customs and therefore the concept of international law was nothing but a "barbarian technique (*yiji*)" (Yin 2017: 1008). The heavy defeats in the two Opium Wars, however, crushed China's confidence; the shift in power dynamics forced officials and intellectuals to realize that China had been absorbed into the European international society. As such, from the beginning of the 1860s, a growing number of intellectuals and ruling elites began to advocate the study of Western knowledge. This is what is often called the beginning of China's "Western learning (*xixue*)."

Martin's translation appeared at the beginning of Western learning. The prevailing public and intellectual discourse of the demand for Western knowledge led historians and legal scholars to conclude that China's acceptance of international law was inextricably linked to the national aspiration to Western learning. This is indisputable as the process of Western learning was indeed spurred by its existential crisis after the Opium Wars. What, however, tends to be forgotten is that Western learning was not one totalized movement that occurred between 1860 and 1900; scholarly discussions on China's adoption of international law often dismisses the first wave of Western learning and focuses extensively on the works from the second movement. In fact, from the beginning of the 1860s till the end of the 1890s, China experienced two distinct movements of Western learning, each corresponding to China's defeat in two different wars. This point is important when discussing the Chinese understanding of international law because each movement gave rise to different but continuous ways of interpreting the idea of international.

The first wave, also known as the *Yangwu*, or the self-strengthening movement, came immediately after the second Opium War. It was led by a number of ruling elites who saw the urgency in China's adoption of Western technology and military modernization. At the core of this movement was the idea of "以夷制夷 (*yi yi zhi yi*)," meaning to use the foreign to counter the foreign (Zhou and Li 2001). One distinct feature of this movement is that despite being about Western learning, to a considerable degree, China's desire for Western knowledge during this period emerged out of its instinct for survival instead of a genuine interest in the West (Jenco 2015).

As such, scholarly interpretations of international law in this period often indicated a sense of instrumentalism in which international law was seen as a political technology that is ready to use for everyone. In 1866, Hongzhang Li, one of the earliest advocates of the movement, accused European powers of aggressive conduct in Chinese territories with reference to his reading of international law:

> Every country knows their purpose is to serve people, but only to Chinese people they [European nations] want to put up more restraints. They want to control people by threatening officials, and control officials by threatening the imperial court. . . . This conduct is devoid of emotion and reason, and it is not fair and just. (cited in Shen 1966: 9)

Earlier in the chapter the main difference between the Japanese and the Chinese understandings of public and private has been discussed. This point is further explicated by Yūzo Mizoguchi (1995) in his genealogical study of the Chinese conceptualizations of public and private, where he traces the conceptual development of the two terms in Chinese thought from the beginning of Song up to the end of Qing dynasty and argues for the scholarly attention to the complexity embedded in the conceptuality of *koh*. He maintains that despite its long and convoluted history, *koh*, in general, has three different meanings when it is used in premodern Chinese texts: (1) refers to state, government, emperor; (2) of the people—common, popular; and (3) a moral connotation that suggests a sense of fairness and justice. These three Chinese meanings of *koh*, albeit different, share one commonality, that is, they are all imbued with a sense of universality. In other words, whether it refers to the idea of state, people, or moral principles, the idea of *koh* in Chinese thinking does not—and probably should not—only apply to China, but also to the rest of the world. This universalist connotation of *koh* was what distinguished Chinese interpretations of international law from that of Japan's and was also the fundamental reason behind the shifting interpretations of international law.

In the above example, by accusing Western behavior as not fair and just, Li was clearly understanding the public in the third meaning, that is, a sense of justice and fairness. More importantly, Li believed that this sense of fairness could be applied to European powers—in other words, China's sense of fairness and justice should also be the world's sense of fairness and justice. This implies the inherent universalist notion of *koh* embedded in Li's understanding. Rulun Wu, one of Li's aides in the imperial court, also had a fairly similar understanding of *koh*; as he wrote regarding European aggression,

> after war, two nations sign a treaty to agree not to cause any more harm to one another. Therefore if one party acts against the treaty and takes the other's belongings . . . he should return what he takes immediately. . . . The norm of public law is that we do not violate widows or take away soldiers' accomplishments. The monarch and his subjects always act righteously, even if the treaty has not been finalized. We fought each other, but we also have rights. . . . A just win for ten thousand countries shall rely not only on one's military strength but also on his good faith. If good faith is lacking, then losers might suffer from the peril of survival, and winners from the possibility of overturn. (cited in Shi and Xu 2000: 543)

Wu's statement is even clearer than that of Li's on his interpretation of *koh*. "To follow what is just is the essence of public law"—the purpose of international law, or public law in Chinese, in Wu's view, was to remind countries that they should always act upon what is just and fair even if they fought a hard battle. Instead of regarding the international as something that China needed to become part of and international law as a set of rules China needed to adopt, both officials here stressed the moral aspect of international law and used it as a *means of persuasion* to contain European powers. Neither Li nor Wu interpreted *bankoku kōhō* as *public* law, but rather as *natural* law. This natural law is not based on the Western conception of natural law as a system of rights common to all human beings, but on the Chinese idea of *koh*, which connotes a set of universal moral principles.

What is intriguing is that such interpretations of *koh* began to shift as it came closer to the outbreak of the Sino-Japanese War. In 1894, seeing that Japan still didn't initiate their attack, Li (cited in Qi 2001: 4) said, "I still firmly believe that as long as the *public law for ten thousand countries* stands, Japan would never dare to start a war." He later added,

> although Japan endeavors to prepare for the war, as long as we do not attack, they will not either. This is the (common) convention according to the public law for thousand countries; whoever starts the war, loses in his reason. (cited in Gu 1998: 6013)

Unlike his previous account where he read *koh* as a sense of fairness, in this context Li interpreted it as common. This implies that Li's reading of *koh* shifted from a purely moral concept to a more normative concept. He then cited *bankoku kōhō* and applied it to predict Japan's behavior, claiming that it was "the convention" of *bankoku kōhō* not to attack first. His aim here clearly was to use international law to restrict a further escalation of tensions between the two countries. Rather than as a natural law that stresses the moral principles, international law in Li's interpretation appeared to function more like a law of nations that delineates the legal

obligations of sovereign states. What, however, remains unchanged is that in both of his interpretations, *koh* connotes a sense of Chinese universalism; while the moral understanding indicates universal applicability of Chinese moral principles. The normative interpretation suggests the Chinese presumption about the existence of certain universal rules. Juxtaposing Li's two accounts on international law, one can then conclude that during the first wave of China's Western learning, the interpretations of international law among the ruling elites were highly fluid but imbued with a sense of continuity. Such continuity is characterized not only by the Chinese search for universality in their interpretations of *koh*, but also by the Chinese imaginary regarding what the idea of "international" should/would/could entail.

This Chinese search for universality reached its zenith during the second movement of Western learning. The Sino-Japanese War (1894–1895) completely subverted power relations in East Asia. Intimidated, but nonetheless fascinated, by the Japanese model of modernization, a young generation of Chinese intellectuals began to advocate for a series of constitutional reforms. This led to the beginning of the second wave of Western learning, *Weixin* movement (commonly known as [*Wuxu*] *Bianfa*). Compared to those on the *Yangwu* movement, there have been extensive scholarly discussions on *Bianfa* and its lasting impacts on China. The reason for this are twofold: First, unlike the *Yangwu* movement, which was led by the ruling elites who were concerned with China's survival, *Bianfa* was inaugurated by the young Guangxu emperor and his reform-minded supporters. *Bianfa*, in other words, took a top-down approach to nationwide reforms while the *Yangwu* movement was more of a bottom-up approach. Second, and more importantly, compared to the *Yangwu* movement, which mainly advocated for the importation of Western technology and the implementation of modernization on the superficial level, *Bianfa* called for thorough reforms at political, intellectual, cultural, and educational levels (Jenco 2015). Although the movement itself only lasted for 103 days (from June 11 till September 21, 1898), its scale as well as political and intellectual significance far surpassed the first movement.

Also during the *Weixin* movment, Chinese intellectuals began to engage more theoretically with the idea of international law, the most important figure of all being Youwei Kang, one of the senior officials of the Guangxu emperor and arguably China's most influential thinker of the nineteenth century. As a prominent advocate of Western learning and constitutional reforms, Kang's writings were heavily influenced by his readings of Western classics and Confucian texts. According to Bai (2013), Kang was the first person in China to use the term 科学 (*kexue*), meaning science, in his writings. Fascinated by the accuracy and universality of Euclidean

geometry, Kang's ambition was to develop a way to *scientifically* explain societal and human conduct. As he says:

> If a law is derived from geometry axiom, then the truth it claims is substantial; if it is set up by man, then the truth it claims is relatively weak. A law of geometry axiom is called absolute substantiality, as well as eternal substantiality; a law of man is called equivocal substantiality. (Kang 1886: 198)

The aim of the writing is to equate what Kang believes is 实理—substantial truth—with scientific validity. For him, geometry axiom represents a form of substantial truth because it is universally proven and therefore eternally valid. A positive law, on the other hand, is only equivocally valid because it is not scientifically provable and subject to human practice. Kang asserts that although it is not likely to have positive law as substantially true as the law of geometry axiom, it is still possible to develop a law of truth about humanity and social phenomenon using the criterion of substantiality. As he wrote later in *Shili Gongfa*:

> A law derived from geometry axiom is one aspect of public law. But because there are too few laws derived from geometry axiom, not enough for usage, that's why we need law of man. . . . There are many systems in the world that cannot be captured by geometry axiom. Laws that are not derived from geometry axiom but are established by man do not have solid foundation; therefore we should implement the laws that are for the greater good of humanity and make them public law. (Kang 1892: 278)

Evidently, Kang's interpretation of *kōhō*, that is, public law changed dramatically from those made by the ruling elites from the *Yangwu* movement. Yet, by interpreting public law as "laws that are for the greater good of humanity," Kang's understanding also denotes a continuity from the last movement in terms of his universalist understanding of *koh*. Indeed, it is widely argued that when Martin was translating Wheaton's text, he was advocating international law as a form of Christian universal values. Because for missionaries like Martin, Westernization and Christianity are inextricably connected; any form of modernization would eventually lead to Christian conversion (Spence 1969). In this sense, Kang's reading of international law was fairly close to Martin's intended interpretation. The truth, however, is that Kang's interpretation ended up transcending Martin's intention because in his seminal work, 大同书 (*da tong shu*), Kang laid out his universalist visions of the world using the Confucian notion of 大同 (*da tong*), meaning the great unity, instead of Christian universalism. In Kang's theory, neither Chinese traditions nor Western knowledge alone can account for the world.

Instead, one should develop a universal formula that can be applied to most people and in so doing achieve "great unity." For Kang, then, this universal formula was to understand Western knowledge through Confucian universality.

Kang's approach to Western learning through Confucian universality soon gave rise to a new wave of intellectuals trying to interpret international law through Confucianist lenses, especially with reference to *Spring and Autumn Annals* (春秋、*chunqiu*), a classic text that chronicles the history of the state of Lu from 772 to 481 BC. As Jujia Ou (cited in Zhongguo Falv Shi Xuehui 2007: 56), one of Kang's students, wrote in 1897 following Kang's approach:

> *Chunqiu* has a law of three times; it says in the time of chaos one wins with power, in the time of progress with wisdom, and in the time of peace with benevolence. With power one integrates its own but excludes other states; with wisdom one integrates all states but excludes other ethnicities; only with benevolence one sees all under heaven as the same. Be it about affairs caused by speaking of faith and cultivating harmony, or fatal destructions caused by forces and killings, all states around the world, those who can implement the teachings of *Chuqiu*, they hope it will be as close as to Confucius's governance of the great community and great tranquility. Therefore I say: *Chunqiu* is the public politics for ten thousand countries, and certainly the public law for ten thousand countries.

In the previous discussion on the *Yangwu* movement, it became clear that the arbitrary interpretations of international law during the first wave of Western learning was mostly enabled by conceptual ambiguity of *kōhō*. Lai (2011) argues that in premodern China, the term "public law" was never deemed as an intellectual concept, in fact not even a common term, because of the various and often diffusive meanings imbued. This means that by translating international law as public law, the idea of international law not only lost its conceptuality in Chinese, but also failed to attain any conceptuality in the first place. Kang's universalizing approach, however, changed the nature of such translation: in contrast to Li's and Wu's accounts, there was no hesitation in Ou to define what *koh* means—*koh* is 天下 (*tianxia*) and therefore a public law should be a law for all under heaven. Previously, in both Li's and Wu's accounts, the idea of *kōhō* was contextualized due to its conceptual ambiguity. In Ou's account, however, the idea of *kōhō* not only became conceptualized but also endowed with a very specific Confucian conceptuality. In other words, by equating international law with *Spring and Autumn Annals*, Kang and his students managed to turn the incommensurability of two distinct concepts, the international and *koh*, into a condition of universality.

Japan

In Japan, the comprehension of the concept of sovereign equality of states in international law was similarly interpreted. The difference, however, was that in contrast to Chinese inquiries revolving around the universal, those in Japan took a relativist formula. In addition, in Japan, in contrast to the *Weixin* movement, the acceptance of the idea was accomplished when the society as a whole followed a greater authority. It was neither top-down nor bottom-up, but the whole society followed the greater public, that is, international society. As Sakuzō Yoshino (1927) states, international law as the public law for thousands of countries was envisaged in terms of the Confucian notion of *ten dō* (天道, Way of Heaven). It was a natural consequence given the fact that the "original" text of *The Elements of International Law* for the Japanese was Chinese. As in China, this notion of *ten dō* was analogous to nature. However, differing from the Chinese understanding, nature was not something rigid but understood as continuously changing.

Although the divergence of Japanese Confucian ideas from those of the Chinese original had probably started from the outset of its importation (Tsuda 1984), it marked a dramatic shift in the Edo period, when an intellectual movement called *kokugaku* emerged, which attempted to move away from Chinese knowledge and refocus on Japanese classics. Accordingly, the idea of nature, and therefore heaven, had been historicized and had little room for normative claims. In this tradition, although nature was always in flux, it had a canonical function *because of this flexibility* (Maruyama 1983). It was this malleable conception of nature that enabled Japanese intellectuals to adapt to the new reality of world politics.

As demonstrated below, Japanese people accepted the idea of the international as they understood it as a historical-social construction and *because* it was a construction, for them, its authority was manifest. Evidently, this was different from the European natural law tradition. However paradoxically, it was this divergence that allowed Japan to accept the idea of international. In this comprehension, the international was envisaged as a greater public, in which states as a smaller public, and then individuals as the minimal entity, were embedded. Because the social relations were envisaged vertically rather than horizontally, the international in Japanese imagination came to be distinctively different from the European one: there was little space of the inter-national as in-between nations because of this verticality. In addition, the distinction between domestic and international became blurred. The consequences of this imagination are: first, it becomes difficult to think about the space of the international as anarchy; second, because individuals are embedded in the domestic state and the state is embedded in the global society, people of the state apt to think that their national

interest matched those of the wider society, rendering their foreign policy optimistic as well as idealistic. Or more precisely, as Shuichi Katō (1991) points out, it tended to become either extremely idealistic or extremely militaristic. Third, the state tends to rely on the power of hegemon, rather than to try to be independent. Indeed, as Kazuhiro Takii (2003) points out, the Meiji politicians willingly accepted international law. Hereafter, we further elaborate the points by analyzing scholarly writings and historical backgrounds.

The first half of the 1860s was a kaleidoscopic period in Japan. As a decade had passed since Commodore Perry's arrival in 1853, it had become impossible for the samurai class to retain the status quo. In 1858, the US-Japan Treaty of Amity and Commerce, the first unequal treaty, was signed, introducing Japanese people to notions of international law. Together with the issue of the shogun's heir, it caused political upheaval, leading to anti-Western *Sonnō Jōi* (revere the emperor and expel barbarians) movement. Still, in the Meiji Restoration (1868), Japan peacefully restored imperial rule, promulgating the Charter Oath as the basis of imperial Japan's constitution. Its fifth clause can be translated as follows: "Knowledge shall be sought throughout the world so as to strengthen the foundation of imperial rule." In due course, the new government declared that its foreign policy would thoroughly rely on *kōhō* (Yoshino 1927: 468; also Tanaka 1991).

What enticed the Japanese people to accept the unfair rule? Indeed, Japan's importation of international law was assertive. Next to Martin's book, they imported many other texts from Europe and politicians and students were sent to Europe and the United States to study law. The most well-known were Amane Nishi and Masamichi Tsuda, who were lectured by Simon Vissering at the University of Leiden. Although until around 1890 the majority of the publications were still translations of Western books, Japanese intellectuals began writing on the topic from the 1870s onward.

One of the earliest examples was *Shinshin Kōhōron* (On New and True Public Law) by Takamasa Ōkuni, a *kokugaku* scholar. Ōkuni in his 1867 work, speculated that Hugo Grotius established international law because he was discontent with the Chinese distinguishing themselves as civilized and others as barbarians. Though he appreciated Grotius's attempt, his point was not supporting the European *kōhō* but the plausibility of establishing Japan's own *kōhō*. He stated that like humans, there had to be good and bad countries in the world. Among them, Japan was potentially supreme because of its unbroken imperial line for thousands of years. This meant for Ōkuni (1927; also Yoshino 1927; Maruyama 1992; Yasuoka 1999) that the emperor had to be the king of *bankoku* (thousands of countries). This discussion, already predicting justification for the Greater East

Figure 1.1 Bankoku danjyo jimbutsu zue by Yoshikuni Utagawa (1861). *Source*: Waseda University Library. Available at: http://bit.ly/2Dnbjf0. Accessed: January 12, 2018.

Asia Co-prosperity Sphere during the Asia-Pacific War, indicates the reasons why the idea of international law was readily accepted in Japan. That is, first, it was understood fundamentally as a social principle. Second, it was exhaustively historicized and therefore envisaged as something whose authority anyone potentially could be. For Ōkuni, the potential contender of Europe was Japan, which had already surpassed China because of its blessed history. In this discussion, because of the historicization of natural law, any dividing line was never stable but always in flux.

The world as one unified society was popular in Japan as indicated in some *ukiyo-e* (see Figure 1.1). Yukichi Fukuzawa (1878), in a book titled *Tsūzoku Kokkenron* (On Popular Discourse of Sovereignty), argues that the foundation of sovereignty resides in people like the foundation of a household is in women, and stresses that the association between nations is equal to that among people. Hence, peace is the common objective of all humans. Fukuzawa goes on to say that albeit there is no difference between foreign people and the Japanese, because customs are different, international law is needed. It is necessary not because the Western way is superior but because without knowing the rule, Japan would get a bad deal. As he insists, "the degree of the skill is different from the difference of style" (1878: 27). Therefore, there was no difference between Buddhism and Christianity. *Bunmei* (civilization) was no one's possession but everyone's. Japan had to learn the new way but without totally abandoning the old way (Fukuzawa 1873).

Takeshi Nakamura (1887) likewise stated that international society was analogous to that of individuals. As people from different parts of the world came into contact with each other, rights and duties were formed. By

extension, international law was the new moral principle (Nakano 1889). Although underappreciated in contemporary IR, the biggest controversy among Japanese scholars during the period was the question if international law was exclusively Christian (Nakamura 1887; Numasaki 1888; Ogawa 1889; Hatoyama 1896). In addition to the fact that Martin was a missionary and the translated book stated that international law was among Christian nations, this suspicion was a natural corollary for them because Christianity was banned since the beginning of the seventeenth century. In this context, civilization was for the Japanese a far more acceptable criterion than religious difference. They did not consider the West as superior, but they identified something familiar in the scheme. As Yoshino demonstrated in 1927, when *kōhō* was understood in this way, it became not an external pressure, but a rescue for Japanese politicians. It was here the mistranslation *bankoku kōhō* was effective. Later, some scholars tried to rectify the mistake to "*kokusaihō*," which was a direct translation of international law (Mitsukuri 1873). However, despite the efforts, it was *bankoku kōhō* that had been widely used until the beginning of the last century. In other words, for the Japanese, it *had to* be called public law (*kōhō*) instead of international law. The authority was not in the author (the West) but in the law per se (Tanaka 1991: 432).

Thus, the international, having no substantial source of law and international society being an unobservable institution, were favorable for the Japanese, even for *kokugaku* scholars like Ōkuni. It was this ambiguity that let them imagine the international as society and its authority in their own creative way. Because of the ambiguity, the image was vivid. Later, during the Asia-Pacific War, as indicated in Ōkuni's discussion and the Charter Oath, the emperor became the symbol of civilization (Ogawa 1889). As Yoshino (1927) claims, the fascination for international law was nothing taught, brought into, or imposed, but *naturally emerged* among Japanese.

CONCLUSION

David Livingstone (2005) calls attention to the way in which scientific texts are creatively read by locals. Emphasizing "the significance of location" in such "hermeneutic encounters," he has demonstrated that the process is essentially a collective affair that takes place in a particular space. For him, in this circulation of ideas, neither authenticity nor misreading occurs. By revisiting the two appropriations of the international, our aspiration lay in clarifying such contingency, creativity, and diversity of global knowledge circulation. We wanted to demonstrate that it is diverse ethe that enables such circulation. In nineteenth-century China and Japan, people imagined

the unknown idea in reference to their own social relations. In the two imaginaries, the way to see social relations played an integral role to understand foreign institutions. However, as seen in Japan's case, the earlier assimilation did not necessarily lead to its right understanding. With the Chinese case, it indicates that it is not necessarily similarity that facilitates the acceptance: it was not China's search for universality that was fairly close to Western Christian universality but Japan's relativist comprehension that paradoxically attained the earlier entry into the European international society. It was their unique way of understanding that facilitated the localization. Moreover, the case of China indicates that such conditions of acceptance were subject to change. It is, then, safe to conclude that it was particular reasons, rather than rationalities, that played a significant role. We do not mean to say that misunderstanding works better than proper understanding. Rather, our point is that the two appropriations indicate that meaning is social but not necessarily "inter-subjective" but "trans-subjective." Thus, the international must not be understood literally as a society because the solidarity is still probably only nominal.

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