

**Morality and Responsibility of Rulers:  
International Order: Confrontations of Western and Eastern Humanisms**

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**1. Introduction** by Professor Anthony Carty (University of Hong Kong)

- This is the second workshop on the exploration of Western humanist views of world order and their impact upon the Confucian inspired order of Imperial China in the course of the 19<sup>th</sup> Century.
- Origin of the workshop: controversy surrounding the thesis of Richard Tuck, *The Right of War and Peace: Political Thought and the International Order from Grotius to Kant* (2001): Western humanism, in contrast to medieval scholasticism, was warlike and predatory, rather than restrained by ethical standards and especially by the doctrine of just war.
- Aim of the workshop: explore the impact of Western understandings of international law and diplomacy on the Confucian inspired Chinese Imperial Tributary System in the course of the 19<sup>th</sup> Century.
  - Comparison and possible incommensurability between Western and Chinese ideas of order
  - Address the paradox of a Confucian inspired civil service recruitment system encased or imprisoned in an absolutist, monarchical regime, military in character
  - Interaction of West and East through micro case studies of three conflicts that China experienced:
    - The Ryukyus in the late 1870s: with Japan, using Western style justifications and with Western acquiescence
    - Over Tonkin-Indochina in the mid 1880s: with France
    - Over Korea in the mid 1890s: with Japan, enjoying the acquiescence and even approval of the Western Powers

**2. The Renaissance European Ideal of a World Humanist Order: A universal rule of law in crisis?**

**2.1 Hugo Grotius and the Universal Rule of Law** by Professor Christoph Stumph (Martin Luther Martin Luther Universität, Halle-Wittenberg)

- Introduction:
  - Grotius as a 'liberal lawyer'/'minimalist theologian'?
  - Two concentric circles in international relations: Christian law is included in National Law
- The place of Law within Human Society
  - Focus on the individual responsibility of rulers and citizens, not on states
  - Categorization of Law
    - Divine Law
      - Natural Law
      - Arbitrary Divine Law

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- Human Law
  - National Law
  - International Law
- Divine Law as standard for Human Law
- The establishment of Government
  - Government is a human institution
  - Distinction between pre-state and post-state situations
  - Social appetite induces humans to form states and establish governments
  - Monopolization of force upon the establishment of the state
- Human law under the Rule of Divine Law
  - Legitimacy of human law depends upon compliance with divine law
  - Divine law requires obedience of citizens towards the state
  - Divine law also requires the state to respect the legal position of its citizens
    - Example: citizens requires the state to promote common welfare
  - There is only a limited space for the legitimacy of citizen's resistance vis-a-vis the authority of the state
- The rule of Law in War
  - Law to War: Divine law determines the legitimate reasons for war
  - Law in War: Divine law also governs the legitimate conduct in war
- Conclusion:
  - Grotius is a proponent of the rule of law in international relations
  - The primary obligation of any agent in international relations is the pursuit of the common good

**2.2 On Richelieu and the Survival of the Scholastic Ethic in 17<sup>th</sup> Century Europe** by Professor Anthony Carty  
(University of Hong Kong and University of Aberdeen)

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- Introduction:
  - A central feature of East-Asian-European dialogue is that Richard Tuck believes the scholastic, humanist ethic was marginalized by a 'tougher' humanism modelled of a resurrected vision of Roman civilization
  - My last presentation in Amsterdam in 2012: argued that Tuck's history of ideas did not take account of the actual practice of a country such as France, directed by the Roman Catholic Cardinal Richelieu.
    - The 1635 French Declaration of War against the Spanish Hapsburgs was justified in terms of the scholastic doctrine of just war, following on advice from specialist theologians of the canon law.
  - Today's presentation: offer a more extensive account of Richelieu's views
    - Looking back to Tuck's critique
    - Looking forward to the Western belief that there is or should be a universal rule of law
- An account of Richelieu's thought may allow many possible reconfigurations of East Asian and European humanist comparisons
  - Argument of Martti Koskenniemi and Emmanuelle Jouannet: in fact international law does not begin in its recognizably modern form until the 18th century, with the secularization of Europe through the Enlightenment. International Law is then a liberal construct, which applied to international relations, the logic of domestic relations among individuals.
  - Argument by Tony Carty in *The Decay of International Law* (1986): States are treated as individuals and their relations with one another have to be marked by a mutual respect of freedom and equality. This equality has implicit in that the international community is plural and that relations are marked by a secular, rational logic of equality.
    - ==> This thinking is a response to the apparent actual plurality of international relations from a European perspective.
    - ==> It is this apparently innocuous, liberal, humanist perspective which confronts and then violently crushes the Qing, Confucian Chinese international order in the French and British attacks on Peking in 1860, the burning of the Old Summer Palace and the imposition of the liberal order on China in the Treaties of Tienstin and Peking (1858,1860).
  - There is much that post-modernism has written on the manner in which the so-called Enlightenment excludes the "barbarous Other" in its definition of the rationality and civility, for which Vattel is most reputed.

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- Peter Fitzpatrick has set this out in his study: "The Desperate Vacuum" imperialism and Law in the Experience of Enlightenment (in Carty editor, *Post-Modern Law* (1990, 90).
  - His arguments are perhaps a variant of Tuck's, that Enlightenment's liberal, rationalism cannot project the universal, but has to define itself against the "Other".
  - The universalist project contains an anti-universalist contradiction.
  - The affirmation of the universal has to include the exclusion of what is not recognized as worthy to be part of the universal.
  - Cf. Tuck recognizes that a new humanist vision of Roman-inspired greatness was more crudely conflictual and did not have to conceal its brutality beneath an ideology.
  
- The great interest of Richelieu and his companions King Louis XIII of France and the *Eminence Gris*, Pere Joseph:
  - They provide alternative paradigms in European thought:
    - Very much as much an "Other" for the European Enlightenment looking back at the 17th Century from the 18th Century.
    - Richelieu is castigated by Jouannet as an admirer of Machiavelli, and no form of international law could have existed in his epoch
      - In Jouannet's *Liberal-Welfarist Law of Nations* (Cambridge, 2012):
        - she attributes to Richelieu admiration for Machiavelli's precept that "There is no dishonor in breaking conventions by which the nation has been committed to a course of action" (Jouannet, 24).
        - She argues that no one could write this in the 18th Century where *pacta sunt servanda* had become a legal rule binding on states - for all of which assertions she provides no references.
      - In other words, Richelieu is as alien to modern Western international law imagination as the Ming and Qing dynasties, which were his contemporaries and which he appears to the author to resemble in a number of respects, especially his absolutist authoritarianism, linked to a version of heavenly legitimacy.
  - Richelieu pursues a doctrine which brings together religious faith and reason in a divine right of kings, a royal absolutism.
    - This attributed to Louis XIII an authority which not merely came from God, but was actually about the implementation of God's will on earth.

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- This was not to be incompatible with reason, but reason was concerned with the practical implementation of divine will.
- This is a way of thinking about international society, which it is very difficult for Europeans to understand now
- The question: not simply how individuals or princes treated one another, but also how they were "compelled" to treat one another by the nature of "reality".
  - There was a part of "reality" which man could not know, predict or control.
    - It was described as blind fate or *Fortuna*.
    - It recognized existence as constantly threatening, requiring drastic measures not merely of pre-emption against the other, but a constant need to reconfigure the contours of relations in constantly changing circumstances.
  - For the religious spirit of Richelieu: this "reality" was also present but he gave it a different name: the struggle between God and Satan
    - As an avid reader of the Spanish mystics such as Theresa of Avila, Richelieu considered that the phenomenal world recognizable in Machiavelli's work, called instead for an acknowledgement of God's mysterious command of the universe
    - Man's unequal partnership with God signified that the King, as God's agent, had a responsibility to discern the opaque complexity of existence in a spirit of humble quest after divine inspiration and guidance i.e. in a spirit of prayer.
- ==> There was clearly marked out in French thinking a doctrine of *Tianxia* literally a *Lord under Heaven*, although, Machiavelli also has a doctrine of Heaven.
  - It did not mean a slow imperial Authority and instead was dedicated to opposing that vision in the form of a universal Hapsburg state, spanning the whole of Europe.
    - Indeed, plurality was the true context of the French policy.
    - It is possible that the vision of Richelieu and Pere Joseph was very close to that of Mencius in the Chinese Warring States/Spring and Autumn Period.
    - France, as a very large state, also well situated geographically, as well as in possession of a very special Christian spirituality, had the leading responsibility to lead the European princes, states and nations to a peace of Christendom, primarily through protecting the weak against the strong, and mediating differences.

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- The French religious vision was one of harmony of all under heaven, i.e. under God's will, where the small would be secure against the large, each having its place.
  - Even the idea of Law itself, in the narrower sense of dynastic title - claims of the French Crown to patrimonial lands - had to be moderated and presented only in the context of the possibilities of the overall harmony of Europe.
  - These ideas of law and hegemonial direction are set out fully by Fritz Dickmann in his study *Rechtsgedanke und Machtpolitik bei Richelieu*.
- French's majesty hovered delicately around this contradiction, favoring Richelieu's exploration of benign hegemony within a concept of a unitary, cultural world.
  - This was also much closer to the Chinese world of Mencius, with a special role for larger states in relation to smaller ones, than the lucidly atomistic autonomy of equal states of Vattel's vision. Richelieu's vision was equally distant from the Hapsburg's vision, which Richelieu abhorred, that is, a concrete, unitary, universal state.
  - As Dickmann shows, the archival proof of Richelieu's perspective rests in his instructions to his ambassadors in preparation for the 1648 Westphalia Peace negotiations, which he prepared shortly before his own death in December 1642.
- Richelieu begins the second part of his *Political Testament* (P.T.) with the words:
  - The Reign of God is the Principle of the Government of States; and, indeed it is a thing so absolutely necessary that without that Foundation it is impossible for any Prince to rule well, or for any State to be happy...
  - But all Men are so sensible by their own Reason, that their Origin does not proceed from themselves, but that a God is their creator, and, consequently, their Director that they all felt that Nature has imprinted that Truth in their hearts with indelible characters...
  - And so many Princes have been laden with Blessings in submitting their Authority to that from whom it was derived, for having only sought their Grandeur in that of their Creator and for having taken more care of his Reign than of their own ... (Ch1 page 2)
- William Church's comments in *Richelieu and Reason of State* (Princeton 1972):
  - In the passage above (493) Richelieu seems to be groping for words to express how central were the religious qualities and purposes of royal government.



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- Hence the personal example of the Sovereign himself, the good life of the Prince is a living Law and more effectively compelling than all the Laws that they might make to coerce towards the good that they wish to procure.
  
- The converse of the Reign of God is clear where Richelieu continues:
  - So many Princes have undone themselves and their States, by laying the foundation of their conduct upon a judgment contrary to their knowledge (of God) and so many have been filled with benedictions for having subjected their authority to that from which it was derived (Church p.493-4, quoting the P.T.)
  - Church notes that Richelieu is speaking of Government according to a higher law. Nothing could be clearer than that Richelieu considered this dimension to be essential for the rules of Christian States.
  - The same standard applied to Ministers as to Princes.
    - The law of God requires precepts beyond the standards of honesty among men.
    - The ideal Minister should be versed in both, but if there is any question of deficiency it should be in earthly in both, because knowledge of God's Law is fundamental and without it, the Minister cannot be expected to understand more ordinary matters.
    - "In a word, the statesman must be faithful to God, the State, men and himself, in that order."
  - The chief resource for Richelieu in fulfilling these obligations was reason: Natural knowledge convinces us that Man being created reasonable, Reason ought to be the Ground of all his Actions, since otherwise he would act against his Nature, and consequently against Him who is the Author of it.
  
- There is an exact correspondence of absolute reason, rule and obedience. Richelieu clearly excludes all that is arbitrary of unreasonable:
  - That as we ought never to will anything, but that which is just and reasonable, and without exacting an entire Obedience to our commands; since otherwise Reason would not reign sovereignly.

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- The practice of that Rule is easier in that Love is the most powerful Motive to oblige Men to obey, and that it is impossible for Subjects not to love the Prince, when they are sensible that Reason is the Guide to all his Actions.
  - Church summarizes Richelieu's reasoning as signifying effective government is procured through following the precepts of Divine Law through maximum application of human reason. The successful pursuit of State goals is simultaneously reasonable and for the purpose of achieving religiously defined objectives.
  
  - This religious faith is the frame encompassing the dangerous and unpredictable world of politics, national and international.
    - This world was in the safe hands chosen by Louis XIII, his minister Cardinal Richelieu.
    - Louis' greatest achievement was to choose a minister who combined loyalty to Christian principles with knowledge of the secrets of States.
    - Church quotes another of Richelieu's intellectual messengers and interpreters, de Run (page 412).  
That:
      - "... Kings have certain obscure designs which resemble prophecies and can be best understood only after their fulfilment..."
      - Church comments on this typical structure of absolutist thought: unquestioning reverence by the subjects for the superior knowledge of kings and ministers of the secrets of state, all within a religious frame of reference.
- ==> However, the ontological foundation which Richelieu sought for international order, a metaphysical response to the radical contingency of reality, was to serve this order, not to undermine it.
- The doctrines and policies of Richelieu could be restrained and moderate in style and execution, because of his religious faith in the benevolence of the international order, in the safe keeping of God's anointed officers.
    - For instance, Richelieu sees the obligation of treaties as resting in the honor and reputation attaching to the good faith of the Prince.
  - He sees the greater prince as more vulnerable than the smaller prince, because, being already so materially advantaged, his reputation mean more than for a weaker Prince.
    - For example, indefinitely to an Ally will matter much less to the weaker Prince, if he thinks he can thereby make up a disparity of power with his neighbours (P.T. page 30).

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- In Richelieu's exact words:
  - I maintain that since loss of honor is greater than the loss of life a great Prince should sooner venture his Life and even the Interest of his State, than to break his word, which he can never violate without losing his Reputation, and consequently the greatest Force of Sovereigns (P.T page 31).
- Richelieu though Reputation so important -- a good opinion for whose loss they should risk to sacrifice fate and grandeur -- that he went so far as to insist rulers should reject all gains that conflicted with their honor.
  - Church remarks further (page 501), that treaty relations for Richelieu, were a matter of relations with fellow princes, where the interests of the state of less moment than the principles of princely honor.
  - Richelieu even carried this doctrine into the area of war for the national good (Church, page 501).
    - War is sometimes inevitable and necessary for such purposes as to regain lost territory, avenge an insult, protect one's allies, stem the progress and pride of a conqueror, and to forestall ills that threaten and cannot otherwise be met.
    - But before undertaking any such war those in charge of state policy must determine its justice according to the most fundamental precepts of Christian morality.

==> Therefore a thorough examination of the equity of the war has to be made by theologians of requisite capacity. The anti-Spanish policy against a fellow Catholic state was believed to be justified by Christian morality. Church notes how Richelieu concludes his Political Testament by emphasizing the obligation of kings and ministers to the rule justly in the sight of God (Church 503).

- So Richelieu affirms:
  - If they (kings and ministers) use their power to commit some injustice or injury that they cannot do as private persons they commit a sin as prince or magistrate that has its origin solely in their authorship and for which the King of Kings will demand a most exact accounting at Judgment Day (P.T page 452).
- Machiavelli and Richelieu: Harsh Humanism and Harsh Catholicism
  - Jouannet has identified Richelieu as an admirer and follower of Machiavelli, in his magisterial *Thoughts on Machiavelli* Leo Strauss explains the thought of Machiavelli began with the principle that the imitation of the beast takes the place of the imitation of God.
  - Machiavelli replaces the imitation of God/Man Christ with the Beast/Man Charon.

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- Apparently foreshadowing Nietzsche, in Strauss's interpretation, Machiavelli says, in *The Discourses*, that the goodness and morality of the People are essentially preserving and conservative, not innovative and revolutionary.
- In contrast, the prototype of princes is Romulus, the fratricide.
- Strauss says we suspect that Machiavelli sometimes uses the word "princes" not to designate monarchs or even human government.
- Machiavelli believes that in the classical tradition there is an unwarranted belief in human goodness.
  - Instead, it is not divine, or divine, or divinely inspired benefactors of the human race but men like Caesare Borgia and especially the criminal Emperor Severus, who are revealed to be the true founders of society.
  - Foundation takes place wherever society as a whole is in grave danger from within or without.
  - In all such situations, the modes used by the original founder must be used again if there is to be society and its offspring, morality.
- Morality can only exist on an island created or at least protected by immorality.
  - Indeed, Machiavelli means precisely the necessity for tyranny, the exercise of power divorced from the common good, which creates the "necessity" which makes men "operate well", i.e. to acquire by prudence and strength of will that for which they long.
  - The selfish desire for personal glory, concern with perpetual or immortal glory, drives men to the greatest possible service to others.
  - Force, honor and glory come together, because power is rooted in force as well as in courage and finally prudence.
- It is overlooked that with Richelieu the linear view of the secularization of European thought through humanism is severely interrupted.
  - While Richelieu's view of the human condition was similar to Machiavelli's, he believed, with an intensity equal to his adversary, that the chaos not only of human wickedness but also of existence itself, could be overcome with divine guidance, that, looking through the glass darkly, it was possible to discern God's Providence, if only by glimpses and never constantly.
  - The huge importance of Richelieu is that the modern Peace of Westphalia, which he did so much to found, rested, in humanist terms, on a vision which did not deny Machiavelli but overcame him.

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- In the absence of Richelieu's not simply theological but also mystical vision, one is left with the shallowness of Vattel's Enlightenment self-interest, with the bonds of political society obviously absent.
- Vattel's silliness is merely to invite us not to question the conscience of these two great Princes. That is the modern doctrine of the sovereignty of states, not amenable to any compulsory authority above themselves.

**2.3 Leibniz' encounter with China and the rule of law in his Universal Jurisprudence** by Professor Janne Nijman (University of Amsterdam)

- Outline:
  - Our project and Leibniz: alternative paradigm?

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- Leibniz's theory of *ius gentium*: reconstructing a universal rule of law
- Bringing rulers under the rule of natural law and justice
- Emperor Kang Xi as an example for European Rulers and Politics
- The Project:
  - Reading of Grotius: alternative to Tuck's reading
  - Reading of Leibniz: the idea of a rule of law, justice, and reason
  - Rewriting history: unearthing alternative histories and paradigms in both East Asian and Western thought
- GW Leibniz 1646-1716
  - Universal jurisprudence
  - Ecumenical agenda vis-a-vis religious diversity
  - Break up of old order, new actors
  - Saw problems of Westphalian Order and sought to mediate or overcome them in his universal jurisprudence
  - Leibniz's metaphysics, his *Monadology*, provides him with an epistemic framework for engaging in and appreciating cultural exchange:
    - 'all individual substances are different expressions of the same universe and different expressions of the same universal cause, namely God.'
    - No stress, no fear, everyone should learn from each other
  - On December 2nd 1697, Leibniz wrote to the Jesuit missionary Antoine Verjus about the China-European encounter:
    - 'I judge that this mission is the greatest affair of our time, as much for the glory of God and the propagation of the Christian religion as for the general good of men and the growth of the arts and sciences, among us as well as among the Chinese. For this is a commerce of light, which could give to us at once their work of thousands of years and render ours to them, and double so to speak our true wealth for one and the other. This is something greater than one imagines.'
  - Leibniz: The Chinese are superior to the Europeans 'in practical philosophy, that is the precepts of ethics and politics adapted to the present life and use of mortals.'
    - People are equal and they should learn from each other. In his view, Confusion tradition is tremendous.
    - Controversial in Europe.

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- Universal jurisprudence, universal responsibilities. On the basis of wise charity. With restraint when it comes the use of force, that is the idea that he seems to find
- Leibniz's interest in Chinese ethics and politics -- his appraisal of Emperor Kang Xi
  - Learned all through Jesuit sources and translations of Ancient texts
  - Fu Xi and the Yi Ching (the Book of Changes), were accorded higher morality, wisdom and intelligence
  - Kangxi as a sage-king or philosopher-king?
  - Kangxi was an authoritative judge, also to the mandarin examination system for Civil Service
  - 'Unparalleled merit' who ruled so successfully since he was concerned for the judgment of history.'
  - He rules by 'the will of Heaven', and with 'justice as a *caritas sapiens*': wise charity. Following the 'eternal law of rational nature'.
- The idea of Confucian state:
  - The *Shu Jing* (Book of History) on reign of ancient sage kings
    - Authority is mandate of Heaven: natural order
    - And guarantee harmony between natural and social order and within social order
    - To work for welfare of the people
  - The *Shi Jing* (Book of Song)
  - The *Analects* to which Leibniz refers as *Lun(g) Yu*: but with which he engages less
  - *Mencius*
  - *Li Ji* (Records of Ritual) interests Leibniz for its linking up ethics and sociopolitical thought with cosmological thought
  - Sources of Neo-Confucian thought: *Compendium* used by Leibniz
- Leibniz's idea of Confucian:
  - Leibniz held that Ancient Confucian texts were compatible or commensurable with European (Christian) thought.
    - Moderns have 'strayed... away from their own antiquity.'
    - Return to thinking about benevolence and justice.
  - Leibniz understands Ancient texts (in translation) as matching his understanding of natural theology, natural reason, and natural law.
  - Leibniz connects with what he understands as the principle of Li-universal natural reason

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- For Leibniz the Other is another expression of the universal, ultimately derived from the divine, not to exclude but to learn from
- Confucian self-cultivation paralleled Christian self-perfection, the socio-political has a moral/spiritual dimension... (Chinese have found a better answer in dealing with our "Hobbesian self" better in controlling and disciplining it.)
- **Conclusion**
  - Last defender of law of nations and nature: loss of normative source
  - Draw on Leibniz's multiculturalism and celebrate diversity
  - Convergence/common ground between/in both traditions to self-reflect on the dominant streams in our traditions
  - Build (on) commensurability
  - Critique of dominant streams of thought, recover alternatives to dominant traditions, such as, the Grotian tradition and Taoist tradition
  - Inclusion not exclusion of the Other to confirm universal and work towards enlightenment and embitterment of humanity
  - Universal jurisprudence about the 'empire of reason', the rule of reason, and based on a universal justice defined as caring for others.

### **3. Chinese thought: Chinese Thought and World Order in Comparison with European Thought**

#### **3.1 A Confucian Reading of Kant and a Kantian reading of Confucius** by Dominic Chow and Anthony Carty (Hong Kong University Law Faculty)

- Immanuel Kant (b. 1724-1804)
  - Born in Königsberg, 1724, bachelor life



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- Fourth of nine children
- Rising,...
- Critical philosophy
  - Faculties: a power or ability to achieve an end; and the power
- Faculties:
  - Three active faculties:
    - Imagination: device
- Rationalism and Modernity:
  - "The dignity of man"
- Seek Self-Containment
  - The subject should not seek after happiness through action (c/p)
- Enlightenment
  - "Obey, and you will be able to reason as much as you like"
- Perpetual peace:
  - Translation of Kant's (idealist) phil
- Internal conditions:
  - Republican state
    - State of peace must be established (institutionalism)
    - A constitution lawful legislation of every nation must be based: republican
    - Based on principle of the freedom of the members of the society as human beings
    - Dependence of all on a common legislation
    - In accordance with the law of the equality of the members as citizens
  - Republican and liberal
    - Republican: political principle of severing the executive power from the legislature
    - Not democracy: tyranny of the majority vs. the minority
    - Citizens would think twice before engaging state in wars
    - Individual freedoms cannot be protected by the domestic law alone, given the perpetual threat posed by international war.
      - The need for cosmopolitan law if individuals are to be free to relate to and trade with foreigners (*Metaphysics of Moral*)
- International Organizations based on cosmopolitan community of states

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- Constituting a league of peace, not as an entity above its constituent states
- Freedom to trade: hospitality of an alien
  - The right to visit, to associate, belongs to all men by virtue of their common ownership of the earth's surface
  - UN (United Nations), WTO (World Trade Organization), ICJ (International Court of Justice), ICC (International Chambers of Commerce)
- Liberal view and institutionalism:
  - Concept of individuals with ability to reason, engaging in private and public critical discourse
    - Cf. Habermas: *A theory of Communicative Action*
      - Vs. market and bureaucratic alienation, communal base of individuals
  - Individuals make decision of state in war or other international affairs, peace be possible due to self-interest reflection on negative consequences of wars (financial debts, casualties etc.)
- Formal and Substantial Equality:
  - Critique 1 (Marxist, materialist, social democratic):
    - Formal equality: between individuals within states or state in the world
    - Vs. substantial equality:
      - Domination/hegemony of interest groups e.g. military-industrial and financial interest in US in deciding to go to wars;
      - Pressure and coercion of large state vs. small ones;
      - Unilateralism;
      - Nuclear club
    - Can perpetual peace be possible if there are only formal equality among individuals within a state and among states, while the disparity in terms of control of resources and power is growing?
  - Remedies:
    - Social democracy: state transfers to enhance enabling conditions for comparatively equal political and social participation of individuals in a state; coalition building among 'weaker' states in international context (G22, BRICS)
    - Still: on the basis of autonomous states acting in an international framework (Kant and international institutions, UN etc.)

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- Internationalism can only be fostered by more progressive ideas of equality to allow human dignity and freedom to flourish
- Root causes of conflicts:
  - Critique 2: why the means of hostility arises in the first place, how can disarmament be possible without removing the root cause of conflicts, goals to control more land, people and resources?
  - Enlightenment project: individual freedoms, fall of church authority, acquisition of aboriginal land and marginalization of alternative cultures, mainstreaming, modernization amounting to westernization and marginalization of the underprivileged
- Contradictions between modernity and perpetual peace:
  - Issue: Can perpetual peace be possible under a worldview based on pursuit of maximization of happiness of the individuals, resulting in industrial scale destruction of non-renewal ecology and consumerism/alienation on an individual level?
- Alternatives to the Western liberal worldview
  - Remedy: Adorno: aesthetics; post-modernism and alternative (green, feminist, gay) movements: limited in scope
  - Alternative worldview and philosophical approaches to international law
  - A post Confucianist Worldview
    - Post Confucianist view and Kant:
      - Three components of Kant: (Two accepted by China: Suri (2013))
        - Commercial spirit of international trade
        - Federation of interdependent republics
        - A republican constitution
      - Guided by rational reflection
        - Respect for the moral law
    - Great Learnings:
      - The ancients who wished to illustrate illustrious virtue throughout the world, first ordered well their own states.  
古之欲明明德於天下者，先治其國 (*Kant: cosmopolitan community of autonomous states*)
      - Wishing to order well their States, they first regulated their families.  
欲治其國者，先齊其家

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- Wishing to regulate their families, they first cultivated their persons.  
欲齊其家者，先修其身 (*Kant: moral laws, potentialities and faculties*)
- Wishing to cultivate their persons, they first rectified their hearts.  
欲修其身者，先正其心 (*Kant: sensible intuition*)
- Wishing to rectifying their hearts, they first sought to be sincere in their thoughts.
- 欲正其心者，先誠其意
- Wishing to be sincere in their thoughts, they first extended to the utmost of their knowledge.  
欲誠其意者，先致其知 (*Kant: desire for knowledge, freedom and reasoning*)
- Such extension of knowledge lay in the investigation of things.  
致知在格物 (*Cf. Kant: desire for knowledge*)
- Dichotomy between individual and world
  - Western/liberalist view:
    - individuals pursuit of happiness;
    - state as aggregate of individuals (problem of aggregation, principal-agent);
    - international order as accepted rules of property rights, sovereignty, trade and human rights
  - Post-Confucianism:
    - individuals and states holding a benevolent worldview
    - Pursuit of both individual and universal interests;
    - Positive reflective loop
  - Taoism: unity of man and universe/nature
  - Cf. Catholic worldview:
    - Love of God (universal), self (as an image of God) and the others (world);
    - Carer of the environment
  - Cf. Kant:
    - Inadequacy of individual pursuit of happiness
    - The universal good
- A post-Confucianist State
  - Form of State:
    - Post-Confucianism, Bureaucratic-rational,

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- Promotion of individual and public, social democratic and redistributive governance on common resources,
- acceptance of global commerce and international institutions and cosmopolitan community
- Issue: Can state forms other than republican be the constituents of a peace world order?
- Towards perpetual peace:
  - Individual: harmony of self interest and universal interest (new concept of the individual)
  - State:
    - Harmony of individuals, families, people from different walks of life;
    - Reflection, learning, charity, benevolent acts of community, business and other collective within the state, mutual assistance (role of non-state sector), neo-Confucianist, social democratic, sustainable
  - Global:
    - Multi-cultural philosophical awakening
    - Harmony of economy with ecology
    - State-to-state cooperation to pursue global ecological and developmental goals
      - global harmony, China dream, indigenous movements, autonomous communities, governance of the commons
- Inquisitive or reasoning self
  - Reasoning self: "
    - "How can we formulate propositions which are necessary, universal, logically independent of sense experience and capable of being contradicted."
    - "As epistemological subjects we occupy center stage in our worldview and field of vision. Around us we see nothing but objects with which we deal by appealing concepts to them."  
(*Kant, Political Writings.*)
  - Insecurity:
    - "The modern state of international law has its origins in the distinction between the immaterial subject and the material reality which it observes and analyses. Its gaze is one of fear and expresses a search for security. The name of modernity is fear, which lies in a unidirectional rational control and analysis of others by the self." (Carty, *Philosophy of International Law*, 222)
  - Prisoners' Dilemma:

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- Two fully reasoning, self-interest individuals, who seek to maximize their own interest through a calculations of outcomes from the various scenarios, will end up making sub-optimal choice compared with an outcome whereby the individuals are cooperating or also taking into account the interest of the other party.
- Confucian Reflecting Self:
  - "I daily examine myself on three points -- whether, in transacting business for others, I may have been not faithful; whether, in intercourse with friends, I may have been not sincere; whether I may have not mastered and practice the instructions of my teachers." (Confucian Analects, 1: Ch.4)
- Fulfilling others:
  - "As you wish to establish yourself, help others to establish themselves; as you wish to attain a goal, help others to attain their goals." (Analects, Ch.6:30)
- Innate Knowledge: Confucius autonomy
  - Wang Yang-ming (1472-1529)
    - "One night, in the 'outpost of advancing day', it suddenly occurred to him that the true meaning of ko-wu (enquiry of things), a concept that he had encountered almost twenty years previously, was to be found internally rather than externally. According to the commonly accepted account, what happened was quite dramatic:
    - In the midnight watches, when he was sleepless tossing and turning, suddenly he felt as if he has heard a voice talking to him about the issue of ko-wu. Unconsciously he called out and jumped out of bed. His servants were startled. For the first time Yang-ming came to the realization that "My own nature is, of course, sufficient for me to attain sage hood. And I have been mistaken searching for the li (way) in external things and affairs." (Kim, 21)
  - Universal self:
    - "If gentlemen of the world merely devote their effort to extending their innate knowledge they will naturally share with all a universal sense of right and wrong, share their likes and dislikes, regard other people as their own persons, regard other people of other countries as their own family, and look upon Heaven, Earth, and all things as one body."
  - Regarding others:
    - When this is done, even if we wanted the world to be without order, it would not be possible. When the ancients felt that the good seemed to come from themselves when they saw others do

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good, when they felt that they had fallen into evil when they saw others do evil, when they regarded other people's hunger and drowning as their own,

- Hierarchy of needs:
  - Individual's motivation can be multi-levels (Maslow (1998))
  - When humans cannot satisfy his physiological needs, he cannot begin to consider safety needs and so on to social and other needs higher in the hierarchy.
  - Self-actualization involves fulfilling one's destiny, achieving what one was meant to do, and being completely satisfied with oneself (Tokuhama-Espinosa, 152)

Self-actualization	<--->	Self-actualization
Esteem needs	<--->	Esteem needs
Social needs	<--->	Social needs
Safety needs	<--->	Safety needs
Physiological needs	<--->	Physiological needs

**3.2 Universal Legal Foundations for Territorial Rights: A comparative Study of Legal Thoughts of Hugo Grotius and Laozi** by Hu Henan (University of Hong Kong)

- Background of the Study
  - A new approach to the territorial disputes in the two China Seas
  - A philosophical inquiry into the central concept of territorial sovereignty
  - Two analytical bases:
    - The lack of a legal foundation of the territorial control of princes in early modern Europe

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- The legal assumption of states' rights to acquire territory in 19 century international law
  - Internal and external territorial rights
- Two conceptions in Western International Order

The Grotian tradition	The Vattelian tradition
State in nature identical with man	State as independent and moral person
Solidarity exists among States	Conditional international society
Superior objective law	State consent, no superiority

- Contemporary International Law?
- The eastern/Confucian Conception of World Order
  - Three dimensions
    - Chinese international law: W.A.P Martin, Hu Wei-yuan, normative approach in early and late 20th century
    - Traditional Chinese world order: Fairbank
    - Reconstruction of world order: Kang You-wei, Zhao Ting-yang
  - Key characteristics of existing Chinese conception of world order:
    - Great unification: a superior political institution that is able to unify all
    - Universal benevolence of the ruler as the standpoint
  - Question and difficulty:
    - How to situate oneself: vassal State or Zhou King/Chinese Emperor?
    - Incompatibility with a Western (Hobbesian and Vattelian) tradition
    - Continued Western criticism on hierarchy and monarchy
- An Evolutionary Perspective for proceeding

West	East
Antiquity: poils, public, Roman <b>Empire</b>	West Zhou Dynasty: <b>feudalism</b> , universal rule of Zhou King
Middle Ages: <b>Feudalism</b> , Christendom	East Zhou Dynasty: Dukedoms as virtual <b>sovereign States</b>
Early Modern: <b>sovereign States</b> under a metaphysical order of natural law	Qin to Qing Dynasties: absolute monarchy, Confucian <b>Empire</b> , tributary system (temporary divisions)



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Modern: absolute liberal States bound only by their own wills	Modern: a western modern model plus Confucian legacy
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- Purpose, Methodology and Argument

- Purpose: not to philosophize "world-ness", but rather to propose some common universal elements in human history for a territorial/State-centered world
- A comparative approach: Two peace Figures in a world of Cultural Replacement

Grotius	Lao Zi
The first person in Europe to provide a natural law theory of law of nations	The first person in China to create a theory of natural law of the ruler
Legal foundation of a territorial Westphalia system	In favor of a divided <i>status quo</i> between great and small powers
Equality of States	The ruled as the standpoint

- Argument: an ideological convergence between the theories of Grotius and Lao Zi that by retrieving these two lost peace traditions could the two worlds be possible connected under a universal conception of international order.

- Western International Order in Grotius

- Balance of two-fold human nature
  - Self-interest as the first principle of nature and two fundamental laws: right to life and property
  - Common good/sociability as the second human nature and two further laws: no injury upon fellows and no seizure of others' possessions
  - Common good inclusive of self-interest
- Identical nature of man and the State
  - The love for others is especially manifesting in the mutual accord of nations: secondary law of nature and primary law of nations
  - Two primary laws of States: non injury upon other States and no seizure of other State's possessions

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- Eastern World Order in Lao Zi
  - The Taoist path: ontology --> cosmology --> law of nature --> the view of human life --> political theory
  - Ontology: the concept of *Dao* (道), nameless, invisible and inaudible, "Non-being, simplicity and spontaneity
  - Cosmology: all things come into being from Dao
  - Law of nature: "The invariables" (常), Reversing (circulation) is the movement of *Dao* (反者道之动), when a thing reaches one extreme, it reverts from it
  - The view of human life (law of individuals):
    - *De* (德, ethics) as human nature: De is what all things obtain from Dao and is the nature and spontaneity of all things, It is the transformation of into all things
    - Few desires (寡欲) and innocence (愚): knowledge --> desire --> social conflicts (lost of *De*)
    - Beyond knowledge and great wisdom of innocence and simplicity: the sage
  - The political theory (law of the rulers/States):
    - An ideal State should be ruled by a sage
    - Non-action (无为): allow all things to develop and complete in their spontaneous ways; not over-doing
    - Non-contention (不争): refraining from occupying and contending with each other
  
- Bridging the Western and Eastern Traditions
  - Sociability and Dao: acceptance of overarching, objective and universal standards
    - Human societies were subordinated to a certain intrinsic force
    - Accept no superior political institution, moral and legal justification of division of power
    - Human liberty, Lao Zi's cosmology could be inclusive of Grotius' natural law theory
    - Non-hegemony and peaceful co-existences of States, regardless of imbalance of power
  - "Force of nature" and "spontaneity": universal legal foundation of internal territorial right
    - Grotius: knowledge --> desire for the advantage of life --> occupation --> private ownership --> public ownership
    - Lao Zi: the ruler raises and nourishes all things but does not claim ownership

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- Different approaches in interpreting human nature, but common humanism in understanding and orienting the State and territorial right
- Ethical theory of the State and critique of external territorial right
  - Identical ethical and legal principles applicable both to men and States
  - Difference in the role of knowledge, but converge on the injustice of excessive desires to occupy
  - Grotius: occupation does not apply to sovereignty and non-Christian world was recognized as sovereigns
  - Lao Zi: Critique of the ruler's desire of acquisition
- Conclusion:
  - The essential question of international law: how the State should be understood and conceptualized?
  - The Statism dilemma and the need for the return of humanism in international law
  - Nation is the legitimate unit of territorial right at the international level rather than the abstract being of the State

**3.3 The Hazards of Translating Wheaton's Elements of International Law into Chinese: Cultures of World Order lost in Translation** by Maranatha Fung Ying Lam and Emily Cheung Hiu Tung (Hong Kong University)

- Introduction:
  - Henry Wheaton, Elements of International Law (1836) first comprehensive and systemic translation
  - William
  - Purpose of Research
  - Hajime Nakamura's Ways of Thinking of Eastern Peoples: India, China, Tibet Japan:
    - Three observations:

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- Concreteness of Expression
- Non-development of Abstract Thought:
- The Anthropocentric Attitude: try to understand all things in relation to mans
- Close Textual analysis of selected translated words in Wheaton's Elements of International Law
  - Law --> 4 Chinese Concepts (Yan Fu 严复: 4 Chinese political and legal concepts)
    - 理 (li): Reason/Right and Wrong
    - 禮 (li): Rites
    - 法 (fa): punishment/prohibitions imposed by State
    - 制 (zhi): System and Regulation
  - International law 萬國公法
    - 萬 (Wan): Ten thousands
    - 國 (Guo): countries
    - 公 (Gong): common; public or collective; belonging of the ruler --> no notion of limited government
    - 法 (Fa): law; state punishment or prohibition
    - Meaning of gongfa: State law; international law
    - Ambiguity of: natural law and 公法
    - Now in use: 國際法 instead of 公法
  - Natural law
    - 性法 or 理法
    - 性: natural instincts; life; true nature from Buddhism
    - 理: reasons
    - Meaning of Xingli:
      - Principle and discipline of life;
      - Emotions and reasons;
      - Humanity and justice
    - New Confucianism: Confucianism combined with Taoism or Buddhism
    - Translation is created in textual and cultural limbs.

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- Authority: 君
  - 君: Ruler; Emperor
  - Qing Dynasty: All was under the emperor's rule. There were no legislative branches in Western sense.
  
- Individual: 人
  - 人: human being; person
  - Meaning of renren 人人: everyone; people; common people --> showing the anthropocentric
  - No concept of individual right. No equivalent concepts of individual and individual rights.
  
- Right: 权利
  - 权: power
  - 利: wealth
  - The concept of right is important of laws in western legal systems; it is also important in
  - Depart greatly from western.
  - Right: no equivalent Chinese Concept
  - 名: name; identity
  - 分: shares
  - 礼: rites; ethical or appropriate conducts
  - Still widely in use today in China
  
- Sovereignty 主權
  - 主: direct (dominate; lord)
  - 權: power
  - Meaning in Ancient Chinese Language:
    - Authority of the ruler; and
    - Officials who control certain authorities/power
  - New meaning given by Martin
  - Decent translation which captures the core meaning of sovereignty

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- Sovereign States 自主之國
  - 自: self
  - 主: direct; (dominate; lord)
  - 之: of
  - 國: state/country
  
- Independence: 自主
  - Overlap with sovereign
  - Every state has certain sovereign rights, to which it is entitled as an independent moral being; in other words, because it is a state.
  - Chinese translation: 夫國之所以為國者，即因其為自主而有義之當守，有權之可行也。
  - Literal English Translation: A state is a state because it is self-directed, and it has righteousness to be observed and power to be used.
  
- Further explanation: Nakamura's Observations
  - Concreteness of expression
  - Non-development of Abstract Thought
  - The Anthropocentric Attitude
  
- Failure to transmit Western Legal Concepts
  - Xu Wenbin and Fu Xiao from the Chinese University of Petroleum argue that for legal translation to be successfully "transmitted", there must be internationalization of the legal concept in the receptive country
  - Local circumstances e.g. social, economic and legal culture have to be reformed for the translation to be implemented
  - Translation to is cultural
  - "Cultural gap" was the main problem
  - Before the translation, basic notions in the West e.g. individuals, rights and sovereignty could find no equivalences in the Chinese culture
  - The incomparability of the Chinese and Western approaches to social order could not be easily shaken

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- Conclusion:
  - We argue that Martin's translation of Wheaton's Elements of International Law has failed to internalize Western knowledge and norms in Qing China
  - The Chinese understanding of international order still remains
  - With China's continuous rise in the 21st Century, the Chinese conception of international community acts as an alternative/challenge to the traditional Western perception of international law

#### **4. Confucian Philosophy and Chinese Imperial Order: The Emperor and/or his Officials**

##### **4.1 The World Order in Ancient Chinese Cosmology** by Wang Aihe (University of Hong Kong)

- **Theme of the thesis:**
  - To examine the Chinese concept of moral ruler and of Son of Heaven of Shang
  - To construct how these three important concepts (i.e. *Son of heaven*, *Heaven's mandate* and *All under the heave*) as originated and how competing social forces have been using cosmological idea to conquest and shape the world order?
  
- **3 main Arguments in the thesis**
  - Confucianism one of the competing thoughts of rule of order of how to order the human world (at least in China);

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- The Confucian idea of model ruler is rooted in the divine cosmology of heaven; and
- The Confucian concept took shape from centuries of contestation and practices. (The Chinese world view has never been a singular contestation ideal)
  
- Cosmology of rulership and world order was found in the Shang period which is structured on *Sifang* (four quarters), a concept based on political geography describing the Asian polities besides Shang domain. *Si fang* extends from the human world classifying cosmological four forces in the universe, using the four cardinal directions. All alien force, forces of nature was commanded by the high God *Di* by sending rains and thunders, war etc.
  
- Shang King monopolized the access of the High God through Shang's ancestor worship. This is because only the ancestors of the Shang king can directly pass the messages to the High God and only the Shang King can communicate to his ancestors. This ritual and the ability to communicate to the High God become THE source of his political power. Here the cosmology, political structure and religion all come into one entity.
  
- **Origination of “*Son of Heave*”, “*Heaven’s mandate*” and “*All under the Heaven*”**
  - These terms were invented when the Zhou people conquered the Shang. To legitimate the military invasion, the Zhou people invented the concepts of Heaven's mandate and son of heaven. Zhou claim that the Heaven equals to High God of Zhou people and the High God shifted the mandate from the Shang and gave the mandate to the Zhou people and ever since then ideal ruler/ actual ruler is always called the Son of Heaven, regardless of the change of the actual title. The Son of Heaven (the Zhou King) received the mandate from the Heaven and the Zhou conquering of the Shang only served to realize the mandate of Heaven. Heaven's intention is manifested through the cosmic omen. For example, the occurrence of earthquakes was seen as a sign of changing of the dynasty, at least a change of the ruler.
  - Furthermore, the Heaven shifted the mandate to Zhou because the Zhou ruler possessed the *De*, later redefined as virtue by Confucianism. Originally, when this term was invented, it meant “power”, including, but not limited to, military power, religious power, political power and all sorts of influence as a moral leader. By attributing the shift of the mandate to a living king based on power *De*, there is a revolution - Zhou undermined the Shang's monopoly of access to the world



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of gods through ancestor worship. That if the living ruler has the power, *De*, the living human being received the mandate from the Heaven directly and verified by the omen. To receive the mandate, the son of Heaven had to take over the center of the world, the four cosmologies and the Zhou build their kingdom in the center where Shang used to locate and tick out the Zhang out of the center. So there was a unification of the center and the 4 quarters since the Zhou claimed that their ancestors controlled the 4 quarters and then they controlled the center. The view of world order of “All under Heaven” was invented, meaning the world that includes all four fangs and the center.

- Zhou’s taking over of the mandate by military conquest was later sustained through its continuous military presence. Therefore the terms of “*Son of Heaven*”, “*Heaven’s mandate*” and “*All under the Heaven*” were originally created to justify the coercive and hegemonic power.
  
- **Transformation of the Confucian ideas during the period between 770 BC to AD 221 (春秋戰國)**
  - Common cosmology of five powers and the world order of the conquerors
    - 5 powers or phrases or elements:
      - cycle of conquest: *Fire – Metal – Wood – Earth – Water*
      - cycle of birth/generation: *Wood – Fire – Earth – Metal – Water*
    - These 2 cycles somehow became confrontational but they were influential in the sense that they
      - Redefined the hierarchical structure of *Sifang* and the center into 5 equal spatial units and rejecting the supremacy of center, the Zhou King.
      - Fundamentally challenged the concepts of rulership by separating the divine knowledge from the King and his ancestor rights. The divine knowledge is not automatically embodied in the bloodline but is reflected through the messages sent by natural phenomena, interpreted by omen, e.g. the eclipse of the sun.

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2,7  
Fire

3,8 Wood      Earth 5      Metal 4,9

Water  
1,6

Explanation of the graph:

Earth (5) represented the Zhou Dynasty;

Qin adopted water (1,6) and used strict discipline and harsh punishment to rule the dynasty;

Han Dynasty also adopted the same symbol of water in the beginning and then in the time of Han Wu Di (漢武帝) use earth to represent his ruling.

The rulers used the cycle of conquer to justify their overthrowing of the previous mandate and the conquering of

- In Han Dynasty, the Confucian scholars, such as Dong Zhong Shu change this justification to use moralized order. (“Moral cosmology”)
  - He revived the ideas from the Zhou that the King is the sole connection between heaven and man. By saying this, he also tried to take away the authority of the religious experts. This school of thoughts tried to establish the absolute authority of the active rule which supported the imperial rule of Emperor Wu (漢武帝).
  - During the ruling of Emperor Wu, there was extermination of other types of thoughts, including *Laozi* (Taoism) and Confucianism was ordered to be the state orthodox. The justification for this was that people know what to follow (“ideological justification”).
  - Moreover, Emperor Wu accepted political centralization by, including, executing the royal noble families.
- Ever since the going down of Han Dynasty’s strength, together with the messages from natural hazard

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including famine, the grievance of Han people developed, leading to the establishment of Xin Dynasty by WANG MANG who gained his authority through his reputation as a moral exemplar well-known for his humbleness and rule virtually.

- Wang Mang, “known as a moral ruler”, was the first and only Confucian in the Chinese history that took over the rulership not by military invasion, but through peaceful transformation of dynasties.
  - Yet, ironically, Xin Dynasty is the mostly condemned dynasty in Chinese history. The label of usurper is used to describe him.
- **Conclusion:**
    - Wang Mang and first Qin King exemplified 2 competing models of the son of heaven/ rulership, one based on morality and one on coercion. The Chinese dynasties after them inherited their institutions and learnt lessons from their dumb fault. They all had mixed elements. All the rulers were military conquerors and their heirs were hereditary princeling. Usually during the time of great emperors, legal code systems similar to the one in the Qin’s time, centralized economy, strong military power and massive expansion existed. These are the features resembled to Qin Dynasty. On the other hand, the dynasties after Qin and Xin continued the Wang Mang’s the use of cycle of generation representing the traditional Confucian morality such as using Confucian Scholars as teachers of children, the advisors of the government. Therefore, in simple words, each dynasty used both models: legalist inside by using strong handed governing measures and Confucian outside claiming moral superiority.
    - The struggles and completing forces between these two models continue in the modern times in terms of the conflicts between rule of law and rule of man.
    - Foods for thoughts:
      - When the Heaven is dead, how could the mandate derive their moral superiority? Who and how could measure one’s morality?
      - Could moral Confucian thoughts be a tool to fight the corruption problems in China?

**4.2 British and Chinese Diplomacy in the Last Days of the Qing: Li Hongzhang between Sir Ernest Satow and the Emperor of China** by Tan Jing and Professor Anthony Carty (University of Hong Kong)

- Central part of the presentation: elaborate the project on moral responsibility of leaders
  - The frame which Ernest Satow looked at Li Hong Zhang from the outside

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- Li's Chinese bureaucratic education background and its linkage to what he did to the throne
  
- **Ernest Satow**
  - Education for British diplomats: trained in Cambridge and Oxford (much the same ways as Chinese Officials), they learnt Greek and Roman classics e.g. Aristotle's ethics and politics
  - Decided his career early to go to China and entered British diplomatic services
  - He had cultural and ethical approach to China and Japan, knew the countries extremely well and speaks the languages of these countries
  - He set up relations with rivals of Li in Hangzhou and Guangzhou, to penetrate the Ching Court
  
- **Dealings between Ernest Satow and Li Hong Zhang**
  - British prevented the tearing apart of China and aimed to preserve the territorial integrity. One of the incidents which Satow had to do with Li Hong Zhang is the invasion of Manchuria by Russia. Satow said himself the objective was to made the concession agreement about Manchuria rescinded by persuading Li Hong Zhong to agree to the rescission of the concession agreement. Li Hong Zhang's response was that the entire negotiation of concession of Manchuria was not in his hand. Yet, in fact, from the minutes preserved in the British Archives, it was clear that the Li was indeed in charge of the concession. On the one hand, we had Satow endeavoring to help preserve the integrity of Chinese territory by also trying to pull Russia into the Boxers so that Russia would face some sort of pressures from the league. Basically Satow was betting for China. But it is a worth thinking question that who Li Hong Zhang was betting for.
  
- **One of the prominent Chinese diplomats in Late Ching: Li Hong Zhang**
  - The speaker at the beginning questioned if the Chinese were actually understandable and why the foreign countries could not understand Chinese community. One question hints her is that how come negotiations between China and other countries never went smoothly. In the presentation, she aimed to discuss the cultural reasons for the behavior of Li, one of the most important diplomats in Late Qing Dynasty. her thesis mainly focus archives during the Boxer Rebellion during 1898 – 1901.
  - Hierarchical structure of Chinese Society: based upon filial piety (i.e. loyalty to the ruler) and the fact that the distinction between Chinese barbarians is hinged on whether one follows and studies Confucian Thoughts.

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- The filial piety reached its highest in the Qing dynasty and the emperors were afraid to make changes to the policies of the past emperors. The JiaQing emperor doubted his new policy in the beginning because he worried whether his policy would contravene that of his father. This is because the legitimacy and authority of the rulers derived from the maintenance of the Confucian system.
- Basic Introduction to Li:
  - His major promotion is related to the foreign affairs at the end of the 19<sup>th</sup> century
  - There are 3 main focuses of Li's life and behavior, namely, Li's achievement in the National Imperial Examination System, Li's relationship with the court and his peer in the Boxer Rebellion and Li's interpersonal relationship and diplomatic relationship with Russian officials.
- Three main focus on Li's life and behavior:
  - Li's achievement in the National Imperial Examination System
    - Extremely important to the Chinese Confucian World, as this is the ultimate forum of Confucian System. It is also a path of promotion or a leeway leading to a change of one's social status. It has the effect of reinforcing the position of Chinese Confucian Scholars because they would be promoted to HanLin (翰林院) to interpret the Confucian Classics for the Court if they achieved great results in the Exam. In other words, they would attain the social status of students of Son of Heaven.
    - At the age of 24, Li ranked 13th of the second class in the Examination. This was an important opportunity for his political career as this allowed him to be promoted to HanLin (翰林院) which provided the most important sources for his political relationship. For example, he knew Zeng Guo Fan (曾國藩), a high ranking official because both Zeng and Li's father were alumni to the HanLin (翰林院).
  - Li's relationship with the court and his peer in the Boxer Rebellion
    - The ruler ruled the countries through Confucian bureaucracy system. The officials under the system did care about their personal interest, and they would maximize their personal interest by mixing with the national interest. During the late Qing period, serious corruption was found and in order to survive in the system, officials needed to corrupt. There is no room for fairness and independence in the Confucian Society. The lives of the officials were in the hands of the Emperor rulers and they lived under high pressure and uncertainty. Officials usually tried to

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make loose official alliance with each others which the Court seemed as a threat. The court usually would make a balance between different parties.

- The officials were divided into 2 groups in the period of Guanxu's ruling. (Emperor's Group and Dowager's Group). In the Box Rebellion, Li disobeyed twice the decrees of the Court before he went to resolve the problem of the Boxer's crisis. Li felt the Boxer crisis was the opportunity for him to regain his status and the Court would offer him what he wanted. On the face of it, Li did not reject the order of the Court, but he did not head to Beijing to solve the problem promptly and used some excuses such as the breakdown of the transportation and the support from the people in the South.
- Li's interpersonal relationship and diplomatic relationship with Russian officials (Pro-Russia)
  - Relied on the interpersonal relationship with some important Russian officials, including the Ministry of Finance who signed the Singing of Sino-Russian Secret Treaty with Li. Ever since then, they maintained a relationship, which was mutually beneficial to them. However, Li wanted to cover his interpersonal relationship with Russian officials to his peer by telling the Russian officials not to contact him directly to avoid suspicion.
  - On the other hand, Li realized the threat posed by Russia to the Qing Court. He warned the Court indirectly by forwarding the Court the telegram sent from the Ambassador clearly pointing out the Court's need of securing the railway in the Manchuria.
- Conclusion comments on Confucian system:
  - inward community, which the insiders served with honor. No flexibility, diversity or creativity is required in the system. As an elite insider on the top of the structure, Li Hong Zhang chose to maintain the system. He established a net of interpersonal relationship to hunt his benefits and he himself was a in other shareholder's net which hunted. Li's survival in the system was the ultimate goal. His diplomacy also served his purpose and he was benefited from it. The interpersonal relationship established with the foreigner helped him never fall out the mind of the ruler. He was a successful Confucian diplomat.

## **5. Confucian Visions of World Order in Confrontation with Western and Japanese Imperialism**

### **5.1 The Crisis of the Ryukyus 1877-1882 Confucian World Order challenged and defeated by**

**Western/Japanese Imperial International Law** by Patrick Leung and Professor Anthony Carty (University of Hong Kong)

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- Main focus: whether or Ryukyus existed in as an independent in the international law? Whether in the Japanese view Ryukyus was a subsidiary of Jap's feudal system?
- American archive – during the time of 1850s when US made expedition to open up Japan
  - American had a God given right to go anywhere and trade as it pleases.
  - The main rivals of US are Russia and Britain; the latter had a firm control of South China Sea. So the key question is that whether US can control the East China Sea and to have complete freedom of commerce.
  - US saw Ryukyus as a very useful naval base for trading with Japan and insisted that Ryukyus belonged to Japan so as to ask Japan to give the right of harbour to America. In response, Japan refused to sign the treaty giving such right and said it was not responsible for Ryukyus.
  - Then the US turned to Ryukyus and forced it to sign a treaty that recognized itself as a state of independent state in the international law. (In 1854)
- A remark from the speaker: the international law is not a ethical system; it's a registration system.
- Britain archive – very academic and theoretical
  - Japanese argued, for the international order, that the Chinese nonsensically claimed as the King of the universe and every nation should submit to its authority; we are in modern state and we know international law; one country can only own the territory that it has effectively occupied. Japan has effectively occupied Ryukyus and that Chinese had never been able to provide evidence of ownership over the Ryukyus. What Chinese can provide is that there were often ambassadors travelling to Peking and this is not seen as evidence of ownership.
    - This picture is widely influential to the left wing in China (from the interview with Wang Hui, who accepts that the Qing was reactionary and stupid to accept the modernity)
  - Ernest Satow was not convinced about what Japanese argument at all. Japan was basically lying and misrepresentation over the issue by acclaiming China was out of the picture of Ryukyus – China would provide assistance to the small state whenever requested.
    - Thomas Wade in Peking: There were Pro-Ryukyus party and anti-Ryukyus party in China and there wasn't anything that China can do since China was in a mess at that stage.
    - Li and other key officials dealing with this issue in China: China would discuss and negotiate with Japan in a conclusion order perspective (under the Chinese principle of mutual understanding and sympathy), not an international perspective.

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- Whether this is a sensible way for China with deal with Japan?
  - Strategic location of Ryukyus and its linkage to the issue of Diaoyu Island and political protest requesting the US retreat from Ryukyus
    - In the 19<sup>th</sup> century, Japanese empire did not admit Ryukyus kingdom as a state but just saw Ryukyus as a feudal domain of Japan and therefore international law should not affect Japan's action. The word of "Shobun" meaning "disposal and punishment" was used.
    - In the Ming Dynasty, Ryukyus was China's special tributary state and tribute was offered to China. Later on Ryukyus was invaded by a domain of Japan and made as subordinate state of Japan. By that time, Ryukyus became dually subordinate to both China and Japan. Having dual superior states is not a usual practice in international law especially in the context of Asian tributary state system. The fact that Ryukyus was a tributary state is very important because by categorizing as a tributary state, it shows Ryukyus was virtually independent since China did not intervene with Ryukyus affairs and had a trading relationship with China. It is a state, not a feudal domain of Japan.
  - Since Japan (Saitama domain) wanted to have more trading relationship with China and used Ryukyus as a media, it could not asked Ryukyus to terminate the tributary relationship with China and Japanese accepted Ryukyus' dual subordination to China and Japan.
    - After the American Arrival, Japan was threatened and wanted to close the door and keep away from foreign powers. When Ryukyus was forced to sign the treaties with America, Japan worried that once Ryukyus was annexed by America, Japan would also be annexed by the same; and thought strengthening the control of Ryukyu island was needed.
- Measure to strengthen the control of Ryukyus by Japan – "seizure"
  - Reasons Japan had to seize Ryukyus: 1) ancestors of Ryukyus came from Japan; 2) the culture, language, social custom and political structure in Ryukyus were similar to Japan; 3) Ryukyus was geographically close to Japan; and 4) criticizing the situation of dual subordination or loyalty, (contradicted to the international law)
    - The people in Ryukyus disagreed with these arguments.
    - The speaker used the example of Balkan to reject the validity of the argument number (4).
  - Actions taken by Japan after 1872



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- Granted the Ryukyus King a title as “the King of Ryukyus domain” – to replace Chinese role to give investiture.
- The diplomatic matters of Ryukyus was taken over by Ministry of Foreign Affairs to show Ryukyus was a subordinate state; later on Home Ministry overtook the matter from the hand of Ministry of Foreign Affairs to further show that Ryukyus was part of Japan, not only a subordinate state
- 1874 Engagement with China as a settlement of the incident that Japan revenging against Taiwan for some Japanese and Ryukyus people were killed in Taiwan before (term in the engagement “providing security to its own subjects”)
  - At that time, China was of the view that the barbarians in Taiwan were not of Chinese People since they had different cultural from China
- Sending agents to inspect the land in Ryukyus and made reform
- Changed the term “offering tribute” to “paying tax” to show the obligation of Ryukyus as beginning a part of Japan
- Seizure in 1879
  - The King of Ryukyus was threatened by the Jap many times, finally was coerced by Japanese army (to expel the King from the city)
  - Before the King left the city, he sought assistance from China.
  - Chinese reactions: doing nothing but only debating because Li Hong Zhang was so confident that the western power would intervene; yet Germany and Italian ambassadors showed no interest and the UK even supported Japan. The US tried to offer assistance by mediation and started Sino-Jap negotiation (which broke down afterwards because the people in Ryukyus did not agree with the solution proposed, i.e. the northern part belonged to Japan and the southern part with no economic resources restored to Ryukyus)
- Conclusion: the problem remained unsolved today. Ryukyus, whether dependent or independent, was definitely a state and the seizure of Ryukyus by Japan was sudden and lacked valid and sound legal justifications.

**6. Possible Alternative, maybe Confucian or other Asian Visions of International Order**

**6.1 The Late 19th Century W.A.P Martin led Debate on Whether Western-style International Law existed in Ancient China and could be revived, its Implications for Continuing Chinese Debate on whether there is a**

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**Need for a distinctive Chinese Approach to the International Order** by Dr. Yi Ping (Faculty of Law, University of Beijing)

- Introduction
  - The 19th century = The time of 'widening of European international law'
  - Chinese intellectuals' response to the Western legal system
    - Is there international law in ancient China?
      - Spring and Autumn (1700 BC-200BC): Not only highly similar to but superior to European International law.
- The translation and introductory work of W.A.P. Martin
  - The translation work
    - Henry Wheaton, *Elements of International Law*, 6th, Boston, 1855.
    - Chinese version: 【美】惠顿著，【美】丁韪良 (W. A. P. Martin) 译，《万国公法》，京都崇实馆，1864年

	Latin	English	French	German	Chinese
1	<i>jus gentium</i>	Law of nations	Droit des gens	Völkerrecht	Wanguo Gongfa 万国公法
2	<i>jus inter gentes</i>	International law	Droit entre les gens, droit international		Guojifa 国际法

- Heffter: *Jus gentium*, or its English word "law of nations", is a law common to all mankind, and which no people can refuse to acknowledge, and the protection of which may be claimed by all men and by all states. While the other term -- international law, as a law between states, cannot sufficiently express the idea of the *Jus gentium*.
- Henry Wheaton: "The term *international law* and *droit international* have now taken root in the English and French languages, and are constantly used in all discussions connected with the science, and we cannot agree with Heffter in proscribing them".
- Martin: did not translate Wheaton's critical opinion against Heffter at all, ignored Wheaton's distinction between "law of nations" and "international law", and translated them uniformly as "万国公法" or simply "公法".

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- "To its fundamental principles, the Chinese mind is prepared to yield a ready assent. In their state ritual as well as their canonical books, they acknowledge a supreme arbiter of human destiny, to whom kings and princes are responsible for their exercise of delegated power; and in theory, no people are more ready to admit that His law is inscribed on the human heart. The relations of nations, considered as moral persons, and their reciprocal obligations as deduced from this maxim, they are thoroughly able to comprehend."
  - "Rules contained in this book which were named '万国公法' (law of nations), are implemented and respected by all nations rather than one. " (Martin, Note of the Chinese version)
  - "The so-called '公师' (publicists) in this book are scholars or ministers of states, who discuss and analyze the relations between states. They are called '公师' because they analyze impartially rather than for the interest of their own states". (Martin, Note of the Chinese version)
  - "If there is no legislative authority which determines '公法' (law of nations), from what authority is '公法' derived? The origin of this law must be sought in the principles of justice, applicable to those relations". (Martin, Chapter 1 of the Chinese version)
- The introductory work
    - Martin's conclusion:
      - In the form of "礼" (rites), the interacting rules among states in the Spring and Autumn and the Warring States Periods were equivalent to the rules of European international law. Even without the name of "international law", the elements of international law had existed in China since ancient times, and thus Chinese people had a tradition of abiding by international law.
      - The material used by Martin: 《周礼》、《春秋三传》、《战国策》等
      - Martin's purpose:
        - For Chinese
        - For Westerners
  - The Ancient China International Law Perspective of Chinese Intellectuals:
    - The unexpected change on Chinese's perception of the international order:

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- Past: Hua-Yi distinction; China is superior to the rest of the world.
- Present: The coexistence of numerous states; China is an ordinary, or even worse, inferior member of the global community
  
- The embryonic Stage (1900-1910):
  - Figures: Chinese students studying abroad
    - Yu Chuan Chan, *China's Position in International Law*, LL. M, Thesis presented to Yale Law School, 1903.
      - His thesis compared some Chinese classics with the works of Hugo Grotius, and concluded that a large number of international law regulations had already existed in the Zhou Dynasty.
    - Ma Derun's doctoral thesis submitted to Berlin University in 1907. Chinese version: 马德润: 《中国合于国际公法论》, 上海: 商务印书馆, 1908 年
      - The author pointed out that there already existed many independent states in China's Spring and Autumn and Warring State Periods. In the author's opinion, if China had acted like Europe where "the presence of dense independent states became a common situation" since the disintegration of the Roman Empire, China undeniably also would have had international interactions and international law.
  
- The developing Stage (1910-1930)
  - Figures: professional international law scholars and historians
    - 刘人熙, 《春秋公法内传》, 1909 年初版, 1913 年重印。
    - 蓝光策, 《春秋公法比义发微》, 南京: 南洋印刷官厂, 1911 年。
    - 何炳松, “中国古代国际法”, 《法政学报》第 2 卷第 5 期, 1920 年。
    - 宁协万, 《现代国际法》(上), 上海: 商务印书馆, 1926 年。
    - 谭焯宏, 《《国际公法原论》》, 上海: 商务印书馆, 1922 年初版。
    - 张心澂, 《春秋国际公法》, 北京: 永华印刷局, 1924 年。
  - Succession: Most scholars followed the thinking developed by Martin and early Chinese students studying abroad
  - Development:
    - Criticism toward Martin's theory

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- 'While small mistakes like this do no harm to its main idea, they suffice to show that however clearly foreigners are able to understand us, it is us, the Chinese people, who can best express ourselves, and the true reality of our history with complete accuracy.' (张心澂, 《春秋国际公法》)
- Comparison between East and West
  - Concept
    - 'Just like Greeks and Roman, ancient Chinese states were heavily theocratic. Our ancestors believed that fidelity is the governing rule for all international treaties. How is this any different from ancient Romans holding 'fides' as the source of all diplomatic relations?' (何炳松, “中国古代国际法”)
    - The independence and equality of States are the two prerequisites for the birth of international law. The Spring and Autumn Period already fulfilled these requirements, while the ancient Greeks, who treated foreigners a barbarians and captives as slaves, and the ancient Romans, who aimed to conquer the whole world and build the one and only empire, did not tolerate the existence of other independent and equal states. Their practices were contradictory to the fundamental principles of international law and could not possibly have given birth to modern international law as we know it. Therefore, "The international relationships and the ideas of international law originated earlier in the East than in the West." (宁协万, 《现代国际法》)
    - 'Compared to modern Western international law, international law in the Spring and Autumn Period not only appeared earlier, but also was more thoughtful and had loftier ideas..... International law in the Spring and Autumn period was closer to achieving the goal of a utopian social order.' (张心澂, 《春秋国际公法》)
  - Practice
    - 'International customs are the source of modern Western international law, while the rites among states are the origin of ancient China international law.' (何炳松, “中国古代国际法”)

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- In the Spring and Autumn and the Warring States Periods, feudal lords governed their states separately, while all of them were loyal to the Emperor of Zhou; similarly, in Medieval Europe, all European states were self-governed, while they were under the command of the Pope. Therefore, an international community had already formed in ancient China. (谭焯宏, 《《国际公法原论》》)
  - If there had been scholars in ancient China who, like Grotius of the West, categorized different types of general practices of international law at that time and wrote them down, Eastern international law might well have been the cradle of global civilization. (宁协万, 《现代国际法》)
- The Maturation Stage (1930-1939)
- Figures: professional international law scholars
    - 徐传保编著, 《先秦国际法之遗迹》(第二部分), 上海: 中国科学公司, 1931年。
    - 陈顾远, 《中国国际法溯源》, 上海: 上海书店, 1933年。
    - 刘达人、袁国钦, 《国际法发达史》, 上海: 商务印书馆, 1937年。
    - 洪均培编著, 《春秋国际公法》, 上海: 中华书局, 1939年。
  - Innovation on System
    - 徐传保编著, 《先秦国际法之遗迹》 Siu Tchoan-pao, *The relics of International Law in the Pre-Qin Period*:
      - Diplomatic institutions
      - International relations:
        - International criminal law
        - Private international law
        - Public international law
          - Unfriendly relationship (不睦关系)
          - Warring relationship (战争关系)
          - Conferential relationship (合同关系)
          - Harmonious relationship (和谐关系)
            - Economic relationships

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- Legal relationships
  - Compassionate relationships
  - Political relationships
    - Substantive political relationship
    - Formal relationship
      - Jiaolao
      - Xiesou
      - Pinwen (*Stable*)
        - Pinwen at the time of a new monarch enthronement
        - Pinwen in normal times
- 陈顾远, 《中国国际法溯源》 CHEN Guyuan, *Tracing the Sources of Chinese International Law*
  - Pandect
  - Rules in wartime
  - Diplomatic relations in normal times
    - Chaojin
    - Pinwen
    - Diaoxu
  - Temporary strategies
    - Huitong
    - Mengshi
    - Zhizhi
- Innovation on content:
  - How to understand the ritual system of the Zhou Dynasty and the relationship between the Emperor of Zhou and the feudal lords:
    - “Only when there is a super-state organization, such as a world republic or a federation of nations, which oversees the application of international law, can international law be truly effective; otherwise it would not be able to have such effect. The Emperor of Zhou was above those feudal lords, but they each were a component of the Zhou Empire, and obeyed the ritual system enacted by the

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Emperor of Zhou. Moreover, though the Emperor was the supreme authority, he did not infringe upon the lords, except that he would launch an imperial conquest if an infringement or invasion occurred between lords. Under this system, international law functioned well and international peace was maintained.” (陈顾远, 《中国国际法溯源》)

- Four categories of the ancient China international law (陈顾远, 《中国国际法溯源》)
  - Li (礼) (international rules)
  - Xin (信) (international morals)
  - Jing (敬) (international comity)
  - Yi (义) (international axioms)
- Epilogue:
  - The succession difference between Martin and early 20th century Chinese scholars: Martin aimed to introduce Western international law into China; Chinese's Resistance of western culture.
  - Both sides sought more balanced understanding of international law in Chinese context.

## 6.2 Classical Chinese philosophy and the Time of the Warring States: Early Confucians, Mencius and Xunzi

by Professor Kim Sungmoon (City University of Hong Kong)

- Core Argument:
  - Warring States Confucian such as Mencius and Xunzi were able to meet both the political and philosophical challenges that the collapse of Zhou's universal moral-political authority gave rise to with regard to the morality of war and legitimate interstate relations on the one hand and their global vision of virtue politics on the other, by justifying a virtuous ruler's punitive expedition (even annexation) of a tyrannical state through creative reappropriations of core stipulations of Confucian



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virtue politics, centered around the ruler's care and moral-ethical responsibility for the people, in a way relevant to the new interstate context in which there is no visible institution representative of the Mandate of Heaven, upon which Zhou universal kingship was predicted.

- Confucian Virtue Politics (*dezhi* 德治)
  - Two stipulations:
    - It is primarily the ruler's moral virtue (*de* 德), which he acquires (*de* 得) from Heaven by virtue of his strenuous moral self-cultivation, that makes politics virtuous.
      - In early Confucian moral-political imagination, the rule was conceived as the Son of Heaven (*tianzi* 天子), presiding over "all under Heaven" (*tianxia* 天下), and he was believed to be granted with Heaven's beneficence and his mission was to pass it on to the people that he governs by being virtuous.
    - While struggling with making contemporary rulers, who generally ascended the throne by hereditary right, sage-kings, universal ruler who is perfectly virtuous, early Confucians also emphasized that the central purpose of Confucian virtue politics lies in making in the people morally elevated by leading and educating them by means of rituals (*li* 禮), the moral-political institutions and practices established by former sage-kings. (*Analects* 2:3)
      - Confucians were strongly convinced that good government is possible only if politics is predicated on moral virtue of both the ruler and the ruled: while the ruler's stellar moral character inspires the people toward moral goodness, the morally elevated people underpin his government not for mere instrumental reasons but sincerely from their hearts.
  - A new challenge:
    - The two stipulations of Confucian virtue politics are concerned with moral leadership and moral legitimacy, which combine to make a government that is of a global scale, in principle, a good government.
    - Ironically, though, early Confucians developed this global vision of virtue politics, focused on all under Heaven, in the midst of arguably the most turbulent period in Chinese history called the "Warring States period" (475-221 BCE).
- Arising issues:
  - How did early Confucians, particularly Mencius (Mengzi 孟子, 372- 289 BCE) and Xunzi 荀子 (ca. 312-230 BCE), accommodate their global vision of virtue politics to a drastically altered political

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- situation during the Warring States period, which apparently was favorable to neither virtue politics nor a global political philosophy for a universal kingdom (*tianxia*)?
- How could they make their global political theory relevant for the (though only nominally) feudal lords, rulers of the ancient political entity called *guo* 國 (conventionally translated in English as “the state”), whose primary concern was to “enrich the (i.e. their own) state and strengthen the (i.e. their own) military” (*fuguo jiangbing* 富國強兵), which was the key political motto of all states at the time, rather than benefit all under Heaven?
  - In short, how could early Confucians make their political theory of virtue politics relevant in the interstate context without compromising the theory’s global vision?
  - Confucius:
    - Though Confucius was deeply worried about the emerging new world order marked by unruly intrastate situations and interstate relations, his most eminent concern was how to restore the Zhou civilization by keeping the feudal lords in their right (i.e. ritually ordered) places.
    - For Confucius, the sovereign authority of the still “feudal” states did not in itself create an independent philosophical question as long as the Zhou Court entertained its traditional moral authority and its ritual culture, which he called “this culture of ours” (*siwen* 斯文), only to be reinvigorated.
  - Mencius and Xunzi:
    - Mencius and Xunzi, however, belonged to quite a different world.
    - The Zhou Court’s moral authority as the King (*wang* 王) was no longer respected by the feudal—now de facto independent—states and several powerful rulers pursued to become the King themselves, the ruler of the (re)unified world, while most of the feudal lords were struggling for mere survival.
    - The immediate challenge posed to them, then, was how to accommodate Confucius’s original political thought, focused on a general and global theory of virtue politics, to the contemporary reality of interstate relations, unconstrained by any transcendental moral- political authority, which could arbitrate the clash of interests among the “feudal” states.
    - How can Heaven’s beneficence, which in principle can only be passed to all under Heaven in mediation of the king’s (i.e., the Son of Heaven) brilliant moral virtue, be reached to all people in the world, when the world is now divided into independent states?
  - Mencius:
    - Consider Mencius’ (M) following conversation with King Hui of Liang:

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- H: I, this solitary man, devotes his entire mind to the state. When the year is bad within the river, I transfer people to the east of the river and transfer grain to the area within the river. When the year is bad to the east of the river, again, I act accordingly. Look into the governments of neighboring states: there is no one as mindful as I, and yet people in the neighboring states do not decrease, nor do my people increase. Why should this be?
- M: [T]here is no reason to expect the people to be more numerous than they are in neighboring states. If the agricultural seasons are not interfered with, there will be more grain than can be eaten. If close-meshed nets are not allowed in the pools and ponds, there will be more fish and turtles than can be eaten. And if axes are allowed in the mountains and forests only in the appropriate seasons, there will be more timber than can be used. When grain, fish, and turtles are more than can be eaten, and timber is more than can be used, this will mean that the people can nourish their lives, bury their dead, and be without rancor. Making it possible for them to nourish their lives, bury their dead, and be without rancor is the beginning of the Kingly Way.  
(*Mencius* 1A7)
- Analysis:
  - King Hui thinks that he benefited his people and he now wants Mencius to tell him how to profit his state.
  - What is interesting is that Mencius's advice to the king was focused not merely on how to profit his state, or his people, but how to benefit the people of the world. In other words, by encouraging the king to exercise the Kingly Way, a universal moral statecraft intended for all under Heaven, Mencius shifts the king's attention from his own state to the people in general.
- While adhering to Confucius's global vision of virtue politics, at the core of which is universal sage-kingship, Mencius was realistic enough not to dismiss as completely illegitimate the new reality of interstate relations, in which states are not only independent but have different sizes according to power, due to its deviance from the Zhou ritual order.
- For Mencius, the most practically effective way to achieve this middle way was to make the incumbent rulers, otherwise preoccupied with power and wealth of their own states, feel responsible for the welfare of the people of another state (and ultimately all people under Heaven) and to care for them, without encouraging them to pursue the position (or the title) of universal kingship.
- Now, consider Mencius's following description of legendary Sage-King Wu's punitive expedition of the Yin people of the Shang dynasty:

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- “When King Wu marched on Yin, he had [only] three hundred war chariots and three thousand brave warriors. He said, “Do not be afraid. I come to bring you peace, not to wage war on the people.” And the sound of the people knocking their heads on the ground was like the toppling of a mountain. To wage a punitive war (*zheng* 征) is to rectify (*zheng* 正).” (*Mencius* 7B4)
- Analysis:
  - In Mencius’s narrative, King Wu initiated the war against King Zhòu 紂, the last ruler of the Shang dynasty, because of his extended sense of responsibility for the welfare of the Yin people who had long suffered from Zhòu’s tyranny (and it is this very sense that King Hui, or any other warring rulers in Mencius’s time, lacked).
  - Mencius calls the punitive war against a tyrant and for the sake of the welfare of the people under the tyrant’s rule “rectification” (*zheng* 正).
  - By identifying punitive war in terms of rectification (*zheng* 正), then, Mencius shows the inextricable intertwinement between domestic politics (*zheng* 政) and interstate politics (*zheng* 征) within the overall framework of Confucian virtue politics.
  - Put differently, from the perspective of Mencius’s idea of Confucian virtue politics, in the absence of a universal rulership, the task of government does not end with securing the welfare of the people within the state (*guo*) but extends to the welfare of the people of other, especially neighboring, states.
- Consider the following conversation between Xunzi (X) and Chen Xiao (C), allegedly Xunzi’s student, which offers the most revealing explanation as to on which grounds early Confucians justified punitive war launched by a virtuous ruler against a tyrant:
  - C: When debating military affairs, you, sir, always take *ren* and *yi* as what is fundamental. One who is *ren* cares for others, and one who is *yi* follows good order. If this is so, then what use does one have for military forces? The reason why one has military forces is for struggle and contention.
  - X: Things are not as you understand them. The person of *ren* indeed cares for others, but it is because he cares for others that he hates for people to harm them. The person of *yi* indeed follows good order, but it is because he follows good order that he hates for people to throw it into chaos. Indeed, military forces are that by which one prohibits violence and does away with what is harmful. They are not for struggle and contention. Thus, wherever the military forces of a person of *ren* reside, that place enjoys a spirit-like state [a state that is extremely good].

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Wherever he passes by, that place is transformed, like the falling of a timely rain, and all are pleased with them.

- X: Thus, Yao attacked the Huan Dou. Shun attacked those who controlled the Miao. Yu attacked the Gong Gong. Tang attacked the one who controlled the Xia [King Zie]. King Wen attacked Chong. King Wu attacked the tyrant Zhòu. These four emperors and two kings all employed a military approach based on ren and yi in conducting their campaigns throughout the world. And so, those nearby drew close to their goodness, and far away regions admired their virtue. The blades of their weapons were not stained with blood, but people far and near came and submitted to them. Such was the abundance of their virtue, and its effects reached to the limits of all four directions. (*Xunzi* 15:2)
  - Analysis:
    - If there was a universal king (i.e., the Zhou King), tyrannical “feudal” rulers, ranked below according to Zhou’s ritual order, would be rightly punished by him or his delegate(s), and this is the true meaning of “punitive expedition” (*zheng* 征).
    - However, in the absence of Zhou’s universal moral- political authority, which has made Zhou’s former feudal states politically independent and morally equal and thus “punitive expedition” (by the superior of the inferior) impossible in principle, a new way to “punish” tyrannical rulers ought to be contrived.
  - According to Xunzi, two conditions must be met for a state (or an alliance of states) to justifiably punish a tyrannical state:
    - the state delivering the Heavenly punishment must care for the people suffering from tyranny
    - there must be sufficient and active harm done by the tyrant, against whom the punitive expedition is to be launched.
- ==>But far more important than these conditions is the ruler’s, now acting as Heaven-appointed officer (*tianli* 天吏), extended sense of moral responsibility.
- From Heaven to People:
    - The ancient cases discussed earlier (such as Wu’s expedition) involve the transfer of the Mandate of Heaven from tyrannical suzerains to virtuous feudal rulers who have launched a Heaven-authorized punitive expedition on their political superiors, the nominal possessors of the Mandate of Heaven.
    - In the Warring States context, however, what is at stake is not so much the transfer of the Mandate of Heaven from one universal king to another, typically a former feudal lord, but the obligation and

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- entitlement of an independent state, de facto sovereign, to interfere with another state that is morally equal, in order to rescue the people from tyrannical rule. No ruler can claim Heaven's Mandate to rule the world and no state is entitled to "punish" others, however tyrannical they are, because the traditional moral hierarchy between superiors and inferiors is now obsolete.
- The dissolution of the universal kingship means collapse of the theory of the Mandate of Heaven (or the theory's arbitrary exploitations by ambitious "feudal" lords) and in the absence of Heaven's Mandate or its agent there is no basis upon which to call a particular military engagement righteous (*yi* 義).
  - Ultimately, then, the challenge for Warring States Confucians such as Mencius and Xunzi can be recapitulated as this—how can a state, presumably governed by a virtuous ruler, justifiably intervene with another state under tyranny, which is equal in moral status, in the virtual absence of an institutional body representative of the Mandate of Heaven and without necessarily aiming at universal kingship (i.e., the title of the Son of Heaven)?
- A Case: Qi's Annexation of Yan
    - Shen Tong, a minister of Qi 齊, asked him whether it would be justified for Qi to attack (*fa* 伐) Yan 燕, a state of almost equal size and strength.
    - Noting the illegitimate transmission of the throne from the ruler of Qi (*Zikuai*) to his minister Zizhi, Mencius replies, "It may."
    - Qi takes this response as an approval, then attacks and annexes Yan.
    - When asked if he indeed encouraged Qi to attack Yan, Mencius replies as follows:
    - "No. When Shen Tong asked me whether Yan might be smitten, and I answered him, 'It may.' They accordingly marched on Yan. If he had asked me, 'Who has the right to march on Yan?' I would have answered, 'A Heaven-appointed officer has the right to do so.' Suppose a man killed another, and someone were to ask, 'Is it all right to kill the killer?' I would answer, 'Yes.' But if he further asked, 'Who has the right to kill him?' I would answer, 'The Marshal of the Guards has the right to kill him.' As it is, it is just one Yan marching on another Yan. Why should I have encouraged such a thing?" (*Mencius* 2B8)
    - Mencius's response points to Qi's (or Shen Tong's) apparent confusion:

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- first, between the punitive expedition (*zheng*) that Yan deserves and the mere military aggression (*fa*) that is simply unjust
- second, between the fact that Yan deserves a punitive expedition and who is entitled to carry out the punishing.
- The problem: Mencius does not seem to be sure who should assume the role of the Heaven-appointed officer in the changed world where there is no institution that presumably, even vicariously, represents the Mandate of Heaven.
- Qi (or any other state for that matter) “may” be permitted to punish Yan, a disordered state under a tyrannical government, because Yan deserves Heavenly punishment. But who authorizes Qi’s punishing and on what basis is Qi’s punishing justified? From the perspective of the old worldview centered on Zhou’s universal kingship, to which Mencius occasionally appeals, Qi (or, again, any other “feudal” state) has no authority to punish Yan, however well intended its punitive expedition is, because both states are equal in their moral standing vis-a-vis the Zhou court, which had yet to collapse in Mencius’s time.
- What is interesting is that while seemingly subscribing to Zhou’s global ritualism, Mencius creates a new source of justification for interstate intervention, when he says, “It is just one Yan marching on another Yan. Why should I have encouraged such a thing?”
- While the first part in Mencius’s statement singles out Heaven or its delegates as the source of authorization for the punishment of Yan, the second part (i.e. Mencius’s conclusion) highlights disqualification of Qi to assume the role of a Heaven-appointed officer solely on the basis of its equally inhumane (*bu-ren*) government.
- This shift from Heaven (and its institutional representative) to *ren* (or virtue) in Mencius’s political thought is crucially important because Mencius is now opening up a way in which an interstate intervention, motivated by “humanitarian” purposes, can be morally justified without positing the existence of an institutional representative of Heaven (the Son of Heaven under normal circumstances or a Heaven-appointed officer during a constitutional crisis).
- Mencius creates this remarkable innovation in Confucian political theory by reinterpreting *ren* as originating from Heavenly grace, which can reach the people in mediation of a (universal) king’s virtue, to a ruler’s (that is, *any* ruler’s) inner disposition or moral character.

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- Consider the following conversation between Mencius (M) and King Xuan of Qi (X)
  - X: Some advise me against annexing Yan while others urge me to do so. The occupation of a state of ten thousand chariots by another of equal strength in a matter of fifty days is a feat which could not have been brought about by human agency alone. If I do not annex Yan, I am afraid Heaven will send down disasters. What would you think if I decided on annexation?
  - M: If in annexing Yan you please its people, then annex it. There are examples of men in antiquity following such a course of action. King Wu was one. If in annexing Yan you antagonize its people, then do not annex it. There are also examples of men in antiquity following such a course. King Wen was one. When it is a state of ten thousand chariots attacking another of equal strength and your army is met by the people bringing baskets of rice and bottles of drink, what other reason can there be than that the people are fleeing from water and fire? Should the water become deeper and the fire hotter, they would have no alternative but to turn elsewhere for succor.
  - Analysis:
    - Completely sidelining the question of Heaven, Mencius's response is exclusively focused on whether by annexing Yan Qi can please the people of Yan. Whether or not Qi is a Heaven-appointed officer is not an issue anymore, as Mencius clearly sees that the discourse of Heaven can easily be manipulated by a politically ambitious ruler like King Xuan, in the absence of a formal institution of the Son of Heaven to which the Zhou rulers had privileged access.
    - Therefore, without denying the foundational importance of the Mandate of Heaven in the legitimization of interstate warfare as well as territorial expansion of a state through annexation, Mencius declares that the welfare of the people of the annexed state is the only visible criterion by which to judge whether or not the annexation (and the initial attack in terms of "punishment") is morally justified.
- Conclusion
  - By decoupling *ren* (or virtue) from the universal political institution representative of Heaven and by redefining *ren* as a person's (hence any ruler's) inner disposition or moral character, achievable without the mediation of the formal agent of Heaven, Mencius (and Xunzi) found a way to justify a humanitarian intervention (or perhaps even a humanitarian annexation)—still rationalized in the



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traditional Zhou language of “punishment”—of a virtuous ruler in a tyrannical state in a world where there is no longer a visible political agent of Heaven.