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Enacting the "Incomprehensible China": Modern European Jurisprudence and the Japanese Reconstruction of Qing Political Law

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The great ambition of Japanese colonialism, from the time of its debut at the end of the nineteenth century, was the reformulation of Chinese law and politics. One of the most extraordinary examples of this ambition is The Administrative Law of the Qing Empire [Shinkoku Gyōseihō], *a monumental enterprise undertaken by the Japanese colonial government in Taiwan intended not only to facilitate Japanese colonial administration of Taiwan but also to reorder the entire politico-juridical order of China along the lines of modern rational law. This article examines the legal analysis embraced in* The Administrative Law of the Qing Empire *and recounts its attempt to reconstruct the Qing's "political law"* (seihō) *by a strange, ambiguous, and hybrid resort to "authenticity." The strangeness of this Japanese colonial production comes from Japan's dual position as both colonizer of Taiwan and simultaneously itself colonized by "modern European jurisprudence"* (kinsei hōri). *In uncovering the effects of modern European jurisprudence on the Japanese enterprise, we will discover Japan's pursuit of its own cultural subjectivity embedded in* The Administrative Law of the Qing Empire, *epitomizing the campaign of national identities observable in the process of East Asian legal modernization.*

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INTRODUCTION

The Administrative Law of the Qing Empire [*Shinkoku Gyōseihō*] is a bizarre product of Japanese colonialism. An encyclopedia-style work, it was created collaboratively by Meiji Japanese jurists and Sinologists aiming to reinterpret imperial Chinese political law (*seihō*, literally "politics and law") through the lens of "modern European jurisprudence" (*kinsei hōri*),[1] such as Montesquieuian separation of powers. Their aim was not only to "translate" the imperial Chinese world into a modern state of law but also to introduce modern Western legal knowledge to early twentieth-century China.

This extraordinary project was initiated by the Japanese colonial government in Taiwan. Initially, the Office of the Taiwanese Governor-General had hoped that investigation of Chinese customs and law would assist the inexperienced Japanese colonial administration in Taiwan and ultimately contribute to a system of special legislation for the colony. However, ambitions for *The Administrative Law of the Qing Empire* extended far beyond the Taiwanese colony. The project envisioned the prospective establishment of Japanese cultural colonialism throughout China through deployment of the legal pedagogy of modern European jurisprudence, which would be used to dominate Chinese legal and political reform.

Although it purports to be a "translation" of imperial Chinese law, *The Administrative Law of the Qing Empire* differs in three fundamental ways from English and French translations of *Da Qing Luli* [The Great Qing Code] undertaken in the nineteenth century.[2] First, the Japanese compilation is not literally a translation of Chinese legal rules at all but a rearrangement. It is organized in the European genre of *Pandekten* (Pandects) rather than in traditional Chinese statutory format. Second, going beyond rearrangement of Chinese codes, *The Administrative Law of the Qing Empire* also incorporates Western legal knowledge. This infusion was not the work of European jurists but of Japanese scholars who had only started to learn Western law a short time before the appearance of the survey. Hence, the work of translation is not bipolar—East to West—but triangular—China/Japan/West. Finally, while the intended readers of English or French translations were mainly Westerners, *The Administrative Law of the Qing Empire* was prepared not only for Western readers or the Japanese colonial officers but also for the Chinese themselves, the objects of this colonial investigation.

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1. Since the meaning of *kinsei hōri* varies with context, I use "modern European jurisprudence," "modern European legal concepts," "modern European legal principles," and "modern European law" alternately for better expressions.

2. For discussion on European translations of *Da Qing Luli* in the nineteenth century, like George Thomas Staunton's *Ta Tsing Leu Lee: The Fundamental Laws of the Penal Code of China* (1810) in English and P. L. F. Philastre's (1876) *Le Code annamite, nouvelle traduction complète, comprenant* in French, see Bodde and Morris (1973) and Jones (1974).

Recent literature on the enterprise of comparative law has examined the Orientalistic representation of Chinese law in European or Anglo-American translations (Ruskola 2002). Interestingly, what the Japanese author of *The Administrative Law of the Qing Empire* produced is not only a representation of the Oriental (that is, the imperial Chinese world) but also a Japanese construction of the Occidental (that is, modern European civilization). On this last point, the Japanese colonial survey differs from Qing attempts at translating international law into Chinese, on-going since mid-nineteenth century, such as the government-sponsored Chinese translation of Henry Wheaton's *Elements of International Law* in 1864.[3] In *The Administrative Law of the Qing Empire*, Western legal knowledge is introduced to China through a non-Western, that is, a Japanese intermediary. Nor is the Western legal knowledge represented in *The Administrative Law of the Qing Empire* itself a literal translation, but rather an amalgamation of French and German legal theories reinterpreted by the Japanese intermediary. This peculiar triangular case is even more complicated than the unbalanced power structure embedded in the Chinese translation of Western law so eloquently described by Lydia Liu (Liu 1999a).

From a pragmatic perspective of actual use, *The Administrative Law of the Qing Empire* did not really contribute to any institutional reform in either China or colonial Taiwan. Although it was devised to function as a pedagogy of legal reform, it had no direct channel for "teaching" the Chinese.[4] Though the Japanese around the turn of twentieth century did have some channels for exporting their knowledge of modern law—many Chinese students studied law in Japan, and the Qing government retained several legal specialists from Japan to help them draft new legislation (Reynolds 1993; Shimada 1980)—none of these projects amounted to exporting a reconstruction of the existing Chinese system in the manner of Western law. The Chinese were seemingly more willing to acquire Western legal knowledge than a Japanese representation of the Chinese legal system couched in what the Japanese then conceived Western terms to be.

We can only make sense of the oddness of *The Administrative Law of the Qing Empire* when it is seen against the backdrop of Japanese colonialism,

3. This Chinese translation was done by W. A. P. Martin. However, the first Chinese translation project of foreign treatise on international law should be attributed to Lin Zexiu. In fact, the Qing court has never taken the translation of international law seriously until Prince Gong's expressive support to W. A. P. Martin's project. Afterward, there were a couple of governmental institutes conducting Chinese translation both in northern and southern China (Li 2002).

4. Meiji Japanese's reordering of the Qing's law and politics was only one of many foreign pedagogies concerning modern state-building for China around the turn of the twentieth century. Another prominent example is the Qing's Imperial Maritime Custom Service under the management of Englishman Robert Hart. As Hevia (2003) points out, the IMC introduced a great deal of new managerial knowledge such as modern bookkeeping and accounting rules to China and in the process "the IMC also functioned as a teaching instrument" (142–43).

for it is precisely the peculiar character of Japanese colonialism that gives rise to this ambitious but ultimately futile survey in the first place. Hence in the first section of this article I describe the Japanese colonization of Taiwan—concurrent processes of nationalizing and colonizing its subjects that gave Japanese colonization the distinctive aspect of "dual coloniality."

In section two, I discuss the implicit drive behind the production of *The Administrative Law of the Qing Empire*, namely the Japanese embrace of *mission civilisatrice*. The embrace of *mission civilisatrice* sharply distinguishes Japan from other "backward" Asian countries. Thus, an inquiry into Japanese ambitions to undertake a colonial survey of Chinese public law turns out to be as much an inquiry into the subjectivity of modern Japan. By comparing *The Administrative Law of the Qing Empire* with its eighteenth-century predecessor, *Japanese Exegesis of the Ming's Code* (*Minritsu Kokujikai*), which interprets imperial Chinese law in a traditional way, we learn that an ambiguous use of "authenticity" helped the Japanese locate their subjectivity under the cloak of different cultural hegemonies, including imperial China and post-Enlightenment Europe.

In the third section, I examine the ambiguous use of double-edged authenticity throughout the writing of *The Administrative Law of the Qing Empire* by exploring three selected topics: the source of law, political organization, and the regulation of everyday life. My discussion of everyday regulation in turn singles out three prominent categories: police, religion, and fiscal administration, in all of which we see an attempt to reconcile the incommensurable worldviews of imperial Chinese law and modern rational law.

In the final section I end with a discussion of how the making of *The Administrative Law of the Qing Empire* actually implicates a nationalist campaign of subjectivity in the realm of East Asian legal reform. As we dismantle the modern European jurisprudence that is the backbone of *The Administrative Law of the Qing Empire*, we find ourselves simultaneously disaggregating the concept of "East Asian law." In this vein, this article reconsiders legal modernization in East Asia as a process that nationalizes naturalized Western law.

I. THE PRODUCTION OF *THE ADMINISTRATIVE LAW OF THE QING EMPIRE*

Japan's Colonial Investigation and Its Dual Coloniality

Japanese colonialism is renowned for its extensive surveys of Chinese society. One of these surveys, *Chūgoku nōson kankō chōsa* [Investigation into the customary practices in Chinese rural villages], undertaken by the South Manchurian Railway Company from 1940 to 1942, has been acclaimed "the

most ambitious attempt ever made before the Communist revolution to study the Chinese rural economy" (Myers 1970, 37). In fact, this survey owed its genealogical origin to a series of surveys initiated by Gotō Shimpei thirty years earlier. From 1898 to 1906, before assuming the position of the first president of the South Manchurian Railway Company (SMR), Gotō was Civil Administrator (*Minsei chōkan*) of the Governor-General Office in Taiwan.[5] It was Gotō's belief that Japan could only secure a successful colonial administration through scientific surveys of the colony. So while in Taiwan, he started to cooperate with Okamatsu Santarō, a civil law professor at the Imperial Kyoto University who had been a student of Josef Kohler, a noted German authority on legal ethnology.[6] Together, Gotō and Okamatsu launched inquiries into various old customs in Taiwan.[7] When Gotō was designated the first president of the SMR in 1906, he retained Okamatsu as the chair of the Bureau of Investigation (*Chōsabu*) in Manchuria (Fukushima 1958). Gotō and Okamatsu embarked on a new round of surveys in southern Manchuria while investigations into old customs in Taiwan were proceeding apace. Hence, the team of Gotō and Okamatsu produced voluminous reports on traditional Chinese customs, ranging from the southeastern to the northeastern peripheries of the Qing Empire.

The surveys were instrumental in nature, covering topics like property ownership, marriage and familial matters, business transactions, administration of justice, and bureaucratic operation, as well as aboriginal peoples' tribal customs in Taiwan. Okamatsu believed that the Manchuria-based surveys would turn out to complement the pioneering surveys performed in colonial Taiwan (Fukushima 1958). In other words, he believed that the surveys on Taiwan had significance extending beyond their geographical

5. The person occupying the position of *Minsei chōkan* was, in effect, the head of the civil service in the Taiwanese colonial government and was only second to the governor-general. When Gotō was appointed in March 1898, the official title of this position was *Minsei kyokuchō* (chief of the civil administration bureau) but, three months later, was changed to *Minsei chōkan* (civil administrator). This change reflected merely an institutional rearrangement and thus had nothing to do with the officer's real power (Huang 2002).

6. The colonial investigation conducted by Okamatsu is more or less influenced by Josef Kohler's theory of comparative law, or, in a broader sense, of the German school of *die ethnologische Jurisprudenz* (ethnological jurisprudence). In his magnum opus, *Taiwan Shihō* [Taiwanese private law], Okamatsu describes the method he used to collect information is Kohler's Fragebogen (questionaire) (Wu Hao-ren 1999).

7. The SMR's *Chūgoku nōson kankō chōsa* in early 1940s employed the term "customary practice" (*kankō*), rather than Okamatsu's "old custom" (*kyūkan*) to define its research object. Fukushima Maso (1958) offers an illuminating comparison of "old custom" and "customary practices." In Fukushima's view, the former term, used by Okamatsu (1) implies a static picture of institutions and norms, (2) emphasizes historical origins, and (3) ignores the dynamic development of customs. In contrast, the latter term (a) focuses on existing social practices and (b) draws from everyday life. If the former term connotes a concept that is historical in nature, then the latter term is more sociological (Fukushima 1958).

scope and would contribute to a systematic understanding of Chinese law and customs.[8]

In a way similar to investigations taking place in European colonies, the inception of Japanese colonial investigations in Taiwan began as an attempt to improve the economic returns of the colony by way of mapping, cadastral survey, and tax registration (Anderson 1991; Mitchell 2002; Comaroff and Comaroff 1992). Before Gotō Shimpei's inauguration in 1898, the fiscal deficit of the Taiwan colony was a critical problem for the then-inexperienced Japanese colonial government. In his first year as Civil Administrator, Gotō immediately set up the Provisional Bureau for Land Registration (*Rinji Taiwan tochi chōsakyoku*, hereinafter "Land Bureau"), responsible for cartography and cadastral surveys aimed at increasing local revenues in the colony (RTTC 1902). However, Gotō soon realized that cadastral survey on its own would neither solve the confusing legal problems stemming from the complex local system of land ownership nor would it be sufficient to fulfill his ultimate vision of an unfettered colonial administration insulated from the fragmented politics of metropolitan Japan[9] (Gotō 1901).

For these reasons, Gotō retained Okamatsu Santarō to investigate property rules in Taiwan. By clarifying the complex ownership system, the colonial government would be able to collect taxes and revenues effectively from real landowners without arousing resistance and dispute. Once the colonial government was financially solvent, it was hoped, the controversy regarding Taiwan colonial policy would quiet down in metropolitan Japan (Kobayashi 1985; Wang 2000). The instrumental focus of Gotō-Okamastsu's investigation could be seen in Okamatsu's preface to his preliminary report, *Taiwan kyūkan seidō chōsa ippan*, which was translated into English under the title *Provisional Report on Investigations of Laws and Customs in the Island of Formosa* in 1902. In its first sentence, Okamatsu stated, "The object of this work, which has been undertaken by order of the Governor-General of Formosa, is to set forth the general aspect of old laws and customs of Formosa, in the hope that something may thereby be done to improve the administration of the island" (Okamatsu 1902).

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8. Some of Okamatsu's colleagues in legal academia also praised the investigations, like *Taiwan Shihō*, declaring that it has great value "in comparative law because it could be traced back to continental China" (Nozumi 1912, 180–81). Even after World War II, Fukuda Tokuzō, an economics professor, claimed that the work was "the most precious gift to arise from the Sino-Japanese War and would be immortal forever" (Fukushima 1958, 22).

9. For the complex "three tiered system of multiple ownership" in Qing Taiwan, please refer to Mark A. Allee's (1994, 52–94) vivid analysis of legal cases at the Danxin Archive (in Taipei, Taiwan). In fact, land reform in Taiwan was a difficult challenge for both the Qing and Japanese governments. Governor Liu Mingchuan's fiscal reform in Taiwan during the last ten years of Qing ruling was not successful because of the fierce resistance of powerful local leaders (Ch'en 1987). For Gotō's ultimate project of colonial administration in Taiwan, see Tsurumi (1965).

Nevertheless, the Gotō-Okamatsu colonial investigation went far beyond the purpose of solving the fiscal crisis or capitalization of the colony through law. After acquiring Taiwan from the Qing Empire in 1895, the Japanese government was unsure whether to treat this island in the manner that France had dealt with their colony in Algeria or instead to follow the example of the British in India. Prominent political leaders like Fukuzawa Yūkichi had even strongly advocated for thoroughgoing assimilation (Wu Mi-cha 1994). During the time of its acquisition of Taiwan, Meiji Japan was transforming itself from a shogunate regime into a nation-state, while at the same time undergoing territorial expansion from Okinawa (1879) to Taiwan (1895) and Korea (1910). Owing both to geographical proximity and to its cultural affinity with these new territories, Japan established a concentric colonial order, maintaining a core-periphery relationship with its colonies, with an eye toward the ultimate nationalization of all the colonies.[10] For this reason, Japanese colonialism is best thought of as a nationalizing colonialism, which engaged the colonized in Japan's own nation-building process (Wu Rwei-ren 2003). Consequently, it would not qualify as a "rule of colonial difference" as Partha Chatterjee (1993, 16–18) has described British colonization in India; rather, a "rule of ambiguity" underpinned Japanese colonial dominance (Wu 2003, 31). According to this way of viewing the matter, the ambitious enterprise of Gotō and Okamatsu, which tried to create a codified system of Chinese customs in Taiwan, seems like an anomaly when viewed against the background of Japan's long-term colonial policy.

However, even though the Japanese government was initially planning to apply an assimilation model to Taiwan (as France had done in Algeria), it finally adopted the British model proposed by William Montague Hammett Kirkwood, a legal advisor of the Ministry of Justice in Japan, as a result of fierce combat between Japanese troops and Taiwanese resistance groups after its occupation of Taiwan (Kobayashi 1982). Kirkwood suggested that Japan rule Taiwan as a colony, which meant it would be governed outside the jurisdiction of the Meiji Constitution. The colony model also required the emperor to delegate his legislative prerogative to the colonial administration for legislation specifically tailored to the distinctive needs of the colony. On Kirkwood's advice, the Imperial Diet enacted the "Law Relating to Laws and Ordinances to Be Enforced in Taiwan under Title 63" (also known as "Title 63") in March 1896. Under the legal structure of Title 63, only those Japanese statutes approved by the Governor-General would apply to Taiwan (Wang 2000). This peculiar politically motivated condition was fortuitous and gave Gotō and Okamatsu the opportunity to conduct their colonial investigation.

Pursuant to this early colonial legal structure, civil matters involving only local people in Taiwan (and the Qing's subjects from China) were

10. As Wu Rwei-ren eloquently argued (2003, 73), the difference between Japan's "oriental colonialism" and its European counterpart was the Japanese policy of assimilation.

adjudicated in accordance with local customs rather than by the newly enacted Civil Code of the Japanese Empire (Wang 2000). Seizing the momentum of "customary law," Okamatsu sought to extend the colonial investigation to the general customs of the Han Chinese population in Taiwan.[11] By Imperial Ordinance No. 196 of 1901, the colonial government established *Rinji Taiwan kyūkan chōsakai* (The Provisional Commission for the Investigation into Taiwanese Old Customs, hereinafter "Commission").[12] During its eighteen years of operation, the Commission published approximately thirty volumes of reports and translations. The zeal of this colonial investigation culminated in the thirteen-volume *Taiwan shihō* [Taiwanese private law], which attached the Western concept of legal rights (*Rechts*) to traditional Chinese customs, thereby constructing the system of "customary civil law" in colonial Taiwan.[13]

Gotō once boasted that the Japanese colonial enterprise of Taiwanese "customary law" would be as magnificent as the British attempt at codifying the law of India. He compared the Commission's compilation with the works of Thomas Macaulay, Sir Barnes Peacock, and James Fitzjames Stephen in British India (Gotō 1901). By analogizing to the case of Indian customary law, Gotō regarded the Han Chinese in Taiwan as a literate population inheriting a traditional culture rather than as savage natives. For this reason, Gotō believed "it would be a modern tyranny to apply Japanese law abruptly to the island" (Tsurumi 1965, 29, 39). Instead, he advocated a scientific survey that would employ a kind of social Darwinism to distinguish between post-Enlightenment rational law and backward Chinese customs. Within this framework the Japanese appear as enlightened as their contemporaneous British peers, which implicitly justified implementation of their "rule of colonial difference" under the legal framework of Title 63.

More or less simultaneously, after four decades studying Western legal systems, Japanese political elites in early twentieth century completed a

11. In fact, Okamatsu wrote a proposal, *Taiwan no seido ni kansuru ikensho* [Opinions on Taiwan's Institution], after the establishment of the Commission. He proposed that Taiwan should have an independent jurisdiction and that only local customs should inform the jurisdiction's special legislation. He also advocated several revisions to the Meiji Constitution to legitimatize the special jurisdictional arrangement in Taiwan. One of his ultimate dreams was to *enact* a Taiwanese Civil Code, a step he thought might prevent defects arising from a hasty legal reception of the Japanese Civil Code and might also allow a balance to be struck between modern European jurisprudence and traditional customs (Okamatsu 1988; see also Haruyama (1988b)).

12. Early on, the Commission had two divisions (*bu*): the first division was in charge of legal customs and the second was in charge of social-economic customs. In 1910, the colonial government suspended the second division due to unsatisfactory results (Yamane 1976). For the Commission's organization and the Commission's reports, see Tsu (1999) and Myers (1971).

13. Jérôme Bourgon (2002) argues that customary law as an epistemic category was introduced to China through Japanese legal scholars in the late nineteenth century. Before that, neither the concept of customary law nor the institution of civil law had existed in Qing China. Marie Seong-Hak Kim (2007, 1069) demonstrates that customary law as "a true source of private law" was an invention of Japanese colonial jurists.

dramatic shift in perspective on legal reform. Beginning in the late 1870s, they put aside earlier interests in adopting the Chinese Qing codes as their model for reform in favor of French and German legal systems (Haley 1991; Ch'en 1981).[14] In other words, Japan, as a nascent colonial power, turned to learning Western law, which also constituted self-colonization of its legal consciousness. It is this "dual coloniality" of Japanese colonialism that distinguishes the Japanese colonial investigations from the British compilation of Indian customs. The British colonizers applied their own common law tradition to Indian customs, forming a bilateral relationship of legal translation and transplantation (Cohn 1996). The Japanese colonizers, on the other hand, applied a Japanese interpretation of European laws to its colony, Taiwan, which created a triangular relationship of legal transplantation.

In fact, the Japanese were uncertain of the epistemological effects of their move toward a European legal orientation. The well-known *haiku*-like title of Yatsuka Hozumi's influential essay, "Minpō idete, chūkō horobu" [Civil Code enacted, filial piety and national loyalty destroyed] clearly displayed an ideological skepticism about the Europeanized legislation of the civil code (Haley 1991). Those opposing the adoption of European codes attacked this development as marking the demise of Japanese morality and political legitimacy and the replacement of traditional values with Western individualism. Okamatsu himself was also very critical of the hasty legal adoption of European codes in Japan, even though he was sent to Berlin by the government to study German civil law. He once commented that Japanese Civil Code combined the worse features of French law and German law, noting that "the flaws in the Japanese Civil Code were more than hundreds of places" (Haruyama 1988b, 207). It was his hope that legislating private law in Taiwan could create a model for a future Japanese Civil Code, thereby rectifying the shortcomings of hasty legal adoption carried out in metropolitan Japan (Okamatsu 1905).

To be clear, the majority people in colonial Taiwan were not Japanese but Han Chinese. How could the Taiwanese customary law and its legislation be the model for metropolitan Japan? Considering the case of British India, Eric Stokes (1989) has powerfully argued that in the minds of colonial administrators like Thomas Macaulay, the Indian colony could serve as a laboratory for metropolitan experiments such as codification. However, the codification of Hindu and Muslim law in India was mostly an attempt on the part of the colonial authority to maintain the politics of difference in the colony for administrative needs (Kolsky 2005). As pointed out earlier, the driving force behind Japanese colonialism was its policy of differential incorporation. In fact, it was not the difference but rather the similarity between the

14. For Japan's futile adoption of traditional Chinese law and its influence on Meiji legal modernization, please refer to the discussion on Oda Yorozu's background and the notion of "double-edged authenticity" in the next section.

Japanese and their colonized that attracted Okamatsu to conduct the legislative experiments. In Okamatsu's point of view, both the Japanese and Chinese descendents occupied a similar position in relation to European civilization; that is, as recipients of European law. As a result, the Commission's recategorization of Han Chinese customs actually mirrored Meiji jurists' aspiration to modernize Japan without demolishing its past. Therefore, it is understandable that Okamatsu chose the old customs of the Han Chinese rather than the tribal aborigines in Taiwan as the central subject of his colonial investigation, whereas Josef Kohler regarded an investigation on Taiwanese aborigines as potentially more valuable (Wu Hao-ren 1999).

The veiled logic of the Japanese colonial investigation once again implies that the Japanese colonizer is in fact the *colonized* of Western legal institution and ideology. This "dual coloniality" (in the first tier, the West as colonizer of Japan; in the second tier, Japan as colonizer of other Asian countries) is indeed the most significant character of Japanese legal colonialism. Being aware of the dilemma of dual coloniality, some Meiji jurists, like Okamatsu, became zealous for finding a third way, other than thoroughgoing transplantation and steadfast conservation, of a creative syncretism to emancipate modern Japan from the class of the colonized. On the other hand, Japan could also assert its prerogative as a cultural agency to other Asian countries by waging its experience of legal modernization. In brief, these Meiji jurists, along with Japanese colonialists, were trying to locate Japan's subjectivity in the new order of the modern world by integrating traditional Chinese customs and law into a post-Enlightenment European legal framework. In the following section, I further explore the Japanese pursuit of subjectivity embedded in this colonial enterprise, which is exactly the ideological foundation of *The Administrative Law of the Qing Empire.*

In Search of Subjectivity: The Japanese *Mission Civilisatrice* and Its Double-Edged Authenticity

While continuing his survey of the traditional customs concerning private law, Okamatsu also realized that Chinese law had never developed a jurisprudential distinction between public law and private law. Okamatsu pointed out that in the Chinese legal system so-called "private law" had always been tightly bound up with public law (Okamatsu 1902). However, when determining the legal validity of a private contract that parties had entered into one hundred years earlier, the Commission had to know what kind of legal effect the contract would have had under the Qing's legal framework (Haruyama 1988a; Yamane 1976). Deeds, wills, and leases were institutional facts, which would not have meaning without the social institutions that generated the documents.[15] When a social institution changes or vanishes, government officers and scholars need to reconstruct

institutional rules in order to characterize these institutional facts. For instance, while constructing "private law" in Taiwan, Japanese colonial officers would inevitably have faced a crucial question: "What would make this rule a law under the Qing?" In other words, any question as to whether a paper would qualify as a valid deed would entail a secondary question concerning the "rule of recognition" in the Qing ruling.[16] In this question lay the origins for what would become *The Administrative Law of the Qing Empire*.

The "rule of recognition" problem presented here is deeply intertwined with issues concerning, for example, the sources of law, the authority of legislation, and the nature of political legitimacy. According to Okamatsu, the solution to all these problems perhaps could come only from a further investigation into the Qing's "constitution," which included the fundamental law and the organic rules of a political body. On his understanding, these issues were within the scope of *public law* in modern European jurisprudence. Consequently, soon after the establishment of the Commission, Okamatsu suggested that Gotō survey the public law system of the Qing Empire as well. In contrast to the Meiji government, the Qing court had not promulgated its constitution, so the Commission decided in 1903 to undertake investigation of the "administrative law" of the Qing Empire.

Okamatsu recommended that his colleague Oda Yorozu, then an administrative law professor at the Imperial Kyoto University, conduct this project. Oda Yorozu was among the rising legal scholars selected to study European law under the sponsorship of the Japanese government in 1896, along with Okamatsu and two other scholars (Oda Yorozu Kenkyukai 1999), so he would have been one of the most capable jurists specialized in European public law the colonial government could find in Japan. Oda Yorozu had also been well trained in classic Chinese prior to his legal education, especially as compared to his Japanese contemporaries. In Okamatsu's view, Oda Yorozu would be uniquely qualified and capable of communicating with both worlds of modern European law and imperial Chinese law.

When Gotō visited Oda Yorozu at the Imperial Kyoto University in 1903, he promised that, since Oda was then serving as the dean of law faculty, there would be no fixed schedule for the survey of *The Administrative Law of the Qing Empire* (Oda 1914). In other words, Oda could act freely regarding investigation into Chinese public law and could ignore pragmatic concerns like the *Taiwan shihō*. If Gotō was sincere in his promise, then Oda might well have wondered what were the colonial Civil Administrator's motivations in conducting this investigation into the Qing's "public law"?

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15. I draw the notion of "institutional facts" from John Searle's work (1997) on speech acts.

16. As Hart noted (1997), the "rule of recognition" as a secondary rule would help to "specify some feature or features possession of which by a suggested rule is taken as a conclusive affirmative indication that it is a rule of the group to be supported by the social pressure it exerts" (94–96).

Oda Yorozu recalled several decades later that when Gotō Shimpei was trying to persuade him to accept the job, Gotō at one point commented,

> I certainly know that to investigate the Qing Empire's political institutions is not an easy task. But neither contemporary *Chinamen* nor *Westerners* have the capacity to undertake this enterprise. Only we *Japanese*, who not only understand modern European jurisprudence (*kinsei hōri*) but also can interpret the Chinese language, have the capability to take on the responsibility. (Oda 1943a, 317, emphasis added)

Gotō went on to claim that, "The development of China is a burden that, from both a material perspective and an intellectual perspective, should fall on Japanese's shoulders. How could we forsake this *divine calling* [*tenshoku*]?" (317, emphasis added). Gotō also elaborated that, "although the Commission's project on the Qing's political institutions derives from our intention to uncover the origins of Taiwanese old customs, it is also a marvelous chance for us to show both Chinese and Westerners that the development of China is the divine calling of Japanese" (317). Gotō told Oda that upon completing the research, the Commission should translate it into both Chinese and European languages in order to show the two civilizations that Japan was no less qualified than *white men* to shoulder the "burden" of civilizing China (317).

About one decade later, in 1914, the same year as the completion of *The Administrative Law of the Qing Empire*, Gotō gave a speech on Japanese colonial policy at a private elite gathering in Tokyo. In this speech, he stated that

> [E]ven though the Chinese legal system is extraordinarily complex, comprising many different types of laws, like *Da Ming Lü* [the Ming's Code] and *Da Qing Huidian* [Collected Institutes of the Great Qing], Dr. Okamatsu, who is the chief of the Commission, has led a successful systematic examination of the system. This effort is a great accomplishment of our empire. By examining China's legal system, we can rule Taiwan successfully. Meanwhile, Dr. Oda Yorozu of the Imperial Kyoto University has been compiling the *The Administrative Law of the Qing Empire*. This work would let the grace of the holy Meiji emperor spread all over the *four hundred shū*.[17] I think that, if our colonial policy is successful, we should attribute the policy's success to the significant decision of Governor-General Godama to initiate the customary investigation. (Gotō 1921, 33–35)

This passage confirms that the purpose of *The Administrative Law of the*

17. Shū (or "zhou" in Chinese) means a Chinese prefecture, the basic administrative unit in Ming-Qing China. "Four hundred shū" was frequently used to refer to China as a whole in traditional Japanese or Chinese writings.

Qing Empire, as anticipated by Gotō, extended beyond facilitating colonial administration in Taiwan; the survey of Chinese public law concerned Japan's civilizing project throughout China. Gotō and his contemporary Japanese colonialists clearly envisioned a project that followed their Western predecessors along the path of *mission civilisatrice*. As Alice Conklin (1997) points out, "In France, the revolution convinced the French that they 'were the foremost people of the universe' and that *la grande* nation had an obligation to carry their revolutionary ideals beyond France's borders" (16–17). This belief in turn meant it was the mandate of the French to spread civilization to all humankind. The *mission civilisatrice* turned out to be a "standard feature of postrevolutionary French colonial discourse," which not only entailed the introduction of French language, art, public hygiene, and education to the "uncivilized," but also the application of the "principles of rational administration" to fiscal, judicial and land reform (18).

The Japanese "divine calling" (*tenshoku*) proclaimed by Gotō bore considerable resemblance to the French post-Enlightenment *mission civilisatrice*. The Meiji Japanese further adapted it to the fictive dichotomy of the East and the West. This Japanese version of *mission civilisatrice* can be found in Takekoshi Yosaburō's largely self-congratulatory "Taiwan tōchishi" [Record of the Rule in Taiwan] of 1905. This book was initially a journalistic report sponsored by the colonial government in Taiwan for international propaganda. In this political pamphlet, Takekoshi (1905) declared

> White people have been conceiving for a long time that it is their burden to develop savage land and to spread the lights of civilization. Now, the nation of Japan, rising from the surface of the far eastern sea, is willing to share the great responsibility with white people. The question concerning whether our fellow Japanese have the capacity to undertake the "yellow man's burden" is waiting for answers. Our success of colonization in Taiwan would demonstrate that we are qualified for this job. (i)

It is worth noting that Takekoshi employed the term "yellow man's burden" to praise the achievement of Japanese colonialism in Taiwan. By using "yellow man's burden," or "divine calling," the Japanese not only attempted to justify their colonial enterprise on moral grounds but also depreciated Chinese as only an object or a recipient of Japan's *mission civilisatrice*. Neither Gotō nor Takekoshi used the term "*dōbun dōshu*" (common culture and common race) that represented China as Japan's sibling. This affectionate term was popular among the circle of "China-hands" in Meiji Japan, like Prince Konoe Atsumaro and members of the influential *Tō-A Dōbunkai* (East Asia Common Culture Association) (Reynolds 1993). In Gotō's view, the "responsibility" of spreading civilization over four hundred Chinese prefectures never came from any sympathetic concern arising from the notion that Japan might share cultural and racial traits with China, but from the notion that

the two countries occupied different evolutionary stages of civilization.

In Gotō's perspective, Meiji Japan had attained a level of civilization that conferred upon the Japanese an obligation to civilize other Asian countries. Through the notion of "divine calling," Meiji Japan's colonial project had been transformed from a strategic calculation into a moral obligation belonging exclusively to the Japanese. Therefore, when the first volume of *The Administrative Law of the Qing Empire* was translated into Chinese, Oda Yorozu (1979) wrote his preface:

> Once the people in power in the Qing Empire glance at this book, they would find different ideas concerning administration, ideas from the East and ideas from the West, ideas from ancient times to ideas in modern times. For this reason, this work is not limited to Taiwan only: it has great benefits for the long-term project of reviving Asia (*xingya changji*). (iii)

The distinctive *mission civilisatrice* of the Japanese colonial investigation, lacking any reference to race or culture, with emphasis only on the evolution of human civilization, cannot be more manifest. The survey of public law was expected to disenchant the old dynastic China and to reify a modern nation-state in the manner as Japan had been civilized, by means of rational law in modern time.

The project of translating *The Administrative Law of the Qing Empire* into European languages did not succeed. Oda Yorozu later explained that it was too difficult to find a proficient Japanese translator who had both mastered French and was well educated in classic Chinese (Oda 1943a). However, the failure of the European translation is attributable not only to linguistic difficulties but also to the unbalanced power relationship of *mission civilisatrice*. The Japanese colonizers had overlooked at least two problems—first, that they might be required to create a new set of European concepts/lexicons to accommodate corresponding Chinese legal modalities, just as they had invented the same for Japanese and Chinese languages; and second, that modern European civilization did not see itself in need of the pedagogy of imperial Chinese law, since civilizing processes went in the other direction. For this reason, it would be futile and paradoxical to translate the Japanese version of Europeanized Chinese politico-juridical order into European languages. Meanwhile, in Japan's own project of civilizing Asia, the target language would always be Eastern and the source language would never be non-Western.[18] Otherwise, Japan would not be able to evoke Social Darwinism

18. Lydia Liu (1995) has persuasively suggested that scholars avoid the confusing terms "target language" and "source language," which often rely on "concepts of authenticity, origin, influence, and so on, and [have] the disadvantage of re-introducing the age-old problematic of translatability/untranslatability into the discussion" (27). However, *Shinkoku Gyōseihō* shows us that the "source-target" relation of "European-Asian" language has hardly changed.

as a way to distinguish itself from other backward Asian countries, as well as to justify its "yellow man's burden." Japanese aspirations to translate their colonial investigation into European languages actually came from their desperate desire to show themselves to be free of Asiatic backwardness and to demonstrate their capacity to modernize old Asia. European countries were unlikely to be too concerned about what Japan, the junior partner in the club of colonialism, had done in deciphering Chinese politico-juridical world. It was only the Japanese who seemed to care about the project of European translation.

In addition to this linguistic maneuver, another noteworthy characteristic of the Japanese colonial investigation was its rejection of the traditional Japanese way of interpreting Chinese law, such as *Seidotsū* (General Survey of Chinese Institutions). As mentioned earlier, during the first decade of Meiji reign the Japanese government had promulgated new statutes modeled on imperial Chinese law (that is, the Qing's and the Ming's laws) such as the *Shinritsu Kōryō* [The Framework of New Law] of 1870, and the *Kaitei Ritsurei* [Revised Statutes and Its Subsections] of 1873. Although these two Chinese-style criminal codes had been replaced with the Francophone *Kyūkeihō* [Criminal Law] and *Chizaihō* [Criminal Procedure Law] in 1882, the influence of imperial Chinese law in Japan did not fade away with the change of legislation. According to Oda Yorozu's reminiscence, Ogyū Sorai's *Minritsu kokujikai* [Japanese Exegesis of the Ming's Code], completed in the eighteenth century, was the most popular textbook used in traditional tutorial schools nationwide after the Meiji Restoration (Oda 1943b). When Oda took the entrance exam of Shihōshō hōgakkō (School of Law affiliated to the Ministry of Justice) in 1884, the questions on the exam were drawn exclusively from Chinese classics and history.[19] This also explains why Oda was proficient at interpreting classic Chinese, since in order to pass the competitive exam he had to demonstrate profound Chinese literacy.

Meanwhile, the Japanese government before the mid-1880s did not hesitate to acquire Chinese knowledge for their urgent political reform. *Uiki tsusan* [General Compilation of Chinese Land], a very important reference book to *The Administrative Law of the Qing Empire*, was officially published in 1888 by the Ministry of Treasury. The author of *Uiki tsusan*, Inoue Nobumasa, combined his own lengthy and pedantic writings in traditional gazette manner with some contemporary essays on various Chinese political institutions by Qing intellectuals. Undoubtedly, its unsystematic writing style was not appreciated by political modernists like Gotō Shimpei; however, a more crucial problem was the fact that the conception of politico-juridical

19. First, he had to interpret and to analyze a paragraph selected from Confucian's Analects; next, he had to explain and respond to a quotation from *Zizhi Tongjian* [The Comprehensive Mirror for Aid in Government], a historiography completed in the Sung dynasty (Oda 1940b).

order presented in *Uiki tsusan* was an uncivilized and premodern cultural locus to which Japan would never return.

Uiki tsusan might have been the last attempt on the part of Meiji Japan to draw lessons from traditional Chinese law and politics. However, the detour of legal transplantation in the early Meiji period, from imperial China to the post-Enlightenment West, continued to influence the intellectual mind of the Meiji Japanese. In this regard, it might help to explore the implicit mindset underpinning the making of *The Administrative Law of the Qing Empire* by tracing the similarity between Oda Yorozu's survey and Ogyū Sorai's *Japanese Exegesis of the Ming's Code*. Both of them aimed to interpret the legal systems of imperial China but did so in very different ways. The former attempted to apply a modern European epistemological framework to Chinese law; the latter translated Chinese statutes literally and interpreted them in accordance with traditional Chinese thought.

Ogyū Sorai (1666–1728) refuted the neo-Confucianism supported by the Tokugawa shogunate at his time and established a new and innovative school of Confucianism, *Kogaku*; that is, the historicist school of "ancient learning."[20] Ogyū criticized the neo-Confucianism originating from Sung China as a deviation from the original teaching of ancient Sages in China. For Ogyū, the way of Heaven is not an abstract ethicality but an empirical construction of living wisdom, varying with time and place. Accordingly, Ogyū first personified the ancient Sages and then approached the Way by means of historicizing their teaching. He also employed philological methods to reconstruct the Sages' authentic thoughts. In his view, laws as well as rites, ethical norms, poetry, and song are all cultural products of human endeavor. The interrogation of "human agency" laid out in Ogyū's theory summons the emergence of Japanese subjectivity against the predominance of Chinese ideas like neo-Confucianism (Burns 2003). His insistence on authentic reading of Chinese ancient Sages also informs his distinctive approach of interpreting imperial Chinese law. According to Ogyū's own words, only those in his circle who could speak and read Chinese were allowed to peruse his *Japanese Exegesis of the Ming's Code*. Before glancing at his translation, the extremely limited circle of readers also had to take an oath that they would not apply the content of the Ming Code to the current regime (Imanaka 1966). Ogyū explained, "These laws are institutions of a different era and a different country. One must not simply employ them in the present era and destroy the existing laws" (Maruyama 1974, 97). The historicist relativism presented in Ogyū provides a theoretical framework for postulating the cultural subjectivity of Japan and its struggle against Chinese ideological hegemony.

20. Ogyū Sorai was considered, at least in the view of Maruyama Masao (1974), the pivotal intellectual figure in Tokugawa Japan, the one who seeded the modern consciousness of Japan.

Ogyū once argued, "After the Three Dynasties, even the Middle Kingdom [China] was disturbed by the barbarians. It was no longer the Middle Kingdom of old. Thus those who are vainly enraptured with the term Middle Kingdom are mistaken" (Maruyama 1974, 97). In other words, the Middle Kingdom does not fixedly denote the existing Chinese political body in a confined geographical region but refers to a transcendental sphere composed of people who crystallize the authentic teaching of the ancient Sages. Therefore, the Japanese are able to replace the Chinese as the subject of the Middle Kingdom; though the Chinese could no longer understand or observe their ancient Sages' words, the Japanese could. In Maruyama's sophisticated analysis, Ogyū Sorai lifts the ancient Sages to the otherworldly level so that "it is possible to free 'this-worldly' (*diesseitig*) history for the first time from the fetters of fixed standards; only then is it possible for history to develop freely" (99). To be precise, "history" in Maruyama's usage actually means Japanese history rather than History proper. Intriguingly, Ogyū first constructed the teaching of ancient Sages as the universal norm and then relativized the Chinese people as merely one possible candidate for the Middle Kingdom. This creative interpretation, in fact, transfigures the cultural positions of Chinese (*Hua*) and barbarian (*Yi*), which detaches "Chineseness" from China. Therefore, Japan can also claim the authenticity of "Chineseness" if the Japanese can fulfill the teaching of ancient Sages. The reversal of authenticity thereby enables the Japanese to rescue its cultural subjectivity from the History (of China).

In *The Administrative Law of the Qing Empire*, the "teaching of ancient Sages" is replaced by modern European jurisprudence (*kinsei hōri*), regarded as the universal value. Modern rational law as a cultural product of civilization can be carried out in a different form of legal system under the guidance of the spirit of enlightenment. Therefore, the enlightened Japanese is actually the mandated subject of human civilization who shares the *mission civilisatrice* with "white men." On the other hand, the Qing Empire might not qualify as the Middle Kingdom since it had been ruled by barbarian Manchurians and therefore derailed from the way of Heaven. Thus, the enlightened Japanese can exemplify, through *The Administrative Law of the Qing Empire*, a way of evolving into an authentic post-Enlightenment European form of civilization without relinquishing their authentic "Chineseness" (*Hua*). *The Administrative Law of the Qing Empire*, therefore, engenders a "double-edged authenticity" with the dichotomy of East and West. Only through the comparativist enunciation of the dichotomy can Japanese self-identification of subjectivity be achieved (Sakai 1997).

From this perspective, the ideological continuum between *The Administrative Law of the Qing Empire* and Ogyū's *Japanese Exegesis of the Ming's Code* reflects the unique search for Japanese subjectivity and struggle against other cultural hegemonies (be it Chinese Confucianism or the post-Enlightenment

European civilization). This self-identification in terms of double-edged authenticity turns out to strengthen Japan's national identity as the only civilized subject in East Asia. Similar to the function of *Tōyōshi* (modern Japanese studies on Asian history) articulated by Stefan Tanaka (1993), the significance of *The Administrative Law of the Qing Empire* is in its "creation of a Japanese self-understanding" and that, despite the objectification of modern European jurisprudence, it "fostered a belief in the nation" (20). Furthermore, the combination of dual coloniality and double-edged authenticity dialectically elaborates the logic of Gotō Shimpei's brave words, "neither contemporary *Chinamen* nor *Westerners* have the capacity to undertake this enterprise."

By introducing modern European jurisprudence, Japan was nationalizing its colonized. By conducting customary investigation, it was also imposing the colonial project on its subject. Whether encountering the East or the West, Japan could always assert its cultural agency by means of this double-edged authenticity. All the colonial questions challenging Japan are derived from and directed to its national thesis of self-identification and self-representation. This is not the Chatterjeean "moment of departure," which "produces the awareness—and acceptance—of an essential cultural difference between East and West" (Chaterjee 1993, 50). It is the modality of eternal regression that emerged from Japan's concurrent process of nationalization and colonization. The modality of eternal regression presents Japanese subjectivity in the form of "either European or Asian" as well as "neither European nor Asian." It consequently brings to the fore the dilemma of "Japaneseness." If it is here and there and everywhere, then it could end up nowhere. *The Administrative Law of the Qing Empire* crystallizes Japan's modality of eternal regression, which provides the sphere of discourses to examine the unique Japanese use of double-edged authenticity and its dilemma of in-between.

II. HYBRIDIZED ANALYSIS IN *THE ADMINISTRATIVE LAW OF THE QING EMPIRE*

In this section, I will examine the content and substance of *The Administrative Law of the Qing Empire*. As mentioned above, questions about institutional facts are the starting point of the Japanese colonial investigations into Qing's public law. Not only the colonial officers but also legal scholars expected that *The Administrative Law of the Qing Empire* would unveil the referential framework of Qing imperial operations. By engaging in an intratextual analysis, we will gain insight into how *The Administrative Law of the Qing Empire* applied the techniques of double-edged authenticity to the jurisprudential interpretation of the Qing's legal system, revealing its dual loci of coloniality.

The Source of Chinese Law—Rendering the Normative Singularity in the Qing's Legal System

The first line in *The Administrative Law of the Qing Empire* reads, "In the modern state, the concept of administration comes from the theory of Separation of Powers" (RTKC 1905, 1).[21] Applying a Montesquieuan model of government, Oda Yorozu defined administrative power as a political power competing against legislative and judicial power. He noted, however, that this kind of operational definition was inapplicable to the Qing Empire. In the Qing Empire, all political powers were concentrated in the emperor and never differentiated according to distinct functions. Therefore, a modern administrative branch never existed in the Qing Empire. What, then, did "administrative law" mean in relation to the empire that he was about to survey?

Oda argued that scholars had different understandings of the nature of administrative law. He followed the German scholar Rudolf von Gneist's definition of administrative law. Gneist was renowned for his treatise on British administrative law, which examined a variety of judicial cases and elaborated the basic principles of English public law.[22] Oda quoted Gneist's words: "[A]dministrative law is the collective category of all laws regarding the function of political power (*seiken*)" (1). Correspondingly, the administrative law of the Qing Empire meant "all kinds of existing laws regarding the function of political power," which could also be called the "political law of the Qing Empire" (*Shinkoku seihō*) (1).

With this functionalistic definition of administrative law, Oda first had to define what "all kinds of existing laws" in the Qing's political arena meant. This discussion introduced the first chapter of *The Administrative Law of the Qing Empire* examining the source (*engen, fayuan*) of administrative law in general.[23] According to the genre of early twentieth-century Japanese legal textbooks written in *Pandekten* (Pandects) style, the discussion of "the source

21. I will cite the Japanese version of *The Administrative Law of the Qing Empire* as it appears in the reference section, for example (RTKC 1910a). In my references to the Chinese version, I will use the Chinese Pin-ying system, *Qingguo xingzhengfa fanlun*.

When there are two parenthetical italicized Asian terms separated by a comma, the first one is its Japanese spelling and the second one is its Chinese spelling, for example (*engen, fayuan*). In cases where there is only one italicized Asian term, the spelling of the word depends on its origination. For example, *uchū teikoku* (Universal Empire) originates from Japan, so I use the Japanese spelling, whereas *Guoji tiaoli* (Statute of Nationality) originates from China, so I use the Chinese spelling.

22. The book to which Oda referred is Rudolf von Gneist's (1883) *Das englische Verwaltungsrecht der Gegenwart in Vergleichung mit den deutschen Verwaltungssystemen* [Contemporary English Administrative Law Compared with the German Administrative System].

23. It was also the writing style of Japanese administrative law textbooks from the first half of the 1900s to introduce the "source of law" first. Regardless of either the Francophone textbook written by Oda himself, *Gyōseihō kōgi* [Outline of Administrative Law] or the *Nihon Gyōseihō* [Japanese Administrative Law] of the German-influenced *Minobe Tatsukichi*, the fashion of administrative law textbooks even nowadays starts with the definition of "source of law."

of law" was divided into two parts: codified law (*seibunhō*) and customary law (*huseibunhō*).

For codified law, Oda identified four sources for Qing "administrative" law: general codes (*Da Qing Huidian* and *Da Qing Lüli*), ministerial precedents (*Zeli*), precedents of provinces (*Shengli*), and miscellaneous. As to general codes, he classified the *Da Qing Huidian* [Collected Institutes of the Great Qing] as the *administrative* code and the *Da Qing Lüli* [Statutes and Substatutes for the Great Qing] as the *criminal* code. But he also reminded his readers that the Qing legal system was not like any modern state, divided into different departments of law, like criminal law, civil law, and administrative law. This could be seen in the more criminal-themed *Da Qing Lüli*, which also mixed in with many stipulations concerning administrative law (5).

However, despite the peculiar case of China, Oda still identified *Da Qing Huidian* as the model code of administrative law for the Qing Empire because the code provided various regulations on the organization, authority, and duties of every administrative office (9). Comparing the Qing system with other countries' systems, Oda stated that the Qing was a very exceptional case because most European countries still had no codification of administrative law. In Oda's view, the codification of *Huidian* overemphasized the idea that officers of all levels should stick to rules and precedents recorded in the code. The codification, indeed, impeded and then retarded the Qing's administration. This development trapped the whole empire in stagnation, even as its population and its territory was substantially enlarged and as international forces landed on its shores. This inclination to conservativism, according to Oda, was one of the fundamental features of Chinese law.[24]

In discussing codified law, Oda further distinguished the validity of *Huidian* and *Zeli*. He pointed out that according to modern European legal concepts, general law (*Huidian*) should trump the ministerial precedents (*Zeli*); in the Qing case, however, once ministerial precedents had contravened general law (*Huidian*), officers in their day-to-day operations always followed the ministerial precedents, not the general law. In other words, officers were not required to adhere to the general law at all times. By what mechanism would officers know which kind of codified law to apply in a case? If ministerial precedents always trumped the general law, what was the validity of the general law?

To unravel these questions, Oda cited a famous Chinese legal dictum, "Precedents (*li*) are negotiable, but general law (*dian*) is immutable" (*Li ke tong, dian bu ke bian*) (11). He explained that general law was the legal framework, whereas precedents were variations within the legal framework. Bureaucratic practice did not imply that general rule (*dian*) had been abandoned. On the contrary, it was still in force but merely ceased to function when a precedent that varied from general law provided nuances that fit

24. This comment can be found not in the original *The Administrative Law of the Qing Empire* but in the Chinese version of *Qingguo xingzhengfa fanlun* (Oda 1979, 94).

that specific case. If the precedent were revoked, general law would reassert its validity immediately. He asserted that this complementary relationship was a unique feature of Chinese law, one for which no general Western legal theory could account (11–12).

Oda further argued that ministerial precedent in its nature was also a kind of codified law ratified by the emperor. Ministerial precedents first appeared as internal instructions for the bureaucracy, helping lower officers deal with a specific case that the general code did not mention. After the emperor approved the case as a standard for future application, the ministers would promulgate it as *li* (precedent) to be followed by lower officers all over the empire. While these precedents accumulated over time, ministries compiled and submitted them collectively to the emperor, who might not be the same emperor, for formal ratification. According to Oda, the internal bureaucratic instructions would then turn out to have external binding effects upon people through this process (22–23). Pursuant to modern European jurisprudence, Oda asserted, ministerial precedents (*Zeli*) had the same level of validity as general laws like *Huidian*. Therefore, the relation between *Huidian* and *Zeli* differed completely from the relation between law and executive rules in modern *Rechtsstaat* (16–17).[25]

Both *Huidian* and *Zeli* were ratified by emperors, the only and supreme legislator of the Qing Empire. On Oda's interpretation, their relation to each other was more like the relation between *lex generalis* (general law) and *lex specialis* (special law) in European law (17). Following the Roman dictum "*lex specialis derogat generali*" ("specific law prevails over general law"), it was conceivable that *Zeli* trumped *Huidian* in Qing legal practice. While Oda showed his readers the incommensurability between imperial Chinese law and modern European jurisprudence, he also attempted to incorporate the Chinese peculiarity into a universal scale of European jurisprudence that informed the Chinese subjects of the ideas of modern European law. In so doing, he also transformed the Qing legal order into a tone more closely approximating the logic of post-Enlightenment European civilization.

In his discussion of customary law, Oda offered a lengthy investigation of the origins of legislative authority in the Qing Empire. He grounded his argument on the historical school of jurisprudence (*Enkakuhōgakuha*) (7).[26]

25. In another paragraph, Oda also analogizes the relation between *Huidian* and *Zeli* like the relation between Constitutional and congressional law. However, this analogy does not change the nature of *Zeli* from law to executive rule (RTKC 1905, 11).

26. The term *Enkakuhōgakuha* literally means "legal conventionalism." However, it is a translation from European jurisprudence, which only tenuously is traced back to original texts. The closest concept in European jurisprudence comes from the historical school of jurisprudence, whose best-known proponents were Frederich Karl von Savigny of Germany, Sir Henry S. Maine of England, and Montesquieu of France. Nevertheless, the thoughts of those scholars differ from one to the other. Therefore, we cannot reconstruct the form of European jurisprudence to which Oda referred when he wrote about *Enkakuhōgakuha* from the text *The Administrative Law of the Qing Empire*. What I have described here is Oda's own words.

This school claimed that the political legitimacy of law was to be found in the general will of the people. Codified law was the *indirect* form of the general will, which had to be mediated and expressed by the legislator. In contrast, customary law was the time-honored practice of the people, representing the *direct* form of the general will and requiring no recognition from the sovereign. Oda adopted this jurisprudential perspective insofar as he accepted the claim that customary law was the expression of the people's general will.[27]

Oda argued that because people had recognized that customary practice had the force of law, it was not necessary to acquire the recognition of the sovereign. Especially after the Manchurian conquest, the Manchurian court did not rule the empire according to their tribal law but retained Ming codes, merely retitling the codes with a new dynastic prefix. Therefore, in Oda's view, even the codified law of the Qing was not enacted by the emperor but merely by an inheritance of former dynasties. In other words, the sheer fact of the enactment of codified laws did not mean the emperor was the ultimate lawgiver; laws were law because they were practiced as general rules governing everyone's life. Consequently, Oda concluded that according to the historical school of jurisprudence, either the codified law or the customary law of the Qing Empire was the direct expression of the general will (6–7).

In sum, Oda first used a Montesquieuan model of separation of powers to redefine the legal structure of the Qing Empire. After his translational comparison, however, he showed that this European analytical framework was useless for the Qing Empire since all three political powers fused together and were controlled by the emperor himself. Next, he concluded that, since the emperor was the one and only sovereign of this massive empire, it was unnecessary to distinguish between the validity of *Zeli* and *Huidian* because both of them originated from the sovereign power. Furthermore, by elaborating the nature of customary law in China, he asserted that either codified law or customary law in the Qing Empire was the direct expression of the general will of the people. The "real" sovereign power in China did not belong to the incumbent emperor but to ancestors in the glorious past. In Oda's view, it was the *spirit of worshiping the tradition* (*shanggu*) that dominated Chinese law (8). Meanwhile, it was the mystic mandate of the Heavens that justified the legitimacy and the legality of the Chinese politico-juridical system in each dynasty (50).

The significance of Oda's hybridized discussion of "sources of law" lies in his attempt to redefine the nature of Chinese laws and thereby achieve the fictional hierarchy of legal validity for Qing law. In so doing, he transformed the constituent of Chinese law from plural sources of normativity to a singular source of normativity. His analyses of general law (*Huidian*),

27. As Oda noted, this school's theory had invited criticism that the school underestimated power of the sovereign who actually had the final word on validity of precedents (RTKC 1905, 7).

ministerial precedents (*Zeli*), and customary practice sometimes contradict each other, which indicates an important fact: a singular legislator did not exist in the Qing Empire. With the practice of "worshiping the tradition" and without the modern establishment of separation of power, a singular hierarchy of legal validity could hardly have existed in Qing China. However, if the Qing court had really applied Oda's suggested framework to its own system, the Qing's plural normativities would have been replaced with the singular normativity, transforming the nature of imperial Chinese law. The issue of whether normativity is singular or plural, however, is not really an either-or matter but a yes-no question. It is also an irreversible choice. Were the Qing to have chosen a singular normativity, the distinctive nature of imperial Chinese law would have been lost. In trying to render a modern legal order without relinquishing the Qing past, Oda's analysis inevitably turned normativity into a dilemma.

Political Theology of the Chinese Universal Empire

After his discussion on the source of law, Oda turned to the organization of the Qing Empire. In this section, he enumerated and classified all the offices, ministries, and bureaus in the empire. He asserted that the Qing Empire was a unitary state based on absolute monarchy. However, in his view, Chinese absolute monarchy was unlike those of European countries. First of all, the Qing Empire was a democratic despotism based on cultural paternalism. According to Oda, although Chinese political power in its origins was grounded on a blood-tied paternalism, it evolved over time into a cultural paternalism (or, *shisōjō no zokuchōshugi*, paternalism in idea) (41–42). In this form of cultural paternalism, the metaphorical analogy of parent and child legitimized the emperor's absolute power over his subjects. On the other hand, the parental duty of child care also limited the absolute power of the emperor over the people's welfare.

To justify this point, Oda cited Mencius's work and argued that China had a philosophical tradition of democracy (*Minshu-shugi*) that put people first (42–43). He also cited two Western authors to support his argument. The first of these was *The Manchus* by John Ross, wherein Ross comments on Emperor Qin's politics: "[t]he unrestricted emperorism has faded away with the ashes of book-burning (*fenshu*). . . . Chinese politics is a despotism based on democracy (*Minshu-shugi*)" (Ross 1891, 20, cited in RTKC 1905, 43). Oda also quoted Lex in his "Administration of Chinese Law," saying that the Chinese government was despotic in theory but was democratic in practice; even though the government's practices did not conform to "constitutional politics" the power of the emperor in fact was subject to good will and benignancy (Lex 1873, 233, cited in RTKC 1905, 43). However, it was still despotic in nature because limited restrictions had been imposed

upon the emperor. According to Oda, once the despotism became unbearable, people would launch into revolution (43).[28]

However, Oda argued, "revolution" in China did not have the same meaning as it did in the French Revolution. In Oda's interpretation, the latter signaled a change not only in the political leadership but also in *the form of government*, that is, from monarchic to republican government, a twofold transformation that had never occurred in China. Among the numerous "revolutions" that had occurred in China over thousands of years, none had ever altered the form of monarchy or "democratic despotism." Rather, Chinese revolutions tended to reflect people's efforts to restore tradition, not to destroy it. People rising against the emperor always denounced the emperor as a traitor to the teachings of ancient Sages. Revolution punished the emperor for violation of ancient tradition; it was intended to deprive him of sovereign power. Oda therefore reconfirmed his argument that the "spirit of worshiping the tradition" was the foundation of Chinese law (44).

In addition to worshiping tradition, "heavenly mandate" (*tian-ming*) also played an important role in Chinese politico-juridical world. According to Oda's description, heavenly mandate broadly conferred upon an emperor and his successors unfettered power to reign over people, unless they deviated from the way of Heaven. Chinese emperors always proclaimed themselves to be "the sons of Heaven" (*tian-zi*). As a result, emperors monopolized all political powers but had neither political obligation nor legal duty within this system; the only duty he owed his subjects was to carry out the heavenly mandate (50). Oda therefore ascribed this power structure to the Chinese political theology of "Unity of Politics and Religion" (*seigyō shiichi*).[29] The idea of religion here merely signified a common theism held by Chinese people since ancient times—a theism that included the practice of Heaven worship.

Oda argued that the significance of this political theology was that it had created a conception of "Universal Empire" (*uchū teikoku*) through the combination of the heavenly mandate and cultural expansionism (50). No matter how distant or how "different" (*Yi*) a people were, once they converted to "Chinese culture" (*Hua*) they were no longer foreigners but Chinese.[30]

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28. In fact, Oda's usage of "revolution" refers to political rebellion in each dynasty. Since the late nineteenth century, political rebellion has been denoted as *ge-ming* (revolution) thanks to the introduction of European and American history. The connotation of *ge-ming* in China has a specific historical context that is intertwined with the translation of Western political thoughts (Liu 1995).

29. *Seigyō shiichi* may also be translated as "entanglement of church and state." Please note that, in Volume 4 of *Shinkoku Gyōseihō*, Oda makes a different statement about whether or not China is a country in which there is "separation of state and religion" (RTKC 1911a, 69–70).

30. For the conflict between the British Empire and the Qing Empire on the definition of *Hua* and *Yi*, see Hevia (1999).

Here Oda's analysis of Chinese political theology implicitly resonated with Ogyū Sorai's interpretation of the "ancient teaching." According to this interpretation, it was not the positive law that defined people's "nationality" but their cultural identity. The greatest Chinese political imperative was that China should conquer and perhaps convert all other peoples by means of its superior culture, and lead in a harmonic world that reflected the order of Chinese universal values. With this cultural universalism, there would be no country to rival China; the Chinese Empire was destined to be the only state selected by Heaven.[31]

With respect to this cultural universalism, Oda argued that the Chinese had no concept of nation-state because they deemed themselves to be the only legitimate and mandated realm on earth, so there was simply no reason for the Chinese to identify themselves in this way.[32] However, after European imperialism landed on the Qing Empire's shores, this "universal empire" inevitably confronted the modern nation-state system. To deal with matters regarding international conflicts, the empire was forced to adopt the concepts of nationality and sovereignty. Therefore, during the preparation for constitutional monarchy, the Qing court promulgated the Statute of Nationality [*Guoji tiaoli*] in 1909. Oda pointed out that this legislation featured some legal principles from the "Conflicts of Law," like *lex personalis* (RTKC 1910a, 111–12). It transformed the distinction between Chinese and foreigner; rather than hinging on cultural identity, the distinction reflected Western concepts of international politics, whose basic unit was the nation-state.

The cause of the Qing court's nationalization came more from the great transformation of its external political pressure. Only through nationalizing its people could the Qing Empire join the international community of nation-states. The theological conception of "Unity of Politics and Religion" seemed to fade away with its cultural universalism. With the growth of influence of Westernized legislation on the Qing legal system, the narratives and interpretations of *The Administrative Law of the Qing Empire* became more and more like a reconstruction of an ancient empire that no longer existed, or a mythical one. In Benedict Andersen's terms, only when the emperor is no longer the "son of Heaven" and the belief that "society was naturally organized around and under" the divinely ordained monarchial reign, can popular nationalism be possible (Anderson 1991, 36).

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31. The Chinese political theology represents a concentric circle: the most inner part is the morality of the emperor that shall conform to the way of Heaven, while the most outer part is the political order of universe that shall also orbit the way of Heaven (RTKC 1905, 50).

32. As for the claim of universal sovereignty, Oda cites S. W. Williams, who compares the Chinese empire with the Roman Catholic Church. According to Williams, "Both the Emperor and the Pope proclaimed to the world that they were the agents of Heaven (God) and the interpreters of heavenly mandate. Having this power made them conceited" (Williams 1883, 393, cited in RTKC 1905, 50).

Regulating Everyday Life in the Imperial World

From the second volume through the sixth, *The Administrative Law of the Qing Empire* embarked on an itemized illustration of every aspect of the Qing Empire's administration. It divided these discussions into four categories: internal administration, military administration, judicial administration, and fiscal administration. The first section, internal administration (*naimu gyōsei*), contains eleven chapters on census registration, the police system, public health, the land system, industry, monetary policy and measurements, construction, communication, education, religion and sacrifice, and charity. Analyses of these issues weave the everyday operations of the empire into a mixed tapestry of European jurisprudence and Chinese canons. In the following sections I select three specific topics—police administration, education and religion, and national finance—as a way of exploring the modern jurisprudential representation of imperial Chinese everyday administration by so-called "Oda-style" legal writing (*Oda ryū*).[33] Through these analyses, we will see more clearly the characteristic Japanese dilemma of entrapment in an in-between position that reflects their ambiguous use of double-edged authenticity.

Muddling the Bao-jia System with the Police State

"Did China have a police system before the establishment of its first police department in 1905?" To answer this question of comparative law, *The Administrative Law of the Qing Empire* first defined what *police* meant in the context of modern public law. According to Oda, the ultimate goal underlying the existence of police was to keep society safe from peril and to maintain local peace. A police system limited popular freedoms for the sake of public welfare. The types of administrative activities that would accomplish this law-enforcement goal, and that would concurrently limit freedom, corresponded to the Qing Empire's police administration (1910a, 119). With this functional definition, Oda argued that the Qing Empire, like other premodern states, mingled the police system with other state functions

33. The term *Oda ryū* was introduced by Katō Shigeru, one of the Commission's assistants who later became a renowned expert in Chinese economic history. He mentioned in an interview, "By the division of labor, we investigated responsible fields and drafted certain pieces for Professor Oda's review. The professor would read every paragraph in detail and write down his questions and suggestions in the margins. Then he would adjust the order of the arguments, rename the titles, and add juristic annotation to make the whole book look like it had been written by one person" (Oda and Katō 1972, 30–31).

(120–22).[34] He cited the *Zhouguan* (that is, *Zhouli* [Rites of the Zhou Dynasty]), one of the Confucian canons, to argue that the Chinese politico-juridical system had, since its inception, mixed the police function with the administration of the military and with adjudication (120). He stated that police in China could exercise extremely broad power over people, an exercise of power that was strikingly similar to the function of police states in Europe.

Oda also noted that the *Baojia* system, which is at least in name a form of community surveillance, played a critical ancillary role in local communities for the police administration in China. In addition, one of the most significant traits of Chinese politics concerned "*Wu-wei*" (literally, "no action," or "noninterference"): the state should regulate social life only if necessary (120–21). Therefore, though the power of police was very broad, in practice the actual scope of their power was relatively narrow. In general, each dynasty in China had relied very much on the *Baojia* system of self-surveillance to control its society (122; Duara 1988).

Following this historical introduction, Oda characterized the Qing's police administration according to the taxonomy of modern European public law. He enumerated three pairs of opposed concepts: first, national police (*hūtsu keisatsu*) versus local police (*chihō keisatsu*); second, administrative police (*gyōsei keisatsu*) versus judicial police (*shihō keisatsu*); and third, ordinary police (*tsūjyō keisatsu*) versus special police (*hijyō keisatsu*). According to his definition, the Qing Empire had only a national police. Police administration was controlled chiefly by the central government; there was no local police. Because the distinct *Baojia* system was not officially included in the bureaucratic system of local government, it could not be regarded as a local police either (125).

As for the second set, Oda pointed out that the distinction between administrative police and judicial police came from the French model, which embodied the notion of separation of powers. Modern readers will find it anachronistic to apply the Francophone prototype to the actual operation of the Qing Empire. Nonetheless, Oda attempted to create the commensurability of legal practices between different cultures. In his definition, *administrative police* referred to law-enforcement officers who act preventively before damage (crimes or disorder) occurred; *judicial police* referred to law-enforcement officers who searched for and arrested suspects after damage had occurred. Therefore, in the Qing system, Oda argued, *Baojia* was akin

34. Incidentally, although *The Administrative Law of the Qing Empire* is a collective work by Oda and his associates, Yamane Yukio (1967) identified the responsible authors for respective chapters, like the police-system chapter by Oda, the religion-and-sacrifice chapter by Asai Torau, and the land-system chapter by Katō Shigeru. However, the authors of some chapters like those on education and financial administration were still unidentified. When the identity of the author is clear, I follow Yamane's suggestion (10–12). Otherwise, I refer to certain sections by the titles of their work, like Chapter Fourteen on Financial Administration or *The Administrative Law of the Qing Empire.*

to the administrative police, with runners or clerks (*chaiyi*) in county governments best thought of as akin to judicial police. However, this distinction could not apply to any office higher than those at the county level because the *Baojia* system existed at that level only (126–27).

In the third category, the ordinary police took charge of daily affairs while special police covered emergencies. Oda's reference to special police meant military police. Although the Qing military system differed significantly from that of the modern state, troops usually took on the job of hunting down criminals on the run. Therefore, this third classification applied to the Qing Empire as well.

As Walter Benjamin (1978) reminds us, any hypothetical distinction between different kinds of violence, be it sanctioned or unsanctioned, should come from the "historical acknowledgement of its end" (280). Only through a critical understanding of the "philosophy of violence's history" (299–300) could a further reflection on violence, like immense police power, be possible. The problem of Oda's analysis for the Chinese police system was its detachment of the formal function of police from its cultural matrix of meanings. For example, even though Oda was aware of the distinctive function of *Baojia* in China and tried to offer an operational definition based on the Chinese classical tradition, his Francophone taxonomy washed out the Chinese meanings attaching to *Baojia*, and so muddled the function of the *Baojia* system.

A modern reader of Oda might reasonably ask, "What does *Baojia* really mean in Oda's analysis of the police system?" On the one hand, Oda excluded *Baojia* from the system of police in his discussion of local police because *Baojia* was absent from even the lowest personnel of local governments. On the other hand, he referred to *Baojia* as administrative police, in contrast to the runners and clerks who function as judicial police. Does Oda's Francophone taxonomy allow us to determine whether the *Baojia* system is a kind of police system, or not? It is not entirely clear. Oda's taxonomy does not help us to situate *Baojia*, but by appropriating a meaning from another context, he found himself stuck somewhere in between modern European jurisprudence and the Chinese order of things.

Incommensurable Minds: Sacrifice, Religion, and Education

"In China, as in other cultures, the state was never a purely secular and utilitarian structure," C. K. Yang (1967) asserts in his seminal research on Chinese religion. "The machinery of government was always propelled by value systems intricately interwoven with dogmas and myths and other non-empirical beliefs rooted in religion. Consequently, neither the structure nor the functioning of government was independent of religious systems" (104–05). In *The Administrative Law of the Qing Empire*, Japanese scholars strove to distinguish the significance of the state's role in religious activities,

and vice versa. The issues of religion and sacrifice were frequently mixed together but were treated separately in Chapter Fourteen, "Internal Administration." Here, the term *sacrifice* (*saishi, jisi*) referred to the time-honored tradition of worshiping Heaven and other spirits (like the spirits of mountains, rivers, seas, and so on), which had always been monopolized by emperors (RTKC 1911a, 1–2). In contrast, *religion* meant established belief systems like Buddhism, Taoism, Lamaism, Islam, and Christianity (69).

Later in their detailed analysis, the authors extracted various examples from Chinese classics, like *Shangshu* [Book of History], *Zhouguan* [Rites of the Zhou Dynasty], and *Liji* [Book of Rites], to argue that in origin, classic Chinese political thought was deeply intertwined with sacrifice and rituals. At the same time, according to them, Confucianism emphasized the study of and compliance with these sacrifices and other rituals by which the political ideals of *Li* (ritual) and *Yue* (music) restored the politico-juridical model decreed by ancient Sages. Hence, they argued, the administration of sacrifice should be the center of Chinese politics, and surely the government had an interest in monopolizing this power (2). Nevertheless, how did these authors apply the modern European legal framework to the concept of Chinese sacrifice? The authors once again stated that there was nothing in the toolbox of modern European jurisprudence comparable to this uniquely Chinese institution of sacrifice. So they simply cited lengthy passages from the Confucian canons and from other classic Chinese writings, page by page.

This proliferation of abridgements was evidently a result of the epistemological clashes between dynastic Chinese statecraft and modern European governmental function. Confronted with the incommensurability between different systems of meaning, the authors left intact what they could not classify and compare, refraining from any further interpretation. The untranslatable order of things in fact reflected the subtlety of Chinese politico-juridical consciousness—such as the symbolism of sacrifice and ritual. The authors' inability to decode the Chinese system of meanings calls in question whether they could actually render the authenticity of Qing administrative law to Western readers and to the Chinese themselves, as they claimed to be doing.

The untranslatable passages from Confucian classics did not, of course, interpret themselves, instead taking on the appearance of an object, like the Codex Hammurabi in the Louvre Museum. The exposition of quotations resulted in the synchronization of different ideas that occurred sporadically in Chinese history. By reproducing those abridgements together in one place, the multitemporalities of ideas were formatted into the present tense of modern time, commensurable with European teleological history. The sacredness of sacrifice and ritual had accordingly devolved into mundane routine of imperial administration, which enabled the authors to escape the mystical incommensurability originating in Chinese consciousness.

For this reason, the authors advanced another set of questions that reformulated the analysis of religion and sacrifice according to a Western

epistemological structure: "Does the Qing Empire adhere to the principle for 'separation of state and religion' in China?" (69–70). Or, the same question recast in the chapter regarding education, "Is there any 'non-religion' doctrine for Chinese educational policy" (RTKC 1910b, 396). The authors implicitly ignored that the concept of *religion*, per se, was constructed mostly after the Enlightenment in Europe. In reformulating the temporalities from multilayers to present tense, their questions concerning "non-religion" doctrines or "the separation of state and religion" adopted the assumption that China and the West share a similar conception of the relationship between state and religion. Although the authors proposed no operational definition of *religion*, they stated that religion was a certain belief system regarding supernatural power and spiritual experience.

Notwithstanding the presence of Daoism and Buddhism, the most conspicuous belief system in China was Confucianism. Inevitably, *The Administrative Law of the Qing Empire* had to tackle the haunting question for generations of Sinologists: "Is Confucianism a religion or not?" Interestingly, the book devotes a good deal of attention to the discussion of Confucianism in the chapter on administration of education rather than in the chapter of religion and sacrifice. The authors declared that it was not their intention to propose any authoritative definition of religion. Nevertheless, in their discussion of Confucianism, they pointed out that almost every Chinese emperor would worship Confucius and his disciples in the Confucian temples, and some even expelled Buddhism in order to dignify Confucianism, actions that clearly bring to mind, for Western readers, the establishment of official religions in European countries. Nonetheless, the authors argued, even though Confucianism had been incorporated into political practice over dynasties in China, Confucianism itself remained a secular political and moral theory that had little or nothing to do with supernatural power and spiritual experience (395–401; RTKC 1911a, 69). Therefore, Confucianism would be better regarded as national learning than as a national religion (RTKC 1910b, 397–98).[35]

From this perspective, the authors asserted, China had consistently practiced the "nonreligion" doctrine in its educational institutions as well as the "separation of state and religion" in national politics (RTKC 1911a, 70). Ironically, their assertion of Chinese "separation of state and religion" seemed contrary to their analysis of the relationship between ritual practice and Confucianism, which argued that sacrifice played a central role in dynastic

35. Even though the Qing government had expressively stated in its Agenda of Educational Affairs (*Xuewu gangyao*, 1903) that, "In foreign countries, they offer a class called 'religion' in school. In China, Confucian classics (*jingshu*) are the religion of China," the authors of *The Administrative Law of the Qing Empire* denounced this statement as a misunderstanding of "religion" (RTKC 1910b, 400–01). By rejecting the Qing government's very own interpretation, the authors once again showed their readers that the agency of China's modernity was not the Qing elites but the enlightened Japanese.

Chinese politics. But, they asked, "Is the sacrificial ritual a kind of religious practice?" As they observed, many traditional Chinese rituals followed Confucian teaching (or pre-Confucian thoughts advocated by Confucius) (2–3). If one regarded Confucianized ritual and sacrifices as a kind of religious practice, to what extent had the Qing Empire practiced the "separation of state and religion"? The authors intentionally excluded ritual and sacrifice from the discussion on religion at the beginning of the chapter of religion and sacrifice, suggesting that this might have not even constituted a question for them (2–3).

Having excluded Confucianism and ritual and sacrifice from the sphere of religion, what other belief systems in China might have qualified as religion in the authors' eyes? There were several possibilities: Buddhism, Daoism, Lamaism, Islam, and Christianity. But as the authors observed, with the exception of Lamaism in Tibet and Mongolia, and Islam in Uighur Xingjiang, none of these religions had been considered as an official religion in China. The authors therefore asserted that the Qing Empire did indeed practice the principle of "separation of state and religion" since Confucianism and state-monopolized sacrifice and ritual were not "religions" in the Enlightenment sense, and none of the other possible candidates had significant government sanction. The mono-temporality of European jurisprudence thereby "disenchanted" the mystic Chinese politics of ritual and religion and turned the Qing Empire into a modern state.

The Calculable Wealth of the Nation: Rationalizing the Qing's Fiscal Law

One of the main characteristics of modern government is its relentless effort to make the national economy measurable. Yet, as Timothy Mitchell (2002) asks, "How were certain everyday transactions among people and things to become something as solid and tangible as 'the economy'?" (97). Citing Georg Simmel's "money economy," Mitchell suggests that new forms of knowledge like cadastral survey, paper currency, or accounting principles that record flows of money and stock enable the calculability of social and economic activities (84–91). In the same vein, the jurisprudence presented in the last section of *The Administrative Law of the Qing Empire*, on the Fiscal Administration, is an attempt to render in precise terms the calculative order of a modern administrative state, one akin to the German conception of *Rechtsstaat* or the French *l'Etat de droit*, that, in Simmel's words, "corresponds to the ideal of natural science" (1950, 412) and simultaneously vests legal validity in the state.

The objectified order of modern European jurisprudence in the chapters on Fiscal Administration not only re-created the day-to-day operation of imperial finance on the model of *Rechts* but also inserted a new logic of

rationality into the Qing's bureaucratic operation.[36] In other words, *The Administrative Law of the Qing Empire* implied that a modern national economy would not be possible without the existence of a modern administrative state built upon the "rule of calculability." To the authors, rationalization of fiscal law was conceived of as the means leading to "the right disposition of things," which was the "convenient" end of sovereignty.[37] Simultaneously, the establishment of modern fiscal law would pronounce the very existence of sovereignty as well. The doctrinal reordering of the imperial Chinese fiscal administration underscored the governmentality of the modern state and, dialectically, justified the sovereignty of a nation-state reborn out of its imperial form.

Rational fiscal law's expression of the modern concept of national sovereignty effectuated the capitalization of all movable and immovable properties within the Qing Empire. As *The Administrative Law of the Qing Empire* showed, any individual in the Qing Empire who wanted to claim their entitlement against other persons or against the state first had to record it with the government; otherwise, unregistered properties would be turned into state-owned properties, and the state would exclusively enjoy the revenue from this property (RTKC 1911b, 298). Waste lands, natural fruits, or sea salt—all could be nationalized as state-owned property.

The authors pointed out that the fiscal power of a modern state meant the power that the state exercised for the purpose of managing its revenue. According to late nineteenth-century European legal principles (*kinsei hōri*), national revenue included two categories: the revenue incurred by the cause of *public law* and the revenue incurred by the cause of *private law* (RTKC 1913, 1). Theoretically, the revenue incurred by public law was consequential upon the execution of state power. For example, taxes constituted the greatest share of the government's revenue by public law account, while criminal penalty fees and administrative fees constituted a minor share of the government's revenue by public law.

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36. *Rechts* has two meanings: law, and rights. In its analysis of regulation on salt monopoly, *The Administrative Law of the Qing Empire* not only "defines" the various rules of salt gabelle as codified law but also associates it to certain rights, which exactly exemplifies the double meanings of *Rechts*. Thus, I prefer to use the term "*Rechts*" to denote this case, rather than "right" or "law" separately in English.

37. The authors' application of rational law and modern state might provide an interesting counter/argument for Michel Foucault's notion of governmentality. Though Foucault (1979) also asserts that the underpinning idea of governmentality is the "theme of the government of things" (12) he argues it is not merely laws but rather the full range of tactics of a state that enables the governmentality of modern states. In Foucault, the fallacy of solipsistic legal discourse lies in its claim to act for the "common good" that constitutes the "circularity of sovereignty"; by asserting the public good as the end of sovereignty, the law becomes a means to ask people to obey the law on the grounds that it is good for the public. Conversely, as the embodiment of public good, the law is also the end of sovereignty itself. This tautological circularity prompts Foucault to look at multiple apparatuses in addition to law. However, it is precisely the "circularity of sovereignty" that prompts the authors of *The Administrative Law of the Qing Empire* to apply "modern fiscal law" to the reconstitution of China.

When the government stood as a private body in transacting with people, however, its revenue had nothing to do with state power and was to be treated as a private law issue. The authors included some examples of private law revenue, like the fruits in national forests, the gains from state-owned business, and the money and crops stocked in state-owned storages (RTKC 1911b, 298). But, they noted, in the case of Qing law, it was very difficult to identify which revenue stemmed from private law, since the Qing legal system did not develop the distinction of private law and public law (RTKC 1913, 1–2). Therefore they applied the legal dichotomy of public and private to rearrange the manner of Qing fiscal administration.

The time-honored Chinese system of *fu* (taxation) and *yi* (compulsory service) had been defined as legal duties of public law. Contrariwise, in the category of miscellaneous taxation (*zafu*), the authors interpreted *zu* (rent) as returns on a loan of state-owned property, governed by private law. The application of this dichotomy detached Qing fiscal administration from its original cultural nexus. For example, the Qing Empire maintained an elastic sovereign power over tribal peoples in the empire's peripheral territory. In *The Administrative Law of the Qing Empire*, tribute (*gung*) to the Qing court offered by the tribal peoples from Kashgar, Guizhou, or Yunana was defined as "gifts," in the sense of private law, rather than as "taxation," as defined in public law. The authors characterized tribute as an offer based on the free will of tribal peoples, not as a mandatory requirement of the Qing emperor (6).

Though the authors intentionally refrained from including this kind of tribute as a part of the international tributary state system, which would go beyond the scope of administrative law, the word "tribute" here had, to some extent, the same political and cultural meaning as it did in the tributary state system. In the literature on the international tributary system of premodern East Asia, *tribute* was widely conceived as a combination of commodity exchange and diplomatic ceremony (Fairbank 1953; Wills 1984; Hevia 1995). Looked at this way, the institution of tribute (*gung*) included not only transactions between the empire's core and peripheral areas but also denoted the ritual symbol of political submission to the celestial Qing's hegemonic power. By reinterpreting its legal definition as a "gift" in the sense of private law, *The Administrative Law of the Qing Empire* once again transformed the imperial order of things into calculable and justiciable goods under modern rational law.

The Administrative Law of the Qing Empire combined the force of rationalization and capitalization to create a new legal order of national economy constituted by the rules of nineteenth-century European jurisprudence. From the authors' perspective, tribute (*gung*) from Kashgar could not be anything other than the "accounts receivable" on the national balance report. The alienation of cultural meaning from its original context was forseeable. In *The Administrative Law of the Qing Empire*, only through the law's commensuration

could the Qing calculate its national wealth—the real "money power" of its sovereignty. The proclamation of sovereignty went with nationalization of the economy, which in turn demarcated the economic boundary of the Qing Empire. The tributary state system disappeared and a new nation-state was born in the Japanese construction of modern European jurisprudence (*kinsei hōri*).

INCOMPREHENSIBLE CHINA AND THE CAMPAIGN OF NATIONAL IDENTITIES

Though the substance of *The Administrative Law of the Qing Empire* was undeniably formidable, the project ultimately failed to achieve its goals. As mentioned earlier, the project's initial purpose was to facilitate "special legislation" for colonial Taiwan, as well as to inform Chinese elites about modern European jurisprudence. However, after the ambitious Civil Administrator Gotō Shimpei left Taiwan in 1906, Japanese colonial policy gradually returned to its mainstream tendency of differential incorporation. In 1919, Prime Minister Hara Kei officially declared his political manifesto for "assimilation" (*Naichi enchō shugi*; literally, the "principle for extension of domestic territory").

Hara Kei's principle ultimately frustrated the attempted special legislation of Taiwanese customary rules. Oda would later observe that he had "little knowledge of how much the colonial administration in Taiwan had directly benefited from this old custom investigation enterprise" (1943a, 327–28). The colonial government distributed the six-volume report exclusively to Japanese offices and bureaus in Taiwan. The Office of the Governor-General prohibited any release of *The Administrative Law of the Qing Empire* to the Taiwanese people (Oda 1914). Thus, the Japanese colonizer excluded the colonized Taiwanese from the knowledge generated by its "enlightenment" project. This policy mirrored Ogyū Sorai's treatment of his *Minritsu Kokujikai*: only persons who took oaths of loyalty to the existing political system could have access to the book. The Japanese colonizer might have been afraid that the Taiwanese, the unenlightened colonized, might use the official report to challenge the colonizer's administration. Therefore, it was the Japanese colonizer, not the colonized Taiwanese, who would decide whether the former institutions and old customs would be recognized.

The colonizer controlled the agenda of the civilizing process and decided to what extent the colonized should be enlightened or, more important, remain unenlightened. So once the government decided not to make policy on the basis of the survey, *The Administrative Law of the Qing Empire* could not help but vanish from the colonized society. The investigation of old customs became no more than evidence that the Japanese were as capable of ruling the colonized as scientifically as their European counterparts. The

survey itself was reduced to an ethnographic archive of how uncivilized the colonized had been, contrasted with how civilized they became after the colonial rule (Comaroff and Comaroff 1997; Anderson 1991; Said 1979).

As to the grander design of civilizing China (or reviving Asia; that is, *xiangya*), Oda (1914) lamented, "In the middle of our investigation, the Qing government has been overthrown all of a sudden. Any value that once adhered to the investigation into the governing laws and the political institutions in the Qing Empire no longer exists. The investigation has ended up as a mere compilation of [Chinese] legal history" (3). Later he would add,

> Those important Chinese officials who received this report from the Taiwanese Governor-General Office probably have deceased now; otherwise they might be too old to be in power as well. The political elites in republican China might not have ever known about this report. Thus, the expectation of Administrator Gotō has pitifully never come true. (Oda 1943a, 326)

And thus, the "cultural colonialism" devised by Gotō Shimpei, like the self-congratulatory propaganda of "yellow man's burden," was probably never realized in the way these Japanese colonizers anticipated.

The Administrative Law of the Qing Empire did have some indirect influence on Chinese intellectuals around the turn of the century that was not within the expectations of either Gotō or Oda. Following publication of the survey's first volume in 1905, three Chinese students who had studied law in Japan translated it into Chinese without permission from either the Governor-General's Office in Taiwan or Oda Yorozu. This unauthorized Chinese translation was published in Shanghai in 1906 and received a tremendous welcome from Chinese readers, requiring a second printing within two months[38] (Sakano 1962). The unexpectedly widespread circulation of *The Administrative Law of the Qing Empire* in this unauthorized form suggests that the Chinese were eager to acquire knowledge of modern European jurisprudence, which might facilitate their access to post-Enlightenment civilization. Rather than passively waiting for Japanese pedagogy, like that of Gotō's civilizing project, Chinese translation signified active engagement in the production of modern legal knowledge in China.

However, after learning of this unauthorized translation, Oda (1979) denounced it as "misleading" and complained that it was "tampering with the correct meaning." In his own Chinese version, he wrote a new introductory chapter to teach the Chinese audience "what the real European legal knowledge is" (3). In other words, a nationalistic competition was under way to determine who would represent authentic European jurisprudence and

38. The unauthorized translation was one of the factors that compelled the Committee to speed up its Chinese translation project, which had been partially realized in 1909.

its application to the Chinese legal framework. The struggle to control the meaning and application of European legal knowledge was embedded in the larger regional power struggle for ideological dominance.

Nationalistic sentiment loomed large in Oda's 1938 essay (1940a) titled "The Incomprehensible Chinese Nation" (*Hukakai no Shina minzoku*, hereinafter "Hukakai"), which posited a critical problem of *The Administrative Law of the Qing Empire*. Oda (1940a) wrote that in 1906 he had traveled to China with Okamatsu and Kano to do the fieldwork for *The Administrative Law of the Qing Empire*. After the long journey, whenever someone asked him what his thoughts on China were, he would simply say three words, "*Hu-ka-kai*" (incomprehensible). Despite completing his extensive survey on Chinese law and political institutions, and despite more than thirty years of tremendous change in China, Oda still chose to describe China as an "incomprehensible" nation. Oda did not mean that China was literally beyond understanding. Rather, what he wanted to convey by using the term was that "China is not what you read from books" (200). Nevertheless, the description contrasts somewhat with what he would later write in another essay discussing the work of *The Administrative Law of the Qing Empire*.

In the later essay, he described China as a "nation of words" because things in China were almost always recorded in books; generally speaking, the authors of the survey had therefore been able to rely on written documents (Oda 1943a, 320). In *Hukakai* (1940a) Oda had written that Chinese philosophical ideas, literary writings, and records of legal institutions were all marvelous, no less outstanding than those of modern European civilization, but that only "skeletons" of these monumental works had remained, turning contemporary Chinese society into a grotesque imitation of tradition (198–99). For example, the funeral was meant to be a solemn ritual in traditional Chinese thought, reflecting respect for ancestors. According to Oda's observations in *Hukakai*, however, Chinese funerals were actually full of exaggerated performances that made the deceased and the spirit of bereavement ridiculous.

In Oda, the Chinese had substituted forms for substance, which turned their sensibility into inertia (198). Oda offered a second example, this one drawing on his observation of the maintenance of Confucian temples. Oda described a Confucian temple he visited in Soochow as the dwelling of bats, permeated by a foul smell that stopped people from entering. If Chinese people really practiced the teaching of their ancient Sages, such as that respect (*kei, jing*) is the origin of propriety (*rei, li*), how could they treat the Confucian temple like a ruin? What Oda had seen in the material world of China did not match what he had read about the conceptual world of China—hence his assertion that contemporary China remained merely the "skeleton" of an earlier grandeur.

In his later writings, Oda also challenged his earlier work by offering counterarguments to the Chinese characteristics he articulated in *The*

Administrative Law of the Qing Empire. For instance, though *shanggu* (worshiping the tradition) was the major element of Chinese culture, Oda noted that in late Qing Governor Zhang Zhidong had rebuilt the Huanghe Lo (Yellow Crane Pagoda), one of the most renowned cultural landscapes in China, in Western style after it had been destroyed in a fire. In the same vein, he argued that the 1911 Revolution, which overthrew the Qing court, did not comport with the traditional meaning of revolution in Chinese history but instead instantiated the meaning of the French Revolution. "It was certain that China could not separate itself from the rest of the world," wrote Oda, "but if they forsook all their tradition, then it might be very difficult for them to achieve the goal of revolution" (203).

In sum, the picture of China represented in Oda's reminiscence Fukaki (1940a) was full of contradictions, contradictions of form and substance, concept and reality, conservation and revolution, civility and vulgarity, and so on. Oda argued that if someone picked up only one side and regarded that as the whole story, one would completely fail to comprehend China in every way. Oda was thus conceding, implicitly, that the failure of *The Administrative Law of the Qing Empire* stemmed, to some extent, from its heavy reliance on a methodology of documentary analysis based on its authors' regard for China as a "nation of words." In fact, this was precisely the same approach they had used to access to modern European jurisprudence—perusal of legal treatises. However, their appropriation of European jurisprudence was not designed to have any effect on Europe. Rather the European jurisprudence the Japanese had discovered was to be applied to China—but the imaginary China that they constructed from words in books. Thus, the Japanese authors of *The Administrative Law of the Qing Empire* combined two jurisprudential *imaginaires* to create a hyperreality of both China and the West, by way of a third *imaginaire—their own*—that located Meiji Japan as cultural negotiator between East and West.

The in-between character of Japanese cultural agency, which entailed the modes of "either-or," as well as "neither-nor," actually embodied a rule of ambiguity in terms of colonial policy. As a product of ambitious colonial projection, *The Administrative Law of the Qing Empire* turned out to engender the incomprehensibility of China (that is, the East), which reflexively mirrored the "comprehensibility" of Japan as an ordered and civilized nation. As Emmanuel Levinas (1999) once noted, "This transcendence is alive in the relation to the other man, i.e., in the proximity of one's fellow man, whose *uniqueness* and consequently whose irreducible *alterity* would be—still or already—unrecognized in the perception that stares at the other" (126). In the course of searching for subjectivity after the establishment of Meiji Japan, Japanese jurists like Oda were keenly aware that the great transformation in the realm of law would cause a crisis for Japanese subjectivity.

What the Japanese sought to transcend was not only Asiatic backwardness but also Western modernism. One way to rescue itself from the crisis

of subjectivity was to exercise double-edged authenticity to shape the "others" in both the Oriental and Occidental worlds. Only through objectification of the Oriental Other and the Occidental Other could modern Japan recover its own subjectivity. The objectification of others, through the representations of modern European jurisprudence or the Qing's law, contributed to the relational structure of transcendence built in *The Administrative Law of the Qing Empire*. From the perspective of the possibility of intersubjective understanding, the relational structure of transcendence, which distinguished Japan by objectifying others, was the origin of the incomprehensibility that Oda had himself helped to construct. In that sense, from the viewpoint of constructing Japanese subjectivity through comparative law, the colonial survey was not a failure at all.

The Japanese attempt to create a relational basis for their own transcendence triggered a symbolic campaign of nationalism in the realm of East Asian laws. As we have seen, the unauthorized Chinese translation of *The Administration Law of the Qing Empire* ignited a battle for control of meaning between Japanese jurists and Chinese intellectuals. In fact, legal reform, legislation, and legal education in early twentieth-century China were all profoundly influenced by Japanese law and its legal scholars (Li 2002; Reynolds 1993). Still, during this same period, an increasing number of Chinese students were studying modern Western law in the United States and in European countries without the mediation of Japanese legal scholarship. The interventions of these non–Japanese-trained jurists gradually changed the triangular relationship of legal knowledge among China, Japan, and the West. The leading figure among these Western-trained jurists was Wang Chung-hui, who had been both the Minister of Justice and Chief Justice at Dali Yuan (the Supreme Court) of Republican China between 1912 and 1921, and from 1922 to1931was a colleague of Oda Yorozu on the International Court (*Cour permanente de justice internationale*) in The Hague (Oda Yorozu Kenkyukai 1999; Wang 1981). Wang received his law degree (JSD) from Yale Law School in 1906, and was the first person to translate the 1900 German Civil Code into English (Yu 1987; Wang 1907).

In an essay, "Wang Chung-hui and I," Oda described Wang as a gifted Chinese jurist with an extraordinary talent for mastering Western languages (Oda 1940c). In 1925, when Wang was visiting Japan on his way back to The Hague, he and Oda met for a reunion banquet. Wang's visit to Japan was actually undertaken on behalf of the Chinese government for diplomatic purposes (Yu 1987). At the banquet, Oda wrote Wang a classic Chinese poem that read, literally, "If siblings fought against each other, how they could defend themselves from intruders? Jackals and wolfs [sic] get in the way of cooperation. For a long time, we have been in harmony with each other on the ground of words. It enables us to drink together in heroic mood" (Oda 1940c, 229). According to Oda, Wang replied with a Chinese proverb, "He who is virtuous would never be alone and would have neighbors for

sure." Oda recalled Wang was phrasing this proverb in a rebuking tone, as if to say, "If we are really siblings, you'd better start behaving like one" (229).

In fact, Wang did not fully reject the notion of a full-fledged fraternity. In 1927, welcoming a business delegate from Japan, he proclaimed that "China and Japan are neighbors in terms of geography, of the same ethnic group in terms of ethnicity, having similar customs and sharing common origin of word. Therefore, the relationship between these two countries cannot be closer" (Wang 1981, 495). In another essay written in 1955, Wang cited Sun Yat-sen's words to express the intimate relationship between Japan and China, "Meiji Restoration is the first step of Republican Revolution in China; Chinese Republican Revolution is the second step of Meiji Restoration. These two events are of the same meaning" (457). However in 1938, during the Sino-Japanese war, Wang accused Japan of being a militarist country that would never wish "to see the Chinese nation becoming flourishing and the Chinese state becoming modernized" (236). So after their policy of expansion had been affirmed, "Japan never treat we Chinese national in fair and equal way" (236–37). The following year Wang also rejected the description of China as a "nation of words," considering it a defamation (247). At the same time, he also challenged his fellow Chinese, "Considering the practical situation in China, are we not a nation of words?" (247). He criticized the Chinese for emphasizing too much on the form of things and ignoring the importance of practice. He therefore urged his fellow Chinese to carry out the "ultimate goal" of Chinese nation, the realization of Sun Yat-sen's "Three People Principle" (248).

It would not be a surprise to see that Chinese intellectuals had utilized nationalist discourses to mobilize their people in the course of modernization. However, it is impressive to see how a comparison of the nationalist thought of these two Asian jurists, Oda of Japan and Wang of China, confirmed the Levinasian insight that "nationalism is best seen as a relational identity" (Duara 1995, 15). In other words, the substance of nationalism varied with the formation of the relational structure. Wang effectively made this point in 1956, noting that when Sun Yat-sen, the founding father of Republican China, had praised the achievements of the Meiji Restoration in his 1924 speech on nationalism, it was to identify Japan's emergence as a first-class country as a source of hope for other Asian nations. The Japanese had proved that "white men [are] not the only people capable to develop modern state in the world" (Wang 1981, 457). In this context, the West was the common enemy of China and Japan.

Sun's nationalism, therefore, was an inclusive relational structure subsuming Japan and China in a broader notion of Asian nations. With this notion, Japanese nationalists and Chinese nationalists collaboratively constructed the metaphorical family of Asian nations. Therefore, it is conceivable that Chinese jurists shared the common concerns of reviving Asia (*xingya*) with the Japanese, symbolized by the unauthorized Chinese translation of

The Administrative Law of the Qing Empire. This relational structure also explains why Oda employed the metaphor of siblings in his poem to Wang. For his part Wang rejected the metaphor: the West was no longer China's enemy at that time, replaced by Japan as intruder upon China (Oda 1940c, 229). In 1943, Wang would use the same sibling metaphor to refer exclusively to Chinese nationals, expelling Japan (Wang 1981, 374).

The idea that law was the expression of national culture was popular in early twentieth-century Asia (Wang 1981, 461; Oda 1940b). The relational structure of transcendence embedded in *The Administrative Law of the Qing Empire* not only signified the nature of Japanese subjectivity but also reconfigured the spectrum of national identities in East Asia. By exercising their double-edged authenticity, Japanese jurists endeavored to incorporate the Chinese, the Korean, and the Taiwanese, all of whom were influenced or governed by imperial Chinese law, into the new order established by the modern Japanese. The same relational structure was latent in the Greater Asia Co-prosperity Sphere later devised by Japanese colonialism. The power of the Greater Asia Co-prosperity Sphere came not only from its borrowing of traditional Chinese notions of "universal empire" but also from the symbolic logic of familial relations, which situated other Asian nations in the commensurable modern order of nation-states, as Oda had done with imperial Chinese law.[39]

However, in Wang Chung-hui's understanding, at least in 1940, the Japanese version of a "New Order in East Asia" would "upset the existing order in violation of international agreements, and might therefore more appropriately be called 'Disorder in East Asia'" (Wang 1981, 606). Wang instead appealed to international conventions and treaties like the Nine-Power (Open Door) Treaty, agreed at the Washington Naval Conference in 1922, and the Kellogg-Briand Pact of 1928 in order to condemn the Japanese "New Order" in East Asia. So doing, Wang made two points: first, the Japanese construction of a modern politico-juridical order could not trump international agreements; second, Japanese representations (and appropriations) of traditional Asian order, such as the "universal empire" of imperial China, had already been rejected by the contemporary Chinese nation itself. In brief, the Chinese nation was reclaiming its own subjectivity by appealing to international law and debunking Japan's double-edged authenticity.

Be it domestic or international, law was a critical instrument for nationalist thought. With this understanding, the "incomprehensible China" of Oda's imagination was also the result of Japan's nationalism. Although the Japanese located their subjectivity through objectifying and differentiating

39. Though the political purpose underpinning the Greater Asia Co-prosperity Sphere is not as same as that of the colonial project promoted by Gotō, the same familial metaphor in these two discourses demonstrates the great influence of pan-Asianism prevalent in the early twentieth century.

the others in Asia, once other Asian nations had their own access to modern Western laws they could change the relational structure of nationalism by taking East Asia into the international order themselves. While Japan attempted to transcend other nations by asserting the teleology of historical evolution, other nations in Asia attempted to restrain Japan as a national unit by asserting the transcendent order of international law.

In *The Administrative Law of the Qing Empire*, modern European jurisprudence (*kinsei hōri*) actually became a nationalistic construction of Japanese law. The order that the project postulated was no unique and perpetual Asian order, as the Japanese colonialists proclaimed, but simply the Japanese interpretation of this-worldly history. In *The Administrative Law of the Qing Empire*, in other words, one encounters the universality of modern European jurisprudence but *provincialized* by Japanese jurists as a representation of Japanese law.

CONCLUSION

By constructing the "source of law," Oda and his colleagues had reformatted the plurality of normativity in Qing law into the singularity of modern rational law. From the cultural difference of Chinese (*Hua*) and Foreigner (*Yi*) to the "Statute of Nationality," the Qing Empire had been "disenchanted" from the mystic universal empire to a modern nation-state in the international treaty system. In addition, the imperial order of things—like *Baojia*, sacrificial rituals, and tribute—had been detached from their multilayered cultural meanings and dissolved in the Pandects of modern rational law. By exercising a double-edged authenticity, the authors had not only created the dichotomy of the East and the West but had also tried to render a creative syncretism of these two legal traditions, though they were eventually trapped in the dilemma of in-between.

Though the Qing Empire has disappeared, the living world of China continues. Given that Chinese jurists could employ Western legal knowledge on their own to improve political and legal reform, how might a Chinese endeavor have differed from what is presented in *The Administrative Law of the Qing Empire*? Oda predicted about a century ago that "The Qing Empire is the basis for the Chinese legal system. However, European law has been invading it. This phenomenon cannot be easily disregarded. It is very possible that one day, Western law would sweep all over China. I can see that day coming" (1979, 86–87). The prophecy was not limited to China; Japan was no exception to the tendency. It was precisely the alienation of living world and transplanted legal order that prompted the Meiji jurists to search for their own subjectivity.

The analysis of Qing's political law became a realm for Meiji Japanese to fulfill their quest for national identity and subjectivity. The making of

The Administrative Law of the Qing Empire actually epitomized the struggle of national identities in the region. Post-Qing Chinese jurists like Wang Chung-hui appealed directly to international law in order to reject the Asian "New Order" advocated by Japanese colonialism. While Japanese jurists, constrained by their position of dual coloniality, proclaimed their subjectivity through a double-edged authenticity, Chinese jurists tried to reclaim *their* subjectivity by turning to Western law without Japanese mediation. By excavating the relational structure embodied in Oda's project, one can disaggregate the collective of East Asian Law.

Both Japanese law and Chinese law had been shrouded by the hegemony of Western law in the process of proclaiming authenticity. In the aftermath of *The Administrative Law of the Qing Empire*, the universality of post-Enlightenment rational law was thereby constructed through campaigns for nationalist legal discourses throughout East Asia. By dismantling "modern European jurisprudence," therefore, we also disaggregate the collective of East Asian law. If one cannot see through the naturalization process of "modern rational law" and its national representations, an incomprehensible China will persist, and with it the invisible alienation of law and its living world.

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