

**The Standard of 'Civilization'
in International Society**



**TREE *of* LIBERTY
SOCIETY**

The Standard of 'Civilization' in International Society

Gerrit W. Gong



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Foreword

The international society which grew up in Europe and today extends over the whole world was explicitly limited until quite recently to states of a particular culture or civilization. In its formative period in the sixteenth and seventeenth centuries, as it emerged from the decay of Latin Christendom, international society was regarded as comprising only Christian rulers and peoples. There were, it is true, thinkers such as Vitoria and Grotius who recognized a universal or all-inclusive society of independent political communities, of which Christian international society was only part, but such a society was mainly theoretical or notional, and the only actual international society in which Christian states were involved was that which they formed among themselves.

In the eighteenth and nineteenth centuries, as religious influences on international politics gave place to secular ones, the belief that international society was distinctively Christian went into decline, but was replaced by the belief that it was a society confined to states of European culture or civilization, including not only the original members of what Burke called 'the diplomatic republic of Europe' but also Europe's offshoots in north and south America, as they became politically independent. In the course of the nineteenth century, as the European impact upon Asia and Africa gathered in force, and the latter were brought within the compass of the expanding European-centred international system, European states had to define the conditions under which they would or would not admit non-European political communities to membership of the international society they formed among themselves. Thus arose the idea that independent political communities which aspired to membership of international society had to meet a standard of 'civilization'.

Today, this concept has a bad name. It was, after all, part of the rationale which the European states provided, when they were at the height of their power and authority, for

denying equal rights to the political communities of Asia, Africa, and Oceania, whose fate in that era was either to become colonies of the European imperial powers or to be assigned a subordinate or second class form of independence. The idea of a standard of 'civilization' defined by Europeans, in relation to which such ancient cultures as those of China, Egypt, or Persia were to be measured and found wanting, was deeply insulting to representatives of non-European civilizations at the time, and strikes us today as arrogant and presumptuous. The privileged legal status which European states claimed for themselves, as for example through the system that exempted citizens of European countries from local courts and conferred upon them the right of 'extraterritorial jurisdiction' in certain countries, invited abuses and led understandably to campaigns for its abolition. The standard of 'civilization' laid down by Europeans in the late nineteenth and early twentieth centuries now appears to us as part and parcel of an unjust system of domination and exploitation against which the peoples of Asia and Africa have rightly revolted.

The truth is, perhaps, more complex. The basic idea behind the requirement that governments aspiring to membership of international society should be able to meet standards of performance (as in protection of basic rights of their citizens, standards of honesty and efficiency in administration, capacity to adhere to rules of international law and to enter into diplomatic relations, and avoidance of slavery and other odious practices) similar to those which European states expected of each other rested not upon ideas of superior right but on a need for reciprocity in dealings between European and non-European powers, which the latter in many cases were either not able or not willing to meet. In the Ottoman Empire, in China and Japan, for example, the Europeans encountered powers in whose traditional understanding of diplomacy and international law the idea that relationships with outsiders could be based upon reciprocal interest and notions of equal right found no place. In the pre-literate and in some cases stateless political societies of black Africa (by contrast with the sophisticated Islamic or Islamicized kingdoms they also met in that continent, and with the Muslim and Hindu polities of south Asia) the

European states encountered powers with which relationships of the kind they had with one another were not remotely possible.

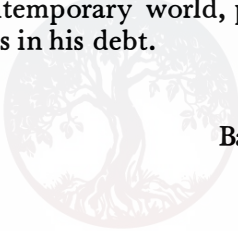
The arrogance of many Europeans, in equating civilization with the particular civilization of Europe, was no less than that of the Chinese, nor was the belief of Europeans that their religion was the one true faith any less than that of the Muslim peoples with whom they came into contact. The standard of 'civilization' on which the Europeans insisted did indeed lead to unjust treatment, but the demand of Asian and African peoples for equality of rights in international law was one that the latter did not put forward until they had first absorbed ideas of the equal rights of states to sovereignty, of peoples to self-determination, and of persons of different race to individual rights, which before their contact with Europe played little or no part in their experience.

The disappearance in the present century of the distinction between full and partial membership of international society, i.e. of the distinction between those states which had and those which had not met the standard of 'civilization', was indeed in part the result of a successful revolt of Asian and African peoples against European dominance. But it also reflected a continuing process which tended to lead to greater homogeneity of political communities. The fact that in the course of the twentieth century, and especially in the two World Wars, the European powers failed so conspicuously to observe the standards they proclaimed for themselves and others in the nineteenth century does not mean that the standards themselves were wrong, or that today we have no need of them.

Dr Gong has written a penetrating study of these issues. He explores the meaning of the concept of the standard of 'civilization' and the history of its emergence. In dealing with its place in international law he traces both its rise, by the first decade of this century, to the status of an explicit legal principle, and also its subsequent demise. He provides us with case studies of China, Japan, and Siam which enable us to see in detail the meaning of the principle from the perspectives both of the European and of the non-European peoples involved.

His study complements the pioneering work in this field of the late Professor C. H. Alexandrowicz, while also challenging some of his conclusions. Dr Gong is able to expose the shortcomings of the European assumptions of yesterday, while also maintaining a critical attitude towards assumptions of an opposite kind, no less founded upon ignorance and prejudice, which are commonplace today. He is also able to explore, in an arresting way, the relationship between the standard of 'civilization' in the old, European-dominated international order, and what one might call the standard of modernity which in the new, global order of today, has replaced it. His book, which (in a way that is all too rare) combines a serious commitment to historical research with enquiry into the problems of the contemporary world, places all students of international relations in his debt.

Hedley Bull
Balliol College, Oxford



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Preface

We all know something about what a standard of 'civilization' is and how it functions.

Anyone who has tried to join a club, a college, or a society of some kind understands that certain standards (the requirements of which are not necessarily explicit) 'distinguish between those who will be invited to become members from those who will not. An international standard of 'civilization' is inevitably appealed to when embassy officials are taken hostage; when unarmed commercial airliners are shot down; when human rights are systematically violated; or when international sensibilities are otherwise outraged. Pointed criticisms such as 'It was a barbarous act by an uncivilized country', or 'It is a crime against the international society of civilized states', are more than moralistic eye-wash: no country wants to be ostracized as 'uncivilized'. Even those countries most intent on pursuing their individual interests recognize the need for, and thereby usually acquiesce to some degree in, certain collective standards of international conduct.

The possibility of enforcing international norms globally became a reality for the first time during the nineteenth century as the European international system expanded. However, the imposition of Europe's standard of 'civilization' on the non-European world precipitated a confrontation of cultural systems as fundamentally irreconcilable standards of 'civilization' clashed with each other.

The first part of this book examines these events from the European perspective. The second part of this book looks at the cultural humiliation, dislocation, and accommodation that non-European countries experienced as they struggled, or were forced, to make the European standard of 'civilization' their own. Both sections of this book also consider the extent to which universal standards have, as part of a greater global transformation toward modernity, emerged to transcend the political and cultural diversity that characterized the international society in the past.

As much as possible, this book portrays the evolution of the standard of 'civilization' through the words, thoughts, and 'unspoken assumptions' of those who wrestled with the natures of their own and foreign civilizations according to the cultural perceptions of their own times. As T. S. Eliot noted in 'Tradition and the Individual Talent', it is easy to criticize those of an earlier age for what they did not know or could not see. Yet, what we know or see now benefits from the trials and errors of those being criticized. Future ages will no doubt look back on our efforts to conduct and understand international affairs with the same advantage of hindsight.

This is a book as much about the future of international society as about its past. Indeed, different cultural traditions as well as different political ideologies, vying with each other in a struggle for power in our day, have again made cultural standards and norms a sensitive issue. No country willingly submits to what it considers to be cultural imperialism; nor does any country passively accept accusations that it is perpetrating cultural imperialism. Both, then, for developing and for developed countries, the dilemmas of intercultural competition and coexistence become increasingly real and pressing. And, in a modern context, the conundrum remains: How can international standards and norms be delineated, promulgated, and enforced without infringing on legitimate cultural sovereignty?

A book of this kind inevitably draws on the efforts of many people. Indeed, those who have contributed to this project span ten years of the author's experience at a variety of institutions in America, Europe, and Asia. Many scholars, colleagues, and friends at Brigham Young University, Oxford University, Chulalongkorn University, Tokyo University, the University of the Philippines, the East-West Center in Hawaii, the Hoover Institution, and Georgetown University's Center for Strategic and International Studies have, directly and indirectly, shaped this work while seeing its production through to publication. Sincere gratitude is expressed to each of these individuals, particularly to Professor Hedley Bull who supervised this work during its Oxford period of gestation and who has kindly written the Foreword. As always, however, the author's appreciation for the contributions of others in no

way obviates him from taking responsibility for the views contained in this book.

No doubt the range of rich and happy associations out of which this book flows is in part responsible for the general optimism of its approach and conclusions. At a time when mere survival is seen by some as an ultimate virtue in an international society of states plagued by uncivil and uncivilized acts, this book takes the more hopeful position that an adequate perspective of the past and future can help us overcome the Sirens' songs in navigating between the twin shoals of cynicism and naivete in international affairs.

...

Gerrit W. Gong
Washington, D.C.
September 1983



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Part I

The Standard of 'Civilization' and the Extension of European International Society



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I

The Standard of 'Civilization'

The Enduring Importance of the Standard of 'Civilization'

The confrontation which occurred as Europe expanded into the non-European world during the nineteenth and early twentieth centuries was not merely political or economic, certainly not only military. It was fundamentally a confrontation of civilizations and their respective cultural systems. At the heart of this clash were the standards of civilization by which these different civilizations identified themselves and regulated their international relations.

Generally speaking, a standard of civilization is an expression of the assumptions, tacit and explicit, used to distinguish those that belong to a particular society from those that do not. Two distinctions pertain. First, by definition, those who fulfil the requirements of a particular society's standard of civilization are brought inside its circle of 'civilized' members, while those who do not so conform are left outside as 'not civilized' or possibly 'uncivilized'. Second, standards of civilization apply to individual states or individual societies, as well as to systems of states or international societies of states.

A system of states (or international system) is formed 'when two or more states have sufficient contact between them, and have sufficient impact on one another's decisions, to cause them to behave—at least in some measure—as parts of a whole'.¹ An international system must therefore logically precede the emergence of an international society. A society of states (or international society) is measured in terms of certain fundamental commonalities: common interests and values, commonly binding rules, and common institutions.²

Because the standard of 'civilization' which originated in Europe during the nineteenth century was applied throughout

¹ Hedley Bull, *The Anarchical Society* (London, Macmillan, 1979), pp. 9–10.

² *Ibid.*, p. 13.

the world, it became a catalyst for change both in the European international society and in the non-European countries which sought to enter it. Even more fundamentally, an investigation of the standard shows that the changes made both within the European international society, and within the non-European countries which sought to enter it, were aspects of a greater global transformation. These changes and transformations in cultures, civilizations, and their patterns of interaction underlie the genesis of the modern international society in which we now live. Accordingly, the standard of 'civilization' is not only of historical significance, but is also an important thread in the social, legal, and institutional fabric of the contemporary society of states. The concept of the standard remains a determining factor in the processes by which the modern international society continues to evolve.

A casual examination of nineteenth-century international relations is sufficient to reveal that the countries of the world did not behave as related parts of a single international system prior to that time. Divergent in their values, rules, and institutions, these countries functioned even less as members of a global international society. However, as the European states-system—the international system which had its roots in Europe—expanded into the non-European world, it developed increasingly frequent and sustained contact with the non-European countries. Over the course of the nineteenth century, the European powers enforced 'unequal treaty', 'capitulation', and 'protectorate' regimes in the Levant, Asia, and Africa, thereby drawing these non-European countries into the framework of what became the first global international system in history.

Paralleling the expansion of the European international system, the international society of European states—those countries which had European civilization in common—also began to extend its boundaries. Interaction with non-Christian and non-European countries underscored the international society's need for a universally acceptable identity. Thus, in extending its domain, the international society which had earlier identified itself with Christendom and then with Europe came gradually to characterize itself as 'civilized'.

By the end of the nineteenth century, its membership

buttressed by two extra-European powers (the United States and Japan), the international society of European states was evolving into an international society of self-proclaimed 'civilized' states. In declaring that its ranks consisted of the world's 'civilized' countries, the 'civilized' international society proclaimed its universalist aspirations. Whereas other societies, domestic and international, had conceived that they bounded heaven and earth, or that they stretched from sea to sea, the nineteenth-century society of 'civilized' states possessed the capacity to do so in practice for the first time.

The previously implicit standard of 'civilization' espoused by this society took on an increasingly explicit juridical character. It provided a purportedly legal way to demarcate the 'civilized' society's boundaries and to differentiate between the 'civilized' countries which qualified for membership within its ranks and the 'semi-civilized' and 'uncivilized' countries which qualified for only partial membership.³ Thus, it was in the name and for the advancement of 'civilized' society in general that the concert of 'civilized powers' (including Japan as a 'civilized' though non-European and non-Christian power) arrayed itself against the Boxer rebellion in 1900, and that conferences of those calling themselves the representatives of the world's 'civilized' countries met at The Hague in 1899 and 1907 in order, among other things, to codify the rules of 'civilized warfare'.

From the perspective of the European centre, what had in the eighteenth and early nineteenth centuries been described as the 'law of Christian nations' or the 'public law of Europe' had by the turn of the twentieth century been slightly altered and largely redefined as the 'law of "civilized" nations'. As the principle which distinguished 'civilized' from 'uncivilized' states, the standard of 'civilization' became an integral factor in the changing domain and rules of international law. International legal rights and capacities became

³ James Mayall, 'International Society and International Theory', *The Reason of States*, ed. Michael Donelan (London, George Allen and Unwin, 1978), p. 124, emphasizes the need for this kind of 'double focus'; the description of international society requires the examination of the 'external boundaries of the society, the demarcation lines which separate those within from the excluded outsiders' and of its 'internal "constitution", those formal and informal arrangements which determined . . . its "identity"'.

contingent on fulfilment of the standard's requirements; so did recognition of full ('civilized') legal personality and admittance into the Family of Nations.

According to the logic of a standard of 'civilization', the nineteenth-century international lawyers (then referred to as publicists) divided the countries of the world into 'civilized', barbarous, and savage spheres. Of the various descriptions of this tripartite division in international legal capacity and personality, James Lorimer's is the most famous. Lorimer typified the conventional thinking of his day in relegating countries unable to meet the standard of 'civilization' to inferior status in international law.

Indeed, some non-European countries had to learn the hard way. Until they fulfilled the standard's requirements, these non-European countries remained outside the law's pale and protection. Until granted 'civilized' legal status, they seemed vulnerable to the power and caprice of those countries to which the material benefits of industrial 'civilization' had come first.

However, the standard of 'civilization' also represented a code of expected 'civilized' behaviour which Europe imposed upon itself. Of the humanitarian sentiments and codes of *noblesse oblige*, the notion of the 'sacred trust of civilization' is the best known. For example, while the 1885 Berlin Conference on Africa convened primarily to regulate Europe's imperial rivalries, it also considered humanitarian treatment for the natives. Likewise, concern that diplomatic irregularities with non-European countries be equitably resolved through legal means permeates the British parliamentary debates and the legal opinions of the British Foreign Office. Wherever possible, the European countries sought to bring traditional, non-European countries into the international society in as orderly and humane a manner as possible.

But, to put the perspective from the European centre into a more global context, the non-European perspective is also needed. From the perspective of what became the non-European periphery, it was against a foreign standard of 'civilization' that the non-European countries were measured. How the non-European countries changed, adjusted, and adapted their civilizations and cultural systems in the face of the European challenge is an indispensable part of the

past and future of the international society we now call our own.

The standard played a varying and in some ways progressive role in these processes. Whereas the standard of 'civilization' provided the European powers with an explanation and justification for their global expansion, it represented an insult, a humiliation, and a fundamental threat to the proud and culturally independent non-European countries. Many of these non-European countries had long maintained their own standards of 'civilization', based on and defined by their own cultural traditions and practices. The East Asian countries had defined and regulated an extensive international order according to their historic standard of 'civilization'. The Muslim world had characterized itself and prescribed its relations with the 'infidel' world according to the standard of its own civilization. Likewise, large sectors of Africa had their own, albeit non-European, civilizations.

To threaten the traditional standards of 'civilization' of these non-European countries, and the larger cultural systems with which they associated themselves, was to undermine the traditional cultural and political foundations on which they were based. Further, because the governing élites in many of these non-European countries were mandated to defend and promulgate their own standards of 'civilization', confrontation with the seemingly superior European standard of 'civilization' challenged the legitimacy of their regimes, both domestically and internationally. For example, by indirectly attacking the Confucian underpinnings of China's political system and thereby diminishing China's regional prestige, the European standard of 'civilization' decisively undermined the traditional East Asian international order. As significant as non-European regimes considered the European military challenge to be, they actually recognized that confrontation with the European standard of 'civilization' constituted the more fundamental threat to their existence.

According to the European standard of 'civilization', non-European countries such as Japan or the Ottoman Empire were 'backward' and 'uncivilized'. However, by East Asian or Islamic standards of 'civilization', the Europeans were 'barbarians' or 'infidels'. Little could have augured less well for harmonious international relations than for 'barbarians'

to point critical fingers at 'uncivilized heathens' or for 'uncivilized heathens' to denigrate 'barbarians' and 'infidels'. The scene was ripe for conflict. Indeed, to echo a Clausewitzian idea, many of the nineteenth century's military engagements, for example, the Opium Wars, were extensions of conflicting standards of 'civilization' by other means.

It was not that the non-European countries regarded power politics as peripheral. Rather, they defined power according to the politics of their own countries. Within the context of its own political culture, each non-European country defined, distributed, and regulated political power according to its own standard of 'civilization'. Most non-European countries assumed (wrongly, as it turned out) that power, domestic and international, would continue to be manifested and manipulated according to historic patterns and standards of traditional civilization. For example, the kowtow in China was a potent symbol of power. It was the ritual means by which the Middle Kingdom regulated its entire political, cultural, and social system, both domestically and throughout East Asia. As Macartney discovered, to refuse to kowtow to the Chinese emperor was to challenge the whole Chinese system of influence.

In the end, however, it was the Western 'barbarians' and 'infidels' who had the disposition and military capacity to impose their standard of 'civilization'. These foreigners insisted that 'unequal treaty', 'capitulation', and 'protectorate' systems, all with extraterritorial provisions, be maintained until the non-European countries of Africa and Asia conformed to 'civilized' standards. European extraterritoriality thus became a badge of inferiority for many non-European countries, a sign of their 'uncivilized' legal status.

For understandable reasons, the standard of 'civilization' also became an organizing principle for the non-European countries. In their struggles to acquire the legal protection and privileges 'civilized' countries enjoyed, the non-European countries let the standard become a stimulus for reform and a guideline for the changes, adjustments, and adaptations needed to fulfil its requirements. And finally, the standard of 'civilization' became a means whereby the non-European countries could argue that they qualified for 'civilized' legal status, and by which the 'civilized' countries could test if

these candidate states were indeed sufficiently 'civilized' to merit recognition as full subjects of the international law and as full members of the Family of Nations.

The central role played by the standard of 'civilization' in the process by which the international society became global, both from the European and non-European perspectives, has been outlined above. But the standard of 'civilization' is not just a historical curiosity, an idea important only to a bygone era, significant as it may have been then. Nor is it relevant only to academic analyses.

Insights into the extent to which the standard of 'civilization' was forcibly imposed, reluctantly accepted, or eagerly embraced are essential to understanding the underlying structural strengths and weaknesses of today's international society. Such insights can also provide the historical context which is needed for contemporary discussions about the possible emergence of a global society and global culture; the enduring and shifting nature of power in a multicultural political system; and the role and impact of international organizations, whether private multinational corporations or public non-governmental organizations, such as the United Nations and its specialized agencies. In its different manifestations, the concept of a standard of 'civilization' remains an integral aspect of contemporary international society, and therefore is highly germane to six issues of current concern.

First, an understanding of the standard of 'civilization' challenges the provocative thesis C. H. Alexandrowicz advanced in his two pioneering studies, *An Introduction to the History of the Law of Nations in the East Indies* and *The European-African Confrontation*. Alexandrowicz is quite certain that 'doctrinal change, particularly [by] the abandonment of the natural law doctrine and adherence to positivism of the European brand' was responsible for the shrinking scope of international law.⁴ This book's case studies suggest otherwise. Also, Alexandrowicz does not consider the entries of China and Japan into the Family of Nations because formal intercourse with them began only in the nineteenth century.⁵ In discussing how China, Japan, Siam, Russia, Abyssinia,

⁴ C. H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies* (Oxford, OUP, 1967), p. 235.

⁵ *Ibid.*, p. 1.

and the Ottoman Empire entered the 'civilized' international society, this book presents extensive counter-evidence to Alexandrowicz's claim that a universal Family of Nations existed prior to the nineteenth century.

Second, a clear definition of the role played by the standard of 'civilization' highlights the important distinction between 'international systems' and 'international societies'. The nineteenth and early twentieth centuries were a transitional period between the expansion of the European international system and the establishment of a 'civilized' international society. During this period, the standard of 'civilization' demarcated countries which were full members of the 'civilized' international society from those which were merely part of the European international system.

It is not surprising that non-European countries previously unfamiliar with the European states-system found themselves part of that international system long before they were considered as candidates for the 'civilized' international society. Countries seeking to enter the 'civilized' international society were first expected to learn its customs and norms, and to embrace its institutions. That took time. The Ottoman Empire, which had interacted with the European states-system for hundreds of years, was not admitted into the European international society until 1856, and then only provisionally. Even Japan, which consciously and conscientiously made fulfilling the standard of 'civilization' a national goal, found the path to accreditation as a 'civilized' power long and difficult.

Each non-European country faced the same quandary. Conflicting demands required that it preserve traditional culture (as defined by historic standards of 'civilization'), and at the same time 'civilize' its domestic and international practices (according to the prevailing international practices of the day). The same dilemma continues today.

Indeed, especially from the non-European perspective, one cannot speak of 'modernization' or the 'process of becoming modern' in any kind of historical perspective without referring to 'civilization' and the 'process of becoming "civilized"'. For this reason, a third topic of current concern is the identity and unity of the contemporary, at least superficially cosmopolitan, society. Precisely because the

international society has expanded to become global, cultural pluralism, while recognized as an inescapable and possibly desirable fact, is also seen as a potentially debilitating weakness. Does cultural diversity dilute the international society to the point that the centre cannot hold, that any sense of society is more mirage than fact? To what extent have the non-European members of the international society adopted its norms and institutions only superficially? Will culturalism increase as countries, for instance, the 'New Iran', return to customary ways of doing things, as enshrined in historic standards of 'civilization'?

A look at these questions in their historical context yields different answers from those given by a merely retrospective glance from the vantage point of today's more cosmopolitan society. In an age when it is unfashionable to dwell on differences between races, colours, or creeds, it is easy to overlook the fact that those in earlier eras, both inside and outside Europe, viewed the world very much in terms of differing civilizations and divergent cultural manifestations, including those arising from ethnic, racial, and religious distinctions. Especially historical perspective makes clear that one cannot talk of culture in the detached terms of contemporary modernization theory. At its very roots, culture implies the ways persons (and collectivities of people) perceive the world about them and determine what they value and do not value within it. There are no value-free models of development; nor do such theories become more objective for being more clinical in their terminology or postulates. Nevertheless, the ultimate lessons of the more than one-hundred-and-fifty years of sustained interaction between what were before called 'civilized' and 'uncivilized' countries have yet to be learned.

Fourth, international relations specialists, including international lawyers, ask specifically what future international law has in a multicultural world. In the 1960s, a 'crisis of international law' occurred as the ranks of the United Nations swelled with new members who stridently denounced the colonial vestiges of the international law of which 'unequal treaties' were perceived to be a blatant symbol. The subsequent twenty years have dispelled the early fears that these newly independent countries would totally reject international

law. Still, many 'Third World' countries continue to feel that their earlier treatment as 'uncivilized' entities precluded their participation in the development of international law, and indeed made them its objects.

This 'subjugation' by means of international law is seen not only as a historical but also as a continuing injustice. Vestiges of the standard of 'civilization' still appear in Article 38 of the Statute of the International Court of Justice in the qualifying phrase, 'recognized by civilised nations', and in Article 73 of the United Nations Charter regarding the trusteeship system. The juridical character of the 'sacred trust of civilisation' has given rise to international dispute in the as yet unsettled International Court of Justice cases dealing with South West Africa (Namibia). Also at issue are questions of international boundaries, state succession, and the validity of treaties signed under duress. For example, the boundary disputes between the Soviet Union and China, and between China and India, still hinge in part on the question of 'unequal treaties'.

Fifth, observers of world politics strongly disagree about the nature and international role of the 'Third World'. It is persuasively argued that the 'Third World' is only a loose political coalition of highly diverse, heterogeneous countries with competing interests. Nevertheless, it is worth considering what gives these countries common cause. B. V. A. Roling cites three commonalities: their common experience with colonial patterns, their comparable struggles for freedom, and their (resented) low standards of living.⁶ For many of these countries, part of their common experience with colonial patterns and the struggle for freedom was confrontation with the standard of 'civilization'. Just as some memories of the Second World War are real to Europeans in a way they are not to many Americans, so memories of the struggle to measure up to European standards are most enduring to those for whom they were most traumatic. Few in the West ever fully appreciated the deep-seated humiliation which resulted when individuals and societies, highly cultured according to their own standards of 'civilization', were

⁶B. V. A. Roling, *International Law in an Expanded World* (Amsterdam, Djambatan, 1960) p. 84.

ridiculed as 'uncivilized'. Whether or not revolutionary Iran's apparent rejection of international standards is a harbinger of future 'cultural revolutions' is an open question; but it is not unrelated to the attitudes and experiences of non-European countries concerning historic and modern standards of 'civilization'.

An appreciation for what the standard of 'civilization' was and how it functioned lies at the heart of a sixth area of current debate. Whereas the standard of 'civilization' emerged as a dominant norm in the last century, it is less clear what, if any, norms characterize this one. Human rights, anti-colonialism, non-discrimination, national self-determination, and equitable (re-)distribution of economic wealth have all vied for acceptance as international norms, but so far none has attained universal consensus.

Efforts are now being made to enshrine demands for a new international economic order, a new international information order, and a new international cultural order within whatever legality United Nations resolutions proffer. An enduring dilemma of modernization, that of harmonizing indigenous traditions with external or imposed standards, continues to confuse both developing and developed countries. The developing seek to maintain their cultural integrity and historical roots while grafting in the fruits of modernity; the developed seek to promote their values—and manufactured products—without antagonizing the cultural sensitivities of those within the developing world.

For this reason, the dilemma of choosing between 'civilizing the natives' (cultural imperialism) and 'marrying the natives' (cultural relativism) was not faced solely by foreign office or state department field officers in the last century. Nor in this century is it faced solely by their contemporary counterparts over matters like human rights or development policy. These questions are more wide-ranging and extend to the myriad points of dissimilarity between the modern, increasingly cosmopolitan international society and the countries within it which maintain indigenous cultural roots. The answers to these questions also hold a key to the resolution of issues that require negotiation across cultural lines. In this context, it is essential to ask: Does a standard of 'civilization' still exist? If not, what has taken place?

The questions which surround the identifying marks and boundaries of the contemporary international society; the future of international law in a multicultural society; the nature of the 'Third World' and its position in contemporary politics; and the delineation of contemporary international norms will elude definitive answers until the role played by the standard of 'civilization' in the evolution of international law and international society is more clearly identified. Such an effort must begin with a definition of the standard of 'civilization' itself.

Defining the Standard of 'Civilization'

By 1905, at the latest, a standard of 'civilization' had emerged as an explicit legal principle and an integral part of the doctrines of international law prevailing at the time. Schwarzenberger describes it as 'an elastic but, nevertheless, relatively objective standard for the treatment of foreign nationals'⁷ that had 'crystallised into a rule of international customary law' from the middle of the nineteenth century.⁸ In general, the standard of 'civilization' demanded that foreigners receive treatment consistent 'with the rule of law as understood in Western countries'.⁹ In specific terms, this meant 'a modicum of respect for the life, liberty, dignity, and property of foreign nationals, such as may be expected in a civilized community, freedom of the judiciary from the direction of the executive, unhindered access to the courts and reasonable means of redress in the case of manifest denial, delay, or abuse of justice'.¹⁰

The standard of 'civilization' evolved to include the following requirements:

1. a 'civilized' state guarantees basic rights, i.e. life, dignity, and property; freedom of travel, commerce, and religion, especially that of foreign nationals.
2. a 'civilized' state exists as an organized political

⁷ Georg Schwarzenberger, *A Manual of International Law*, 6th edn. (Abingdon, Oxon., Professional Books, 1976), p. 84.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

bureaucracy with some efficiency in running the state machinery, and with some capacity to organize for self-defence;

3. a 'civilized' state adheres to generally accepted international law, including the laws of war; it also maintains a domestic system of courts, codes, and published laws which guarantee legal justice for all within its jurisdiction, foreigners and native citizens alike;

4. a 'civilized state' fulfils the obligations of the international system by maintaining adequate and permanent avenues for diplomatic interchange and communication.

The standard of 'civilization' also included a more subjective requirement:

5. a 'civilized' state by and large conforms to the accepted norms and practices of the 'civilized' international society, e.g., suttee, polygamy, and slavery were considered 'uncivilized', and therefore unacceptable.

These five requirements are examined in greater detail below.

In general, the standard of 'civilization' reflected the norms of the liberal European civilization which arose to replace, though it remained firmly rooted in, the mores of Christendom.¹¹ Because the international society of European countries automatically protected the life, liberty, and property of foreigners, defenders of European extraterritoriality in the non-European countries (like Rodney Gilbert) contended that such mere basic 'rights' were 'protection which every civilized state automatically affords'.¹² Circular logic produced a seemingly straightforward corollary. countries unwilling or unable to guarantee such rights could not be considered 'civilized'.

What these basic 'rights' were and what constituted their guarantee was never well defined. Further, differing conceptions of and demands for 'civilized' rights made them difficult to enforce. Those journeying in distant lands wanted freedom of travel, as enjoyed in Europe. Merchants argued

¹¹ Robert W. Tucker, *The Inequality of Nations* (London, Martin Robertson, 1977), p. 9.

¹² Rodney Gilbert, *The Unequal Treaties* (London, John Murray, 1929), p. vii.

for the right to freedom of commerce, and missionaries for the right to free propagation of religion. These rights were often interrelated, for example, freedom of travel was seen as a prerequisite to unhindered proselytizing. The foreigners seemed to benefit from any 'right' gained in any sphere.

Limited legal authority to protect these basic rights for European nationals in foreign countries was established in the early treaties signed with the non-European countries. This authority was often extended in subsequent treaty agreements. For example, the first treaty signed with China (the Treaty of Nanking) opened five ports to European trade and residence. The Treaty of the Bogue, signed the following year, granted extraterritoriality and permitted warships to anchor at the five ports in order to protect those who had taken up residence and trading there.

A second requirement of a 'civilized' state was political organization. To the publicists of the day, political organization meant an effective government over defined territory, that is, 'a considerable number of persons who are permanently united by habitual obedience to a certain and common superior, or whose conduct in regard to their mutual relations habitually conforms to recognized standards'.¹³ In addition, a 'certain minimum of efficiency in running the State machinery' had to be evidenced.¹⁴ T. E. Holland associated 'well-organized States' with 'civilized' states.¹⁵ John Westlake concurred that a country 'with an old and stable order of its own' might be considered 'civilized'.¹⁶ In practical terms, a 'stable government whose writ runs over the whole country' was seen as necessary for the guarantee of basic rights and freedoms within a country.¹⁷ For example, Her Majesty's Consul Knox challenged the authority of the Siamese government in Chiangmai on the grounds that it could not guarantee the lives or property of its own nationals, let alone that of British nationals, against the bandits in that area.

¹³ M. F. Lindley, *The Acquisition and Government of Backward Territory in International Law* (London, Longmans, Green, 1926), p. 23.

¹⁴ Schwarzenberger, *International Law*, 6th edn., p. 13.

¹⁵ T. E. Holland, *Lectures on International Law* (London, Sweet and Maxwell, 1933), p. 117.

¹⁶ John Westlake, *Collected Papers of John Westlake*, ed. L. Oppenheim (Cambridge, Cambridge University Press, 1914), p. 103.

¹⁷ Sir Skinner Turner, 'Extraterritoriality in China', *British Yearbook of International Law*, X (1929), p. 63.

Some international lawyers, Westlake among them, assumed that an objective test of political organization was the ability to organize for self-defence.¹⁸ Against this notion (which appears to have been the conventional wisdom of the time), M. F. Lindley argues that a society's conformity to recognized standards was more important than its ability to unite against external aggression. He supports his case by postulating a hypothetical island community which had never had occasion to combine for common defence. Such a society could hardly be judged as 'civilized' or 'uncivilized' on the basis of its capacity for self-defence.¹⁹

Though Lindley's argument is only hypothetically persuasive, his concern that political organization be defined in terms other than those of capacity to resist external threats is laudable. Where political organization is defined in terms of capability for self-defence, then 'civilized' states are those which successfully repel aggression; 'backward' or 'uncivilized' states are those which fail to do so. Such thinking reduces international law to the efficacy of force, and equates civilization with the ability to wage war. During the 1930s, Italy used not dissimilar arguments to rationalize its aggression against 'uncivilized' Abyssinia.²⁰

On the third element of the standard of 'civilization', all the international lawyers agreed: 'civilized' states had to maintain domestic and international legal regimes consistent with those accepted by international society in general. Held to be a maxim of civilization in a society of states was *ubi societas ibi jus est*, 'where there is a society, there is law'.²¹ Conversely, a non-European state which did not obey 'civilized' international law could not be considered part of the international society which identified itself by that system of law. Westlake was representative of his day when he contended:

Without society no law, without law no society. When we assert that there is such a thing as international law, we assert that there is a society of states: when we recognize that there is a society of states, we recognize that there is international law.²²

¹⁸ Westlake, *Collected Papers*, pp. 2, 103.

¹⁹ Lindley, *Government of Backward Territory*, pp. 20-3.

²⁰ Frank Hardie, *The Abyssinian Crisis* (London, Batsford, 1974), p. 94.

²¹ Westlake, *Collected Papers*, p. 2.

²² *Ibid.*

An important element in international law was the body of rules and conventions governing the conduct of war. Familiarity with and adherence to such rules of war was considered essential in determining whether or not a state accepted international law. China's ignorant firing on the white flag was taken as proof of its 'uncivilized' condition. On the other hand, Japan's scrupulous efforts to prosecute both the 1894 Sino-Japanese War and the 1904 Russo-Japanese war according to the accepted laws of war won her the plaudits of Europe. Various Japanese writers took great pains to proclaim that Japan's 'law-abiding spirit, especially in war' had induced her to 'issue very stringent and systematic military laws, instructions and acts'.²³

An assumed corollary of a state's adherence to international law was its willingness and ability to guarantee legal justice for all within its jurisdiction, foreigners and native citizens alike. Europeans in many non-European countries were deeply concerned by the absence of written laws, by the foreign conceptions of jurisprudence, and by the apparent lack of independent judiciaries (when they existed at all).²⁴ Published and publicized civil and criminal codes available for scrutiny in European languages; independent court systems; and acceptable jurisprudential underpinnings for their domestic legal systems—all were required in practice before the non-European countries could be considered 'civilized'.

A fourth requirement of 'civilized' countries was their establishment of adequate and permanent avenues for diplomatic interchange and international communication. Diplomacy was seen to lie at the heart of the sustained contact necessary to bind states together. Reciprocal interests were assumed to accrue from the free flow of information, the facility of negotiation, and the opportunities to present causes before the courts or governments of other countries.²⁵ Legal inviolability of envoys and resident embassies were two more components of the 'cogent set of arrangements whose purpose was to focus and articulate the business of the states-system'.²⁶ In terms of the standard of 'civilization', permanent

²³ Sakuye Takahashi, *Cases on International Law during the Chino-Japanese War* (Cambridge, Cambridge University Press, 1899), p. 2.

²⁴ Turner, 'Extraterritoriality in China', p. 63.

²⁵ Keens-Soper, 'The Practice of a States-System', p. 34.

²⁶ *Ibid.* p. 35.

avenues of communication presented an opportunity for the embassies of non-European countries in Europe to persuade the governments there that they were 'civilized', and permitted the European embassies in their countries to corroborate those claims. Daily diplomatic intercourse presupposed that language translation, official titles, dress, and all other conventions of the diplomatic world could be conducted in the manner expected of 'civilized' states.

Adherence to public international bodies (or unions), and participation at international conferences, also provided evidence that a state had taken a responsible role in international society. Such organizations as the 1868 International Telegraph Bureau, the 1874 General Postal Union, and the 1875 International Bureau of Weights and Measures were open to all nations as international bodies established on a permanent basis.²⁷ Membership in them was seen as an important way to facilitate international communication, and thereby to bind international society. Even more important were international conferences, such as those conducted at The Hague in 1899 and 1907, and at Versailles in 1919. Attendance at international conferences did not automatically confer 'civilized' status; but it was noted favourably by international lawyers such as T. E. Holland, who felt that representatives of China, Persia, and Siam at The Hague conferences contributed to bringing them to the 'outer courts of the charmed circle', if not qualifying them as 'fully civilized states'.²⁸

The fifth requirement of the standard of 'civilization' was its most elastic, and most subjective. Not all of what it took to be considered 'civilized' could be neatly categorized as the protection of basic rights, political organization, adherence to international law, or maintenance of permanent diplomatic relations. The demand that a country conform to 'civilized' norms represented an intuitive effort to guarantee the general acceptability of its cultural practices before declaring it 'civilized'.

Coping with the fundamentally different ways in which non-European countries approached basic philosophical

²⁷ Evan Luard, *Types of International Society* (New York, The Free Press, 1976), p. 333.

²⁸ Holland, *Lectures on International Law*, pp. 39-40.

and jurisprudential questions, e.g. the nature of justice, posed a major challenge for the 'civilized' international society. These differing traditions and underlying assumptions could not be changed merely by imposing the requirement that legal and criminal codes be written, or that European-styled court systems be established. For example, in China, the jurisprudential tenet that sometimes held collective rights and duties ahead of individual ones, for example, when the Chinese held an entire ship's crew responsible until a single offender could be determined from among them, did not square well with the European sense of 'civilized' justice. In Africa, native courts were authorized to apply native customary law when it was compatible with 'natural justice' and 'good conscience and morality'—which meant in practice that it was not considered 'patently and grossly repugnant to European ethical ideas'.²⁹

Even seemingly unimportant differences of tradition and custom, such as dress or diet, sometimes presented obstacles to non-European countries in their quest for 'civilized' status. For example, the 1871 Iwakura mission from Japan to the West made only one public appearance dressed in traditional court kimonos. Their audience before President Grant of the United States convinced them that Japan would never be considered a 'civilized' state until its official representatives wore Western-styled suits. Westlake's emphasis on similarity of 'habits, occupations, ideas, family life, social life'; 'avocations and interests'; 'sense of justice', etc., helps to explain Japan's *rokumeikan* where foreigners were entertained literally in the style to which they were accustomed. 'There are differences of detail', Westlake concludes, 'but no one who has had a liberal education feels himself a stranger in the houses, schools, law courts, theatres, scarcely even in the churches, of another ['civilized'] country.'³⁰ Japan and the non-European countries which followed its example sensed that they would have to imbibe at least some of these practices if they were to be considered 'civilized'.

In none of these attempts to guarantee minimum protection of 'civilized' standards; to outline the requirements

²⁹ R. E. Robinson, 'Law Applicable in Native Courts', *Journal of African Administration*, vol. I, No. 4 (October 1949), p. 158.

³⁰ Westlake, *Collective Papers*, p. 101-2.

necessary for a country to be considered 'civilized'; or to make the standard an integral part of the qualifications necessary for recognition in international law, was the standard of 'civilization' intended as a legal device to impose European civilization *per se*. However, by definition, it was expected that members of the same society of 'civilized' states would share sufficiently in fundamental, underlying assumptions about the world; in customary, historically proven institutions; and in ordinary, everyday life-styles, so as to feel part of a common society and a shared civilization. Drawing the fine lines between a universal standard of civilization, a European standard of 'civilization', and a standard of European civilization was one of the problems of defining and applying the standard of 'civilization'.

Problems in Defining the Standard of 'Civilization'

At least three problems made definition of the standard of 'civilization' difficult.

First, the standard was never much more than a fairly blunt legal instrument. Even after it emerged as an explicit legal concept, the standard was still subject to the admixture of contrasting elements—political and legal, subjective and objective, explicit and implicit—associated with any doctrine of recognition. As has been noted, the standard was always more than a mere list of requirements necessary for a state to be recognized as 'civilized'. It was also a concept. Closely associated with the notion of 'civilization' in general, the standard of 'civilization' was no more easily defined in general terms in the nineteenth century than it is today.

In particular, the subjective part of the standard tended to remain implicit, thereby falling in the category of what James Joll has called 'unspoken assumptions'.³¹ These 'unspoken assumptions' include the 'instinctive reactions, traditions, and modes of behaviour' which are usually taken for granted and therefore seldom written down in specific terms.³² By definition, these 'unspoken assumptions' are an

³¹ James Joll, '1914: The Unspoken Assumptions', *The Origins of the First World War*, ed., H. W. Koch (Great Britain Macmillan Press, Ltd., 1972), p. 309.

³² This is part of a working definition of culture discussed in: Adda Bozeman,

integral part of the culture of the individuals making them. Even those nineteenth-century publicists who refused to dismiss all non-European civilizations as patently 'uncivilized' found it difficult to define which aspects of those historic cultures might rightly be included in a universal standard of civilization. However unintentionally, the nineteenth century's standard of 'civilization' tended to remain a European standard, if not a standard of European civilization.

Second, the subjective and tacit assumptions about civilization which made the standard difficult to define, also made it difficult to apply in practice. Even when the standard was seen only as a legal principle to facilitate sustained relations with barbarous and savage countries, its application in practice often made it into a guideline and stimulus for reform. In particular, the foreign consuls charged with implementing the extraterritorial provisions of the early treaties found it difficult to dissociate the protection of life, liberty, and property—especially in a judicial context—from the general moral norms and practices of the host culture.

The problems of maintaining 'civilized' conditions without 'civilizing' the country's inhabitants was often as difficult as 'civilizing' its inhabitants without estranging them from their cultural heritage. Sometimes this meant walking a tightrope between imposing a standard of European civilization (making the savages European) and countenancing barbarisms in the name of cultural relativity (leaving them savages).

Practical answers to the permissibility of polygamy, slavery, or suttee; the desirability of wearing shoes or blouses in tropical climates; the possibility of accepting kimonos or other non-European-styled dress during treaty negotiations; and the practicality of dealing with jurisprudential systems based on collectivist notions of group responsibility, etc., were seldom forthcoming. Defining the standard of 'civilization' and its intended scope of influence was difficult in part because the issues with which it dealt were extremely complex and problematic—even more so then than today.

A third problem derives from different perspectives. To speak of *the* standard of 'civilization' is often to forget that China, Japan, the Ottoman Empire, and other non-European

countries had to compromise or surrender their own historic standards of 'civilization' in order to accept what they initially perceived to be a European one. Earlier in history, many such standards existed. This tendency to speak of the standard of 'civilization' as though it were a single universally accepted standard is due not only to traditionally Eurocentric perspectives, but also to current, historically myopic viewpoints.

The closing of the frontier of international society in modern times has erased, or at least blurred, the historical line between Europe and non-Europe. If standards exist in contemporary international society, they are certainly not defined in terms of differences of civilization; what has been called 'the barbarian option' no longer exists.³³ Indeed, the international controversy over apartheid in South Africa underscores the continuing effort to eliminate the vestiges of an old colonial order that is as anachronistic and unfashionable as the nineteenth-century standard of 'civilization'. Determining whether or not a new standard has superseded the old standard of 'civilization' is at least partially a problem of defining the role these concepts play in the evolution of international society.

Defining civilization, let alone determining standards for it in all but the broadest terms, remains an acute if not intractable philosophical problem with real and practical everyday ramifications. However, it is useful to keep in mind that this book uses the term 'standard of "civilization"' in two senses. First, the term refers to the five requirements that 'civilized' countries were presumed to have fulfilled, including the protection of basic rights and adherence to the rules of international law and diplomacy. Second, in a more general sense, the term refers to the concept which determined the domain of international law, and thereby defined the identity and delimited the boundaries of the 'civilized' international society. The historical process by which the standard of 'civilization' emerged demonstrates how the theoretical distinction, at least, between the specific legal principle and the general concept developed.

³³ Mayall, 'International Society' p. 127. By 'barbarian option' he means: 'The rules which applied in relations between "civilized" peoples did not automatically apply beyond the civilized world'.

II

The Historical Emergence of the Standard of 'Civilization'

In pre-1914 customary international law, the standard of 'civilization' emerged as Europe's response to two problems—one practical, one philosophical—which had arisen with Europe's expansion into the non-European world. First, in response to the practical problem of protecting European life, liberty, and property in sometimes hostile non-European countries, the standard of 'civilization' guaranteed certain basic rights 'observance of which, at least in relation to foreign nations, could be expected from civilised states'. Second, in response to the philosophical problem of determining which countries deserved legal recognition and legal personality in international law, the standard of 'civilization' provided a doctrinal rationale for limiting recognition in international law to candidate countries which 'recognizing states, rightly or wrongly, regarded as being civilized'.¹

In state practice, these two expressions of the standard merged into a single test and rule:

the test whether a State was civilised and, thus, entitled to full recognition as an international personality was, as a rule, merely whether its government was sufficiently stable to undertake binding commitments under international law and whether it was able and willing to protect adequately the life, liberty, and property of foreigners.²

Three facets of the standard's historical emergence must be considered: the process by which the standard emerged; the elements of continuity and change within the standard; and the relationship of the standard to the social milieu out of which it emerged.

¹Georg Schwarzenberger, *The Dynamics of Law* (Milton, Professional Books, 1976), p. 114.

²Georg Schwarzenberger, 'The Standard of Civilisation in International Law', *Current Legal Problems*, 1955, p. 220.

The Process by which the Standard of 'Civilization' Emerged

Europe's responses to the practical and philosophical concerns which precipitated the emergence of the standard of 'civilization' are traced in, and documented by, two historical records: (a) the nineteenth-century treaties which Europe signed with the non-European countries, and (b) the international legal texts written by the leading international lawyers of the era. The early treaties illustrate the efforts of the European international system to adjust its state practice to the different customs and patterns of international intercourse held by various non-European countries. The international legal texts record the efforts of the era's leading international lawyers (publicists such as Henry Wheaton, William E. Hall, and T. E. Holland) to determine if and when the international law could recognize non-European countries as 'civilized' countries with full international legal personality. In turn, these treaties and legal texts are now themselves the best historical documentation for the two-stepped process by which the standard was codified and articulated as an explicit legal concept.

The first step of the standard's emergence was the codification of its requirements, for example, the assumption that the life, liberty, dignity, and property of European nationals would be protected in non-European settings. Initially implicit in the customary practice of the European states-system, these assumptions were not necessarily shared by all non-European countries. Hence, when signing treaties with non-European countries, the European countries deliberately inserted explicit provisions to make the non-European countries responsible for protecting European nationals according to what emerged as 'civilized' standards.

In time, the implicit expectations derived from the customary practice of the European states-system were codified as explicit requirements in the nineteenth-century treaties signed with increasingly numerous non-European countries. The fulfilled expectation that treaties signed with such countries as Japan, Siam, Vietnam, and Korea would follow the same general pattern strengthened the perception that such treaty arrangements had become, if they were not originally, the accepted mode of intercourse between the

European powers and the non-European countries.³ Both because minimum standards of 'civilization' were enforced and extended in each country, and because they were enforced and extended by similar processes in several countries, the implicit requirements of the standard of 'civilization' gradually crystallized until 'sufficient evidence existed to make it possible to hold that these minimum standards had become rules of international customary law'.⁴ By definition, such practice corresponded with what 'civilized states' regarded as general principles of law.⁵

Once the initially implicit concept of the standard of 'civilization' became part of customary international law, all that was required before it emerged as an explicit legal concept was its articulation as such. This second step in the standard's emergence occurred only during the extension of the European international society, sometime during the late nineteenth and early twentieth centuries. The actual task of articulating the standard of 'civilization' fell to the leading publicists of the day.

Of these, none was more successful or important than Henry Wheaton, who wrote *The Elements of International Law*. Born on 27 November 1785 in Providence, Rhode Island, to a wealthy and influential family, Henry Wheaton distinguished his early career by careful study of international law, and by intimate association with the leading legal and political figures of his day in Europe and America. His two decades of diplomatic experience, much of it as the Minister Plenipotentiary in Berlin, gave him the pragmatic understanding reflected in his highly successful *Elements of International Law*, first published in 1836. Ultimately, Wheaton's *Elements* went through fifteen American and English editions, twelve of them posthumously, the last in 1944. It was translated into French (twice), Italian, and Spanish. In 1864, in what his editor described as a 'singular distinction', *Elements* was translated into Chinese for use in China's newly established *Tsungli Yamen* or office for general administration.⁶

³ Ibid.

⁴ Schwarzenberger, 'The Standard of Civilisation in International Law', p. 227.

⁵ Ibid.

⁶ Henry Wheaton, *Elements*, 8th American edn. (Boston, Little, Brown and Co., 1866), p. xi.

In 1865 the Chinese translation of Wheaton also found its way into the hands of those who became Japan's Meiji Restorers. Initially at least, Wheaton's was considered the sole and definitive treatise on international law by countries in East Asia.

Examination of successive editions (both American and English) of Wheaton's *Elements of International Law*, reveals that the standard of 'civilization' was gradually articulated in response to the questions which arose from Europe's sustained contact with increasing numbers of non-European countries. Published in 1836, the first edition of Wheaton's *Elements* answers the question, 'Is there a universal law of nations?' firmly in the negative: 'The public law, with slight exceptions, has always been, and still is, limited to the civilized and Christian people in Europe or to those of European origin'.⁷ Wheaton notes the 'distinction between the European law of nations and that of the other races of mankind', but mentions no specific countries, citing only the opinions of earlier writers like Grotius, Bynkershoek, Leibniz, and Montesquieu.⁸ By the 1846 third edition of *Elements*, Wheaton adds a discussion on the rights of legation in Turkey, Persia, Egypt, and the states of Barbary, to illustrate what he quotes Savigny as having noted: 'the progress of civilization, founded on Christianity' in conducting 'intercourse with all the nations of the globe, whatever may be their religious faith, and without reciprocity on their part'.⁹ Likewise, relations with China are mentioned for the first time as evidence that it 'has been compelled to abandon its inveterate anticommercial and antisocial principles'.¹⁰

The first three English editions of Wheaton, published in 1878, 1880, and 1899, add no further notes on the status in international law of non-European countries. It is the 1904 fourth edition of Wheaton's *Elements* that mentions the great significance of 'the acquisition by Japan of full

⁷ Henry Wheaton, *Elements*, 1st American edn. (Boston, Little, Brown and Co., 1836), p. 18.

⁸ *Ibid.*, pp. 19-20.

⁹ Wheaton, *Elements*, 3rd American edn. (Philadelphia, Lea and Blanchard, 1846), p. 45.

¹⁰ *Ibid.*, p. 46.

international status' and that contains a new section titled 'the international status of non-Christian nations'.¹¹

In that section, China's international status is questioned when judged against the same standard used to vindicate Japan's claims for full international legal personality. 'While of the ability of China to form binding international engagements there can be no doubt', the discussion begins, there were two causes to question 'how far she has even now entered into the pale of public law'.¹² First, extraterritoriality meant that 'all jurisdiction civil and criminal over foreigners within the bounds of the Chinese Empire is carefully reserved to tribunals of their own nationality'.¹³ The need for extra-territoriality underscored China's inability to guarantee basic rights, including basic legal rights, and was one evidence of China's 'semi-civilized' status. Second, China's refusal to 'adopt the rules of war prescribed by the rules of civilised states', also formed 'a grave if not insuperable bar to her full recognition as a subject of international law'.¹⁴

In terms of the requirement that 'civilized' countries adhere to generally accepted international agreements, it was admitted that China had been invited to The Hague conference, had signed parts of the conventions on pacific settlements of disputes, and had subscribed to the Geneva Convention.¹⁵ However, the Boxer outrage against the 'comity of nations' was of recent memory and of sufficient gravity to make uncertain China's ability to uphold the standard of 'civilization'. Indeed, it appears that the standard was preserved in China only after a powerful and determined concert of 'civilized' powers rallied together to defend it.

In sharp contrast to China, Japan had used the standard to direct its transition from what was considered a 'semi-civilized' country subject to 'unequal treaties', to a 'civilized' great power with recognized international status. The same section in Wheaton's *Elements* which seriously questions China's status in international society delightedly praises Japan. Japan had adhered to international conventions, including the 1866 Geneva convention and The Hague convention; in the 1895 war, Japan had 'striven scrupulously

¹¹ Wheaton, *Elements*, 4th English edn., J. Beresford Atlay (London, Stevens and Sons, 1904), p. vi.

¹² *Ibid.* p. 22.

¹³ *Ibid.*

¹⁴ *Ibid.*, p. 23.

¹⁵ *Ibid.*

to comply with the highest civilised standards'; and Japan had revised its civil and criminal codes so that as of 1899 'all persons of whatever nationality within the confines of Japan have been subject to the Japanese tribunals'.¹⁶ The 1902 alliance with Great Britain was a final sign of Japan's qualifications to enter international society with full international status. Even before Japan's victories in the Russo-Japanese war, it was 'impossible to dispute her right to rank among the powers who are, without reservation, subject to international law'.¹⁷

Less well known than Japan's rise to prominence as a great power are the details of the process by which it achieved 'civilized' status in international law. On 16 July 1894, a fortnight before the outbreak of the Sino-Japanese War, Japan signed the Aoki-Kimberley Treaty in which Britain provisionally renounced extraterritoriality in Japan, to take effect after five years. Other European powers soon followed suit. In 1899 the European treaty powers renounced their extraterritorial privileges in Japan as agreed; by 1911 Japan had also won back control over her tariffs. With the 'unequal treaties' (those symbols of semi-civilized status) completely abrogated, Japan gained recognition as a 'civilized' country. By 1905, the added impact of Japan's victory over Russia had highlighted the reality that, both in terms of the balance of power and in terms of participation in other international institutions such as war, law, and diplomacy, Japan had entered the international society as a 'civilized' power with which to be reckoned.

This culmination in Japan's efforts to conform to the standard of 'civilization' also marked a turning point in the process by which the standard emerged. Initially unfamiliar with the standard, by efforts to fulfil its requirements, Japan made it necessary that the standard be articulated in specific, legal terms. When Japan gained recognition as a 'civilized' power by adhering to it, the standard of 'civilization' took its place as a universally valid principle, applicable to all non-European countries seeking to enter the Family of Nations as 'civilized' states. Clearly neither a European nor a Christian

¹⁶ Ibid., see also the documents in Ian Nish's *Japanese Foreign Policy 1869-1942* (London, Routledge & Kegan Paul, 1977), Appendix.

¹⁷ Wheaton, *ibid.*, p. 24.

country, Japan became the first non-European country to gain full international status and full recognition as a 'civilized' state by fulfilling the requirements of an explicit standard of 'civilization', codified in treaties, articulated by the publicists, and embedded as a rule of customary international law. In proving itself, Japan vindicated the standard.

Accordingly, with the emergence of Japan, the implicit set of customary practices, carried from the European state tradition into a global setting by the expansion of the international society, became an explicit standard of 'civilization'. Writing within a few months of the Japanese victory over Russia, Oppenheim specified three conditions for a country to be recognized as a legal member of the Family of Nations:

A State to be admitted must, first, be a civilized State which is in constant intercourse with members of the Family of Nations;

Such a State must expressly or tacitly consent to be bound for its future international conduct by the rules of International law; and

Those States which have hitherto formed the Family of Nations must expressly or tacitly consent to the reception of the new member.¹⁸

Outlined this clearly by Oppenheim in 1905, the same three conditions, expressed in almost identical terms, were listed in the 1929 edition of Wheaton's *Elements* as requirements for non-European countries wishing to gain full international legal personality. Noting that 'the gradual extension of relations among states has enlarged the field within which international law is applicable', the sixth edition of Wheaton goes on to say that 'the extension necessarily involves three factors':

The State to which international law is to be extended must have a form of civilisation which renders it able to apply the rules of that law, and it must be in communication with the States already enjoying it;

It must further be prepared to accept the rules of that law as binding upon it; and

The other states must agree to accept the new member of the Family of Nations.¹⁹

¹⁸L. Oppenheim, *International Law* (London, Longmans, Green, 1905), i.32.

¹⁹Wheaton, *Elements*, 6th edn., i.30.

At this point in the editions of Wheaton, the standard of 'civilization' emerges as a clearly articulated, explicit set of requirements necessary for recognition as a 'civilized' country and as a member of the Family of Nations.

The conventional wisdom maintains that an explicit standard of 'civilization' dates back to 1856, to the time when the Ottoman Empire is traditionally assumed to have been formally admitted as a 'civilized' member of European society. Particularly in retrospect, it is easy to telescope the period of nearly forty years between the signing in 1856 of the Treaty of Paris and the signing in 1894 of the Aoki-Kimberley Treaty and to assume, apparently against the facts, that an explicit standard existed throughout this period to regulate the admission of non-European countries into the international society. While the Ottoman Empire was the first non-European country to gain provisional admittance into the European international society, it does not necessarily follow that it was admitted according to an explicit standard.²⁰

Further, unless the case of the Ottoman Empire is viewed as exceptional, it is difficult to explain the lack of discussion concerning the standard of 'civilization' in the international legal texts before the turn of the present century. For example, the first three editions of Wheaton's *Elements*, Hall's 1884 edition of *A Treatise on International Law*, and Lorimer's 1883 *Institutes of the Law of Nations*, are all silent on the subject. While the Turks were criticized subsequently to the 1856 Treaty of Paris, for alleged failures to fulfil 'civilized' duties, their legal obligations were never spelled out in the legal texts as they later were for China or Japan. Though he laments that the Ottomans had betrayed unspecified 'civilized' obligations, Lorimer only hypothesizes that should the Japanese 'continue their present rate of progress for another twenty years, the question whether they are not entitled to plenary political recognition may have to be determined'.²¹ Non-European countries in Asia and Africa receiving full international legal status was still more a question for future speculation than an issue of immediate practical concern at the time of Lorimer's conjecturing.

²⁰ This line of argument is elaborated in Chapter IV.

²¹ James Lorimer, *Institutes of the Law of Nations* (Edinburgh, Blackwood and Sons, 1883), vol. II, p. 102.

While treaty relations with China in 1842, Japan in 1854, and Siam in 1855 preceded the Treaty of Paris with the Ottoman Empire in 1856, it was still several years before the international lawyers consciously articulated the requirements of the standard which were enforced in the treaties entered into with these non-European countries. Only after sustained relations began with countries initially unfamiliar with the implicit assumptions and practices of the European international society, did the standard of 'civilization' have to be declared explicitly. Even then, the general consensus concerning the Ottoman Empire was that, in Oppenheim's words, 'Her position as a member of the Family of Nations was anomalous, because her civilisation fell short of that of the Western states. It was for that reason', he admitted, 'that the so-called capitulations were still in force, and that other anomalies still prevailed.'²² Indeed, since the Ottomans presented an anomaly even in terms of an implicit standard of 'civilization', and since the persistent efforts by Japan and other non-European countries to achieve 'civilized' status by fulfilling the standard increased the demand that its requirements be made explicit and precise in legal terms, it is more accurate to date the culmination of the process by which the standard of 'civilization' emerged not at the middle, but at the end, of the nineteenth century.

Two further points should be noted. The first is that, initially at least, the publicists attempted to distinguish between recognition of sovereignty and recognition of acceptance by the Family of Nations, and made adherence to the standard of 'civilization' necessary for both. Formal recognition of a state's statehood and sovereignty was a 'perfectly distinct thing' from the recognition required for membership in the Family of Nations, Wheaton asserted.²³ Oppenheim concurred, 'Statehood alone does not include membership of the Family of Nations.'²⁴

Oppenheim made adherence to the standard of 'civilization' mandatory for a state to enter the Family of Nations. 'There are States in existence', he said, 'although their number decreases gradually, which are not, or not fully,

²² Oppenheim, *International Law*, 3rd edn., p. 34.

²³ Wheaton, *Elements*, 6th edn., i. 48.

²⁴ Oppenheim, *International Law*, p. 108.

members of that family because their civilisation, if any, does not enable them and their subjects to act in conformity with the principles of International Law.²⁵ Recognition lost its function if 'a State entered with its birth really of right into the membership of the Family of Nations.'²⁶

It is sometimes noticed that Oppenheim's declarations contradict those of Hall. Indeed, writing ten years after the 1895 fourth edition of *A Treatise* was published (the last before Hall's death), Oppenheim takes specific issue with Hall's statement that, 'Theoretically a politically organized community enters of right . . . into the family of nations and must be treated in accordance with law, as soon as it is able to show that it possesses the marks of a state.'²⁷ However, Hall's Eurocentric perspective must be remembered; at the time he was writing, 'new states' still meant essentially new European states. He admits that it is only in 'rare instances in which a state is artificially formed, as was Liberia, upon territory not previously belonging to a civilised power, or in which a state is brought by increasing civilisation within the realm of law'.²⁸ Nor had Hall been presented with adequate opportunity to consider fully Japan's victory over China, and still less its victory over Russia. In this light, Oppenheim's approach represents not so much a change of doctrine as a continuity of doctrine in circumstances which he recognizes as changing.

In 1905, when the first edition of Oppenheim's *International Law* was published, the rise of Japan had presented international law with its first East Asian candidate not only for full legal personality and 'civilized' status, but also for complete membership in the Family of Nations. Yet, somewhat paradoxically, whatever the need to keep distinct in theory the separate recognition of Japan's sovereign statehood and its admittance into the Family of Nations, it was the claim by Japan (and by other non-European countries which followed its example) to statehood, sovereignty, equality, 'civilized' status, full international personality,

²⁵ Ibid.

²⁶ Ibid., p. 110.

²⁷ William E. Hall, *A Treatise on International Law* (London, Stevens and Sons, 1895), 4th edn., p. 87.

²⁸ Ibid., pp. 87-8.

and membership in the Family of Nations (claims eventually accepted by the international society), which further blurred whatever distinctions may have existed among them, before an example of a barbarous country fulfilling the standard of 'civilization' actually existed.

A second point to note is the universality with which the notion of a standard of 'civilization' was held among the publicists of all the 'civilized' countries. Holtzendorff's 1885 *Handbuch* protests 'the premature extension to all peoples of the forms of the Law of Nations, and of the principle of international equality'.²⁹ Holtzendorff cites the prodigiously varied organization of the 'Mahometan States of Europe' or of those 'that belong to the extreme East' and suggests their lack of the 'community of traditions' and the 'mutual understanding' which 'even in Europe took thousands of years to produce the germ of International Law'.³⁰

Pasquale Fiore, the distinguished Italian jurist, first published *International Law Codified* in 1890, following his successful three-volume *Treatise on Public International Law* (1879-84). Fiore limits the ways to escape the capitulations and their resulting restrictions upon the jurisdiction of the territorial sovereign to three: '1) when the country where the Capitulations are in force is annexed to an independent state; 2) when it ranks by reason of its civilization with civilized countries; and 3) when it is under the protectorate of a civilized state'.³¹ France's Fauchille held not dissimilar views.

Considered 'representative of the Tsarist period', the outstanding Russian publicist of the period was Frederic de Martens.³² His attitude toward the notion of the standard of 'civilization' is clear even from the title of his two-volume *International Law of Civilized Nations*, published in 1882-3. The Russian original went through five editions, and was translated into German, French, Spanish, Serbian, Persian, Chinese, and Japanese. Perhaps because de Martens became

²⁹ Holtzendorff, *Handbuch*, cited in T. E. Holland, *Lectures on International Law* (London, Sweet and Maxwell, 1933), p. 39.

³⁰ *Ibid.*

³¹ Pasquale Fiore, *International Law Codified*, 5th Ital. edn., trans. Edwin S. M. Borchard (New York, Baker, Voorhis, 1918), p. 211.

³² Arthur Nussbaum, 'Frederic de Martens: Representative Tsarist Writer on International Issues', *Nordisk Tidsskrift for International Ret*, XXII (1952), p. 52.

a permanent member of the Council of the Foreign Office, his arguments sometimes 'suggested rather the diplomatist in constant touch with his foreign office, than the jurist who adorned the chair of international law at St. Petersburg'.³³ For this reason, the translations of de Martens' work into Persian, Chinese, and Japanese 'can hardly be explained by the scholarly interests of the Asiatic nations of that time in the science of international law; these nations were, however, deeply interested in the official views of the Russian government'.³⁴

While de Martens's relationship to his particular foreign office was exceptionally close, a general congruence of beliefs about the standard of 'civilization' among the publicists of the various 'civilized' countries, and between the publicists and their foreign office counterparts, was very much the rule.³⁵ Particularly after the standard of 'civilization' emerged as an explicit legal principle, it was taken almost for granted as a starting-point for those who wrote about—and practised—international law.

Thus, the two-stepped process by which the standard of 'civilization' emerged is preserved in carefully documented form in the successive editions of the standard international legal texts and the canon of treaty law on which the publicists commented. In part, this process was intended to make explicit the implicit customs and assumptions of the international society. The task in the next section of this chapter is to delineate these elements of change and continuity.

Continuity and Change in the Standard of 'Civilization'

Elements of Continuity

Although the standard of 'civilization' was articulated as an explicit legal concept only at the end of the nineteenth century, the notion of such a standard was deeply rooted in the historical experience of the society of countries which had previously characterized their collectivity as Christendom

³³ T. E. Holland, 'Frederic de Martens', reprinted from *The Journal of the Society of Comparative Legislation*, p. 2.

³⁴ Nussbaum, 'Frederic de Martens', p. 62.

³⁵ This point is examined further in Chapter IV.

or Europe. There are two themes here. One theme is that the characteristics and qualities the Europeans came to describe as 'civilized' remained implicit until interaction between the European and non-European worlds required that they be spelled out explicitly. What the 'civilized' world had in common became apparent only when juxtaposed with the 'barbarous' and 'savage' worlds. A second theme is that many of the intellectual and institutional elements of what later became the standard of 'civilization' were natural outgrowths of the European states-system.

An examination of the legacy of Europe's historical experience reveals four elements of continuity which left their mark on the emerging standard of 'civilization'.

One element of continuity was the European expectation and belief, based on the European experience, that certain inalienable rights were associated with the freedoms of trade, travel, and proselytizing. Though the sixteenth-century Spanish jurist Vitoria is normally seen as a champion of the legal rights of the Amerindians, he is more fundamentally an exponent of what the Europeans held to be basic 'natural rights'. For this reason, Vitoria's description of the 'natural rights' of the Amerindians illustrates both Europe's early concern to define the rights of all with whom it came in contact in legal terms, and its unchanging demand that the basic elements of what later became known as a standard of 'civilization' be enforced.

Although Vitoria separates the world into 'believers' and 'nonbelievers', he does not seek to enforce the dictates of Christendom on the Indians. 'Whether they do or do not receive the faith, this furnishes no lawful ground for making war on them or seizing in any other way their lands', he states.³⁶ Though the Indians are 'barbarians', unsound of mind and guilty of mortal sins and other manifestations of heresy, their unbelief provides no grounds for denying them their legal rights. 'The barbarians in question', Vitoria concludes, 'cannot be barred from being true owners, alike in public and in private law, by reason of the sin of unbelief or any other mortal sin, nor does such sin entitle Christians to seize their goods and lands'.³⁷

³⁶ Franciscus de Vitoria, *De Indis et de Iure Belli. Reflectiones*, ed. Ernest Nys, Carnegie Institute of Washington (Washington DC, Gibson Brothers, 1917), p. 156.

³⁷ *Ibid.*, p. 125.

At the same time, Vitoria also felt that if the Indians did not protect the 'peace and safety' of those who came from afar, then those whose lives were endangered could take whatever measures were necessary to ensure their safety and well-being. If the 'natural rights' of the Spanish, including 'the right to trade with them (the Indians) and to journey in their lands', were violated, then the Spanish had 'against the Indians all the rights of war, and might take possession of their lands. If after recourse to all other measures', Vitoria argues, 'the Spanish are unable to obtain safety as regards the nature of the Indians, save by seizing their cities and reducing them to subjection, they may lawfully proceed to these extremities'.³⁸ The logic of his proof:

lies in the fact that 'peace and safety are the end and aim of war,' as St. Augustine says, writing to Boniface. And since it is now lawful for the Spaniards, as has been said, to wage defensive war or even if necessary offensive war, therefore everything necessary to secure the end and aim of war, namely, the obtaining of safety and peace, is lawful.³⁹

'Safety and peace' were defined, of course, from Vitoria's frame of reference, as they were to be by subsequent European publicists. The Spaniards' resort to war against the Indians was further justified, Vitoria claims, by another fundamental right. 'Ambassadors are by the law of nations inviolable and the Spaniards are the ambassadors of Christian people', he says. It is their 'right to preach and declare the Gospel in barbarian lands'.⁴⁰

In the course of his argument, Vitoria upholds the implicit requirements of the standard of 'civilization' that were made explicit centuries later. For Vitoria, the issue was less one of faith and more one of protecting certain natural rights. The Indians maintained their legal rights and protection so long as they guaranteed the 'safety and peace' of Spaniards journeying, trading, or preaching the Gospel. With this emphasis on freedom of trade, travel, and proselyting, the requirements Vitoria seeks to uphold presage their later explicit definition as part of the standard of 'civilization'.

The European requirement that countries deal with each other within the customary framework of international law

³⁸ *Ibid.*, p. 155.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, p. 156.

and diplomacy is a second fundamental continuity which links the emergence of an explicit standard of 'civilization' to the assumptions implicit in the historic European states-system. These assumptions were by-products of, and thereby inherent to, the very structure of the states-system itself. They were also implicit for that reason—'implicit in the sense that they were more openly proclaimed not by being announced or authorised by any one body of persons meeting at a particular moment, but in the no less instructive reiteration in practice of shared precepts and rules of conduct'.⁴¹ The requirement that European countries participate in the institutions of the society of which they were historically a part was never 'authorised' or proclaimed because it did not need to be.

It had not always been so. European states had once repeated clauses concerning the rules of equity in their treaties with each other. In time, such expectations formed a foundation of shared precepts and rules of conduct within the European states-system, obviating the need for their explicit articulation among its members. 'Significantly, however, such [European] states continued to insert some of these clauses in treaties with new states which could not be expected to be fully aware of, or observe, these rules or in treaties with states on the fringes of Western civilisation'.⁴² In the nineteenth century, in the course of intense interaction with countries unfamiliar with the European international society's customary practices and unspoken assumptions, these standards needed to be explicitly articulated. Though the international system was becoming global, the institutions which formed its core remained essentially European.

Only in fairly recent times, and then not altogether successfully, have Alexandrowicz and others challenged these Eurocentric institutional foundations as the sole and original source of the standard of 'civilization' and of international law in general. Commentators such as Verzijl still join the mainstream nineteenth-century writers in declaring that, (1) even the historic countries in non-European world orders,

⁴¹ Keens-Soper, 'The Practice of a States-System', p. 29.

⁴² Schwarzenberger, *The Dynamics of Law*, pp. 62-3.

e.g. China and Japan, were newcomers to the European international society; and (2) that they had merely adopted the European law of nations in the process of entering into that society.⁴³ While stressing the need for a sympathetic interpretation of Alexandrowicz, Martin Wight suggests a concentric circle model of the domain of international law, paralleling in a way T. E. Holland's conception of a 'charmed circle' of 'civilized' nations surrounded by other nations with various degrees of civilization on the outside.⁴⁴

A sense of moral responsibility for the well-being of the disadvantaged was a third element of the customary European practice and concept to be imbibed as a dimension of the standard of 'civilization'. A sense of *noblesse oblige* required that Europeans involved outside Europe deal justly with weaker nations, or at least justify their behaviour according to some standard of what was right or fair. While this moral sense was often obscured by less noble tendencies, it did help check what might otherwise have been completely selfish motivations. Not a small part of this moral sense derived from the Christian dictate to take the good news to every nation. Though the Europeans later tried to dissociate the more objective conception of 'civilization' from its Judaeo-Christian roots, such Christian notions as letting one's light shine and being one's brother's keeper still influenced the doctrine of 'fair play' and what it meant to be 'civilized'.

As has been noted, Vitoria is rightfully seen as an early voice of conscience in arguing for the application of European standards to non-European countries. In the celebrated trial of Warren Hastings, Edmund Burke first tied the notion of a 'trust' to the moral and ethical issues which became increasingly important as non-European countries were drawn into ever closer contact with the European countries. In the nineteenth century, this sense of moral responsibility can be traced in the parliamentary debates regarding the treaties the Europeans signed with different non-European countries. There can be no question that aspects of the standard were imposed by the use or threat of military force, and that they necessitated sometimes unwelcome changes in various

⁴³ J. H. W. Verzijl, *International Law in Historical Perspective* (The Netherlands, A. W. Sijthoff, 1969), i. 443-4.

⁴⁴ Wight, *Systems of States*, pp. 117-28.

non-European countries. Even so, the standard contributed to self-imposed European limits in the non-European world. Although cynics in both the European and non-European worlds decried the moral obligations associated with the standard as merely sentimental window-dressing or arrogant paternalism, the import remained that the standard was indeed to be applied universally, in all the countries, not just non-European ones.

A fourth element of continuity derives from the tradition that those who would be 'civilized' should turn to the civilization of Europe. This tradition reflected the self-conscious assessment of states which were the 'legatees of a civilisation thoroughly acquainted with the singularity of its own diverse character'.⁴⁵ This cultural self-confidence contributed to the criteria by which the dominant international society of states distinguished itself from the non-Christian, infidel world; from the non-European, geographically non-contiguous, and culturally different Asian and African world; and from the generically 'non-civilized' (barbarous and savage) worlds which it confronted and gradually enveloped during the course of its expansion.

The customs and practices inherent in the institutions of the European states-system, and the tradition that civilization was to be found in Europe, were integrated into a single standard, implicit because form and content were accepted by all. Before the nineteenth century no explicit standard of 'civilization' was spelled out. None needed to be. What Europe was, what it stood for, and how it functioned were matters of firsthand observation and customary experience. This was one of the 'implications intimated in the practices of men who shared a civilization and who inherited an entire vocabulary of words and procedures for the conduct of public affairs'.⁴⁶ Peter the Great's efforts to modernize ('civilize') Russia along European lines reinforced the feeling that Europe had the civilization most worth emulating. Likewise, 150 years later, Japan's essentially voluntary efforts to fulfil the European standard vindicated it.

⁴⁵ Keens-Soper, 'The Practice of a States-System', pp. 25-6.

⁴⁶ *Ibid.*, p. 28.

Elements of Change

Two main elements of change determined the process by which the standard of 'civilization' emerged and the ways in which it was applied. First was the rise of non-European great powers; second were doctrinal changes in the approach to international law brought by the ascendancy of positivism. In fact, the significance of the first change was much greater than that of the second.

At the close of the nineteenth century, although the political order of Christendom had long since crumbled, Europe was overflowing its geographical confines in a process of global expansion. As the 'great movement of European expansion and encroachment in Asia and Africa reached its peak, the result, it was generally believed, would simply be to transpose the European balance of power, as it had developed during the past four centuries, from a European to a global plane'.⁴⁷ However, what actually occurred was a direct challenge to the assumption that 'the ultimate decisions would be made in Europe', and to the continuity of historical tradition on which such assumptions were based.⁴⁸

Dramatic evidence that control of the balance of power no longer resided solely in Europe came with the rise of two non-European great powers, the United States and Japan.⁴⁹ The entry of these two Pacific powers onto the international scene during 1895-1905 constituted a major element of change for the international system. It hastened the process by which the standard of 'civilization' emerged. That the United States and Japan joined the international society during the same years as the standard of 'civilization' emerged as an explicit legal concept was more than a symbolic coincidence.

The United States, having survived a negative 'war of unification' in the Civil War of 1861-4 and having defeated an effete but recognized traditional power during the 1898 Spanish-American War, was accepted as a charter-member

⁴⁷ Geoffrey Barraclough, *An Introduction to Contemporary History* (Harmondsworth, Pelican Books, 1967), p. 96.

⁴⁸ Ludwig Dehio, *Germany and the World Politics in the Twentieth Century* (London, 1959), pp. 42-60 as cited by Barraclough in *Contemporary History*, p. 97.

⁴⁹ Barraclough, *Contemporary History*, p. 97.

once removed of the international society. After all, it was an heir of Christian and European civilization, besides being an extra-European great power. Japan had embarked with the Meiji Restoration on a modernization programme sufficient to bring a full and equal military alliance with Great Britain in 1902. With its resounding victories over China in 1895 and Russia in 1905, Japan emerged as both a non-European and a non-Christian great power. Although neither the United States nor Japan was part of European International society, both could be described as part of a 'civilized' international society. Thus, the public law of Europe was generalized, and the European international society was extended—both under the rubric of a standard of 'civilization'.

If the rise of non-European great powers demanded recognition in a general standard of 'civilization', the emergence of such a standard was still the culmination of a complex process in which other elements of change were involved. The standards of Europe and of Christendom superseded by the standard of 'civilization' were already being overtaken by events within and outside Europe. The fundamental shift in relations between Europe and the non-European world had begun half a century earlier. Indeed, the initial impetus for the standard's codification and articulation arose from Europe's relations with the non-European world which was greatly its military inferior. In part, the standard reflected Europe's need to explain and justify its overlordship of non-European countries in other than merely military terms.

Alexandrowicz attributes the emergence and application of a standard of 'civilization' to a second element of change: the ascendancy of positivist theories of international law. In many ways, the standard was both a product and a manifestation of the change towards positivist legal conceptions. However, the role played by positivist legal doctrines should not be overstated.

The fact that positivist notions supplanted naturalist doctrines as the fundamental philosophical basis of the European law of nations cannot be held responsible for Europe's increased use of coercive military force against non-European countries. True, this shift may have facilitated the rationalization of the use of force against non-European

countries. Positivist legal notions did underscore that 'admissibility of war and nonmilitary pressure' were a 'prerogative of sovereignty'. And, under the positivist conception, a measure of compulsion did not invalidate a treaty. Indeed, the treaty provisions which imposed extraterritorial or protectorate systems to guarantee 'civilized' rights for foreign nationals in non-European countries were thought justified by the same standard of 'civilization' they enforced.

Regardless of how positivist doctrines modified the European law of nations, they did little to change the content of the emerging standard of 'civilization'. The need for universal freedom of trade, travel, and proselytizing seemed patent; likewise, the need for international institutions of law, diplomacy, etc., had long been established by custom and tradition, at least so far as the European powers were concerned. Ascendant positivist legal notions merely spelled out explicitly what had been implicit historically.

While positive international law sanctioned the selective use of force against the 'uncivilized', and defined such countries as 'uncivilized'—partially for the circular reason that they were unable to defend themselves against military attack—the effects of such doctrines did not depart that radically from what Vitoria's natural law philosophies had countenanced in the past. Even Vitoria felt that military force was justified to protect the inviolable 'peace and safety' of the 'ambassadors of the Christian peoples'. Like Vitoria, those who assumed that non-European peoples had legal rights also presupposed that delicts were legal should such peoples violate the international law that granted them those rights in the first place. Thus, the nineteenth-century shift towards positive law and the tendency to describe 'civilized' rights on that basis gave a new name to an old practice—the willingness to use military force when basic rights, as defined by European conceptions of international law, were perceived to have been denied.

In this view, what changed was not so much the European willingness to use force to impose a standard of 'civilization', as the European ability to do so. Increasing use of European military force against non-European countries coincided with increasing availability of superior European fire-power (as exemplified by the nineteenth-century development of

breech-loading rifles and canons, high explosives, and the machine-gun in 1884). While it is simplistic to suggest that positivist law was merely an *ex post facto* rationalization for colonial exploits, it is equally wrong to confuse tiger and tail by making positivist law the cause, and the use of military force against non-European countries the effect.

Alexandrowicz and others also blame the ascendancy of positive international law for the discarding of 'some of the fundamental qualities of the classic law of nations, particularly the principle of the universality of the Family of Nations irrespective of creed, colour, and continent (nondiscrimination)'.⁵⁰ According to this line of argument, 'international law shrank from a global order into an Eurocentric system which imposed on extra-European countries its own ideas' and 'discriminated against non-European civilisation'. Thus, it ran on 'parallel lines with colonialism as a political trend'.⁵¹

It is valid to trace the requirement that countries were not 'civilized' until they passed a formal test so recognizing them to the presumptions of positive international law. However, this does not mean that the standard of 'civilization' emerged as international law shrank from a universal into an exclusive Eurocentric system. On the contrary, the standard emerged not so much to ostracize the non-European countries from the Family of Nations as to include them within the domain of international law.

Indeed, there never was a primordial, universal Family of Nations. The emergence of an explicit standard of 'civilization' underscored the fact that non-European countries did not consider themselves part of any Family of Nations centred in Europe. In fact, the universal Family of Nations hypothesized under classical natural law was based more on the conceptions of European theorists, than on the realities of sustained contact among the countries of the world.

The classic Family of Nations did not constitute a global international system, much less a global international society. In this sense, the non-European countries were 'newcomers'. Since they had never left or been displaced from it, they were newcomers to a new Family of Nations—one centred

⁵⁰ Alexandrowicz, *European-African Confrontation*, p. 6.

⁵¹ *Ibid.*

in, and administered by, Europe. For this reason, the elements of continuity and change in the standard of 'civilization' overlap with the process by which it emerged. The proclivity and ability to employ military force as justified by positive international law did little to alter the requirements of the standard of 'civilization' that were imposed in the early treaties. At the same time, sustained contact with the European international society caused the non-European countries to replace their historic standards of 'civilization' with that of Europe.

Vindicated by a process of self-fulfilling prophecy, a single standard of 'civilization' emerged. It had its genesis in the customary practice of the European states-system and in the moral norms of European culture. Yet, paradoxically, it became the first standard of 'civilization' genuinely to be applied and enforced on a global basis, as an identifying characteristic of a Family of Nations that was likewise becoming universal for the first time.

The Social Milieu of the Standard of 'Civilization'

The debate continues as to what extent the standard of 'civilization' was intended to be, and was recognized as, a universal standard with objective, legal requirements and humanitarian aspirations, and to what extent it was simply an ethnocentric statement of European racial arrogance, or rationalization for colonial hegemony. A common 'Third World' perception is that the standard of 'civilization' symbolized an international legal system which was European-grown, reflected European cultural biases, and essentially codified European hegemony and imperial dominance. To argue, as some do, that international law discriminated against non-European countries simply because it originated in Europe is a *non sequitur*. To enquire how the social and intellectual assumptions inherent in European society influenced the standard's emergence is something else.

The emergence of Europe has been described as a gradual shift from an identification with Christendom to an identification with 'Europe', not only as a geographical term but also as a political idea. As a philosophical trend, an identity as 'Europe'

(as opposed to 'Christendom') paralleled increasingly secular tendencies in the Age of Enlightenment, such as those manifest, for example, in the typical humanist philosophical and literary attitudes. As a political trend, an identity as 'Europe' was symbolically enshrined at Westphalia; was reflected in the influence of new types of cartography, as European explorers encountered and mapped the non-European world; and was traced to the fall of Constantinople as a challenge to Christian Europe.⁵²

Europe, wrote Voltaire in a telling passage, is a:

kind of great republic divided into several states, some monarchical, the others mixed; the former aristocratic, the latter popular, but all corresponding with one another. They all have the same religious foundation, even if divided into several confessions. They all have the same principles of public law and politics, unknown in the other parts of the world.⁵³

Even from Voltaire's time, self-conscious European assessments of civilization prefigure the requirements of the standard of 'civilization'. Criteria for 'civilized' states came to include: (1) a kind of political organization; (2) constant correspondence with one another; (3) similar religious foundation (later broadened and secularized to include elementary consonance of ethical, moral, and jurisprudential concepts); and (4) shared principles of public law and politics. Perhaps most significant is Voltaire's phrase, 'unknown in other parts of the world', which set Europe and European civilization apart from the rest of the world.

The process and tradition which fused identification with Christendom, with Europe, and gradually with 'civilization' in general was symbolized by the discourses of Samuel Purchas. Writing in the early seventeenth century, Purchas extolled the virtues of Europe: the identification of Christendom and Europe; its advantages of geography and climate; the 'resolute courages, able bodies, well-qualified minds of its people; its glory of holding Asia and Africa "captivated" and subjugated; its achievements as the sole home of arts and inventions like cooking, horse management, and chemistry;

⁵² Denys Hay, *Europe: The Emergence of an Idea*, 2nd edn. (Edinburgh, Edinburgh University Press, 1968), p. 73.

⁵³ *Ibid.*, p. 233.

and its honour as the cradle of the intrepid explorers'.⁵⁴

The *Oxford English Dictionary* entries for the words 'civility' and 'civilization' provide the basis for R. G. Collingwood's assertion that the concept of 'civilization' in English can be traced to 1772 and the attempt to distinguish among three senses of the word: the process itself; the conditions to which in a given case it leads (the result of the process); and the use of the word as an equivalent to 'civility' in Boswell's sense ('the ideal condition into which whoever is trying to civilize a community is trying to bring it'). Whereas Samuel Johnson distinguished 'civility' (the name of an ideal state) and 'civilization' (the name of a process directed toward that ideal state), Boswell triumphed in using the name of the process for the name of the state itself. Hence, the state Johnson wanted to call 'civility' is now in standard English called 'civilization'.⁵⁵ Whatever 'civilization' meant before, however, it is clear that the social and intellectual trends which became dominant in the nineteenth century affected the concept of 'civilization' and thereby at least indirectly the attitudes towards the standard of 'civilization'.

Among the nineteenth-century intellectual trends, none was as initially persuasive or pervasive as that of positivism. Based on belief in the progress of science, positivism has been characterized as the science of progress, the tendency to 'discuss human behaviour in terms of analogies drawn from natural science'.⁵⁶ It thus became tied to the Victorian belief in the progress not only of science but of all society, indeed of all mankind, toward ever higher levels of achievement and civilization.

The development of positivism is attributed to Auguste Comte, who coined the term. Comte's *Cours de philosophie positive*, published in Paris between 1830 and 1842, were aimed at the redemption and regeneration of humanity through the Law of the Three States and Classification of the Sciences. The three stages were the theological stage of belief in an anthropomorphic God, the stage of metaphysical

⁵⁴ Ibid., p. 120.

⁵⁵ R. G. Collingwood, *The New Leviathan* (Oxford, Clarendon Press, 1942), p. 286. See the discussion of civilization in Part III, pp. 280-342.

⁵⁶ H. Stuart Hughes, *Consciousness and Society: The Reorientation of European Social Thought* (London, MacGibbon and Kee, 1959), p. 36.

abstractions, and the stage of scientific truth. They were based on decreasing generality and increasing interdependence, and on the complexity of the sciences, namely mathematics, astronomy, physics, chemistry, biology, and sociology. Biology was seen to have recently reached the positive stage; Comte imagined that it was next the turn of sociology. Firmly embedded in Comte's hope for turning sociology into a science was the belief that human progress would thereby result by the application of scientific laws to society.⁵⁷

Not only did Comte's stages of development advance essentially unilinear models of human development and progress toward civilization, but his belief in science and the application of its laws contributed to a widespread conviction that the problems of man in society were readily capable of rational solutions. One of the most popular and perceptive of the writers who espoused positivism was Henry Thomas Buckle. Considered serious history despite its tremendous popularity, Buckle's *History of Civilisation in England* (two volumes, 1856-65) went through numerous editions. Devoting his efforts to 'ascertaining the whole of the laws which regulate the progress of civilization', Buckle sought to discover the general laws of human development through history.⁵⁸

Based on social Darwinian notions was the proposition that the advancement of civilization depended on the struggle between peoples of different races and colours. What was called the science of ethnology also came into its heyday. Gobineau's classic statement of the colour line, *The Inequality of Human Races*, used physiology to distinguish three clearly marked types, the black, the yellow, and the white—and to arrange them in a permanent hierarchy on the assumption that men were born and remained unequal, and that superior races declined when mixed with inferior ones. By this kind of logic, slavery or at least unequal relations between people of different races was justified, in part because it was the natural place of inferior coloured races to serve superior white ones.

⁵⁷W. M. Simon, *European Positivism in the 19th Century* (New York, Cornell University Press, 1963), pp. 4-9.

⁵⁸Fritz Stern, *The Varieties of History*, 2nd edn. (London, World Publishing Company, 1970), p. 120.

Nor were the international lawyers immune to positivist notions. Indeed, positivism so decisively influenced nineteenth-century international law that positivist legal doctrines began superseding those of natural law. For example, James Lorimer, not unlike Gobineau, divided humanity into three zones or spheres—civilized humanity, barbarous humanity, and savage humanity. He further divided savage humanity into the ‘progressive and nonprogressive races of mankind’.⁵⁹ Though unconcerned whether these distinctions resulted from ‘the peculiarities of race or from the various stages of development in the same race’, Lorimer justifies this division of humanity by appealing to the science of race. He states his belief plainly: ‘No modern contribution to science seems destined to influence international politics and jurisprudence to so great an extent as that which is known as ethnology, or the science of races.’⁶⁰

Lorimer’s disgust with the Turks is as obvious and biting as his statement that they ‘possibly do not even belong to the progressive races of mankind’.⁶¹ No lower category was possible in the science of jurisprudence. This faith in science and his own avowed efforts to place jurisprudence on a scientific basis give Lorimer’s works a decidedly positivist flavour, despite his efforts to defend natural law doctrines.

Even the chief of the colonial division of the American delegation to the Paris Peace negotiations, G. L. Beer, candidly put forth his belief that, ‘The negro race has hitherto shown no capacity for progressive development except when under the tutelage of other peoples.’ The ‘new science’ seemed to substantiate his position. ‘According to many scientists’, he argued, ‘it is an established physiological fact that the cranial structures of the negro close at an early age, which condition, it has been contended, prevents organic intellectual progress thereafter. Hence, many have denied the capacity of the negro to advance far on the path of civilization.’⁶²

Concern for the role of colour and race in international relations has changed as dramatically as the times and

⁵⁹ Lorimer, *Institutes of the Law of Nations*, i. 10–12.

⁶⁰ *Ibid.*, i, p. 101, p. 93.

⁶¹ *Ibid.*, i, p. 102.

⁶² G. L. Beer, *African Questions at the Paris Peace Conference* (New York, Macmillan Co., 1923), p. 117.

circumstances of contemporary events. In 1900 the American Negro leader, William E. Burghardt De Bois predicted, 'The problem of the twentieth century is the problem of the colour line—the relation of the darker to the lighter races of men in Asia and Africa, in America and the islands of the sea.'⁶³ For Alfred Zimmern, who later became professor of international relations at Oxford, the defeat of Russia by Japan in 1905 marked a watershed. As Tinker relates the story, Zimmern put aside Greek history that morning, 'Because, I said, I feel I must speak to you about the most important historical event which has happened, or is likely to happen in our lifetime; the victory of a nonwhite people over a white people.'⁶⁴ Written around 1920, a book with the telling title of *The Rising Tide of Colour Against White World Supremacy* details Stoddard's fears that the European powers were over-concerned with political problems among themselves, and insufficiently attentive to the 'world-wide struggle between the primary races of mankind—the conflict of color'.⁶⁵

But at the same time, the movement against slavery which had roots in the French Revolution; which was carried on in England at the instigation of Wilberforce; and which was taken up in France by Lamartine, Ledru Rollin, and other liberals, had resulted in slavery's suppression in the French and British colonies in America. The anti-slavery movement thus struck tangentially against any racial overtones in the standard of 'civilization' by undermining the ways they would have been manifest.

Saying race and colour did not matter did not make it so. However widespread the general beliefs about race and colour, their direct influence on the legal standard of 'civilization' was circumscribed by the shift toward general principles of progress in civilization which, at least in theory, denied fixed hierarchies based on the immutabilities of race and colour. That peoples could progress toward civilization was clear. Less clear was whether or not a hierarchy would

⁶³ Colin Legum, *Pan-Africanism* (London, 1962) p.25, as quoted in Barraclough, *An Introduction to Contemporary History*, p. 153.

⁶⁴ Alfred Zimmern, *The Third British Empire* (London, 1926), cited in Hugh Tinker, *Race, Conflict, and the International Order* (New York, Macmillan Press, 1977), p. 39.

⁶⁵ Theodore Lothrop Stoddard, *The Rising Tide of Color Against White World Supremacy* (Westport, Conn., Negro University Press, 1971), p. v.

persist as people at different points in their development progressed together. Whether the civilized would simply become more civilized remained an unanswered question.

Another nineteenth-century trend which focused attention on 'civilization' was the general secularization of European society. Owen Chadwick defines secularization in the following terms: 'the relation (whatever that is, which can only be shown by historical inquiry) in which modern European civilization and society stands to the Christian elements of its past and the continuing Christian elements of its present'.⁶⁶ The trend toward secularization clearly related, though in complex ways, to the 'distant origins of modern science, the beginnings of the idea of progress, the first historical criticisms of the Biblical records, the discovery of the true nature of other great religions and cultures of the world', in short, to many of the same influences which contributed to the emergence of the standard of 'civilization'. These influences called into question the Christian elements initially implicit in the identification of the international society with Christendom and contributed to a shift toward a standard based on the notion of a more general and abstract modern 'civilization'.

One element of the Christian tradition which the trend toward secularization not only maintained but intensified was the universality manifest in the biblical injunction to take the good news to every nation. Christianity's universalist aspirations were easily transformed into notions of a universal civilization which could progress by adhering to scientific principles. Progress toward civilization would come as the universal laws of physics, chemistry, and biology were applied, despite the myriad surface manifestations of the different cultures.

Man, the nineteenth century declared, was not intended to wait for knowledge and progress to be revealed. Instead, he was to discover them through his own efforts for the benefit of all. Thus the 'civilizing' mission was born. It remained a moral crusade, with all the self-confidence and zeal that many thought the Christian reformers were losing in the face of secular science's challenge.

⁶⁶ Owen Chadwick, *The Secularization of European Society in the Nineteenth Century* (Cambridge, Cambridge University Press, 1975), p. 264.

Because Europe thought itself the epitome both of scientific law and of Christian principle, its standards were self-consciously declared to represent universal values. Barbarians might therefore acquire 'civilization'. Combined with the eighteenth-century belief that human misery was to some degree preventable, the idea that progress could be shared by all contributed to the notion of the 'civilizing' mission where secular reformers, even enlightened believers, could share the missionary zeal and rally around the standard of 'civilization' to carry the light of 'civilization' to dark places.⁶⁷

An individual whose life illustrates a shift from limited racial concerns to broader considerations based on 'civilization' is Cecil Rhodes. Rhodes's thinking is complex but in some ways representative of that at the end of the nineteenth century. His initial racist orientation is clear-cut. His 'Confession of Faith' of 1877 states, 'I contend that we are the finest race in the world and that the more of the world we inhabit the better it is for the human race.'⁶⁸ Hence, his lifelong efforts aimed at the 'furtherance of the British Empire and the bringing of the whole uncivilised world under British rule'. However, a shift in Rhodes's orientation becomes apparent in the change of his phrase 'equal rights for every white man south of the Zambesi' used in a speech at Cape Town on 20 April 1897, to 'equal rights for every civilised man' used in a later speech at Cape Town on 18 July 1899.

What this phrase change meant, however, is debated. Lockhart and Woodhouse imply that Rhodes was persuaded to change the phrase though they do not say by whom or why, or give grounds for their view.⁶⁹ Most likely, these speeches were made in an electioneering, or at any rate a party, context. Also, it is important to distinguish between the Rhodes before and after the Jameson Raid, which broke his alliance with the Afrikaner Bond and pushed him towards an alliance with the more extreme British faction at the Cape, the Progressives.⁷⁰

⁶⁷ Philip P. Curtin, *The Image of Africa* (USA, University of Wisconsin Press, 1964), pp. 259-60.

⁶⁸ John Flint, *Cecil Rhodes* (London, Hutchinson, 1976), see the appendix: Rhodes's 'Confession of Faith'.

⁶⁹ John Gilbert Lockhart and C. M. Woodhouse, *Cecil Rhodes* (London, Macmillan, 1963), p. 367; p. 433.

⁷⁰ The author is grateful to the Rhodes House librarian for supplying this information about Rhodes.

All this also underscores the problem of documenting anything but a general trend in attitudes toward 'civilization'. Nevertheless, in the case of Cecil Rhodes, there are personal documents detailing at least a public change from concerns for 'white men' to 'civilized men'. That a man of such firm opinion as Cecil Rhodes would publicly adopt the cry of recognizing 'civilized' men underscores the extent to which such thinking had permeated the general public consciousness.

The general trends suggest that the legal concept of the standard of 'civilization' rose above, though it remained firmly rooted in, the popular concerns and assumptions of nineteenth-century European society regarding race, colour, and religion. If, as in the cases of Lorimer or Beer, a relationship between race, ethnology, and the standard of civilization' existed, it was never articulated as causal. Barbarous or savage countries were not such solely because of race or colour. So far as international law was concerned, the standard's requirements were explicit and objective. Any coincidence between the predominance of 'civilized states' being white and of barbarous or savage states being coloured was just that, a coincidence of nature which did not have to remain that way. After all, there was the case of Japan.

At least in theory, the standard of 'civilization' was colour-blind. It discriminated neither in favour of, nor against, non-white, non-European countries. But applying the standard as an integral part of the international law was more difficult in practice.

III

The Standard of 'Civilization' and International Law

The Standard of 'Civilization' and the Expanding Domain of International Law

Once it had emerged and been explicitly defined in legal terms, the standard of 'civilization' was thought to expand the domain of international law according to secular, non-geographically bound, universal principles of 'civilization'. The standard thus provided a basis for international law which not only transcended religious and geographical boundaries, but which also proposed a practical way to make its scope as universal in fact as the classical writers had postulated in theory.

For this reason, what the state papers of eighteenth- and nineteenth-century Europe had called the 'public law of Europe' gradually became described in the more general terms of 'international law' or the 'law of "civilized" nations'.¹ This shift from overtly religious (Christian) and culturally or geographically limited (European) definitions of international law, to one based more on secular and universal 'civilization', is also clearly documented in the writings of the nineteenth-century legal scholars. For example, Wheaton's 1836 first edition of the *Elements of International Law* defined international law as it is 'understood among civilised, Christian nations'; by the 1846 third edition and in all successive editions of *Elements*, the definition had been amended to read simply 'among civilised nations'.² While the 'Christian Nations' were sporadically mentioned by international lawyers even into the early twentieth century, this was largely because the 'states of the Civilised World' were, as Oppenheim noted, 'largely Christian'.³

¹ Schwarzenberger, *A Manual of International Law*, p. 6.

² Wheaton, *Elements*, 1st edn., p. 46; Wheaton, *Elements*, 3rd edn., p. 46.

³ Oppenheim, *International Law*, i. 10.

Still, as publicists such as T. E. Holland began to emphasize, the 'Christian morality' which had influenced the historical development of international law had left no trace of 'definite religious doctrine'; hence, 'nothing in the character of its principles which need restrict its application to Nations professing the Christian faith'.⁴ Indeed, Holland concludes, the domain of international law was a 'question rather of Civilisation than Creed'.⁵ Similarly, though geographically non-European, countries such as the United States were nevertheless 'inheritors of European civilization' and thereby subjects of the international law whose domain could be better described as universal among 'civilized nations' than geographically limited to Europe proper.

'International law', Hall pointed out, 'is a product of the special civilisation of modern Europe'.⁶ In this view, international law itself was among what Francis Lieber and others called the 'blessings of modern civilisation', constituting 'one of the highest manifestations' and 'one of the most notable achievements of that civilization'.⁷ 'Innumerable are the interests which knit all the individual civilised states together', Oppenheim celebrated, including the 'sciences and arts, agriculture, industry, trade' and the general 'constant intercourse' which made them a universal international community'.⁸ Writing in 1928, Brierly was still representative of an age when he defined international law as 'the body of rules and principles of action which are binding upon civilised states in their relations with one another'.⁹

In the minds of the nineteenth-century international lawyers, 'civilization' became a scale by which the countries of the world were categorized into 'civilized', barbarous, and savage spheres. The legal rights and duties of the states in each sphere were based on the legal capacity their degree of 'civilization' supposedly entitled them to possess. Not surprisingly, by definition, the full rights and duties of international law were restricted to those 'civilized' states which

⁴ Holland, *Lectures on International Law*, p. 38.

⁵ *Ibid.*

⁶ Hall, *A Treatise on International Law*, 2nd edn., p. 40.

⁷ James W. Garner, *Recent Developments in International Law* (The Tagore Law Lectures of 1922) (University of Calcutta, 1925), p. 2.

⁸ Oppenheim, *International Law*, p. 10.

⁹ J. L. Brierly, *The Law of Nations* (Oxford, Clarendon Press, 1928), p. 1.

could abide its principles and precepts. Since they made the standard of 'civilization' their guide, it is understandable that the nineteenth-century publicists, and the international legal texts they penned, declared that 'civilized' states alone were qualified to be recognized with full international legal status and personality, full membership in the Family of Nations, and full protection in international law. Significantly, the authority to determine the jural capacity of the states in the barbarous and savage spheres also belonged of right to the 'civilized' states.

Needless to say, the states in the barbarous and savage spheres were thought to have correspondingly less legal capacity. Those in the barbarous sphere were granted at best only partial recognition as 'semi-civilized' states with limited or 'imperfect' legal status and personality, only partial membership in the Family of Nations, and only partial (if any) international legal protection.¹⁰ Some publicists even maintained that the principles of international law 'cannot be supposed to be understood or recognized by countries differently civilised' from those of Europe.¹¹ Therefore, it was 'discretion, and not international law, according to which the members of the Family of Nations [were to] deal with such States as still remain outside that family'.¹²

Even if a 'civilized' state did recognize a 'semi-barbarous' state, such recognition did not extend to that country's municipal law, either public or private, except as that country's law 'regards its own citizens within its own frontiers'.¹³ Moreover, the orthodox positivist doctrine came to require that:

States outside European civilisation must formally enter into the circle of law-governed countries. They must do something with the acquiescence of the latter, or of some of them, which amounts to an acceptance of law in its entirety beyond all possible misconstruction.¹⁴

At the same time, some publicists grudgingly granted the 'semi-civilized' countries partial legal personality. They

¹⁰ Wheaton, *Elements*, 6th edn., p. 45.

¹¹ Hall, *A Treatise*, 2nd edn., p. 40.

¹² Oppenheim, *International Law*, p. 34.

¹³ Lorimer, *Institutes of the Law of Nations*, i.217.

¹⁴ Hall, *A Treatise*, 2nd edn., p. 40.

admitted that 'Persia, Siam, China, Abyssinia, and the like were certainly civilised states, and Abyssinia is even a Christian State'.¹⁵ However, though such states clearly possessed a kind of civilization, 'their civilisation has not yet reached that condition which is necessary to enable their Government and their populations in every respect to understand and to carry out the command of the rule of International Law'.¹⁶ Still, since 'they send and receive diplomatic envoys and conclude international treaties, the opinion is justified that such States are International Persons only in some respects—namely, those in which they have expressly or tacitly been received into the Family of Nations'.¹⁷

Such doctrines left the 'semi-civilized' states in a kind of limbo: 'they are some parts within the circle of the Family of Nations, they remain for the other parts outside'.¹⁸ Westlake agreed that, 'Our international society exercises the right of admitting outside states to parts of its international law without necessarily admitting them to the whole of it'.¹⁹ The slippery status of the barbarous states under 'unequal treaty', capitulation, or protectorate regimes caused one publicist to remark: 'So anomalous are those not-full sovereign states that no hard and fast general rule can be laid down with regard to their position within the Family of Nations, since everything depends upon the special case'.²⁰

Nineteenth-century international law also differentiated between the 'barbarous' countries like China, Japan, and Siam with their established if non-European civilizations, and the 'uncivilized' countries, groups, or tribes thought to lack all but the barest essentials of 'civilization'. Holland includes 'possessory rights' for the nomad and 'rights of property in their own lands' for agricultural peoples among the rights of the 'uncivilized', but notes that European relations with such 'tribes do not resemble those which may arise out of a Treaty with civilized and well-organized States, even when their civilization is of a non-European type'.²¹

¹⁵ Oppenheim, *International Law*, p. 33.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, p. 148.

¹⁸ *Ibid.*, p. 34.

¹⁹ Westlake, *Collected Papers*, p. 82.

²⁰ Oppenheim, *International Law*, p. 192.

²¹ Holland, *Lectures on International Law*, p. 117.

The practice of bothering at all to create international legal arrangements with 'uncivilized' countries was justified as necessary to maintain law and order in the 'civilized' international society. Hence, the doctrine and practice developed that states might 'acquire rights by way of protectorate over barbarous or imperfectly civilised countries, which [did] not amount to full rights of property or sovereignty, but which [were] good as against other civilised states, so as to prevent occupation or conquest by them, and so as to debar them from maintaining relations with the protected states or peoples'.²² Because protected states could not be 'subject to a law of which they [had] never heard, their relations to the protecting state [were] not therefore determined by international law'.²³ International law applied 'in so far only as the assumption of the protectorate affects the protecting country with responsibilities towards the rest of the civilised states of the world'.²⁴ Holland concurred that when a 'civilized' power makes a legal agreement concerning 'uncivilized' peoples, its title is an affair between the occupying European State and the rest of the 'civilized' states of the world.²⁵

M. F. Lindley's *The Acquisition and Government of Backward Territory in International Law* is a classic exposition of the categories and legal rights of the so-called 'backward territories'. 'Backward territory', Lindley stresses, is a term both relative and dynamic—relative, because it 'includes territory inhabited by natives as low on the scale of civilization as those of Central Africa' and 'excludes territory which has reached the level of what is sometimes known as European or Western civilisation';²⁶ dynamic, because 'as civilisation advances it may cease to apply to territory which would today be said to be included within it'.²⁷ Still, without question, the benefits of international law were primarily intended for its 'civilized' subjects and not for those which were made its objects, both as determined by

²² Hall, *A Treatise*, 4th edn., p. 130.

²³ *Ibid.*, p. 131.

²⁴ *Ibid.*

²⁵ Holland, *Lectures on International Law*, p. 117.

²⁶ Lindley, *Government of Backward Territory*, p. v.

²⁷ *Ibid.*

the same standard. Thus, though the domain of international law was by definition expanding to include all 'civilized' nations, the countries qualified to come within its scope remained limited in practice.

Applying the standard of 'civilization' as an integral part of the international law raised four areas of question for nineteenth- and early twentieth-century state practice. Some of these questions stemmed from the orthodox stipulation that 'civilized' states alone qualified as international legal personalities; others, from the presumption that the standard was a legal principle of universal application and validity. Indeed, commentary by the publicists regarding these unprecedented legal problems evidences their struggles to answer questions for which their established legal frameworks were unprepared.

One question to arise was that a standard of 'civilization' could hardly be promulgated as a universally valid legal principle unless it were so accepted, at least in theory if not immediately so in practice. The publicists acknowledged standards of 'civilization' different from their own, and countenanced the possibility that countries upholding foreign standards of 'civilization' might someday be accepted into the Family of Nations. But there was a proviso. To be considered 'civilized' these countries had to abide the principles of international law. Thus, the nineteenth-century international lawyers tried to square the circle by opening full international status not only to countries of 'Christian civilisation', but also to others—'civilisation of such kind only is conditional as to enable the respective State and its subjects to understand and to act in conformity with the principles of the Law of Nations'.²⁸

Westlake felt that a country like China or Japan 'with an old and stable order of its own, with organized force at the back of it, and complex enough for the leading minds of that country to be able to appreciate the necessities of an order different from theirs . . . must be recognized as being civilised, though with other civilisation than ours'.²⁹ Holland granted that treaty relations were possible with 'civilised and

²⁸ Oppenheim, *International Law*, p. 31.

²⁹ Westlake, *Collected Papers*, p. 103.

well-organized States, even when their civilisation is of a non-European type'.³⁰

This spirit of tolerance proved difficult to translate into the letter of state practice. In fairness, those who formulated nineteenth-century international law could hardly have foreseen that international law was not the product of, nor the practice among, all 'civilized' nations. Many non-European countries with highly developed civilizations rejected the precepts and practices of the European international society as incompatible with their standards of 'civilization'. In spite of its rhetoric of universalism and tolerance, the standard was perceived by non-European countries *at the time* to epitomize an international law peculiarly European in origin and character. Declarations by the European publicists that international law represented the consent of the 'heads of the civilised States, their Governments, their Parliaments, and public opinion of the whole of civilised humanity',³¹ and that it had 'progressively taken form and developed within the consciences of civilised peoples'³² did not mean it was or make it so in fact.

The limitation of full international legal personality to 'civilized' countries posed a second problem. By the mid-nineteenth century, the European powers had signed numerous agreements with 'semi-civilized' and 'uncivilized' countries which, theoretically, remained legal nonentities. How could treaty relations with these 'backward', non-European countries be made consistent with the fact that such relations might be construed as recognition of legal personality?

The publicists tried to resolve this doctrinal quandary in two ways. First, they acknowledged that relations with 'semi-civilized' and 'uncivilized' countries were necessary and were, indeed, treaty relations. But second, they denied, especially regarding relations with 'savage' countries, the normal legal presumption that treaty relations constituted any kind of recognition of legal capacity (tacit, informal, or otherwise), or of membership in the Family of Nations.

In the 1880 third edition of *A Treatise*, Hall notes that:

³⁰ Holland, *Lectures on International Law*, p. 117.

³¹ Oppenheim, *International Law*, p. 12.

³² Fiore, *International Law Codified*, p. 85.

A tendency has shown itself of late to conduct relations with states, which are outside the sphere of international law, to a certain extent in accordance with its rules and a tendency has also shown itself on the part of such states to expect that European countries shall behave in conformity with the standard which they themselves have set up.³³

How specifically, Hall puzzles, could 'semi-civilized' China make a legally valid request that Britain prevent French ships from coaling in British ports after the French blockade of Formosa in 1884? Hall tries to resolve this conundrum by emphasizing that European states were sometimes obliged by 'their sense of honour' and by 'their interests', not from any reasonable expectation of 'reciprocal obedience', i.e. jural capacity, on the part of the 'semi-civilized' entity.³⁴ At least according to Hall, when determining the legal status of 'semi-civilized' states, 'it is not enough consequently that they shall enter into arrangements by treaty identical with arrangements made by law-governed powers, nor that they shall do acts, like sending and receiving permanent embassies, which are compatible with ignorance or rejection of the law'.³⁵

Lorimer detected a difficulty in taking the doctrines of recognition to such positivist extremes. To make recognition merely an 'act of courtesy, comity, or the like, the exercise of which maybe jurally withheld', Lorimer commented, 'deprives international law of permanent basis in nature, and fails to bring it within the sphere of jurisprudence'.³⁶ 'In separating it from the natural', he concluded, 'it separates it from positive law, and hands it over to the dominion of mere human caprice'.³⁷ Lorimer was more successful in posing the problem than in solving it. As shown by Hall, most publicists focused less on the objective, demonstrable actions of the 'semi-civilized' states and more on how the 'civilized' countries should construe such actions. The subjective nature of the recognition process and the political element within the standard of 'civilization' put the European powers in the always powerful and sometimes awkward position of having to be judge in their own cases.

³³ Hall, *A Treatise*, 3rd edn., pp. 43-4.

³⁴ *Ibid.*, p. 44.

³⁵ *Ibid.*, p. 43.

³⁶ Lorimer, *Institutes of the Law of Nations*, I. 104.

³⁷ *Ibid.*, p. 105.

The 1894-5 confrontation between Japan and China presented a first test case relating to a third general question arising from the application of the standard of 'civilization'. The question was, what legal principles, if any, would apply in relations among 'semi-civilized' countries? Although the nineteenth-century publicists held that 'uncivilized' states were not subjects of international law, they were still anxious that these non-European countries abide by its precepts. Global obedience to international law was deemed important to the law's claim to universality and to the orderly governing of international relations.

When war broke out between China and Japan, no one knew if international law would apply to the combat of these two at least formerly Confucian states. 'Are China and Japan, with reference either to one another or to other Powers, subject to the duties which are recognized as subsisting between the States of Europe', queried Professor Holland. 'We come here upon a large question, no less than the essential character of International Law, and the sphere of its operation'.³⁸ At the end of his enquiry, Holland concludes, with some understandable relief, that 'Japan, apart from the lamentable outburst of savagery at Port Arthur, has conformed to the laws of war, both in her treatment of the enemy and in her relations to neutrals, in a manner worthy of the most civilized nations of Western Europe'.³⁹ While China had not yet attained to a respect for the laws of war, it had nevertheless adopted the 'rudimentary and inevitable conceptions of International Law' and had shown itself 'to be well versed in the ceremonial of embassy and the conduct of diplomacy'.⁴⁰ In its first test as a probationary 'new-comer to the charmed circle', Japan had vindicated not only its own international position but also the universality of international law among 'civilized' states.⁴¹

Fourth, whether or not the fulfilment of the standard necessarily guaranteed a newly 'civilized' state equality became a pressing problem of the first magnitude. Indeed, the fundamental right of equality:

³⁸ T. E. Holland, *Studies* (London, Stevens and Sons, 1898), p. 113.

³⁹ *Ibid.*, p. 128.

⁴⁰ *Ibid.*, p. 129.

⁴¹ *Ibid.*, p. 114; the term is Holland's.

could have little, if any, meaning for peoples who, until the present century, were not admitted to the select circle of sovereign states. Thus for centuries the equality principle in international law coexisted with the colonial system, the latter being no less sanctioned in law than the claim to equality.⁴²

The nineteenth-century publicists recognized this contradiction, and attempted to make doctrinal explanations for it, though not always successfully so. The problem is illustrated by the writings of the Italian publicist Pasquale Fiore which discuss the issues of 'civilization' as 'Italy's representative work of the period'.⁴³

Fiore's equivocal notions about the standard of 'civilization' are in some ways symptomatic of the nineteenth-century publicists in general. Fiore admitted that the 'regime of Capitulations and the resulting limitations upon the jurisdiction of the territorial sovereign should be considered as abrogated in fact and in law' when a 'country ranks by reason of its civilization with civilized countries'.⁴⁴ Nevertheless, Fiore maintained that, 'it will never be possible for civilization to extend uniformly over all the parts of the world' and, hence, a legal community 'will never be brought to realization equally and uniformly with all states'.⁴⁵

Progress toward 'civilized' status was necessary and possible for the less 'civilized' to achieve, but complete and perfect equality was not. Like Sisyphus, the less 'civilized' were doomed to work toward an equality which an elastic standard of 'civilization' put forever beyond their reach. Even to attain 'civilized' status, as Japan was to discover, was not necessarily to become equal. The 'civilized' had a way of becoming more 'civilized' still. In a world governed by principles of self-help, Japan was naive to assume that attaining 'civilized' acceptance meant attaining equality. Still, while such equality as symbolized by the denial of the racial equality clause in 1919, may have been a mirage, it was only after Japan declared the fountains of international law to be dry that it embarked on its own revisionist course.

⁴² Tucker, *Inequality of Nations*, p. 9.

⁴³ Arthur Nussbaum, *A Concise History of the Law of Nations* (New York, Macmillan, 1962), p. 244.

⁴⁴ Pasqual, Fiore, *International Law Codified*, 5th Ital. edn., trans. Edwin S. M. Borchard (New York, Baker, Voorhis and Co., 1918), p. 211.

⁴⁵ *Ibid.*, p. 101.

Legal Theories and Practices Associated with the Standard of Civilization

As would be expected, the standard of 'civilization' directly influenced specific areas of nineteenth-century international law. This section details four: the enforcement of minimum requirements of 'civilization'; the 'civilized nations' and the sources of law; the standards of 'civilized' warfare; and the 'sacred trust of civilization'.

The Enforcement of Minimum Requirements of 'Civilization'

Inherent in the capitulations maintained in the Levant and in the extraterritorial provisions of the 'unequal treaties' imposed on China, Japan, and other countries in East Asia was the assumption that such measures were justified until these countries could guarantee certain minimum requirements of 'civilization'. These 'civilized' standards were operationally defined by the way they were practised in Europe. Treaty provisions for religious freedom in Japan or for freedom of travel in Siam were not considered unequal because any Japanese or Siamese could expect such rights in Europe.

Measured against this European standard, however, many non-European countries seemed unwilling or unable to protect basic 'civilized' rights. The imposition of extra-territorial requirements until a certain 'minimum of efficiency in running the State machinery, modicum of independence of the judiciary from the executive, and adequate protection of the safety, life, liberty, dignity, and property of foreigners' could be guaranteed by the non-European countries themselves, seemed a practical solution to the everyday problems which unavoidably arose when different civilizations collided in their customs and traditions, and especially when Europeans attempted to live in countries that were seldom eager to have, and sometimes outright hostile to, their presence.⁴⁶

As Alexandrowicz rightly underscores, the extension of European domination in the nineteenth century did not occur in a legal vacuum. Some international legal precedents

⁴⁶ Schwarzenberger, *A Manual of International Law*, p. 13.

concerning the reconciliation of cultural differences by legal means existed. Limited agreements had been signed with China, Japan, Siam, and other Asian countries before the nineteenth century; capitulations in the Levant dated to as early as 1193; and some relations had been entered into with African chiefs and peoples.

Some of these legal arrangements reflected a spirit of reciprocity and equality. In the Levant and to a more limited degree in China, extraterritorial practices had developed gradually to permit foreign traders unfamiliar with local customs and restrictions to carry out their business. In the Ottoman Empire, these privileges were chartered in Articles or *capitula*, from which the term 'capitulations' derived. Initially, as a gesture both gracious and condescending, the Sublime Porte offered freedom to trade, to travel, and to be judged by European consuls, to infidels who could not be expected to abide by Muslim law. Commenting on the capitulations in Egypt, Lord Milner noted:

The first Capitulations were not so much treaties as concessions. The Sultans of those days neither regarded the rulers of the Christian states of the West as equals to be treated with, nor was their principal aim to obtain reciprocal advantages in exchange for the privileges they granted.⁴⁷

This was also true of the handful of cases where extraterritorial rights were granted in China; the Chinese viewed them as special concessions unilaterally bestowed by a benevolent emperor upon a limited number of 'barbarian' traders, who otherwise would have been unable to function in an unfamiliar Chinese society.

But circumstances had changed by the mid-nineteenth century. The number of foreigners wanting special privileges had increased; the willingness of weak and isolationist Ching or Tokugawa leaders to grant them had waned; and the military capacity of the non-European countries to resist their forcible imposition had diminished as the European industrial revolution spawned steam-powered ships and Maxim guns. Accordingly, the nineteenth-century European powers came to possess a new capacity and proclivity: first,

⁴⁷ Jones, *Extraterritoriality*, p. 82.

the military capacity to dictate their will in relations with the non-European world; second, the proclivity to enshrine their notions of 'civilization' in international legal standards and doctrines which assigned superior status to 'civilized' countries and inferior status to those less 'civilized'.

For these reasons, over the course of the nineteenth century, protectorate, capitulation, and 'unequal treaty' regimes became the enshrinement of superior and inferior legal positions and status based on differing levels of 'civilization'. In the Levant, capitulations were objected to as anomalies, increasingly after 1856. In Africa, the protectorate 'deteriorated into a political institution carrying the label of colonial protectorate and capitulations lost their function of balancing the traditions of African legal custom against the innovations brought by European [Eurocentric] law'.⁴⁸ In East Asia and Siam, international legal relations with Europe took the form of 'unequal treaties'; these 'unequal treaties' are worth examining in greater detail because of the central role they played in the process by which these non-European countries entered the international society.

The Standard of 'Civilization' and 'Unequal Treaties'

Defining the specific conditions which constitute 'unequal treaties' is difficult, because unequal treaties appear to be the natural and inevitable result of formal relations between unequal states; even unprotested and undisputed 'equal treaties' are usually unequal in some way. Conceptually, most discussions of unequal treaties, historical and contemporary, consider four broad categories: (1) the formal provisions and practical effects of the treaty; (2) the method by which the treaty was achieved, i.e., whether or not force was used or threatened, with the subsidiary questions of what constitutes force; (3) the initial, relative positions of the treaty parties; and (4) the possibility of changes in treaty relations due to time, i.e., concerns for *rebus sic stantibus*.

But the term 'unequal treaties' has acquired a special modern meaning.⁴⁹ In the twentieth century, 'unequal treaties' are considered, rightly or wrongly, as an integral

⁴⁸ Alexandrowicz, *European-African Confrontation* pp. 89-90.

⁴⁹ Prem Varma, 'Unequal Treaties in Modern International Law', *Eastern Journal of International Law*, Vol. III, No. 1 (April 1975) 56-7.

part of 'imperialism' and 'colonialism'. Indeed, the term 'unequal treaties' now conjures up images of the perceived injustices expressed by the oxymoron 'gunboat diplomacy'. These connotations of injustice are now a permanent part of the term's meaning. Contemporary definitions must therefore include the pejorative sense that 'unequal treaties' are 'unjust treaties' in some way.

'Unequal treaties' are seen as 'unjust treaties' for at least two reasons: first, because such treaties involved 'gross inequalities of treaty obligations'; second, because they were brought about through the use or threat of force.⁵⁰ Subsidiary questions of what constitutes force, e.g., whether or not force is limited to military coercion, or if it extends to economic forms of pressure as well, have not yet been answered by any authoritative international legal body.⁵¹

Nevertheless, 'unequal treaties' can be defined as those treaties which fulfil at least two of the following three related conditions: (1) they impose unequal obligations in practice; (2) they are imposed through the use or threat of force; and (3) they are perceived to be 'unjust treaties', often because they impair the sovereignty of one of the treaty parties. Each of these three conditions is individually necessary to a definition of an 'unequal treaty', but none of them is sufficient in itself. These conditions are closely related since, given any two of them, it is reasonable to expect the third.

As discussed in the case study of China, the 1842 Treaty of Nanking is an example of a treaty which fulfils all three conditions. Faced by a Western threat to bombard Nanking, the Chinese were compelled to accept unequal treaty provisions, i.e. fixed and low tariff rates and extraterritorial jurisdiction, which infringed on China's sovereignty. Perhaps most importantly, the Chinese perceived the Nanking treaty (and those 'unequal treaties' which followed it) to be unjust for many reasons, the fact that it was signed under duress being only one.

⁵⁰ Resolution of Unequal Treaties of the *Conference des Juristes Afro-Asiatique, Damas*, 7-10 November 1957, p. 198, cited in S. Prakash Sinha, 'Perspective of the Newly Independent States on the Binding quality of International Law', *I.C.L.Q.*, 14 (1965), 123-4.

⁵¹ Fariborz Nozari, *Unequal Treaties in International Law* (Stockholm, S-Byran Sundt and Co., 1971), p. 114. See also Stuart S. Malawer, 'Imposed Treaties and International Law', 7 *Calif. Western International Legal Journal* (1977).

The power and proclivity of the Europeans to impose their standard of 'civilization' on the non-European countries with which they established formal relations during the course of the nineteenth century made 'unequal treaties' almost inevitable. Indeed, the standard of 'civilization' influenced all three components in 'unequal treaties' discussed above. 'Fundamental differences in the character of a civilization', argued Harvard Professor of Law Edwin Dickinson, 'have always been the source of important limitations of [state] capacity'.⁵² One conclusion of such thinking was that 'most of the modern publicists recognize that equality can be the rule only among states having common standards of civilization'.⁵³

Unequal legal obligations arose because 'inequalities of legal capacity arising out of differences in civilization are manifested in several important rules of the positive law of nations',⁵⁴ including extraterritorial jurisdiction, rights of diplomatic protection of citizens abroad, exclusion of aliens, practice of granting asylum in legations and consulates, and on public vessels.⁵⁵ Regarding the use of force (the second element in 'unequal treaties'), many forcible interventions can be 'explained by essential differences in civilization'.⁵⁶ Thus, 'differences in civilization' minimized the legal protection of 'uncivilized' countries outside the pale of the international law, while providing ready excuse for the 'civilized' countries to exercise military force in the cause of 'civilizing' them.

The standard of 'civilization' also contributed to the sense that many of the nineteenth-century treaties signed between European and non-European countries were somehow unjust and unfair—the third element of 'unequal treaties'. 'The treaties [with new states] recognize', says Dickinson's matter-of-fact conclusion, 'that degree and character of civilization are essential factors in determining status'.⁵⁷ Once a purportedly universal standard of 'civilization' was decreed, the

⁵² Edwin Dickinson, *The Equality of State in International Law* (Cambridge, Harvard University Press, 1920), p. 223.

⁵³ *Ibid.*

⁵⁴ *Ibid.*, p. 224.

⁵⁵ *Ibid.*, p. 277.

⁵⁶ *Ibid.*, p. 262.

⁵⁷ *Ibid.*, p. 341.

tolerance for cultural pluralism in international law narrowed. The historic standards of 'civilization' held by the non-European countries were found inadequate and 'backward'. At least initially, historic non-European countries perceived the 'unequal treaties' to be unjust not only because they imposed unequal obligations by superior military force, but primarily because they threatened the cultural underpinnings of their polities and thereby undermined the fundamental fabric of their societies. The case studies in the second part of this book consider the extent to which 'unequal treaties' were the vehicle by which a multiplicity of historic standards of 'civilization' were replaced by a single European one.

'Civilized' Nations and the Sources of Law

It is an embarrassing anachronism to some that Article 38(1) of the statute of the International Court of Justice still directs the Court to apply the general principles of law recognized by civilized nations in such disputes as are submitted to it. Both historical and contemporary discussions of the sources of international law almost invariably focus on the 'general principles of law' and overlook the phrase 'recognized by civilized nations'. This emphasis on the jurisprudential aspects of the concept is understandable. Given the contemporary consensus that all countries are now to be considered 'civilized', the distinction between 'civilized' and 'uncivilized' has declined in relevance.

In contrast, in earlier eras when the general principles of law recognized by 'civilized' nations were thought to differ from those of 'uncivilized' ones and, indeed, were thought to be one of the primary ways to distinguish between them, it was assumed that the distinction between 'civilized' and 'uncivilized' was highly relevant. Thus, the qualifying phrase 'recognized by civilised nations' was initially thought quite necessary. Because of this close link to the standard of 'civilization', it is worth sketching the historical development of the tradition that permits the court to consider the 'general principles of law recognized by civilised nations' as a subsidiary source of international law.

The absence of a formal legislative body charged with promulgating international law has given international

conferences and conventions of recognized stature the opportunity to declare, if not binding international law, then at least authoritative statements of international opinion and consensus. In this light, the international society which characterized itself as 'civilized', and which defined its international law as that recognized by 'civilized' nations, gathered representatives from its 'civilized' constituency to declare authoritatively the international consensus of its time. The first occasions to bring the foremost 'civilized' nations together for such a shared purpose were the 1899 and 1907 Hague Conferences.

Noting that, 'in the course of the last twenty years, the longings for a general appeasement have become especially pronounced in the consciences of civilized nations', the Rescript of the Russian emperor on 24 (old-style 12) August 1898 commanded Count Mouravieff, the Russian Minister for Foreign Affairs, 'to propose to all the Governments which have accredited representatives at the Imperial Court the holding of a conference to consider this grave problem'.⁵⁸ The Rescript also answered the first question of the conference: which nations qualified to be invited? Of the fifty-nine nations claiming independent sovereignty at the time, twenty-six were invited to the conference.

Of these, nineteen were European, five Asian, and two American. Of the nine Asian powers claiming sovereignty, China, Japan, the Ottoman Empire, Persia, and Siam were represented. Siam was something of an exception since it was not represented in St. Petersburg by a resident minister but was permitted to attend since King Chulalongkorn and the Russian emperor were personal friends. Six African nations claimed sovereignty at the time, but none were invited to, or represented at, the first Hague Conference. Of the twenty-one American republics, the United States and Mexico attended; two others declined invitations, Brazil on the grounds that it had no permanent army, and another undisclosed country for equally undisclosed reasons. The one hundred delegates who convened at the House in the Woods, The Hague, on 18 May 1899, in the first modern

⁵⁸ James Brown Scott, ed., *Texts of the Peace Conferences at The Hague 1899 and 1907* (Boston, Ginn and Company, 1908), p. 1.

peace conference not immediately preceded by war, considered themselves representatives of the 'civilized' nations of the world in part because the nations they represented 'controlled the resources and presided over the political destinies of three fourths of the human race'.⁵⁹

The work of the First Hague Conference 'took shape in three great conventions': the Convention for the Pacific Settlement of International Disputes, the Convention for the Adaptation to Maritime Warfare of the principles of the Geneva Convention of 22 August 1864, and the Convention with Respect to the Laws and Customs of War on Land.⁶⁰ It was particularly in the Convention with Respect to the Laws and Customs of War that principles accepted by 'civilized' nations played a prominent role. The convention signatories agreed that:

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.⁶¹

Likewise, the signatories of the Convention for the Pacific Settlement of International Disputes declared that they were animated by 'the ever increasing requirements of civilization' to recognize 'the solidarity which unites the members of the society of civilized nations'.⁶²

When the 256 delegates from forty-four countries (of the fifty-seven claiming sovereignty) convened on 15 June 1907 at the Hall of the Knights, The Hague, for the Second Hague Conference, those not present at the first conference were permitted to sign the Conventions on the Laws and Customs of War on Land and on the Adaptation to Maritime Warfare of the Geneva Convention. After some debate, the seventeen Latin American states represented for the first time (making

⁵⁹ William I. Hull, *The Two Hague Conferences* (Boston, Ginn and Co., 1908). Kraus Reprint Co., New York, 1970, p. 12.

⁶⁰ Scott, *Texts of the Peace Conferences at the Hague*, p. xvi.

⁶¹ *Ibid.*, p. 48.

⁶² *Ibid.*, p. 23.

a total of nineteen) were finally permitted to assent to the Convention on the Pacific Settlement of International Disputes. (It had initially been considered a closed convention.) Thus, in 'the interests of humanity and the ever progressive needs of civilization', the Second Hague conference ratified for a second time an appeal to 'the principles of international law as they result from the usages established between civilized nations'.⁶³

This same appeal was made by the Advisory Committee of Jurists delegated to draft the Statute of the Permanent Court of International Justice. Authorized by Article 14 of the Treaty of Versailles, the League Council set up a Jurists' Committee of ten prominent international lawyers who worked through the summer of 1920. In his opening speech as President of the Committee of Jurists, Baron Descamps concluded with the hope that, as 'jurists profoundly devoted to the task which has brought us together', the group could contribute 'to the progress of international justice and universal civilisation'.⁶⁴

Although the jurists concurred in their final report in the 'Competence of Court as Ultimate Tribunal of the Civilised World', debate had marked their deliberations over what rules the court should and could apply.⁶⁵ The documents of the committee's discussions record that Mr Elihu Root of the United States thought that the world was prepared to accept compulsory jurisdiction according to 'universally recognised rules of International Law', but 'not principles of law differently understood in different countries'.⁶⁶ President Baron Descamps replied that 'concerning Mr. Root's statement that the principles of justice varied from country to country, that might be partly true as to certain rules of secondary importance' but not to the 'fundamental law of justice and injustice deeply engraved on the heart of every human being and which is given its highest and most authoritative expression in the legal conscience of civilised nations'.⁶⁷

⁶³ *Ibid.*, pp. 203-5.

⁶⁴ PCIJ Advisory Committee of Jurists, *Proceedings* (London, 1920), p. 19.

⁶⁵ Permanent Court, *Documents* (London, 1920) p. 109.

⁶⁶ PCIJ, *Proceedings*, p. 308.

⁶⁷ *Ibid.*, p. 310.

On the following day, Baron Descamps spoke again on the rules of law to be applied by the court. He cited the 'unanimous declarations by the assembly of civilised States, both with reference to peace and war'. He then quoted the provision in the Hague Conventions that left populations and belligerents 'under the protection and empire of the principles of international law, as they result from the usages established between civilized nations'.⁶⁸ Waxing eloquent, the President urged his fellow jurists to take inspiration from the inscription above the Palace of Peace which read *Sol Justitiae Illustra Nos* and to see that the 'conception of justice and injustice as indelibly written on the hearts of civilized peoples' required that the court be able to appeal to the general principles accepted by them.⁶⁹

Baron Descamps's logic carried the day. 'General principles of law recognized by civilized nations' became part of Article 38 of the Statute of the Permanent Court of International Justice. Nowhere in the debates did anyone question the distinction between 'civilized' and 'uncivilized'. It was an assumption ever made manifest, though never articulated *per se*. Each of the jurists on the committee, representing ten different countries, accepted the standard of 'civilization' as a given. They were joined by their colleagues in the League of Nations Assembly, who in Geneva on 13 December 1920 unanimously approved the Statute of the Permanent Court of International Justice, Article 38 of which referred to 'the general principles of law recognized by civilized nations'.

Nor was the distinction between 'civilized' and 'uncivilized' debated during the transition period between the Permanent Court and the International Court of Justice. The Informal Inter-Allied Committee and the Dumbarton Oaks Proposals made it plain that the Court's Statutes needed re-examination. The four sponsoring powers convened a full committee of jurists in Washington, DC. Forty-four states were represented—the same number as had sent delegates to the Second Hague conference—as well as was the Permanent Court of International Justice.

The existing statutes were retained with slight amendments. Article 38 of the Permanent Court of International Justice

⁶⁸ *Ibid.*, p. 324.

⁶⁹ *Ibid.*

became Article 38 of the new International Court of Justice. Thus, a belief in 'general principles of law as recognized by civilized nations' made its way from a convocation of 'civilized' states gathered in 1899 to the not dissimilar group which convened in London on 24 October 1945 to ratify the Charter of the United Nations at the first session of the General Assembly. The International Court of Justice held its inaugural sitting on 18 April 1946 at the Peace Palace (to which Baron Descamps had referred in his appeal to 'civilized' conscience), and began its judicial business proper on 22 May 1947 when the *Corfu Channel Case* opened.

The Standards of 'Civilized' Warfare

Pre-1914 international customary law also reflected the standard of 'civilization' in the laws of war applicable between 'civilized' states. 'The rules of war', Walzer asserts, 'consist of two clusters of prohibitions attached to the central principle that soldiers have an equal right to kill. The first cluster specifies when and how they can kill; the second whom they can kill.'⁷⁰ While the first cluster is 'susceptible to the transformations brought about by social change, technological innovation, and foreign conquest', the second is 'more closely connected to universal notions of right and wrong'.⁷¹ Similarly, Schwarzenberger recognizes the 'continuous tug-of-war between the requirements of the standard of civilization and military necessities'.⁷² He also notes the paradoxical fact that, from the time of the Israelite invasion of Canaan, the distinctions of savagery and 'civilization' were also 'accompanied by comparable distinctions between nations against which, in principle, they [the 'civilized'] practised unlimited warfare and others to whom they meted out a more humane treatment'.⁷³

The distinction between 'civilized' and 'uncivilized' became an integral part of the codes of war which were drawn up

⁷⁰ Michael Walzer, *Just and Unjust Wars* (Harmondsworth, Penguin Books, 1978), p. 41.

⁷¹ *Ibid.*, p. 42.

⁷² Schwarzenberger, *Dynamics of International Law*, p. 82.

⁷³ *Ibid.*, p. 81.

over the course of the nineteenth century. One of the first of these efforts, Francis Lieber's 'Instructions for the Government of Armies in the Field', commonly known as General Order No. 100, was issued on 24 April 1863 for the direction of Union troops during the American Civil War. It noted that:

As civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself. . . .

The almost universal rule in remote times was, and continues to be with barbarous armies, that the private individual of the hostile country is destined to suffer every privation of liberty and protection, and every disruption of family ties. Protection was and still is with uncivilized people, the exception.⁷⁴

The soldiers in the United States armies were instructed that they were to abide by the 'civilized' standards that pertained to the 'modern, regular wars of the Europeans, and their descendants in other portions of the globe'.⁷⁵

The spirit of Lieber's efforts was enshrined the following year in the 'Red Cross Convention', officially signed at Geneva as the Geneva Convention of 22 August 1864, 'For the Amelioration of the Condition of the Sick and Wounded of Armies in the Field.' In 1868, the representatives of the seventeen European countries which met at Russian invitation to adhere to the Declaration of St. Petersburg considered, among other things, 'forbidding the use of certain projectiles in time of war among civilized nations' in the spirit that 'the progress of civilization should have the effect of alleviating, as much as possible, the calamities of war'.⁷⁶ The 'International Declaration Concerning the Laws and Customs of War' (adopted by the Conference of Brussels on 27 August 1874) and the *Oxford Manual of the Laws of War* (recommended for adoption by the Institute of International Law at its Oxford session in 1880) were likewise seen as important developments in the law of war for 'civilized' nations.

Five legally relevant distinctions became generally accepted: (1) the distinction between international and internal war; (2) the distinction between members of armed forces and civilians; (3) the distinction between combatants and

⁷⁴ Scott, *Texts*, Appendix.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, p. 381.

non-combatants; (4) the distinction between the laws of war in the wider and narrower senses of protection of neutral ships and cargo, or of belligerent occupation; and (5) the distinction between belligerents and neutrals.⁷⁷ The Conventions adopted by the two Hague Conferences continued both the process of codification and the distinction which placed 'civilized' warfare in a special category which was not challenged until the time of the Great War.

The 'Sacred Trust of Civilization'

Integral to the notion of the 'sacred trust of civilization', the standard of 'civilization' was reflected in the trusteeship system which came to include a dual mandate: besides duties to the dependent peoples placed in its trust, the colonizing power had obligations to the Family of Nations which itself had a collective responsibility and trust in the matter. Because protectorates over 'uncivilized' countries remained an affair between the occupying European state and the rest of the civilized states of the world, the 'sacred trust of civilization' provided a mechanism for the occupying state to be granted legal privileges and duties (*vis-à-vis* the Family of Nations) without necessarily extending legal personality to the occupied territory.

With the precedent of the Concert's involvement in the Ottoman Empire since at least 1826, the European powers attempted to regulate their penetration into, and their competition for, Africa by extending the European concert system. Accordingly, from 15 November 1884 to the signing of a General Act on 26 February 1885, fifteen powers met in the first Berlin Conference on Africa under the Chairmanship of Bismarck himself. Additional conferences, concerned to adjust conflicts and to draw up common international rules for African affairs, followed in Berlin and Brussels in 1890, 1900, 1906, 1907, and 1912.

Power politics and humanitarian concerns were intertwined during these conferences. By Article VI of the General Act, the Powers agreed to 'bind themselves to watch over the preservation of the native tribes, and to care for the

⁷⁷ Schwarzenberger, *Dynamics of International Law*, pp. 82-4.

improvement of the conditions of their moral and material well-being', with the ultimate aim of 'instructing the natives and bringing home to them the blessings of civilization'.⁷⁸ The 'civilizing' of the natives was to go together with peace and free trade; the relative importance of each was evidenced by the fact that only two of the Act's thirty-eight articles dealt with humanitarian concerns. Thus, while the official business of the 1885 Berlin Conference on Africa concerned 'free trade and free navigation in the Congo and Niger, the formalities to be observed in the future for valid annexation of African territory, the protection of the native peoples and the suppression of the slave-trade', it was the behind-the-scene claims and counterclaims regarding territorial questions that 'in practice were regarded as more important than the official business'.⁷⁹

As early as 1882, King Leopold II had begun to use the thinly disguised Association Internale du Congo, with its rhetoric of free trade and philanthropic intentions, to gather support for his colonial ambitions. The existence of a standard of 'civilization' meant that greater prestige accrued to states which could control occupied as opposed to totally unoccupied territory. Just as 'French rule over an ancient and civilised people in Indo-China did much to keep alive France's belief in herself as a great power which had successfully recovered from the humiliation of 1870', so Leopold was eager to have his African International Association recognized at the 1885 Berlin Conference on Africa as a sovereign state.⁸⁰

By Leopold's clever manipulations, German and British support were gained, Portugal and France were outwitted, and a million square miles of African territory came under the rule of a single European monarch. Declared 'Sovereign of the Congo Independent State' at Boma in July 1885, Leopold notified the powers to the same effect the following month. What had been nobly granted as an international 'sacred trust of civilization' thus degenerated, at least in the

⁷⁸ See General Act of the Conference of Berlin, *Parliamentary Papers*, the Congo 1883-1913, Africa No. 3 (1886) (London, Harrison and Sons, 1913).

⁷⁹ Ruth Slade, *King Leopold's Congo* (London, OUP, 1962), p. 43.

⁸⁰ James Joll, *Europe Since 1870* (Harmondsworth, Penguin Books, 1976), p. 86.

case of Leopold's Congo, into a 'heart of darkness'. Given the brutal administration and maltreatment for which the Congo Free State became notorious, it is not surprising that the International Court of Justice, in its highly controversial rulings on South West Africa in 1966, recognized the 'humanitarian considerations' and the possible 'inspirational basis for the rules of law' inherent in the 'sacred trust of civilization' during this period, but declined to recognize its juridical character.⁸¹

Whatever the actual juridical status of the 'sacred trust of civilization' during the thirty years of international regulation of African affairs before the First World War, it (and the dual mandate it implied) became sufficiently well-defined in practice to be incorporated into the League of Nations mandate system. Article 22 of the League Covenant declared that for territories 'inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world':

There should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.⁸²

'Tutelage' of those less 'civilized' was 'entrusted to the advanced nations'; an awareness of diversity in 'civilization' was evidenced by mandates classified in A, B, and C categories, since 'the character of the mandate must differ according to the stage of the development of the peoples, the geographic situation of the territory, its economic conditions and other similar circumstances'.⁸³

In 1962, the International Court of Justice characterized the 'essential principles of the mandate system' to consist:

chiefly in the recognition of certain rights of the peoples of the under-developed territories; the establishment of a regime of tutelage for each of such peoples to be exercised by an advanced nation as a 'mandatory' 'on behalf of the League of Nations'; and the recognition of a 'sacred

⁸¹ *South West Africa cases (Phase 2)*, I.C.J. Rep., 1966, p. 34-5.

⁸² *The PCIJ, Statutes and Rules* (Leyden, Netherlands, A. W. Sijthoff's, 1922), pp. 21-2.

⁸³ *Ibid.*

trust of civilisation' laid upon the League as an organized international community and upon its Member States.⁸⁴

The principle of the 'sacred trust' also found expression in Article 73 of the United Nations Charter. By subscribing to the trusteeship system, United Nations members recognize:

the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of those territories.

As from the time of the Berlin Conferences on Africa, the 'sacred trust' and the 'sacred trust of civilization' employed in the League mandate and the United Nations trusteeship system were not beyond political controversy.

It is precisely the widespread political dissatisfaction which followed the International Court of Justice's judgement of 18 July 1966 on the *South West Africa* Cases which makes their statements concerning the juridical nature (or lack thereof) of the sacred trust of 'civilization' so important. 'Law exists', the Court recognized the Pleadings as emphasizing, 'to serve a social need; but precisely for that reason', the Court continued, 'it can do so only through and within the limits of its own discipline. Otherwise, it is not a legal service that would be rendered'.⁸⁵

The conclusion of the Court was that:

In the present case, the principle of the sacred trust has as its sole juridical expression the mandates system. As such, it constitutes a moral ideal given form as a juridical regime in the shape of that system. But it is necessary not to confuse the moral ideal with the legal rules intended to give it effect.⁸⁶

While it recognized that 'all civilized nations have an interest in seeing that [the sacred trust of civilization] is carried out', the Court still maintained that 'in order to generate legal rights and obligations', the 'sacred trust of civilization' 'must be given juridical expression and clothed in legal form'.⁸⁷

⁸⁴ *I.C.J. Reports* (1962), p. 329.

⁸⁵ *South West Africa* cases (Phase 2), *I.C.J. Rep.*, 1966, p. 34.

⁸⁶ *Ibid.*, pp. 34-5.

⁸⁷ *Ibid.*, p. 34.

In an article critical of the Court's interpretation that 'the principle of the sacred trust has as its sole juridical expression the mandates system',⁸⁸ Alexandrowicz maintains that the multilateral guardianship 'made within the framework of the transaction of the Conference [i.e. the 1885 Berlin Conference on Africa], must be considered as declaratory of the consensus of opinion of all civilized states'.⁸⁹ The documents, he insists:

reveal that the transfer of sovereign rights or titles by the African Rulers to the protecting European Powers was either expressly or implicitly connected with the duty of civilization, i.e., the task of the transferee to assist African communities in achieving a higher level of civilization before they reentered the family of nations as equal sovereign entities.⁹⁰

However much one may join the fifty-four African and Asian nations which expressed disappointment at the ruling of the International Court of Justice during the twenty-first session of the United Nations General Assembly in 1966, and however sympathetic one may be to Alexandrowicz's interpretation regarding the 'sacred trust of civilization', the limitations of his propositions must also be remembered. No African rulers or countries were represented at the Conferences; only five non-European countries assented to the General Acts of the Berlin or Brussels Conferences on Africa. And of these, Ethiopia, Liberia, and the Sultan of Zanzibar were primarily concerned with articles in the General Acts regarding slavery. To make these arguments indicative of the 'consensus of opinion of all civilized states', as Alexandrowicz suggests, is to narrow that opinion to its narrowest, meanest, and most legalistic sense.

Such an interpretation mocks the noble cause for which the 'sacred trust of civilization' was said to stand in the first place. It is true that the President of the International Court of Justice was forced to cast the determining vote in the Court's 1966 decision on the *South West Africa* Cases in what some saw as an irregularity of procedure. It is also true

⁸⁸ C. H. Alexandrowicz, 'The Juridical Expression of the Sacred Trust of Civilization', *A.J.L.L.*, 65 (1971), 155.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

that several of the dissenting judges were of the opinion that, in the words of Judge Padilla Nervo, 'the sacred trust is not only a moral idea, it has a legal character and significance; it is in fact a legal principle'.⁹¹ While one may deplore the political consequences of the Court's denial of the juridical nature of the 'sacred trust of civilization', such a stand is understandable, especially given Leopold II's record in the Congo. Despite the short-term setbacks for Namibia, it may be to the long-term credit of international law to recognize the 'sacred trust of civilization' prior to the League mandate system for what the Court in 1966 said it was.

The End of the Standard of 'Civilization'?

Two questions arise when considering the standard of 'civilization' today. First, why has the standard of 'civilization' become a rhetorical anachronism to which few appeal directly in this half of the twentieth century? Second, have any new norms taken its place in contemporary international society?

Although first clearly enunciated at the turn of the twentieth century, i.e., about the time Japan entered the international society with full legal personality, the standard of 'civilization' was elaborated during the years which followed. Just as it is illuminating to trace the emergence of the standard in successive editions of Wheaton, so it is useful to consider its elaboration in successive editions of more contemporary international legal texts. Among other things, these modern writings provide a means to gauge the normative directions prominent international lawyers thought the law should take concerning the standard.

In a sense, Oppenheim's *International Law* takes up where Wheaton's *Elements* leaves off. First published in 1905, Oppenheim's *International Law* begins its discussion with the emergence of the standard of 'civilization' and continues elaborating what the standard was and what it meant through to the 1955 eighth edition. Georg Schwarzenberger carries the story on from there, beginning with his first edition of

⁹¹ *ICJ Reports* (1966), p. 453.

a *Manual of International Law* published in 1947, through to his 1976 sixth edition.

Lass Francis Lawrence Oppenheim was born near Frankfurt on 30 March 1858. In 1908 he succeeded Westlake to the Whewell chair at Cambridge. Although Oppenheim died on 7 October 1919, the later editions of his *International Law* were edited (as were Wheaton's) by colleagues, through to the eighth edition in 1955, which itself has gone through eight impressions, including one in 1967. From his first edition in 1905, Oppenheim defines international law as 'the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other'. The specification that international law binds 'civilized states' is maintained in each subsequent edition of Oppenheim until the 1955 eighth edition, which is amended to define international law simply as 'the body of customary and treaty rules which are considered legally binding by States in their intercourse with each other'.⁹² During the half century between 1905 and 1955, the successive editions of Oppenheim's *International Law* trace many other changes regarding the standard of 'civilization' as well.

Oppenheim answers affirmatively the question of whether or not there is a universal community by calling it the 'universal international community of civilised States'.⁹³ What is required, Oppenheim emphasizes, is 'no particularly Christian civilisation, but civilisation of such kind only is conditional as to enable the respective State and its subjects to understand and to act in conformity with the principles of the Law of Nations'.⁹⁴ Propounding a general standard of 'civilization', not a standard of Christian civilization, he cites Turkey and Japan as examples of non-Christian members of the international system.

'Persia, Siam, China, Korea, Abyssinia and the like, are civilised', he further admits, 'but their civilisation has not yet reached a point to enable them to carry out rules of international law'.⁹⁵ Nevertheless, 'all of them make efforts to

⁹² Oppenheim, *International Law*, p. 3; Oppenheim, *International Law*, 8th edn., p. 4.

⁹³ Oppenheim, *International Law*, p. 10.

⁹⁴ Ibid., p. 31.

⁹⁵ Ibid., p. 33.

educate their populations, to introduce modern institutions, and to raise thereby their civilisation to the level of the Western'. (This is a classic example of the difficulty of delineating and differentiating the 'modern', the 'Western', and the 'civilized'.) 'They will certainly succeed in this regard in the near future', Oppenheim continues. Despite that optimism, he remains firm: 'But as yet they have not accomplished this task, and consequently they are not yet able to be received as full members into the Family of Nations'. Nevertheless, 'the example of Japan can show them that it depends entirely upon their own efforts to be received as full members into that family'.⁹⁶

The standard of 'civilization' is applied unabashedly in subsequent editions of Oppenheim. The 1928 fourth edition of *International Law* still records that some non-European countries were 'certainly civilised states . . . however, their civilisation had not yet reached that condition which was necessary to enable their Governments and their population in every respect to understand, and to carry out, the rules of International Law'.⁹⁷ None the less, 'international intercourse had widely arisen between these States and the States of the so-called Western civilisation. Many treaties had been concluded with them, and there was full diplomatic intercourse between them and the Western States'.⁹⁸ Moreover, since China, Persia, and Siam had taken part in the World War on the side of the allied and associated powers, and were subsequently represented at the Peace Conference at Paris; and since Abyssinia, China, Persia, and Siam 'are now all members of the League of Nations', they had taken such positive steps in fulfilling the requirements of the standard of 'civilization' that it was 'impossible to deny that they are now International Persons and Members of the Family of Nations'.⁹⁹

The trend away from the standard continued. By the fifth edition of *International Law*, published in November 1937 under the editorship of H. Lauterpacht, a new section records that, 'After the World War the Capitulations and some other restrictions upon the territorial sovereignty of most of these (non-European) States were abolished.' Further, it declares,

⁹⁶ *Ibid.*, p. 34.

⁹⁷ *Ibid.*, 4th edn., p. 40.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*, p. 41.

'religion or the controversial test of degree of civilisation have ceased to be, as such, a condition of recognition of statehood'.¹⁰⁰

It was, of course, for a complex concatenation of reasons that the standard of 'civilization' began to lose its place as an organizing principle in international law. But, broadly speaking, there were two forces—one within, one without—which precipitated its decline.

On the one hand, the standard was increasingly considered anachronistic and insulting by the growing number of non-European countries which were becoming for both political and legal reasons full International Persons and members of the Family of Nations. The global expansion of the domain of international law appeared to impose a choice between the universality of the Family of Nations and strict adherence to the standard. As one publicist noted in 1925:

The admission of a number of petty and more or less backward states to participation in the Peace Conference of 1919 and to membership in the League of Nations shows a disposition not to insist upon over-rigorous standards in respect to area or civilization as conditions of membership in the international community.¹⁰¹

This was thought to indicate a tendency in the direction:

of enlarging the international community so as to extend its membership to include not only all independent states, large and small, civilised, and semicivilised alike, but also great colonial dominions which have acquired a large measure of autonomy.¹⁰²

Even the 1929 edition of Wheaton's *Elements* submits that admission to the League of Nations 'must clearly bind all the members of the League to admit the State character of the member admitted'.¹⁰³ While full recognition and membership in the Family of Nations could be granted conditionally, for example, as it had been in 1878 to Rumania, Serbia, Montenegro, and Bulgaria—Wheaton still maintains that 'failure to observe the condition is not a ground for withdrawing recognition'.¹⁰⁴ Also writing in 1929, Sir John

¹⁰⁰ *Ibid.*, 5th edn., p. 46.

¹⁰¹ Garner, *Developments in International Law*, p. 25.

¹⁰² *Ibid.*

¹⁰³ Wheaton, *Elements*, 6th English edn., p. 49.

¹⁰⁴ *Ibid.*

Fischer Williams admits that, 'the conception of "civilised society" as a community of nations or States distinct from the rest of the world no longer corresponds with the main facts of contemporary life . . .'.¹⁰⁵ Further, 'in the contemporary world it is no longer possible to maintain a view of human society in which some States would constitute a sort of exclusive club, to which election is made by the more prominent members under rather vague rules, more or less of unanimity, while the rest of humanity is left beyond the pale under the general protection of principles of morality but excluded from the reign of law.'¹⁰⁶

Neither could the international lawyers of later years fail to recognize the plethora of treaties concluded with non-European countries, the full diplomatic intercourse into which they had entered, and their increasing importance in the emerging global international system, 'a fact', Oppenheim observed, 'of considerable political significance'.¹⁰⁷ By the 1960s, the burgeoning membership of the United Nations had closed the frontier of international society. The 'barbarian option', at least based on the old standard of 'civilization', disappeared.

A 'bandwagon' atmosphere and an element of self-fulfilling prophecy contributed to the process. Where there were twenty-five Afro-Asian states in the United Nations in 1955, there were fifty-three in 1961 (seventeen new African states having joined in 1960 alone), and over 70 per cent of the 132 member states by December 1971.¹⁰⁸ Not only did these new United Nations members object to the distinction between 'civilized' and 'uncivilized', it was becoming increasingly irrelevant in the most universal Family of Nations to date.

Pressures in the European metropole also militated against the continued applicability of the standard of 'civilization'. As early as 1937, Lauterpacht criticized Lorimer for separating recognition into spheres based on 'civilization'. Also edited by Lauterpacht, the 1947 sixth edition of Oppenheim's

¹⁰⁵ Sir John Fisher Williams, 'Recognition in International Law', *Proceedings of the Grotius Society*.

¹⁰⁶ *Ibid.*

¹⁰⁷ Oppenheim, *International Law*, 4th edn., p. 41.

¹⁰⁸ Tinker, *Race, Conflict, and Order*, p. 61.

International Law further argued against the standard of 'civilization'. The 1947 edition notes that in addition to the pre-Great War non-Christian States, e.g., China, Siam, etc., 'other non-Christian States, such as Egypt, Iraq, Saudi Arabia, Lebanon, and Syria participated in the San Francisco Conference of 1945 and are now among the original members of the United Nations'. Thus, 'the question of the membership of the Family of Nations, as distinguished from the position of a State as a subject of International Law, is now a matter of purely historical interest'.¹⁰⁹ Accordingly, for the first time since the initial 1905 edition of *International Law*, the requirements for entry into the Family of Nations are not discussed in terms of standards of 'civilization'.

Chen Ti-Chiang took the standard of 'civilization' to task in even more adamant terms. 'The introduction of extraneous requirements', Chen wrote, 'such as the degree of civilisation, the legitimacy of origin, the religious creed and the political system of a new community, would shift the basis of recognition from the objective test of State existence to nebulous, intractable considerations'. After thus arguing against the old standard, Chen continues, 'Lorimer's doctrine that barbarous and savage peoples, peoples of certain religious beliefs, intolerant monarchies and republics, intolerant anarchies, communist or nihilist communities and communities under personal or class governments are not eligible for recognition on the ground that they are unable to possess a "reciprocating will" seems to be contrary to both fact and principle'.¹¹⁰

Lauterpacht's *Recognition in International Law* is equally emphatic. 'Modern international law knows', it asserts, 'of no distinction, for the purposes of recognition, between civilised and uncivilised States within and outside the international community of civilised states'.¹¹¹ Commenting on Lauterpacht's statement, Schwarzenberger—in something of an ironic statement—notes that: 'At this point doctrine reaches the other extreme. The standard of civilisation has vanished, and states are supposed to be under a legal duty to recognize even *noncivilised* States and their governments' (*italic added*).¹¹²

¹⁰⁹ Oppenheim, *International Law*, 6th edn., p. 47.

¹¹⁰ Chen Ti-Chiang, *International Law of Recognition*, p. 60.

¹¹¹ H. Lauterpacht, *Recognition in International Law*, p. 31.

¹¹² Schwarzenberger, 'The Standard of Civilisation', p. 227.

Although the old standard of 'civilization' was phased out only gradually, the period around 1937 is clearly the beginning of its end—at least by that name.

The holocausts of the Second World War and the threat of nuclear destruction further changed the meaning of 'civilized' and 'uncivilized'. Writing in 1942, in a book which concluded that the Germans represented the fourth great 'barbarism' (after the Saracens, the Albigenian heresy, and the Turks), R. G. Collingwood characterizes *The New Leviathan* as an 'inquiry into civilisation, and the revolt against it which is the most conspicuous thing going on at the present time'.¹¹³ The horrors perpetrated in Europe itself during the two World Wars did much to discredit Western claims of cultural superiority and to undermine the self-confidence from which such attitudes had originated. The barbarities committed by 'civilized' Germany, Japan, and Italy—what Schwarzenberger calls the 'totalitarian aggressors' of World War II—made reference to a standard of 'civilization' meaningless. In addition, the spectre of the hydrogen bomb appeared to 'point to the evanescence of the standard of civilisation from international law'.¹¹⁴

Social consciousness in the metropolises (e.g. the landmark United States Supreme Court decision, *Brown v. Board of Education* in 1954, regarding desegregation) and experience with self-confident nationalists in the peripheries also underscored the moral inconsistencies of standards based on differences of race, colour, or creed. Riddled as it was with overtones of discrimination against race, colour, and creed, the standard of 'civilization' withered as part of the corpus of beliefs that were rapidly becoming socially unfashionable.

A major difference between Oppenheim's and Schwarzenberger's discussions of the standard of 'civilization' is that the former is groping toward a still unknown conclusion while the latter already knows the end from the beginning. Although by no means an apologist for the standard of 'civilization', Schwarzenberger does devote increasing space and discussion to it through successive editions of his *A Manual of International Law*. His increasingly detailed explanations develop

¹¹³ Collingwood, *The New Leviathan*, p. 1.

¹¹⁴ Schwarzenberger, 'The Standard of Civilisation', p. 234.

as if intended to respond to the concerns which arose as the 'Third World' emerged. Indeed, these explanations are particularly sensitive to the historical grievances rooted in the perception that non-European countries were exploited and discriminated against because their civilizations were 'inferior' or 'backward' according to outmoded standards.

From the first edition of *A Manual of International Law* published in 1947, Georg Schwarzenberger maintains that previous manifestations of the standard of 'civilization' 'are primarily of historical significance. They are', he suggests, 'by-products of the transition of the European State system from colonial imperialism to a fully developed world society'. Even his first edition gives a relatively full account of how 'there were intermediary stages between the outright subjection and incorporation of the territories of outsiders and their acceptance as subjects of international law'.¹¹⁵

In the 1960 fourth edition of *A Manual of International Law*, the word 'civilisation' is indexed for the first time. The new section on 'International Law in Ethical Perspective' contains Schwarzenberger's argument that the 'common Christian background and tradition', which had 'nourished continuously and imperceptibly the more formal and technical aspects of their relations', formed a 'common ethical foundation' which 'could no longer be taken for granted' as the 'European Family of Nations developed into a world society'.¹¹⁶ This discussion also specifically mentions that 'those African and Asian states which had assimilated themselves to the Western pattern of political organization, were treated as subject to a simplified system of international law that was free from its peculiarly European features and considered by the Western states to be congenial to all civilised nations'. Indeed, in the case where a country was regarded as approaching, rather than having reached, a phase in its development in which it could be relied on to comply with the standard of civilisation as embodied in international customary law, capitulation treaties assisted further in bridging remaining discrepancies in social and legal systems'.¹¹⁷

¹¹⁵ Schwarzenberger, *A Manual of International Law*, pp. 21-2.

¹¹⁶ Schwarzenberger, *A Manual*, 4th edn., p. 12.

¹¹⁷ Ibid.

But, according to Schwarzenberger, the secularization of international law, the eclipsing of the naturalist approach by positive treatment of international law, and the shift in emphasis from law between 'civilized states' to law between 'sovereign states' all meant that, 'in pre-1939 international law, the standard of civilisation had almost reached vanishing point'. The actions of states 'like Russia, Italy, Germany, and Japan' in adopting 'against sections of their own populations barbarous practices which in any but a largely amoral age would have put them automatically beyond the pale of civilisation' further undermined the ethical credibility of the law, including the normative prescriptions of the standard of 'civilization'.¹¹⁸

By the sixth edition of *A Manual of International Law*, published in 1976, Schwarzenberger has had to retrench. Whereas his first edition had spoken of the transition from the European State system to a 'fully developed world society', his sixth edition more cautiously calls it 'a slowly maturing world society'. He also notes sadly that 'the tactics of saturation bombing as applied to the final stages of World War II, and the atomic bombs dropped on Hiroshima and Nagasaki, prove that the necessities of war tend to engulf any remaining restraints that, at one time, were imposed out of regard for the requirements of the standard of civilisation'. By that point, the standard has lost meaning almost to the point that, 'if ever there should be a third world war, what is likely to happen is that, in a judgment of Washington, Moscow, or Peking, the survivors will determine retrospectively in which way their enemies have violated the laws and customs of "civilised warfare"'.¹¹⁹ One senses Schwarzenberger's doubts that anything of civilization would remain in such a case.

The preceding pages have traced the emergence and decline of the standard of 'civilization' through successive editions of some of the most representative and influential international texts during the relevant time periods. Yet, the decline of the standard did not mean it faded into oblivion. The increasing numbers of non-European countries entering

¹¹⁸ *Ibid.*, p. 13.

¹¹⁹ Schwarzenberger, *A Manual*, 6th edn., p. 311.

international society and the emerging 'Third World' were not satisfied merely to have the old standard fall into disuse. Since it was a pointed reminder of the old colonial order, they actively sought to replace it with international norms more harmonious to their sensitivities and interests. This effort was part of what in the 1960s was called 'the crisis of international law'.

In retort to the old standard of 'civilization', the 'Third World' countries insisted on passing United Nations General Resolutions and Declarations to the effect that no country would be discriminated against on the basis of 'civilization'. 'Inadequacy of political, economic, social, or educational preparedness', noted the Declaration on the Granting of Independence to Colonial Countries and Peoples, 'should never serve as a pretext for delaying independence'.¹²⁰ Members of the International Law Commission agreed to 'refrain from using the expression "civilized countries"', even if Article 38 of the Statute of the International Court of Justice used it' because it 'dated back to the colonial era with its concept of the "white man's burden"'.¹²¹

What was initially feared as Afro-Asian rejection of international law *in toto* turned out to be a rejection of those aspects of it tainted by the colonial past. 'The Afro-Asian countries do not arbitrarily reject the present system of international law', R. P. Anand explained, 'they accept everything that does not smell of "colonialism and imperialism"'.¹²² But aspects of international law originally associated with colonialism and the standard of 'civilization' in theory or in practice, e.g. 'unequal treaties', became anathema. The international condemnation of apartheid in South Africa evidences the collective willingness to make countries which maintain vestiges of the old colonial order into international pariahs.

By definition, an international society must maintain common precepts, interests, and norms. While the old standard of 'civilization' has fallen into disrepute, at least two

¹²⁰ *U.N. Resolutions*, ed., Dusan J. Djonovich (Dobbs Ferry, New York: Oceana Publications, 1974), VIII. 189.

¹²¹ *U.N. International Law Commission Yearbook* (1949), p. 170.

¹²² R. P. Anand, 'Attitude of the Asian-African Countries towards Certain Problems of International Law', *I.C.L.Q.*, 15 (1966) 73.

possible successors may have arisen as new standards in contemporary international society.¹²³

A first possibility is a 'standard of non-discrimination' or a 'standard of human rights'. 'By 1965, at the latest', Professor Brownlie of Oxford University argues, 'it was possible to conclude that the principle of respect for and protection for human rights had become recognized as a legal standard'.¹²⁴ This new 'standard of non-discrimination' is thought to derive from the United Nations Charter, especially articles 55 and 56, the practice of United Nations organs, and the Universal Declaration of Human Rights and International Covenants on Human Rights, as well as other international conventions, court rulings, and resolutions.¹²⁵ It is possible that the 'standard of non-discrimination' is now *jus cogens*.

The parallels between the old standard of 'civilization' and a new 'standard of human rights' are intriguing. They share a common concern for fundamental rights of life, liberty, property, and individual dignity, though in various forms depending on one's politics. There is an easy and natural transition from concern for 'civilized' rights to concern for 'human rights', as evidenced by the debate in the International Law Commission while the Universal Declaration of Human Rights was being drafted. Stressing that the obligation to protect human rights was incumbent upon all states whether or not they were United Nations members, one delegate pointed out that the principles to be applied 'must be sought out in the Constitutions of the different civilized States, namely states which respect fundamental human rights'.¹²⁶

Perhaps most interestingly, there is a sense in which willingness and ability to protect human rights has become a new standard for Europe. It is internationally recognized that only the European Human Rights Conventions require compulsory jurisdiction. The ability to guarantee human rights, as determined by the new standard of the European

¹²³ Ian Brownlie, *Principles of Public International Law*, 3rd edn., (Oxford, Clarendon Press, 1979), pp. 596-8.

¹²⁴ *Ibid.*, p. 596.

¹²⁵ *Ibid.*, pp. 596-8.

¹²⁶ *International Law Commission Yearbook* (1949), p. 169.

Human Rights Convention, still retains something of its old role as a shibboleth for those seeking to enter Europe. Pressure was brought upon Greece to see that it would meet European human rights standards before it was accepted, from 1 January 1981, as a full member—the tenth—of the European Economic Community.

As symbolized by its advanced protection of human rights through what some see as supranational conventions and court systems, Europe appears to be setting a standard of transnationalism in an age when most countries are still coming to grips with nationalism and national territorial boundaries. Whatever their protests that they are not imitation European Economic Communities, groups like the Association of South East Asian Nations (ASEAN) still find themselves portrayed as only quasi-European Communities, just as their nineteenth-century predecessors were labelled quasi-sovereign or semi-sovereign states.

A second possible successor to the old standard of 'civilization' is a 'standard of modernity', which may take one or more different forms. In one form, a 'standard of modernity' vindicates the nineteenth-century assumption that the laws of science, being universal, undergirded a rational cosmology which would bring the 'blessings of civilization' to all. The 'standard of living', taken in its more generous concern for the quality of life on a global perspective, is perhaps epitomized by the efforts of groups such as the World Health Organization (WHO). Using science's most sophisticated theories, resources, and technologies, the World Health Organization has, to take one example, nearly completely eliminated smallpox. What was once a fearful epidemic will soon be eradicated for all people everywhere. At least in terms of world health, it is the Victorian dream for an ever-increasing standard of 'civilization' come true.

In another form, concern for a common 'standard of modernity' raises the possibility of a contemporary cosmopolitan culture. Although its veneer of McDonalds, Levis, and Coke seems frivolous, a cosmopolitan culture may reflect the shared values, moral norms, and experiences given popularity in the conceptions of the 'global village' and the 'global city' discussed by McLuhan and Brzezinski. While Saudi Arabian court sentences of whippings for

distilling alcoholic beverages (with a copy of the Koran held under the arm) and the transmogrifications in the 'new Iran' (everything from the return of veiled women to the stoning of condemned 'sinners') raise doubts about the thoroughgoing nature of contemporary cosmopolitan culture, they can also be seen as the exceptions which suggest the actual if still nascent coalescence of cultural norms, based on and including shared standards of modernity in their various forms.

The foregoing discussion has emphasized that even the old standard of 'civilization' is not just a historical curiosity, but forms an important thread in the social, legal, and institutional fabric of contemporary international society. It formed an even more important thread in the fabric of international society before its frontiers closed. The standard of 'civilization' was promulgated at a time when the questions of the extension of European international society and of the entry of non-European countries into that society were real and pressing. The first part of this book considered the standard of 'civilization' and the extension of European international society; the following part examines the role played by the standard in the entry of non-European countries into the international society that characterized itself as 'civilized'.

Part II

The Standard of 'Civilization' and the Entry of Non-European Countries into International Society



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IV

The Impact of the Standard of 'Civilization' in the Non-European World

Conflicting Standards of 'Civilization'

The successful expansion of the European international system is usually attributed to European military superiority. However, from the perspective of the times in which they occurred, the interactions between the European and non-European worlds represented something more fundamental than the triumph of technologically and militarily superior European societies. At least initially, Europe's expansion to the non-European world resulted in confrontation between the different standards of 'civilization' which underpinned their different polities, economies, and societies. On occasion, these fundamental cultural confrontations were extended by military means.

In the seventeenth century, as the European colonization of North America began, the confrontation of social and cultural systems were more important than the clash of military forces in determining the nature and extent of the European impact. The European military advantage was limited, both qualitatively and quantitatively. Indeed, it was not European firearms but diseases brought by the Europeans (for which the natives had little natural resistance) which reduced the native populations to a fraction of their earlier numbers.

Further, the ravages of smallpox and cholera not only decimated the native populations, but also destroyed the traditional foundations of their societies. Many native American societal and cultural orders revolved around the medicine-man. Medicine-men served as spiritual and temporal leaders, and were believed to be endowed with power over sickness and health, life and death. When shown to be impotent against the sickness and death brought by the white

men, medicine-men lost their legitimacy and right to rule. Likewise, the uncontrollable, seemingly supernatural quality of European firearms belied the medicine-man's claim to control of heaven and earth.

Accordingly, the cultural orders which the medicine-man personified also gradually unravelled. They were slowly superseded by attempts to reintegrate society according to new patterns of power and meaning. Increasingly convinced that kings did not rule by divine right or supernatural power, the Europeans could not have understood how severely even their peaceful presence threatened the societies they encountered in America.

Likewise, in East Asia, the Middle East, and Africa, the European challenge was both more subtle and more devastating than a purely military confrontation would have been. In each case, precisely because their different standards of 'civilization' defined, ordered, and distributed political power differently, the fundamental clash between the European and non-European worlds was seen, especially from the non-European perspective, in terms of a conflict of cultures and cultural systems. However, European military superiority left non-European societies no choice but to come to grips with the European standard of 'civilization'.

There was no escaping what became an enduring association of military defeat with a perceived inadequacy of cultural development and of civilization in general. The Europeans claimed it was so; the non-Europeans resisted reaching the same conclusion with little success. Even when European military prowess was not demonstrated on the battlefield directly (as it had been in China), a lesson was still taught (as it was in Japan and Siam which learned vicariously from China's experience). Cultural humiliation and threats to their traditional political and cultural orders, as much as military defeat, produced intractable dilemmas and concomitant despair for the Ottoman empire after Carlowitz; for the Chinese empire after the Opium Wars; for the Tokugawa Shogunate after Perry's reappearance in Edo Bay; and for Mongkut's court after Bowring announced his intent to negotiate a modern treaty with Siam.

Indeed, from the perspective of the non-European countries, it appeared that to maintain a traditional standard

of 'civilization' was to remain defenceless in the face of European military superiority, while to adopt Europe's standard of 'civilization', even in the name of self-defence, was to surrender the standards of traditional civilization they were mandated to defend. Non-European élites faced a personal challenge: their authority and political *raison d'être* derived from their established places as exemplars and guardians of their historic cultural orders. Leaders in non-European societies desperately sought to accommodate the new European standard without sacrificing their own legitimacy. But one could not long simultaneously cling to an old standard of 'civilization' while grasping for the European one. In the Ottoman empire, for example, even seemingly minor changes in the military sector caused serious reverberations throughout society. It was a problem for which no simple answers were forthcoming.

Many thoughtful non-European reformers arose to preserve the cultural integrity of their countries. However, they soon realized that Europe's military strength was an integral outgrowth of European civilization. This was a hard and sometimes bitter pill to swallow. The perceived need for strengthened self-defence appeared to necessitate adherence to the European standard of 'civilization' and thereby, at least to a certain degree, to the standard of European civilization.

Most non-European countries attempted to blend the best of both worlds. China, for example, tried to graft Western technology (what was somewhat derisively called *yung*) on to the moral and historical foundation of the Chinese tradition (what was called *ti*). Initially popular, *ti-yung* efforts to adopt selectively the technology of the West without adopting Western values and thereby without losing one's cultural identity, proved easier to delineate in theory than in practice.

For many reasons, the European standard of 'civilization' came genuinely to be emulated, albeit often grudgingly or fearfully, by many non-European countries. Each non-European country had to reconcile itself with, to adapt to, to imbibe, or to develop a syncretic compromise with, the European international society and its standard. Initially the problem was formulated as one of preserving the traditional character of society while providing the technological means necessary for its defence. Later the problem became

one of isolating the requirements of the standard of 'civilization' which contributed to universal values and industrial growth from those which would lead to wholesale Westernization. This effort continues today.

As an integral element in the late nineteenth- and early twentieth-century *Weltanschauung*, the concept of the standard of 'civilization' decisively influenced the way the European countries perceived the non-European countries should be drawn into the international society. In turn, the standard of 'civilization', voluntarily or involuntarily, was imbibed by the non-European countries as part of the way they perceived themselves and their relations with the European powers and the 'civilized' international society. And the whole process was governed, at least in theory, by international law.

That law was not totally blind to the fact that the standard of 'civilization' had different impacts in different cultural settings. As one legal commentator recognized, 'There is an objective law of nations, binding as such upon civilised states, irrespective of their assent to specific rules. On the other hand, it is equally clear that the content of this law in relation to particular matters can only be ascertained in reference to custom and practice.'¹

Behind the standard of 'civilization' lay the hope of its promise that domestic development and membership in the international society could be universally enjoyed. The operation of the standard, however, is generally associated with those countries which maintained at least a semblance of independence, and thereby which could (more or less) voluntarily adopt it. Indeed, in some cases, such adoption was thought essential to the protection of that independence.

Russia and the European Standard of 'Civilization'

Medieval Russia had long been on the periphery of Europe, surrounded by enemies: heathen Ottomans to the south, heretic Christian nations to the west. Russian tsars did not intermarry with the aristocrats of European society as did

¹ Smith, *Great Britain and the Law of Nations*, i, p. 1.

monarchs from Poland to Spain. Except in rare instances, only religious scholars learned foreign tongues and then usually only Latin and possibly Polish. Foreign influences such as tobacco smoking, instrumental music, and representational art were decried as the devil's work.² Foreign business men were required to live in the 'German Suburb' east of Moscow's walls. Anti-foreign riots were a periodic expression of Russian xenophobia.

The speed with which Russia was assimilated into European international society increased at the end of the seventeenth century largely because, as Tsar, Peter the Great turned the almost unlimited powers of his office towards 'civilizing' his country according to European standards. Unlike Russian monarchs before him, Peter had been exposed to the West from an early age. Raised in the home of a progressive pro-Westerner, Peter's mother influenced the thinking of both her husband and her son. As a boy, Peter was fascinated by the grand fleets and Western shipbuilding techniques which had made England and Holland wealthy maritime powers. When only fifteen Peter hired a Dutch 'tutor' to teach him about seamanship and shipbuilding.³ Intrigued by questions of war and strategy, he organized, as a youthful hobby, an army of men to enact mock battles. The men assigned to carry out Peter's lavish pastime wore Western-styled uniforms and studied Western strategies.

From an early age Peter took every opportunity to learn from the foreigners in Moscow. After ascending to the throne, he dispatched fifty students to the West to study maritime arts. He encouraged foreign trade and sent ambassadors to Denmark, England, Rome, Venice, the Dutch states, and the Elector of Brandenburg, making it clear that he was interested in closer ties with Europe than his predecessors had been. He organized an army and a navy, and made stipulations for a merchant fleet.

Peter recognized Russia's need to change. He deliberately set out to put his country 'firmly and actively on the road of cultural and material Westernization'.⁴ His aim was 'to

² Robert K. Massie, *Peter the Great: His Life and World* (New York, Knopf, 1980), p. 61.

³ *Ibid.*, p. 68.

⁴ Marc Raeff, 'Imperial Russia: Peter I to Nicholas I', *An Introduction to*
contd...

"civilize" his country on the pattern of the West'.⁵ Peter wanted to make Russia a European great power 'equal not only in terms of military might, but also in trade and industry, in government, and civilization'.⁶

To that end, Peter did what no tsar had ever done. He left Russia on a diplomatic mission to the nations of Europe. He spent eighteen months from 1697-8 in a great embassy to Western Europe visiting the Swedish held Baltic coast, Germany, Holland, England, and Austria.⁷ Travelling incognito as a member of the ambassador's staff, he called not only upon heads of state, but also upon scientists, philosophers, military men, and craftsmen. He sought everywhere and from all the great talents of Europe skills and ideas that might benefit his country. He observed Western political institutions at first hand. Though willing to learn, Peter was also selective. After viewing the British Parliament in session, he concluded that while Russia 'could not accept the limitation by parliaments of the power of kings, still it is good to hear subjects speaking truthfully and openly to their king. This is what we must learn from the English'.⁸ While not all that he saw pleased him, so impressed was Peter with Russia's need to learn from the West that his great embassy recruited for Russian service more than 800 Europeans with special technical skills.

He learned of European conceptions of law, justice, basic rights, and territorial sovereignty. Many things European leaders assumed as a matter of course were foreign to Peter and had to be explained. For example, while in Holland, Peter was offended at criticism by two of his own noblemen. Outraged, he ordered them placed in irons to await execution. When Dutch Stadtholder Witsen informed him that in Holland only a Dutch court could sentence a man to death, Peter refused to relinquish his powers of personal sovereignty over the men. However, 'finally he reluctantly agreed to a compromise which saw the two unfortunates

Russian History, ed. Robert Auty and Dimitri Obolensky (Cambridge, Cambridge University Press, 1976), p. 123.

⁵ Denys Hay, *Europe*, p. 124.

⁶ Ian Grey, *Peter the Great* (London, Hodder and Stoughton, 1962), p. 136.

⁷ This section draws on Massie, *Peter the Great*, 'The Great Embassy'.

⁸ *Ibid.*, p. 214.

exiled to the farthest overseas colonies of Holland; one to Batavia, the other to Surinam'.⁹

For the most part, Europe received the Russian monarch warmly, appreciating his wit and eagerness to learn. This was no doubt how they believed it ought to be—the 'backward' learning from the 'civilized'. Some were surprised at how quickly he learned. 'His wit is alert and quick', wrote Cardinal Kollinte, the Primate of Hungary, 'his manner closer to civil than savage. The journey he has made has improved him greatly, and the difference from the beginning of his travels to the present time is obvious'.¹⁰ Others were dubious about Russia's possibilities for real progress. Wrote the Imperial Ambassador Hoffman of Vienna, 'They say he intends to civilize his subjects in the manner of other nations. But from his actions here, one cannot find any other intention than to make them sailors'.¹¹

Returning to Russia from Europe with a broadened understanding of European civilization, its institutions, philosophies of government, diplomatic practices and technological advances, Peter's vision of what Russia needed to be considered an equal member of European society also expanded. He formulated a policy to introduce and inculcate European culture and civilization to Russia, 'which also meant what—for want of a better term—is called the "modernization" of Russian society'.¹² V. O. Kluchevsky, former professor of Russian history in the University of Moscow, describes these Russian attempts to adopt European standards of 'civilization' in terms which highlight the transition from Russia's being a part of the international system to its playing a role in the European international society. What Kluchevsky calls 'intercourse' existed in Russia's fifteenth- and sixteenth-century relations with Europe—business, both diplomatic and commercial, the employment of artists, skilled artisans, physicians, and soldiers. What he calls 'influence' appears:

when the community by which it is received begins to recognize the superiority of the culture or environment with which it (the

⁹ *Ibid.*, p. 187.

¹⁰ *Ibid.*, p. 224.

¹¹ *Ibid.*, pp. 214-15.

¹² Marc Raeff, 'Imperial Russia', p. 123.

community) is being influenced, and also the necessity of studying it, of morally submitting to it, while at the same time borrowing from it not only the amenities of life, but also the very basis of a system of life—views, ideas, and social relations.¹³

These changes in Russian civilization were diversely manifested. The day after returning to Moscow, Peter personally shaved the beards of leading Muscovites because he 'regarded beards as unnecessary, uncivilized, and ridiculous'.¹⁴ He refused to let his *boyars* kowtow to him in the traditional oriental style. He cut the flowing sleeves of their traditional court robes. Later he made shaven chins and European dress obligatory for Russian gentry and officials. This was seen as a powerful attack on the traditions of the old orthodoxy of which beards were a potent symbol. His entourage was given shortened *odnoriadoki* (court uniforms) and *ferezi* (festive jackets). His court also adopted the Julian calendar.

Although these changes of *coiffure* and raiment were not imposed on peasant or clergy, they were proclaimed to the rest of the general populace in January 1700, to the beat of a drum through street and square. Men were to be vested in Hungarian caftan. By 1701, an additional decree ordered every man to procure a jacket of either Saxon or Gallic cut and to 'wear it over a costume of German small clothes, waistcoat, breeches, gaiters, boots, and cap, and every woman to wear German boots and petticoat and bodice and head-covering'.¹⁵

Later in his reign, Peter introduced French-styled entertainment to Moscow society. Because they were so foreign to the Russian aristocracy, Peter issued 'Regulations' explaining what these 'Assemblies' were and how they should be conducted. He required his own daughters, Anne and Elizabeth, to receive a European education. They studied French, because 'all civilized men including Germans, wanted to learn French'.¹⁶

Peter also sought to emulate European standards in Russian institutions. He equipped his capital with a Marine Academy,

¹³ V. O. Kluchevsky, *A History of Russia*, trans. C. V. Hogarth (New York, Russell & Russell, 1960), Vol. III, p. 266.

¹⁴ Massie, *Peter the Great*, pp. 234-5.

¹⁵ Kluchevsky, vol. IV, p. 225.

¹⁶ Massie, *Peter the Great*, p. 806.

Schools of Navigation and Medicine, a training college for gunners, and seminaries for the acquisition of mathematics and Latin. Foreign specialists were called in as military officers, shipbuilders, navigators, factory superintendents, and mining engineers. More students were dispatched to study mathematics, natural science, shipbuilding, navigation, and anything else required to compete with Europe. In 1717, he created a Russian Senate. In 1718, the traditional government offices (*prikazi*) were replaced by nine colleges—foreign affairs, revenue collection, justice, expenditure, finance control, war, admiralty, commerce, and mining and manufactures—which were modelled after the Swedish system of colleges. Peter imported foreign translators, lawyers, and administrators to help make the new system work. He created an order of Russian knighthood patterned after similar orders in the West. He signed a treaty with Constantinople, one provision of which placed a permanent Russian ambassador at Constantinople to be considered equal to ambassadors from Austria, England, France, and Holland; this constituted a major step towards Russia being ‘recognized as a major European power’.¹⁷

The Petrine state’s new role in European politics portended Russia’s

territorial expansion even beyond the limits set by traditional historic claims or national, linguistic, and religious criteria. In the process, Russia became a truly multinational empire, with the status and functions of a world power, involved in diplomatic and military imbroglions and open to influences from the West.¹⁸

Russia’s borrowing so extensively and fundamentally from Europe brought with it a psychic cost. Many in Russia opposed Peter’s reforms. The inertia of the Russian state and the innovative spirit of the tsar soon brought a fundamental schism in Russian society. By the latter half of the eighteenth century, two distinct groups had emerged in Russia.

At first, the nationalist expounders of Russian independence from Europe called themselves ‘Russophils’, and dubbed their opponents ‘Semi-Franks’, ‘Gauls’, ‘Freethinkers’, and ‘Voltairians’. From the mid-nineteenth century, however,

¹⁷ *Ibid.*, p. 286.

¹⁸ Raeff, ‘Imperial Russia’, p. 123.

the groups were called 'Westerners' and 'Slavophiles'. The 'Westerners' taught an essentially unilinear model of cultural progress based on European civilization. On the basis of civilization, they considered Russia European, though 'junior European by historical growth, and therefore bound to traverse the same road in culture as Western Europe and also to adopt the fruits of their civilization'.¹⁹ In contrast, the 'Slavophiles' taught that Russia was European but also Eastern, with native principles of life which had to be worked out without influence from Western Europe. The 'Slavophiles' thus sought neither to imitate, nor to borrow the fruits of an alien culture, but to elaborate the principles of their own historical life which lay hidden within the depths of the national soul.

Russia's experiences under Peter's dynamic leadership in many ways foreshadowed those of non-European countries subsequently confronted by the expanding European international society. Russia's entry into the international society of the day corroborated Europe's confidence in its standard of 'civilization' and served as something of a reference example for other non-European countries seeking to join the Family of Nations. Nevertheless, in contrast to most non-European countries, the challenge to Russia's cultural foundations was buffered by centuries of customary intercourse, contiguous proximity, and visions of shared civilization born partially of racial similarities.

The Ottoman Empire and the Standard of 'Civilization'

The entry of the Ottoman Empire into 'civilized' international society is of particular importance because of the lingering conventional wisdom that an explicit standard of 'civilization' existed in 1856 and that by fulfilment of such a standard the Ottoman Empire was admitted to full membership as the first non-European country in the European international society. This assertion appears to fail on two counts: firstly, as discussed in Chapter two, the standard of 'civilization' emerged as an explicit legal concept only at the

¹⁹ Kluchevsky, Vol. III, p. 270.

end of the nineteenth century, not at the middle; secondly, at best, the Ottoman Empire was initially admitted as a provisional member of the European international society, and even then, in what was more a European manoeuvre to preserve the existing balance of power by guaranteeing Ottoman territorial integrity from Russian aspirations, than an effort to enlarge the scope of international society.

The question of when the Ottoman Empire first qualified as a full and civilized legal personality is complicated by historical facts which changed meaning over time. As early as 1193, the Sultan extended extraterritorial jurisdiction to European 'infidels' who could not be expected to understand the religious codes which regulated the daily lives of the Sublime Porte's other subjects. These European 'rights' came to be called capitulations long before any sense of subservience, i.e. capitulation, was perceived to attach to them.

The situation reversed only gradually. As the standard of 'civilization' emerged as an explicit legal concept, the capitulations became a symbol in European eyes of Ottoman inability to uphold 'civilized' standards. Initially, the capitulations permitted a few foreign nationals to be judged by their own laws and standard of 'civilization'. Because the foreign community was limited, their impact at the time remained circumscribed. However, as the number of foreigners increased, their demands for 'civilized' treatment grew; alleged Ottoman maltreatment of Christian minorities also threatened to provide an excuse for foreign intervention in Ottoman affairs. These deficiencies in 'civilization' were thought to limit the Ottoman Empire's ability to participate in the European international society—at least as a full legal personality.

Indeed, there were other factors to consider. Due to its geographic proximity to Europe, the Ottoman Empire was drawn into the European states-system from an early time as a factor in the balance of power. It formed part of what Martin Wight calls the triangle of Ottomans, Habsburgs, and French.²⁰ Functionally part of the European power

²⁰ Martin Wight, *Systems of States*, Hedley Bull, ed. (Great Britain, Leicester University Press, 1977), pp. 188-9.

balance, and thereby thoroughly familiar with the implicit assumptions and practices of the European international society, the Ottoman Empire merely had to be formally admitted into the international society of which it was already in some ways a member in practice.

Nevertheless, the integral role the Ottoman Empire played in the European power balance seemed to contradict its refusal to participate as a full European member of the international society (as defined by that society's still implicit standard of 'civilization'). Ottoman military might and traditional learning underscored the Ottoman sense of 'the immeasurable and immutable superiority of their own way of life', and caused them 'to despise the barbarous Western infidel from an attitude of correct doctrine reinforced by military power'.²¹ It was this Ottoman sense of superiority, this sense of confidence in their own traditional standard of 'civilization', that made the 'infidel Turks' a threat to Christian and European civilization. The concept of the jihad or holy war took the world and 'divided (it) into two great zones, the house of Islam and the house of war, with a perpetual state of war, or at best truce, between them'.²² Indeed, it was a 'voluntary and deliberate act', whereby the Ottoman Empire had accepted resident missions from Europe but had refused to send its own to the continent; this was part of the way the Padishahs expressed contempt for the emerging European nation-states.²³

Ottoman faith in traditional standards of 'civilization' and European perceptions of the Ottoman threat both diminished as Turkish military might declined. Indeed, with the failure of the second Turkish siege of Vienna in 1683, the Ottoman tide began to turn. In 1696, the Russians seized Azov, their first foothold on the Black Sea. In 1699, the Austrians imposed the Treaty of Carlowitz, the first treaty signed by the Ottoman Empire as a defeated power. It was following the Treaty of Carlowitz that the Sublime Porte began to 'keep a record of its [the Ottoman Empire's] international

²¹ Bernard Lewis, *The Middle East and the West* (Great Britain, Weidenfeld and Nicolson, 1964; reprinted 1968) p. 32.

²² *Ibid.*, p. 30.

²³ J. C. Hurewitz, 'Ottoman Diplomacy and the European State System', *The Middle East Journal*, Spring 1961, p. 145.

commitments to Europe'. From that time the Ottoman Empire chose (out of perceived advantage) to be 'bound by the rules of the European state system'.²⁴ Playing by the rules which conferred the greatest advantage, i.e. the most needed protection, seemed only natural.

The Ottoman defeat and the subsequent signing of the Treaty of Carlowitz marked a turning-point for Ottoman relations with the West. Thereafter Sultan Selim III (1789-1807) experimented with reciprocal diplomacy, which lasted from 1793-1821. Following him, Ottoman diplomacy was progressively integrated into that of the European states-system in the middle decades of the nineteenth century. Reciprocity was achieved as Constantinople created the necessary diplomatic support apparatus.

Thus, for more than a hundred years before the 1856 Treaty of Paris, the Ottomans had been gradually drawn into the European international society, first by their participation in the European balance of power, then later by reciprocation of resident diplomatic missions. During this period, the Ottoman Empire functioned more as a part of the European international system than as a member of the European international society (since they shared few of Europe's interests, principles, or norms).

This changed as Europe's impact grew. Lewis argues that the 'impact of European imperialism was late, brief, and for the most part, indirect'. The impact of Europe was, however, 'profound and overwhelming'. The Ottoman's loss of cultural self-confidence was evidenced by the importation of instructors from European technical schools in the eighteenth century; by European influences in Ottoman architecture, even in religious architecture, as for example, in the baroque ornamentation of the Nurusmaniye mosque completed in 1755. By 1809 Muhammed Ali Pasha had sent the first Egyptian student mission to Italy; by 1818, twenty-three Egyptian students were in Europe. In 1826, the Pasha of Egypt sent the first large Egyptian mission of forty-four students to Paris. In 1827 Sultan Mahmud II, despite strong religious opposition, sent a Turkish mission of 150 students to various European countries. The young Ottomans visited

²⁴ Ibid.

Europe in the 1860s and began to publish opposition journals in London, Paris, and Geneva.²⁵

Other reforms evidence the Ottoman Empire's efforts to meet European expectations and standards. For example, the 1826 Ottoman army code of regulations mandated European-style tunics and trousers, as well as 'a subara, a drill-coat, short tunic and vest of broad cloth, tight-fitting serge breeches, and frontier-boots'.²⁶ In 1847, mixed civil and criminal courts tried to establish European and Ottoman judges in equal numbers, with rules of evidence and procedures drawn from European rather than Islamic practices. These changes occurred as European innovations such as the telegraph in 1855, railways in 1866, and a postal system hastened the general transformation of Ottoman society. Mahmud tried to adopt the structure and organization of a European-styled central government partly 'to give to the apparatus and personnel of Ottoman government the nomenclature and outward appearance of their European equivalents, and thereby to impress European observers with the modernity and progressiveness of Turkey'.²⁷

Though a formal standard of 'civilization' had not yet emerged in 1856 when the Treaty of Paris was signed, stipulations regarding the standard and its still implicit (but nevertheless real) requirements were integral to the conditions on which the Ottoman Empire was provisionally accepted as a subject of the European international law. The Ottomans had long been susceptible to European practices, partly because of European pressure and partly because of their own attempts to gain European approval. A preliminary to the signing of the Treaty of Paris was the promulgation by the Sultan of a new reform charter. The Imperial Rescript (*Hatti-i Humayun*) issued on 18 February 1856 served to affirm the attempts at reform in the period preceding its proclamation. Specifically, the Rescript affirmed the principles of 1839, including: (1) the abolition of tax-farming and other abuses; and (2) the guaranteed equality of subjects, irrespective of religious beliefs.

²⁵ Lewis, *Middle East and West*, pp. 31-42.

²⁶ Bernard Lewis, *The Emergence of Modern Turkey* (Oxford, OUP, 1962), p. 98. Lewis notes that 'a subara is a wadded cap, made of cloth, with a roughly cylindrical crown ending in a flap'.

²⁷ *Ibid.*, pp. 94-5.

There is an important continuity of concern demonstrated in the 1856 Treaty of Paris. Just as Europe before 1856 had focused on the role of the Ottomans in the balance of power, so that remained a primary concern in 1856. With Russian forces intent on—and subsequently occupying—Moldavia and Wallachia, the other countries in Europe, namely Austria, Great Britain, France, and somewhat reluctantly Prussia, regarded the situation in 1853 as a crisis involving the balance of power. The records of the Paris conference, one commentator argues, corroborate that the '*droit public européen*' and '*concert européen*' 'express simply two aspects of the same thing'; indeed, the history of Article 7 of the Treaty of Paris shows it 'to be closely connected with the conception of the concert and the balance of power'.²⁸ Hugh McKinnon Wood concludes by declaring quite plainly:

Article 7 of the Treaty of Paris does not deal with Turkey's status in international law. It is not an instance of the recognition of an Oriental State as a subject of that law. Its purpose was not even, in a strict sense, a legal but rather a political purpose. The benefits to which it admitted Turkey were those of being formally declared to have been part of the legal structure of European in the nexus of treaties and accepted policies which underlay and maintained the stability of the continent, and of being expressly included in the operation of the European concert.²⁹

Further evidence argues that the Ottoman Empire did not enter the Family of Nations through Article 7 of the 1856 Peace Treaty of Paris. It is Smith's opinion that, 'for many centuries Turkey had maintained diplomatic intercourse and concluded treaties with Great Britain and other European powers, and the official documents which accompany this intercourse make it clear that the general body of international law was considered to apply'. He concludes that, 'if a state possesses a degree of civilization and stability sufficient to enable it to maintain their normal relations with other states, then those relations will be regulated by the general body of international law. Whether the culture of such countries be Christian or non-Christian, European

²⁸ Hugh McKinnon Wood, 'The Treaty of Paris and Turkey's Status in International Law', *A.J.I.L.*, 1943, pp. 264-5.

²⁹ *Ibid.*, p. 274.

or Oriental, would appear to be irrelevant.'³⁰ Examination of the volumes on Turkey in the British *Foreign Office Legal Officer Opinions* edited by Clive Parry confirms the point that 1856 and subsequent years passed without comment on any changes in the legal status or legal capacity of the Ottoman Empire.

For many Turks, the wholesale reform of the Ottoman Empire according to 'infidel' standards was anathema. It seems not only a betrayal of the established customs and order, but also a highly visible reminder of concessions made to a foreign standard of 'civilization'. The repugnance Turks felt toward these concessions was proportionate with their sense that the Ottoman Empire lacked viable alternatives. The European insistence that they were helping the Empire to 'civilize' itself only added insult to injury. Thus, while it is true that the reform in the Ottoman Empire (as in other non-European countries in this period) cannot be said to have been militarily imposed, neither the pace, the direction, nor the extent of reforms in the Ottoman Empire can be said to have derived solely from indigenous inspiration.

There was no easy way to separate the demands for reform from the general humiliation of the Ottomans. The eclipsing of their traditional standard of 'civilization' was forcefully evidenced not only by the erosion of their military position, but also by their actual territorial losses to the 'infidels'. Particularly for a regime which prided itself on its military accomplishments and which derived not a small portion of its psychic identity and legitimacy from its military accomplishments, these losses precipitated an agonizing period of national soul-searching.

Forced acquiescence to 'infidel' standards and definitions of 'civilization' dealt a double blow: it meant denying important aspects of the traditional standard of 'civilization'; it also meant embracing what before had been *bête noire*. For this reason, the traditional role played by the military guaranteed that military reform would become the thin end of a wedge of discontent. Reforms designed at strengthening Ottoman military capacity could not be guaranteed or limited to strictly military reforms. If the military served as the

³⁰ Smith, *Great Britain and the Law of Nations*, pp. 16-18.

nervous system of the Ottoman societal structure, then military reforms not only touched a raw nerve but hastened a general systemic breakdown.

By 1856, the conditions both in Europe and in the Ottoman Empire were in transition. The Ottomans recognized their need for Europe's protection; Europe recognized its need to protect them. As is well known, the Preamble of the Treaty of Paris signed on 30 March 1856 declared that the independence and integrity of the Ottoman Empire were necessary for the peace of Europe. This assertion was converted into a collective guarantee in Article VII of the treaty, which gave the Ottoman Empire the right '*à participer aux avantages du droit public et du concert européen*'. Three things were thought to have occurred: the Ottoman Empire was admitted as a participant in the public law of Europe; tentatively recognized as a European state; and thereby guaranteed its position from expropriation by other states such as Russia.

Indeed, these were the issues debated in 1856 when the House of Commons and the House of Lords considered the merits of the Treaty of Paris. For an admixture of reasons, various participants found the Treaty of Paris desirable. First, a 'subject of congratulation' was that the articles of the treaty were part of a general instrument 'cordially ratified' by the Sovereigns of Europe, who thus gave their 'assent to the principles and the policies on which it is founded', placing it 'under the guarantee of Europe as part of the national law of Europe'. Second, there were calls for rejoicing that the Sultan 'has accorded civil and religious equality to all his subjects, Christian and Mohammedan' recognizing for the first time, 'the rights of conscience and the rights of man'. Perhaps most important, Russia, which 'had created and justified the greatest alarm throughout Europe', had been turned back—with Sibastopol (*sic*) and the Russian fleet no longer a menace to Turkey; with seas which had before been closed now open to free and unrestricted commerce; with Ottoman principalities no longer suffering from Russian protection, or having to fear Russian interventions.

But there were dissenting voices, voices fearful that the *hatti-sherif* would only prevent the foreign powers from enforcing due justice. The Earl of Aberdeen was concerned

that the *hatti-sherif* was of 'less value than it might be, because it precludes the contracting Powers from interfering in its execution, and that prohibition is included in the treaty of peace itself'. Several shared his view that 'without the constant superintendence of the other Powers to secure its execution, the *hatti-sherif* will not be worth the paper on which it is written'. For others, the issue was even more fundamental. The 'contest undertaken ostensibly to uphold the independence and integrity of the Ottoman Empire, has, in my opinion', said the Earl of Gray, 'tended greatly to accelerate that inevitable and rapidly approaching issue—the dismemberment and dissolution of Turkey as a Mohammedan state'.³¹ The dilemma was simple: declaring Turkey a 'civilized' country meant nothing if the standard of 'civilization' was not enforced by the Ottomans themselves, or enforceable by the European countries concerned.

As in 1856, so in later years. 'Only to call the Grand Vezir and his colleagues ministers, dress them thus in frock coats, provide them with offices, desks, and newly frock-coated staffs, did not change them overnight into the administration of a modern state.'³² Despite Europe's prompting, urging, and cajoling, the Ottoman Empire was perceived as unable and unwilling to fulfil its obligations as a European state. The religious freedom, equal taxes, and admission to public employment without distinction of nationality the Ottomans promised in Article IX of the Treaty of Paris (which recognized the Sultan's generous intentions towards the Christian population of his Empire and noted his Firman of 18 February 1856) did not appear forthcoming.

As the Eastern question became increasingly grave and the 'Sick Man of Europe' would not or could not reform, Lorimer was only one of the many who questioned whether or not it had rightly been admitted into European circle. The promulgation of new land and penal codes in 1858, of mixed courts in 1860, and of further commercial and maritime codes, largely of French inspiration, in 1861-3, failed to

³¹ *Parliamentary Debates*, House of Lords, Vol. CXLI, 5 May 1856, pp. 1959-2027.

³² Lewis, *Emergence of Modern Turkey*, p. 95. See also Roderic A. Davidson, *Reform in the Ottoman Empire, 1856-1876* (Princeton, Princeton University Press, 1963).

assuage the fears, doubts, and sometimes outright animosity towards the Turks. Lorimer railed at the bitter consequences 'of extending the rights of civilisation to barbarians who have proved to be incapable of performing its duties'.³³

Granting that the emergence of the standard of 'civilization' shifted the perception of all concerned toward the whole system of capitulations, it is still difficult to pinpoint the turning-point when this change in attitude occurred. By the 1907 Second Hague Conference, the capitulations had clearly become a sore spot for the Ottoman Empire. Considering the Ottoman legal system less than fully 'civilized', the countries attending the Second Hague Conference brushed aside the Ottoman diplomatic displeasure in ranking the Empire among the second-class powers at the Conference. The general congruence of military power and judicial development (as in the case of Japan) or lack thereof (as in the case of the Ottoman Empire) proved a happy coincidence. It would have been awkward to have accorded Turkey second-class status on the basis of its court system while having to cope with its military pride; to have accorded it full international legal status solely on the basis of military strength would have been equally unsatisfactory.

The Times felt fortunate in being able to report that:

In diplomatic quarters here there seems to be no disposition to take very seriously the protest of the Porte against the classification of Turkey among the second-class powers by the Hague Conference. The European governments are not engaged in elaborating a scheme of judicial reform in Macedonia, and while showing such a striking lack of confidence in Turkish justice, they could scarcely, without stultifying themselves, invite the Turkish government to nominate a permanent member of the Court of Arbitration or the International Prize Court.

There was no escaping the practical consequences of the Ottoman's perceived inability to uphold 'civilized' standards. Hence, *The Times* concluded, in 'both official and non-official quarters the incident is regarded as a fresh humiliation for Turkey, but it is recognized as the inevitable outcome of circumstances'.³⁴

³³ Lorimer, *Institutes*, i, p. 102.

³⁴ 'The Position of Turkey', *The Times*, 10 Sept. 1907, p. 3.

The humiliation felt to derive from the capitulations was a factor in the Ottomans joining the Central Powers in the Great War. Indeed, the participation of the Ottoman Empire contributed to making the Great War into the First World War. At least three factors helped shape the Ottoman stance towards the First World War.

First, the Ottomans signed a secret agreement shortly after the war began, essentially indicating that should they join the conflict, they would do so on the side of the Central Powers.

Second, the Ottoman Empire had raised funds for two cruisers through enthusiastic public subscription. (For example, women had cut and sold their hair to help the patriotic effort.) When Great Britain expropriated the two Ottoman cruisers, which were being built in British shipyards, Ottoman public opinion turned immediately toward the Central Powers.

Third, in a master-stroke of diplomacy, two German cruisers, the *Breslau* and the *Goeben*, slipped up to Constantinople, where their commanders offered their ships for Turkish command in place of the two cruisers that had been lost. That important coastal areas were exposed to the powerful guns on the two German ships did not escape the notice of the Ottoman authorities.

Thus, for a number of reasons, some of which played on Ottoman indignation and pride, the Ottoman Empire joined the Central Powers and declared war on 19 September 1914. The Empire specifically claimed that its declaration also meant that the capitulations were abolished as of that day. But the outcome of the war meant that the Allied Powers could enforce their interpretation that Turkey's act had been unilateral, and therefore insufficient to nullify the capitulations. The Allied Powers continued to assert that the capitulations could be abolished only by bilateral agreement.

Written, in 1918, the language of one commentary deserves close attention because of the underlying assumptions it reveals regarding the application of the standard of 'civilization' to the Ottoman Empire. In describing the 1856 Treaty of Paris, the commentators, Oakes and Mowat, note that with the signing of the treaty the tradition 'from the time of the Crusades that the Turks were the enemies of Europe and

of civilization' was abandoned.³⁵ 'Turkey was henceforth to be a member of the European States-system, and to be treated as a civilized community.'³⁶ Further, 'by admitting them to the privileges of the Public Law of Europe, the Treaty of Paris recognized them as a civilized and respectable State', and if by its subsequent conduct in the community of European States, Turkey should justify its position there, 'neither Russia nor any other power would have a moral right to expropriate her'.³⁷

Implicit in Oakes and Mowat's analysis are several 'unspoken assumptions'. First, the Turks had ceased to be enemy to both Europe and 'civilization'; civilization was thought to derive from Europe. Second, it was both recognition by treaty and willingness to engage in decorous conduct in the community of European states which made Turkey 'civilized' and respectable. Third, recognition in the Public Law of Europe secured the Ottomans from expropriation by other European powers, conditional upon its subsequent conduct, protection which did not exist without such recognition. Fourth, Oakes and Mowat indicate the common belief of their time when they speak of the '*rise of Turkey to membership among the States of Europe*' (italics added).³⁸

The stigma of the capitulations became a focal issue during Turkey's negotiations at Lausanne in the early 1920s. The 'proposals submitted to the Turkish delegations in regard to the right of establishment were based on ordinary European modes, notably on the Franco-Swiss Treaty, and claimed nothing but what one civilized country might legitimately ask of another', *The Times* said prosaically. Yet *The Times* warned, 'the conference may possibly break down to the accompaniment of the parrot-cry of "Turkish sovereignty"... The majority, if not all, of the States interested', it continued, 'are in general agreement with the two principles which the Allies took as their starting-point namely: 1) that the old capitulatory system had so many defects as to make

³⁵ Augustus Oaks and R. B. Mowat, *The Great European Treaties of the Nineteenth Century* (Oxford, OUP, 1918; reprinted 1970), p. 162.

³⁶ *Ibid.*, p. 163.

³⁷ *Ibid.*, p. 164.

³⁸ *Ibid.*

the substitution of a more modern and less cumbrous system desirable in the interest of all parties; and 2) that any new system must, while taking full account of Turkey's desire for independence, provide adequate safeguards for the persons, property, and interest of Allied subjects.³⁹ The understandable desire to enforce the standard of 'civilization' when one's life, liberty, and property were at stake, whatever the sensitivities of a host country toward its domestic jurisdiction, died hard.

Written a month later, *The Times* summary of the capitulations situation was again permeated by concern for the standard of 'civilization':

It is impossible to pronounce judgement upon the compromise reached at Lausanne until we learned the result of the unfinished negotiations on the collateral question of the Capitulations. The security which these ancient treaties assured to foreigners trading in Constantinople will disappear with their abolition, which may be regarded as having been decided upon in principle by all parties at Lausanne. The nature of the safeguards which will be substituted for them will be scrutinized with anxiety by every country that has any commercial dealings with Turkey. . . . Unless the Turks so completely alter their habits as to bring the administration of the law into some sort of harmony with that to which Western Europeans are accustomed, it will be impossible for foreign traders to pursue their calling in security.⁴⁰

Many at the Lausanne Conference recognized that the Europeans' enforcement of the standard of 'civilization' and, thereby, the perceived humiliation of Turkish cultural pride, had become a central issue. An article entitled, 'The Break-down at Lausanne', of 5 February 1923, reported:

The Turkish delegates have definitely refused to sign the Treaty and the British delegation are on their journey home. . . . The assent of civilized Europe to the forcible exchange of the Greek and Turkish population of certain regions is a startling instance of the lengths they were prepared to go in order to meet the proposals of Angora. On Saturday the Allies abandoned the limitation upon the number of Turkish troops to be stationed in Eastern Thrace, and, the arrangements they had proposed for the trial cases in which foreigners were concerned. This arrangement was in lieu of the present system, established centuries ago by the Capitulations and confirmed by many treaties. A safeguard

³⁹ 'Turks Warned Again', *The Times*, 29 Dec. 1922, p. 8.

⁴⁰ 'Compromise at Lausanne', *The Times*, 11 Jan. 1923, p. 11c.

of this kind is absolutely essential to the safety of Europeans resident in Turkey, and to the trade and industrial enterprise which they carry on, and whatever progress towards civilized standards the Court may make, it will remain indispensable for many years to come.⁴¹

However, *The Times* continued a little indignantly, 'The Turks reject this proposal as an infringement upon their sovereignty or a slight upon their civilisation.'⁴²

Even when the new treaty was finally signed, it was not so much with a bang as with a whimper. *The Times* noted with sad resignation, 'The Treaty will seem a humiliating confession of surrender by the Western Powers. . . . Gone are the Capitulations with the Consular Courts and immunity for foreigners from arrest without the presence of the Dragoman and from all but property taxation.'⁴³

Thus, by the early 1920s, the Turks had passed a turning-point. The humiliation of being considered 'uncivilized' and the indignation that the capitulations impaired Turkish sovereignty could be mollified only by treaty revision. With the signing of the Lausanne Treaty on 24 July 1923, the capitulations were officially abrogated. But, as elsewhere, even the official abrogation of extraterritoriality did not guarantee smooth international sailing for the modern state of Turkey.

Abyssinia and the Standard of 'Civilization'

Abyssinia was the only African country not colonized outright during the 'scramble for Africa' at the end of the nineteenth century. In this sense it was atypical of the African experience. But, precisely because Abyssinia remained independent, its experience with how the standard of 'civilization' was applied and received in Africa is particularly pertinent.

In some ways, Abyssinia's early relations with Europe are best known for the events which took place at Adowa

⁴¹ 'The Breakdown at Lausanne', *The Times*, 5 Feb. 1923, p. 11.

⁴² Ibid.

⁴³ 'The Lausanne Treaty. For and Against. Free Hand for the Turk', *The Times*, 23 July, 1923, p. 11.

in 1896—the first major defeat of a European power by a non-European one. Tracing his ancestry to a daughter of King David, Menelik proclaimed himself king of kings. He was a member of the house of Solomon, a leading ras, and had the loyalty of the Shoan army. The Italians, late comers to the colonial scramble and eager for the prestige and opportunities that colonial holdings apparently held, sought and signed the Treaty of Ucciali with Menelik.⁴⁴

Italy assumed the treaty made Abyssinia its protectorate and publicly announced so. Indeed, the Italian text seemed to read, Menelik 'consents to avail himself of the Italian government for any negotiations which he may enter into with other Powers or Governments'. Menelik saw it differently. He interpreted the treaty to mean 'may use Italian assistance' rather than 'consents to use Italian assistance'. In the meantime, his nephew Ras Makonnen, the governor of Harar, had gone to Rome where King Umberto had presented him with 28 canon and 38,000 rifles—weapons later used at Adowa. Menelik accepted a further gift of 2,000,000 Italian cartridges in 1893. But the Italians soon learned that such gifts engendered little subservient loyalty. Angered by Italian activity in Eritrea, Menelik also resented the Italian pronouncement that Abyssinia had become an Italian protectorate. He repaid the loan he had received with the Treaty of Ucciali and denounced the treaty.

The Italians were embarrassed and upset. Crispi, the Foreign Minister ordered General Baratieri to produce an 'authentic victory'. No doubt, both had in mind Napier's impressive military victory which had secured for Great Britain the Abyssinian crown jewels and other Abyssinian treasures. Baratieri counted on three factors to sway the battle to his favour: surprise, since he decided to attack on Sunday, 1 March 1896, a feast day in the Abyssinian Church; superior equipment; and European military discipline and *élan*. He failed, however, to take account of three additional factors: the stockpiled weapons and ammunition Menelik had been given and which he had been importing through Jibuti for some years, including Hotchkiss quick-firing

⁴⁴ A. H. M. Jones and Elizabeth Monroe, *A History of Abyssinia* (Oxford, Clarendon Press, 1935; reprinted 1978) provides much of the narrative about Abyssinia and the Battle of Adowa.

mountain guns; the superior ability of the Abyssinians to manœuvre with advantage through familiar home territory; and the abysmal inaccuracy of his local intelligence and maps.

Hoping that Abyssinia's armies would be worshipping at the holy city of Axum, Baratieri planned to descend on Adowa, the capital of Tigre, on Sunday. Accordingly, he left camp at nightfall on 29 February, advancing with 14,500 men in three columns. Day-long rain made the going slow. The plan was to occupy three hills commanding the Adowa plain. The left wing, consisting of native troops under the command of General Albertone, was to position itself on the hill farthest to the south, the one marked Chidane Meret. Albertone's native regiments quickly outdistanced the two Italian detachments. At daybreak Albertone was left without sign of the central force to his right. Disturbed, he was told by native guides that the hill he was on was wrongly mapped; the real Chidane Meret was still some miles further. Uncertain, he decided to move ahead, and still out of touch with his companion forces, moved toward Chidane Meret proper.

In full view of Adowa he was attacked on all sides. Surrounded, he was forced to surrender. The right wing, though better placed, did little better. Cut off, their general was killed and the troops broke back towards the centre body, spreading panic and disarray as they went. At evening, Menelik ordered his troops back to camp. Had he not done so, the cavalry could have blocked the few passes available and possibly exterminated the whole Italian army. As it was, some 8,000 Italians and 4,000 native troops were killed outright. Some managed to escape in the narrow gorges and make their way to Eritrea while others were taken prisoner.

The humiliation was never forgotten in Italy. The inability to hold a colonial protectorate was compounded by the stunning military loss to a 'barbarous' people. In 1935 when Italy set forth to conquer Abyssinia, revenge was still an important motive. Even then, a veteran Gabriele d'Annunzio could write to a young man bound for the 'African War', to wipe out its memory, for he 'could still feel on his shoulder "the scar, yes, the shameful scar, of Adowa"'.⁴⁵

⁴⁵ *Ibid.*, p. 145.

As the Europeans sometimes did too, Menelik applied a double standard to the treatment of prisoners. It is said that Hitler applied to Europe the standard that Europeans had earlier reserved for countries outside Europe; his code of honour differed when fighting British or French from when dealing with *Untermenschen*, even in Europe. However, unlike the European standard which treated its own well and left for the 'barbarians' whatever they deserved, the Abyssinian standard was reversed.

As the Japanese were to do prior to World War II, Menelik took care not to give the Europeans cause to fault him. He took pains to repay the loan attached to the Treaty of Ucciali. He made certain after the battle of Adowa that European prisoners of war were treated according to European standards. Thus, by Menelik's express order, European prisoners were not mutilated according to the Abyssinian custom which permanently identified those who had lost battles.

In 1935, despite Italian stories of mutilations, apparently only thirty of the 1,865 prisoners returned to Italy after the war had been marked according to the old Abyssinian custom. The sensational stories circulated in Italy no doubt derived in part from efforts to assuage hurt pride, and in part from the exaggerated fears which arise when those who consider themselves 'civilized' encounter the 'barbarous' uncertainties of the 'jungle'. Similarly, after the First World War, hearsay accounts of barbarous conduct by non-Europeans played on the fact that France used Moroccan troops to help police French occupation areas in defeated Germany. The Americans in Vietnam likewise complained about Vietcong tactics, as have the Soviets about methods employed by various of the Afghan tribesmen.

Though Menelik treated European prisoners of war (in so far as possible) by a European standard, he considered the native Eritreans captured in battle to be traitors. He therefore commanded that 406 of them have their right hand and left foot cut off. Unlike Hitler, who was lenient to his own kind, Menelik reserved the more traditional standard of treatment for those familiar with its requirements.

The Italians, whether voluntarily or not, signed a supplementary convention to the peace treaty. In it they

recognized Menelik's influence in preserving their prisoners from the fate of the Eritreans. The convention stated:

The Italian plenipotentiary having spontaneously acknowledged that the prisoners have been the object of the greatest solicitude on the part of His Majesty the Emperor of Ethiopia, admits that their maintenance has entailed considerable expense, and that the Italian Government is indebted to His Majesty for sums corresponding to these expenses. His Majesty the Emperor of Ethiopia declares himself willing to leave it to the equity of the Italian Government to recompense him for these sacrifices.⁴⁶

No public record is made of any further transaction, but Jones and Monroe note that a British mission in 1897 recorded that the Italian prisoners making their way down the coast looked 'brown, healthy, and well-cared-for, and were 'in tearing spirits at the idea of their speedy return to Europe'.

Menelik's successor, Ras Tafari (later to be Haile Selassie) desired Abyssinia to be a Westernized state. Like Menelik, he was attuned to European ideas, developments, and standards. And, like Japan's Meiji leaders and Siam's kings from the time of Mongkut, his orientation to the West was not born purely of admiration. It is true that he had visited the British at Aden in 1923 and, to the dismay of his retinue, had made his first aeroplane flight. He did speak fluent French, and in 1925 had gone to Europe. These firsthand visits to Europe influenced his thinking and orientation. While in England, he did retrieve the Abyssinian crown which Napier had taken as one of the few trophies of his success at Magdala.

Ras Tafari, crowned as Negus in 1928, wanted to 'civilize' Abyssinia in part because he understood the ramifications of not conforming to European standards. During the Versailles Peace Conference, world-wide attention focused on so-called humanitarian questions, among them arms traffic and the slave trade. Foreign friends helped Ras Tafari realize that humanitarian issues could lead to external interference in Abyssinian affairs. To forestall such possibilities, he caused Abyssinia to apply for League of Nations membership in 1923.

⁴⁶ Ibid., p. 146.

In fact, as early as 4 April 1919, *The Times* records Abyssinia's interest in sending a mission to Paris to apply for admission to the League. Abyssinia's application for League membership was first officially noted at the League's Plenary meeting of Monday, 3 September 1923, by Viscount Ishii, Acting President of the Council. Viscount Ishii remarked, 'Already the number of Members has risen since 1919 from 42 to 52, and now covers three-quarters of the world's population, and this year the Irish Free State and Ethiopia have applied for membership'.

Slavery, within the wider debate concerning how the standard of 'civilization' should be enforced, had indeed become a major issue in the League's deliberations. On Friday, 28 September 1923, in a Report of the Sixth Committee on slavery, M. Bonamy from Haiti reminded the group that 'there is (*sic*) still to be found civilised peoples who, because men are black, and belong therefore to a so-called inferior race, keep them in the degrading state of slavery...'. Again, Bonamy's final appeal was that the standard of 'civilization' be promulgated universally: 'I speak on behalf of the whole coloured race when I ask the great civilised Powers, who are more advanced than we are, to assist the unfortunate Africans to rise to a higher stage of civilisation.'⁴⁷ (One would not expect to hear such petitions in the United Nations General Assembly today.)

At this point, the League of Nations Verbatim Record for 1923 shows an ironic juxtaposition of agenda items. No sooner had M. Bonamy finished his impassioned plea than the Council was requested to obtain further information on slavery, 'particularly from the Governments of States not Members of the League'. Brilliantly anticipating that Abyssinia would not want to be listed among the 'Governments of States not Members of the League', Haile Selassie had earlier submitted what some had seen as a rather hurried application for League Membership. That application was the next item on the Agenda.

Abyssinia's application had not made it to the floor for a general vote without a fight in the Sixth Committee, which

⁴⁷ *League of Nations Verbatim Record*, Seventeenth Plenary Meeting, Geneva, 28 Sept. 1923, p. 3.

dealt with admissions. The records of the Sixth Committee concerning 'Abyssinia's Admission to the League' show that the standard of 'civilization' was again a central issue. Sir Joseph Cook from Australia 'thought that Abyssinia should enter the League of Nations to enable her to rise gradually to the level of the other Members, and that as a matter of fact, the League recognized different degrees of civilization.' Mr Wood, representing the British Empire, articulated the dilemma the League faced regarding the application of the standard of 'civilization'. 'In the minds of all members of the Committee', he pointed out, '[are] two conflicting motives, both of them most honourable.' On the one hand, there was the desire 'to help Abyssinia raise herself on the scale of civilisation, which it was possible she might do more effectively if she became a Member of the League'. On the other hand, was the feeling that the 'well-being of the League depended on the level of public opinion in each of the Member States'.⁴⁸

The Abyssinia question was thus part of the continuing dilemma faced by the nineteenth- and early twentieth-century international lawyers. Was it better to apply international law universally by making all states its subjects, or to limit its scope to only those countries which fulfilled the standard of 'civilization'? Universality created a sense of legitimacy and prestige; it also diluted the purity of the doctrines and increased the room for disagreement. Sir Joseph Cook raised yet another possible difficulty: the admission of Abyssinia to the League might permit it to criticize other countries, 'such as New Guinea, whose conditions of life were much more favourable'. Hence a situation could arise wherein 'Abyssinia might examine and criticize countries whose civilization was more advanced than her own'.⁴⁹

Granting Sir Joseph Cook's point that difficulties 'might be caused by admitting to the League a country which was in a backward state of civilisation as compared with European States', the French delegate M. De Jouvenel observed, 'it

⁴⁸ *League of Nations Official Journal*, Special Supplement, Records of the Fourth Assembly, Meetings of the Committees, Minutes of the Sixth Committee Political Questions, Geneva 1923, pp. 13-15.

⁴⁹ *Ibid.*, p. 21.

might be unwise and dangerous for the League to make classifications which might reopen the way to prejudice of race, caste, colour, and nationality'. 'One of the tasks of the League', he argued, 'was to eliminate these very prejudices, as far as possible and to realise the equality of nations.' And, he reminded the Committee, 'the abolition of serfdom in one of the most important European countries, namely, Russia, had taken place less than a century ago'.⁵⁰

He warned that 'a delay in the admission of Abyssinia to the League, might prejudice the cause of peace and the prestige of the League. For example', he argued, 'if an incident were to take place within the coming year on the frontiers of Abyssinia and it was settled by force, the League would be blamed for such recourse to force because it had failed to make a decision in time.'⁵¹ Italy's Count Bonin-Longare complimented Abyssinia on the 'enlightenment of the princes who had succeeded one another on the Ethiopian throne during a long succession of years, more especially [that of] Ras Tafari, the present heir to the throne, a broad-minded prince, in touch with modern ideas, to whose credit must be placed the decree of November 1918, enforcing with greater severity all previous edicts for the punishment of those engaging in slave traffic'.⁵² Within ten years, Italy would change its tune regarding Ethiopia. But the issue of Ethiopia's civilization would remain.

Abyssinia's application for admission to the League followed precedent; its qualifications for admission were examined according to a set questionnaire which was a codified expression of the standard of 'civilization' and a predecessor in some ways to the Montevideo Convention on the definition of a state. The questionnaire read as follows:

1. Is Abyssinia's request for admission into the League of Nations in order?
2. Is Abyssinia recognised *de jure* or *de facto*, and by what States?
3. Does the country possess a stable Government and well-defined frontiers?
4. Is it fully self-governing?
5. What have been the acts and declarations of Abyssinia, (a) as regards her international engagements, (b) as regards the stipulations of the League with reference to armaments.⁵³

⁵⁰ Ibid., p. 20.

⁵¹ Ibid.

⁵² Ibid., p. 18.

⁵³ Ibid., p. 32.

After much debate, Abyssinian leaders decided to expedite their country's admission into the League by signing a declaration to abolish slavery. A telegram from 'Ras Tafari Mekonen, Heir to the Throne and Regent of the Empire for Abyssinia' empowered the Abyssinian delegation to sign the necessary document. Ras Tafari's edict read, 'The Abyssinian Government has already, by Imperial Decree, prohibited, under penalty of death, the purchase and sale of slaves throughout its territory.' It further declared that Abyssinia was prepared 'now and hereafter to furnish the Council with any information which it may require, and to take into consideration any recommendations which the Council may make with regard to the fulfillment of these obligations in which she recognizes that the League of Nations is concerned'.⁵⁴

The standard of 'civilization' was a pivotal concern in the domestic debate in Great Britain over the questions of slavery and of Abyssinia's admission to the League. In the House of Commons on 31 March, Mr C. Roberts (Derby, L.) said 'it was sound constitutional doctrine that we could recognize a stable and established Government in another country without implying the faintest approval of its domestic policy'. 'In the whole of Africa, and probably in the whole of the world', Mr R. McNeil, Under-Secretary for Foreign Affairs in the government, pointed out, 'Abyssinia was the one remaining settled State where slavery could be said to be an institution which was part of the economic and social arrangements of the people'. Thus, although Great Britain was 'opposed to anything in the form of slavery, it was necessary to draw a distinction' between the 'grossly oppressive' and the 'comparatively mild' types.⁵⁵ The dilemmas inherent in such distinctions likewise bedevilled American human rights doctrines in the 1970s and 1980s.

'Letters to the Editor' in *The Times* took various sides. One called upon 'the civilized Powers not to supply savage and slave-raiding tribes with arms of precision'. Another found Abyssinian plans to combat slave raiding and trading so impractical as to be 'an attempt to throw dust in the eyes of civilisation'.⁵⁶

⁵⁴ *League of Nations Verbatim Record*, Seventeenth Plenary Meeting, p. 4.

⁵⁵ 'House of Commons Points of Replies', *The Times*, 31 Mar. 1923, p. 4d.

⁵⁶ 'To the Editor', *The Times*, 12 Apr. 1923, p. 8b.

Despite apprehension of 'a recrudescence of slavery', however, Abyssinia's signed declaration turned the tide. The declaration was read to the League assembly, after which the forty-five members present approved the application, following their decision with 'unanimous and prolonged' applause. Thus, in an article entitled 'Abyssinia Admitted to the League', *The Times* of 29 September 1923 reported that, 'The League of Nations Assembly today decided unanimously that Abyssinia should be admitted to the League. The decision was received with great applause, in which the public galleries joined.'⁵⁷

Ten years later, the League of Nations met again to consider whether or not Ethiopia conformed to 'civilized' standards. Italy, bent on aggression, charged that Italian assistance was needed for this backward people, who persisted in the barbarous institution of slavery and other 'uncivilized' practices; that it was for the advancement of civilization that Italian troops had used the incidents at the Wala Wala waterholes as a pretext for mobilizing against Abyssinia; that the Italian need for expansion was just and due to a European great power; that Japanese expansion (based on the false rumour in 1934 that Japan had been granted vast cotton-growing concessions in Ethiopia) needed to be countered (adding an anti-European and racial element to the argument). Slavery, the wild conditions on the frontier, the barbaric mutilations which were still the punishment for crime, the cruelty of many native customs, the lack of imperial control over outlying provinces, the primitive state of legal development'—whatever impact these claims against Abyssinia might have had was effectively neutralized by Italy's extremist efforts at self-justification.⁵⁸

Even the standard of 'civilization' could be bent according to the exigencies of the balance of power, and with Hitler on the rise, the allies were in 1935 eager to appease Mussolini in hopes of preserving the League and saving peace. But the words of Haile Selassie to the League Assembly after he had valiantly fought the losing battle to preserve his country were also to be prophetic. He said, 'Us today, you tomorrow.'

⁵⁷ 'Abyssinia Admitted to the League', *The Times*, 29 Sept. 1923, p. 10c.

⁵⁸ Jones and Monroe, *History of Abyssinia*, pp. 181-2.

There are many who rightly see the Abyssinian crisis as the major turning-point during the inter-war period. Italy's aggression was clear-cut and flagrant. Unlike the 1931 Manchurian crisis, it took place within Europe with the European powers as major actors. Unlike the Manchurian crisis, the absence of the United States was not needed to enforce a League decision; the oil sanction and the closing of the Suez canal could have brought Mussolini and Italy to their knees in a short time. Counter-factual arguments based on historical scenarios both suffer and benefit from the advantage of being disprovable. But Hitler's move into the Rhineland in 1936 was in some ways precipitated, excused, and covered by the events in Abyssinia. It was ironic that Italy's appeal against Abyssinian barbarism was a harbinger of the Nazi and Fascist barbarisms that were to follow.



TREE of LIBERTY
SOCIETY

The Standard of 'Civilization' and the Entry of China into International Society

The Chinese World Order

From the earliest days when the Marco Polo adventurers first visited China, the Chinese asserted that they would deal with the Europeans according to the same patterns and principles they used with all non-Chinese peoples. These patterns and principles epitomized and were expressed in the language of a Chinese standard of 'civilization'. The Chinese emperor, as the Son of Heaven, possessed the mandate of heaven to rule the Middle Kingdom, which in principle encompassed the entire world, both 'civilized' (those Chinese in culture) and not yet 'civilized' (the 'barbarians' not yet Chinese in culture). This distinct and self-conscious Chinese standard of 'civilization' evolved possibly from the Chou dynasty which replaced the prehistoric Shang dynasty at the end of the first millennium BC and certainly from the fully historical times dating to the written records of the ninth century BC.¹ Hence, C. P. Fitzgerald emphasizes the Chinese 'sense of unity, of belonging to a civilisation rather than to a state or a nation'.² Hsu agrees that China was not so much a state as a cultural entity; doubtless, not a nation-state.³

Though the Chinese empire expanded and contracted with the fortunes of subsequent dynasties, those dynastic changes occurred within the historical framework of prescribed Chinese patterns. Emperors rose and fell, ruling houses waxed and waned, but these predictable changes merely confirmed the Chinese sense of historical continuity and reinforced the

¹ Charles P. Fitzgerald, *The Chinese View of Their Place in the World* (London, Royal Institute of International Affairs, 1964) p. 6.

² Ibid.

³ Immanuel C. Y. Hsu, *China's Entrance into the Family of Nations* (USA, Harvard University Press, 1960), p. 13.

traditional wisdom that the early sages knew best, that older and more traditional civilizations were wiser and better ones.

Reflected in orthodox Confucian doctrines, the Chinese standard of 'civilization' regulated every aspect of China's affairs, domestic and international.⁴ These Confucian patterns prescribed a hierarchy of order on the model of the extended family. As the Middle Kingdom, China assumed the position of the benevolent father or elder brother, who governed younger members of the family according to Confucian principles. In return for the proper ritual observances and dutiful respect, China attempted to observe fair if patriarchal relations with its non-Chinese neighbours.

By the condescension and beneficence of the Son of Heaven, the non-Chinese 'barbarians' could bring tribute (in proportion to Chinese strength) and thereby be rewarded with gifts or sometimes with trade concessions (in proportion to Chinese weakness). Fundamental to this establishment of China as the Middle Kingdom surrounded by tributary states was the acceptance by those surrounding states of China's standard of 'civilization'. The overarching perception in the tributary-states system was that of 'universal kingship linked to a widely shared sense of participation in a high culture'.⁵ Korea, Annam, Siam, Burma, and Japan for a time recognized the Chinese world order and paid due ritual respect and periodic tribute.⁶

Nor was it necessarily the Chinese themselves who maintained the system of order, either internally in China or externally in East Asia. Non-Chinese emperors ruled more than half the time of China's last seven centuries—the Yuan dynasty of the Mongols (1279–1368) and the Ching dynasty of the Manchus (1644–1912).⁷ Yet they were forced to rule

⁴ These are discussed in the series of books edited by Arthur F. Wright, including: *Confucianism in Action* (Stanford, Stanford University Press, 1959); *Confucianism and Chinese Civilization* (S.U.P., 1959); *The Confucian Persuasion* (S.U.P., 1960); *Confucian Personalities* (S.U.P., 1962).

⁵ Benjamin I. Schwartz, 'The Chinese Perception of World Order, Past and Present', *The Chinese World Order*, John K. Fairbank, ed. (Cambridge, Mass., Harvard University Press, 1968), pp. 276–84.

⁶ Hsu, *China's Entrance*, p. 3.

⁷ John K. Fairbank, 'Synarchy Under the Treaties', *Chinese Thought and Institutions*, John K. Fairbank, ed. (Chicago, University of Chicago Press, 1957), p. 204.

in the Chinese way, using the traditional bureaucracies and institutions because the 'Confucian monarchy had a basis more cultural than national', and a capacity to bring the nomad into the polity of the same Confucian state, no matter whether they were dominant or dominated.⁸ Until the coming of the West, Chinese cultural prestige had always 'tamed' the 'barbarians' into reverent submission, and often eventually into physical assimilation. Equal relations were seldom an issue with 'barbarians' who embraced, often eagerly, the Chinese standard of 'civilization' as their own.

The Chinese world order thus established a China-dominated tributary-states system in times of Chinese strength and a regional (for China, universal) international society in times of relative Chinese weakness. Even after the West had imposed 'unequal treaties' on China, foreign observers during the 1860s were amazed that other Asian countries such as Annam continued to accept China's tributary system. The longevity of the system caused foreign observers in China to comment that the former tributary states 'continue to worship the shadow after the substance has departed'.⁹ In 1864, the *North China Herald* noted:

It is singular that notwithstanding its material weakness, the Chinese government contrives to maintain unimpaired the suzerainty over neighboring states which it acquired in former days, under more energetic emperors.¹⁰

Though couched in the language and Confucian hierarchical philosophy of Chinese cultural superiority, the tributary system with its implicit Chinese standard of 'civilization' was historically accepted by peoples in East and parts of South-east Asia as part of an integral, universal, historically proven, and thereby acceptably prescriptive world order. Seen from the perspective of a complete and indivisible Chinese world order, the Chinese preoccupation with the kowtow is easier to understand. One could not refuse to kowtow without challenging the whole of the

⁸ Ibid., pp. 211-12.

⁹ *North China Herald*, September 15, 1866, cited in Mary C. Wright, *The Last Stand of Chinese Conservatism: The T'ung-Chih Restoration, 1862-1874* (Stanford, Stanford University Press, 1957), p. 223.

¹⁰ *North China Herald*, November 19, 1864, cited in Wright, op.cit., p. 223.

extensive Chinese world order, domestic and international. The kowtow represented not only an obeisant greeting to the reigning emperor, but also a ritual sign of acceptance of the world order which would continue to regulate changes of emperors and ruling houses as it had for thousands of years of patterned dynasties. Even if the kowtow were merely a cultural manifestation as the Chinese sometimes argued, the Europeans were correct in seeing it as symbolic of a self-consciously superior Chinese standard of 'civilization'. It is not surprising, then, that the kowtow played a pivotal role in early Sino-Western confrontations such as the 1645 Rites Controversy, the 1689 Treaty of Nerchinsk, and the initial British attempts to open China for trade.

The 1645 Rites Controversy

The Jesuit missionaries who entered China in the last part of the sixteenth century confronted the Chinese standard of 'civilization' over the role the kowtow should play in the lives of Chinese Christian converts. Their ruling that Chinese Christians could continue the kowtow as part of the Confucian ancestral rites was sharply criticized by Dominican and Franciscan missionaries who maintained that the Chinese ancestral rites violated the first Christian commandment to worship only God. In 1645 the Pope ruled in favour of the Dominicans and Franciscans. Incensed at a foreign declaration that Chinese practices were unsuitable, the Chinese emperor expelled all non-Jesuit missionaries and rescinded an Edict of Toleration for Christianity. There was no question in his mind about which standard of 'civilization' should prevail: the decisions of 'barbarian' missionaries could not supersede the rule of the Son of Heaven in Chinese affairs.

It is easy to ascribe the Rites Controversy to missionary jealousies or to unwillingness to treat the Chinese as cultural equals.¹¹ To do so, however, overlooks the fact that China's civilization and world order could not be neatly compartmentalized. Nor were China's cultural values as universally applicable or as valid as they purported to be. It was as

¹¹ See Joseph S. Seebis, 'China's Jesuit Century', *The Wilson Quarterly* (Winter 1978).

difficult to distinguish the Chinese standard of 'civilization' and Chinese civilization as it was to distinguish the European standard and European civilization. As in Europe, so in China: the standards of the respective international societies were equally difficult to dissociate from the cradles of the civilizations in which they evolved.

The 1689 Treaty of Nerchinsk

The Treaty of Nerchinsk, signed with Russia on 27 August 1689, was significant for at least three reasons. It was China's first treaty (in the Western sense of the word); it was its first treaty with a Western power; it is accepted by China as an equal treaty.¹² At least two important elements of equality were evident when the Treaty of Nerchinsk was signed: first, an approximate equality of military power in the contested border area (neither side desired to extend the confrontation); second, the agreement by the two courts to reciprocate ritual observances, apparently satisfying the demands of both that the prestige of each civilization be maintained. Thus, Chinese-Russian ritual relations following the treaty were conducted on an equal basis. In 1720 Leoff Ismayloff, ambassador to China, agreed to perform the customary Chinese ceremonies, on the condition that, when the emperor sent a minister to Russia, he should conform in every respect to the ceremonies used at that court. The Chinese agreed. Accordingly, Chinese envoys to Russia in 1729 and 1731 performed the kowtow to the Russian ruler.

In 1806, in spite of the earlier reciprocity, two Russian ships were prevented from trading in Canton. Russia's trade privileges evidently extended only over land. Frustration over these slow and hazardous land routes later prompted the West to approach China from the southern sea routes to Canton. Canton, far from the capital and thereby a difficult point from which to control trade, became an increasingly troublesome spot for China as contact with European powers grew.

¹² Soviet polemics in the Sino-Soviet controversy contend that the Treaty of Nerchinsk was an 'unequal treaty', largely on the grounds that the Chinese allegedly intimidated Russian plenipotentiaries. China maintains the treaty was equal and valid.

British Efforts to Open China for Trade

It was, of course, Lord Macartney who first refused to kowtow to the self-proclaimed superiority of the Chinese standard of 'civilization'. Earlier traders from the West, more interested in gold and individual glory than worried about equality, had earlier performed the ritual kowtow to gain trading concessions. Of the seventeen missions between 1655 and 1793—six from Russia, four from Portugal, three from Holland, three from the Papacy, and one from Britain—all but the last, under Lord Macartney, agreed to kowtow.¹³ As the first representative delegate of His Majesty's Government, Macartney was unwilling to kowtow because to do so would indicate subordination, not only of his government but also of his race, his culture, and his country—all as proud and powerful as China.¹⁴

Macartney did suggest that a 'subject of the emperor, of rank equal to his own, should perform, before a portrait of his Britannic Majesty, dressed in his robes of state, the same ceremonies which the ambassador would be required to perform before the Chinese throne'.¹⁵ In the end, the Chinese agreed that Macartney bow on one knee, the mark of respect he showed his own sovereign, in lieu of the kowtow. No business was discussed or settled: no change in the restraints on trade at Canton, no opening of other ports such as Tientsin, Ningpo, Chusan. The concessions Macartney had hoped to obtain were not achieved until they were imposed by the Treaty of Nanking.

Both Lord Amherst, ambassador to China in 1816, and later Lord Napier, chief superintendent for the control of English trade in Canton in 1834, were given the conflicting directives to increase trade and to refrain from ceremonial concessions which might diminish British national prestige. It is difficult to assess whether performance of the Chinese kowtow might have improved trade relations. J. L. Cranmer-Byng is probably right: 'If the Emperor and his advisors had

¹³ John K. Fairbank, *Trade and Diplomacy on the China Coast* (Cambridge, Mass., Harvard University Press, 1953), i. 14.

¹⁴ See George Macartney, *An Embassy to China*, J. L. Cranmer-Byng, ed. (London, Longman, 1962).

¹⁵ H. B. Morse, *The International Relations of the Chinese Empire* (London, Longmans, 1910), i. 54-5.

wished to have closer ties with the English they would have done so whether the ambassador kowtowed or not'.¹⁶

But the Emperor and his advisers had good reason for eschewing closer ties with the West. In the trough of the dynastic cycle, the weak Ching government was anxious to remain isolated. It had little need to trade. Indeed, trade on Western terms was fundamentally irreconcilable with the traditional Chinese world order and the Chinese standard of 'civilization' which underpinned it. The West's penetration into China and its contemptuous disregard for the Chinese standard of 'civilization' (as symbolized by the ritual kowtow) further undermined an already moribund Ching dynasty. Intercourse with the West could only highlight the internal weaknesses which were already becoming apparent.

The Chinese empire was part of a self-proclaimed universal system which united heaven and earth. So long as the Chinese and European international systems were separate and distinct, Chinese and European prosperity and power were independent. As the two international systems merged, however, political power, economic prosperity, and cultural traditions became less separate and less independent. Trade according to Western practices may have seemed the lifeblood for the European countries, but it sounded the death-knell for old China.

Transition from Chinese Universal Empire to Nation-State

1. Development of the Treaty Port System: The Impact of the West

The Opium War

Of undisputed importance are the 1839 Opium War and the 1842 Treaty of Nanking as turning-points in Sino-Western relations. 'Whether Chinese or Western, radical or conservative, scholars have invariably taken it [the Opium War] as a starting point in the study of modern China'.¹⁷ The Opium War and the Nanking Treaty marked the first use of Western military force in China, the initiation of sustained if forced

¹⁶ Macartney, *An Embassy to China*, p. 34.

¹⁷ Hsin-Pao Chang, *Commissioner Lin and the Opium War* (Cambridge, Mass., Harvard University Press, W. W. Norton and Co., 1970), p. ix.

Sino-Western contact, and the start of what is generally referred to as a hundred years of unequal relations due to the imposition of 'unequal treaties' and of European standards of 'civilization'.¹⁸

Three issues, each arising at least in part from conflicting standards of 'civilization', contributed to the outbreak of the Opium War. First, accustomed to European practices of direct representation on the basis of equality, Western merchants and diplomats complained that the hierarchical Chinese system denied them the right of direct representation in Peking. It also required them to deal through monopolistic Cohong trading firms, which were inefficient intermediaries even after the necessary and sometimes exorbitant bribes had been paid. Nor could the crippling restrictions on travel be rescinded without Peking's permission. The Europeans repeatedly protested that they were being treated not only as unequals but as inferiors by Chinese contemptuous of 'barbarians'.

Second, Chinese insistence on traditional legal practices caused Europeans to feel that they were being subjected to an 'uncivilized' standard of justice.¹⁹ Although consistent with certain collectivist qualities of Chinese culture, the Chinese concept of group responsibility (which made persons related to criminals liable to prosecution) seemed as unjust as Chinese forms of execution, e.g. strangling, seemed barbaric.

Third and more immediate, after decades of frustrated efforts to penetrate the essentially self-sufficient Chinese economy, British merchants discovered that opium, easily imported from India, commanded a high price and such a ready market that by the mid-1820s the silver flow between Britain and China had finally reversed.²⁰ Tension mounted as Commissioner Lin Tse-hsu took firm measures to control the opium trade. Although Commissioner Lin's detention of the foreign community at Canton and the destruction of 20,000 chests of opium provided Britain a *casus belli*,

¹⁸ Ssu-yu Teng, *Chang Hsi and the Treaty of Nanking 1842* (Chicago, University of Chicago Press, 1944), p. v.

¹⁹ See Morse, *China's International Relations*, 'The Question of Jurisdiction', i. 94-117.

²⁰ Chang, *Commissioner Lin and the Opium War*, p. 40.

underlying the opium issue were British demands for equality of diplomatic representation, judgement by their own legal concepts and courts, and freedom of trade, conditions which were assumed granted by all 'civilized' countries.

The battle of Cheunpi, the first of the Opium War, occurred on 2 November 1839 when two rather small British warships, the *Hyacinth* and the *Volage*, decimated an inexperienced and ill-trained Chinese collection of fifteen war junks and fourteen fire-ships. The overwhelmingly superior fire-power of the Western forces brought a quick cease-fire. With the British threatening to bombard Nanking, the Chinese began treaty negotiations in earnest.

The First Treaty Settlements

After a period of inconclusive proposals and negotiations, the formal Treaty of Nanking was signed on HMS *Cornwallis* on 29 August 1842. The 13 articles of the Treaty of Peace, Friendship, Commerce can be summarized as follows:

1. A \$21 million indemnity.
2. Abolition of the monopolistic Cohong trading system.
3. Opening of five ports for trade and residence by British consuls, merchants, and their families: Canton, Amoy, Foochow, Ningpo, and Shanghai.
4. Cession of Hong Kong.
5. Equality in official correspondence.
6. A fixed tariff, to be established shortly afterwards.²¹

The still controversial question of opium was carefully avoided in the treaty so as to facilitate its completion and ratification.

Following the 1842 Nanking treaty, the Western powers signed the Treaty of the Bogue (1843), the Treaty of Wanghia (1844), and the Treaty of Whampoa (1844). These four treaties became the basis of a unified Western approach to China and formed the 'foundation on which has been erected the superstructure of the diplomatic and commercial relations between China and upwards of a score of foreign nations which have entered into common treaty relations'.²² For this

²¹ Treaty texts appear in Godfrey E. P. Hertslet, ed., *Hertslet's China Treaties* 3rd edn. (London, Harrison and Sons, 1908), 2 volumes. Morse, *China's International Relations*, 3 volumes, provides useful commentary on the treaty provisions.

²² Morse, *China's International Relations*, i. 299.

reason, H. B. Morse describes the first treaty settlement as 'four treaties one settlement'.²³

After twelve years, when the Nanking treaties came up for revision, the alleged hauling down of the British flag after the *Arrow* was boarded and the murder of a French missionary were exploited as pretexts for war by those demanding broader treaty privileges. Insisted on in essence was 'the opening of China as a market for Western manufacturers and commerce on the basis of China's incorporation, by force or otherwise, into the modern state system'.²⁴ Specifically, the West demanded permanent residence in Peking for diplomatic representatives and the opening of the China market through increased numbers of treaty ports, freedom of navigation on inland rivers, travel into the interior, and the abolition of the demand that they kowtow. Under the threat of renewed Western military force, China signed the Tientsin Treaties in 1858. These treaties granted:

1. Permanent Western residence in the capital of Peking.
2. Opening of ten new treaty ports: Nanking, Newchwang, Hangchow, Tengchow, Kiukiang, Chinkiang, Taiwanfu, Tamsui, Swatow, and Kiungchow.
3. Foreign travel in all parts of China under passports issued by a consul and countersigned by Chinese authorities, but free travel without passport within 100 *li* (33 miles) of the ports.
4. A limit on inland transit dues (*likin*) for foreign imports of 2.5 percent *ad valorem*.
5. Indemnity of 4 million *taels* for Great Britain and 2 million for France.
6. Freedom of movement for both Catholic and Protestant missionaries.

China was especially reluctant to permit permanent Western residence in Peking since, with the abolition of the kowtow which symbolized the tributary system, it seemed a final denial of that system. When China temporized in implementing the Tientsin treaties, 11,000 British soldiers and 6,700 French troops marched on Peking where, on 24 October 1860, Lord Elgin dictated to Prince Kung the Convention of Peking. The Convention finally established the Western right to permanent diplomatic residence in the

²³ Ibid.

²⁴ Masataka Banno, *China and the West 1858-1861*, Harvard East Asian Series, Vol. 15 (Cambridge, Mass., Harvard University Press, 1964), p. 10.

Chinese capital, increased China's indemnity, and opened Tientsin itself to foreign trade and residence. Britain acquired Kowloon, while France secured the right for Catholic missionaries to acquire property in China's interior.

By 1860, the West could dictate the conditions of its relations with China. Beginning with the Nanking and Tientsin treaties, the imposition of what gradually became formalized as a standard of 'civilization' forced China to open its ports, to trade on Western terms, and to conduct its relations according to the patterns of international law and diplomatic representation familiar to the West. At least initially, the European powers intended only to promulgate their international system of diplomatic representation, trading rights, and judicial process—as granted by and to all 'civilized' states. Equally, at first they sought neither to colonize nor to subjugate China. However, for the Chinese, the treaties imposed a foreign standard of 'civilization' and formed the spearhead for increasing Western penetration. In time, however, China's early treaties with the West gradually replaced the traditional Chinese tributary system by forming the foundation for a Western treaty port system.²⁵

The Treaty Port System

The treaty port system was so named because the treaty ports, demanded in increasing numbers after the Treaty of Nanking, became a symbol of the West in China. The first five treaty ports were on the coast at Amoy, Canton, Foochow, Ningpo, and Shanghai. The Tientsin treaties opened ten new ports, and Tientsin itself was added after the Western march on Peking. By 1920 there were sixty-nine treaty ports dotted about China, on the coasts and in the interior.

The treaty ports became the permanent residences of increasing numbers of Westerners, the centres for trade and commerce, the home stations of the Western gunboats, and the sites of diplomatic legations and military barracks, all protected as semi-autonomous units with their own tax and

²⁵ Fairbank, 'Synarchy Under the Treaties', and Rhoads Murphey, 'The Treaty Ports and China's Modernization', *The Chinese City Between Two Worlds*, Mark Elvin and G. William Skinner, eds. (Stanford, Calif., Stanford University Press, 1974.)

legal-judicial systems, and thereby exempt from Chinese jurisdiction. A treaty port system grew by accretion as concessions granted in the Nanking and Tientsin treaties were expanded through further agreements, arrangements, conventions, and supplementary conventions, ranging over Rules of Trade, Customs, Commerce, Official Intercourse, etc. In this way, the treaty port system became a complex and far-reaching arrangement of interrelated rights, interests, and privileges acquired or claimed over the course of almost a century. Within their enclaves, foreign nationals enjoyed the rights, privileges, and protection they associated with 'civilization'.

A major exception to the treaty port system's gradual and relatively peaceful growth occurred in 1900 when the Boxer rebellion erupted. Driven by xenophobic hatred and by superstitious beliefs in their magical powers, Boxer mobs launched a campaign to exterminate the foreign presence 'root and branch'. When it appeared that the Boxer rebellion might succeed, officials of the Ching court and other gentry declared war on the Western powers on 21 June 1900.

The Western powers responded by mobilizing an international concert of 'civilized' powers to defend the lives of their countrymen and their interests in China. Even powers like Austria-Hungary and Italy, which considered themselves 'civilized' countries though they had few nationals and no real interests in China, contributed troops to lift the Boxer siege on the Western diplomatic legations in Peking. Japan's leaders were eager to use the Boxer rebellion to demonstrate Japan's ability to co-operate with the other 'civilized' powers, but cautious not to appear aggressive at China's expense in a way that might offend them. To this end, Japan was vindicated when its 8,000 man expeditionary force behaved with exemplary propriety and efficiency as part of the 'civilized' concert which finally crushed the Boxer rebellion.

After the Boxers surrendered, the treaty powers demanded more stringent guarantees of foreign life, liberty, and property and increased protection for their diplomatic channels of communication. As evidenced by the murder of the German minister; the siege on the Peking diplomatic legations; the cutting of the legation telegraph wires and other forms of communication; and the general wanton rampaging of the

Boxer mobs, China was more than unwilling and unable to abide the standard of 'civilized' countries. As Morse noted sadly, China had 'reached a stage of national degradation so low that she still retained few of the attributes of a sovereign and independent state'.²⁶

It is ironic that the Boxer excesses which sought to eliminate the foreign standard of 'civilization' in China increased the severity with which the standard was ultimately enforced. The memory of the Boxer rebellion became an enduring Western justification for increased extraterritorial protection and jurisdiction. It precipitated harsher provisions in already unequal treaties. Indeed, the twelve articles of the Boxer Protocol, which the treaty powers forced the Chinese court reluctantly to accept on 16 January 1901, provided for the expanded Western presence needed to protect foreign life and property. One protocol provision even proscribed gentry who had supported the Boxers, or would-be gentry who might have supported them, from entering Chinese public life. Yet, it was only natural that such a great assault on the standard of 'civilization' as the Boxer uprising should galvanize the collective determination of the 'civilized' powers to impose sufficient treaty provisions so that China's adherence to that standard could be guaranteed in the future.

The influence of the treaty port system peaked in the 1920s and 1930s. Beyond the original treaty concession of consular jurisdiction, the treaty port privileges evolved to include: (1) national courts of the major extraterritorial powers at Shanghai and the 'mixed courts' which extended Western jurisdiction even to cases involving Chinese defendants when foreign plaintiffs were involved; (2) foreign-administered bureaucratic services such as the Chinese Maritime Customs Service, the Postal Service, the Salt Gabelle (tax agency); (3) a fixed and low *ad valorem* tariff and immunity from direct taxation by China; and (4) foreign-controlled settlements which, protected by the gunboats at the coastal ports and on the Yangtze River, were the main manifestations of the Western presence.²⁷ In Peking, the treaty powers maintained the Legation Quarters with

²⁶ Morse, *Chinese International Relations*, iii., 359.

²⁷ John Carter Vincent, *The Extraterritorial System in China*, Harvard East Asian Monographs No. 30 (Cambridge, Mass., Harvard University Press, 1970), p. 2.

Legation guards. Western troops were also stationed at Tientsin and at strategic points along the railways from Peking to the sea. The rights to coastal and inland navigation were included in the right to travel. Missionaries were not only permitted to travel freely but to settle, acquire real property, and proselytize throughout the country.

Despite the gradual but pervasive extension of the treaty port system, the Western economic impact, except in special areas such as Shanghai, remained relatively circumscribed. However, the social and political impacts of the treaty port system remain incalculable. Though the treaty ports resulted as much from Chinese concessions as from outright Western conquests, China still considered them a national humiliation because the unwanted foreign presence could not be expelled, and because the social changes associated with the early treaties challenged traditional Chinese society. Because China resented these treaties as forcefully imposing unequal obligations and a foreign standard of 'civilization', they became known as 'unequal treaties'.

'Unequal Treaties'?

Dictated under the threats of naval bombardment and overland siege, the Nanking and Tientsin treaties were imposed treaties *par excellence*. The 1860 Convention of Peking was dictated to China after British and French troops stormed and occupied Peking, burned the Summer Palace, and forced the emperor to flee to Jehol, Manchuria. These Western military lessons did not have to be repeated on a large scale until the 1900 Boxer Rebellion.

The effects of the treaty obligations in practice are difficult to assess. The imposition of an indemnity was a standard procedure, though the amount of China's indemnity has been challenged as unfair. The abolition of the monopolistic Cohong system and the opening of Chinese ports for trade were seen as necessary guarantees to free trade. The stipulation of diplomatic equality in official correspondence, the abolition of the word 'barbarian' from Chinese treaty texts, the assertion that Western-language texts of the treaties be authoritative, and the demand for permanent residence in Peking were all intended to promote equality of diplomatic representation. The treaty provisions granting extraterritorial

jurisdiction over Western nationals and the cession of territory, e.g. Hong Kong, to Western extraterritorial control were deemed necessary to establish enclaves where 'civilized' justice could flourish, and Western life and property be protected.

While the West may have intended only to establish customary commercial, diplomatic, and judicial relations and arrangements, its demands upon China spiralled. Chinese weaknesses were gradually exploited as Western dominance of Sino-Western relations slowly increased. The gap between the possibly justifiable Western ideal of establishing equal relations through equal treaties with China, and the reality of increasing Western dominance of Chinese affairs through 'unequal treaties' steadily widened.

The justice or injustice of the provisions in China's 'unequal treaties' is difficult to assess because internal weakness in the Ching empire required that the Manchu government come to terms with the Western invaders. After the failure of Lin Tse-hsu's 1839-40 'root and branch' extermination programme and the failure of Ch'i-shan's policy of negotiation, Ch'i-ying, who eventually signed the Nanking treaty, adopted a policy of appeasement and concession at any price. China signed the Treaty of Nanking hurriedly, without seriously attempting to amend Britain's demands, in part because of inexperience in dealing with Western powers, but more importantly because China was more concerned with the short-term threat to its cities than with the long-term threat to its sovereignty. The Chinese negotiators celebrated a myopic victory when the British warships sailed away, carrying the Treaty of Nanking to England for ratification. Thereafter the Chinese called the Treaty of Nanking the 'Treaty of Eternal Peace' (*wan-nyan he-ywe*) and saw it as a concession necessary for peace and preservation of the empire. Without question, the Manchu government made concessions in the 'unequal treaties' to preserve its own crumbling dynasty. For this reason especially, Republican China felt justified in agitating for the removal of the 'unequal treaties' made by the Ching dynasty it overthrew.

To some extent, it is also true that Chinese imperial officials, 'incensed by a bitter hatred against England, tried to win the friendship and military alliance of France in their

struggle against the enemy'.²⁸ The traditional Chinese policy of 'playing "barbarian" against "barbarian"' gave the French negotiator Lagrené 'exceptional opportunities to extend French prestige and influence'.²⁹ Lagrené told China that treaty concessions granting religious freedom could arouse French sympathy and friendship. This explanation argues that China voluntarily conceded the right of missionaries to travel and later to own property in order to win French friendship.

Although the elements of the Western use of force and of economic exploitation appear important as unequal factors today, China's culturally-determined world view caused it to perceive the 'unequal treaties' as unjust treaties in cultural terms at the time of the Nanking Treaty. Concern for tariff restriction, extraterritoriality, consular jurisdiction, and 'most-favoured-nation' treatment were not considered important in traditional China because the notions of sovereignty, territorial jurisdiction, and protective tariff did not exist historically. China granted 'most-favoured-nation' treatment to the West in part as an expedient measure and in part as an expression of the emperor's traditional benevolence toward all men from afar, regardless of their culture or nationality. Concessions such as extraterritoriality were freely granted largely 'because Chinese statesmen were ignorant of its impact'.³⁰

Unintentionally, however, the 'unequal treaties' threatened China's fundamental political and social systems. These 'basic institutions' or *t'i-chih* involved not only China's prestige and 'face', but extended to encompass the totality of its 'tangible and intangible traditions, beliefs, codes, statutes, governmental systems, and religious observances'.³¹ The 'unequal treaties' challenged China's world order, its customs and traditions, its cultural identity and standard of 'civilization'. Even in the 1860s, China was still preoccupied by the

²⁸ Angelus Francis Grosse-Aschhoff, *The Negotiations Between Ch'i-Ying and Lagrene 1844-1846* (New York, The Franciscan Institute, 1950), p. 1.

²⁹ Ibid.

³⁰ T. F. Tsiang, 'The Extension of Equal Commercial Privileges to Other Nations than the British After the Treaty of Nanking', *Readings in Modern Chinese History*, Immanuel C. Y. Hsu, ed. (New York, Oxford University Press, 1971), pp. 141-52.

³¹ Hsu, *China's Entrance*, p. 111.

Western threat to the Confucian hierarchical system. For this reason, China fought to maintain such cultural formalities as the word 'barbarian' in Sino-Western correspondence and the requirement that foreigners kowtow. As one Chinese envoy questioned, the word 'barbarian' (i) 'is recorded in sacred classics; why is it not refined'?³² The West's repudiation of China's sacred classics and its ritual tradition of kowtows was tantamount to rejecting China's standard of 'civilization' and the world order it undergirded. When the European order prevailed, China made the transition from universal empire to 'civilized' state as it was drawn into the dominant international society.

2. Fulfilling the Standard of 'Civilization'

China, Sun Yat-sen once complained, was like a sheet of sand: it appeared solid on the surface, but crumbled when you moved it. While 'unequal treaties' were imposed on China before they were on Japan or Siam, they were abrogated in Japan and Siam before they were in China. The Middle Kingdom's size, inertia, and adherence to its own standard of 'civilization' made China slow to implement the European standard even after the progressives accepted China's need for reform. As late as the 1870s, the T'ung Chih reformers were still struggling to preserve the old Confucian world order.³³ Even in the early twentieth century, the Boxers appealed to the popular misconception that the 'foreign' devils could be driven into the sea and their influence eradicated.

Particularly in contrast to Japan, China's acceptance of the standard of 'civilization' appears slow. In 1899 when extraterritoriality in Japan was abrogated in fact, China was on the eve of the Boxer outbreak. In 1911 when Japan regained control of its tariffs and the last restrictions of its 'unequal treaties' passed into history, China under Sun Yat-sen was forming a Provisional Government along Western lines for the first time. In the long term, China's reluctance to relinquish its own standards of civilization may have preserved

³² Teng, *Chang Hsi and the Treaty of Nanking 1842*, p. 83.

³³ Wright, *The Last Stand of Chinese Conservatism*.

important cultural traditions and thereby lessened a possible crisis of identity upon entering the international society. Still, from the time of the Nanking treaty and the imposition of what became the standard of 'civilization', China slowly adapted its own historic standard and sought to enter the international society according to that society's definition of a 'civilized' state.

China's perceptions of the 'unequal treaties' and its protests against them reflected the extent to which it had accepted the European standard of 'civilization'. Initially, China objected to the treaties because they threatened the Chinese standard of 'civilization'. However, as China gradually accepted the European standard, it began to object to 'unequal treaties' in terms of previously foreign notions such as the inviolability of sovereignty and the equality of 'civilized' states in international law. China eventually came to see extraterritoriality as 'a badge of subordination that can exist today only against the will of the nation within whose territory it is maintained; and it can be maintained there only on account of superior force'.³⁴ Clear from 1842 and the Nanking treaty was that 'unequal treaties' would enforce a standard of 'civilization' foreign to China. Clear, at least by 1911, was that China could employ the European standard to enter international society as a 'civilized' state.

Protection of Life, Liberty, and Property

Extraterritorial privileges guaranteed fairly well the life, liberty, and property of foreign nationals in China. Foreign nationals within the treaty ports were guarded by their own police forces, while the treaty ports themselves were protected by the gunboats stationed there by treaty provision. These foreign legations became not only administratively self-contained units and thereby *imperium in imperio*, but also physically isolated enclaves. The extraterritorial separation of the foreign community meant that minimal standards of 'civilization' could be maintained despite the limited co-operation the Chinese government was able to offer.

³⁴ Benjamin H. Williams, 'The Protection of American Citizens in China: Extraterritoriality', *A.J.I.L.*, XVI (1922), 53.

Changes in Political Organization

After several false starts, a revolution against the Ching dynasty burgeoned into full force on 10 October 1911. In January 1912, the Republic of China was founded as China's first attempt to conduct its affairs after the pattern of the European states-system. China's constitutional government was 'intended to consolidate the gains of the revolution by restraining the powers of the conservatives and the military',³⁵ and 'to replace the Confucian orthodoxy which had hitherto been the fundamental principle of the state with a new concept, legitimacy'.³⁶

Organizational changes also underlay the revolution. These included the advent of the telegraph in the 1850s, the post office in 1896, and the railways and steamships which by 1910 linked the country capitals and the cities of China as they never had been before, both internally and internationally. This communication network facilitated movements of people and goods, while helping to precipitate a sense of national unity. By 1911 sufficient grass-roots organization existed for China to make the transition from the dynastic system of the Ching empire to the provisional government of Sun Yat-sen relatively quick and essentially bloodless.³⁷

Though it had renounced the dynastic traditions of China's imperial past, the fledgling Chinese Republic was unable to divorce itself from the internal weakness which had undermined the Manchu regime in the first place. Following Yuan Shih-kai's self-aggrandizing efforts to have himself declared emperor, internal dissent encouraged factionalism and rivalries for power. During the 1920s, China disintegrated into regions dominated by warlords. Even after Kuomintang leader Chiang Kai-shek loosely united China in 1928 following the successful northern campaign against the warlords, China remained divided. Civil war continued between the dominant Kuomintang party and the Chinese Communist party, which gained strength through Russian support and

³⁵ Jerome Ch'en, 'Historical Background', *Modern China's Search for A Political Form*, Jack Gray, ed. (London, OUP under the auspices of the Royal Institute of International Affairs, 1969), p. 12.

³⁶ *Ibid.*

³⁷ Dr Mark Elvin makes this point about China's organizational changes.

grass-roots popularity after its formation in 1921. China's efforts to revise its 'unequal treaties' and to enter the international society as a 'civilized' state must be seen in the context of the chronic weakness, division, and instability which left its political organization questionable.

The Establishment of Permanent Diplomatic Relations

Traditional Chinese policy eschewed resident diplomatic legations at home and abroad. China's sense of cultural superiority and self-sufficiency gave it little reason to send diplomatic delegations abroad, either temporarily or permanently.³⁸ In his letter to King George III in 1793, the Ch'ien-Lung Emperor pointed out that difficulties of speech, dress, and housing would preclude permanent residence abroad for both Chinese and Western ministers. During the Ching dynasty's first two hundred years, only two missions were sent to the 'West'—both to Russia, in 1729 and 1731.

At home, traditional China viewed 'barbarian' presence with suspicion. Tribute missions were escorted over designated routes and not permitted to linger. Westerners were prohibited from buying books or anything else that could supply potentially hostile forces with knowledge detrimental to China: from wandering the streets without official permission and escort; and from learning the Chinese language.

Western demands for diplomatic relations date from Lord Macartney's unsuccessful mission in 1793. The Treaty of Nanking freed the Western powers from dealing with the monopolistic Cohongs but did not provide for direct diplomatic representation in Peking. Instead, the West was forced to negotiate through Chinese officials in Canton in what was called the Canton Viceroy System. A provision in the Tientsin treaties signed after the 1858 *Arrow* War finally permitted Western diplomats to take up residence in Peking for the first time in China's history. By 1862, Sir Frederick Bruce, Alphonse de Bourboulon, Colonel Balliuzek, and Anson Burlingame had begun residence as the ministers from Britain, France, Russia, and the United States, respectively.

Early in 1861, China established an official 'Office for General Administration' or *Tsungli Yamen* to serve as its

³⁸ See Ishwer C. Ojah, *Chinese Foreign Policy in an Age of Transition*, 2nd edn. (USA, Beacon Press, 1971), pp. 1-25.

new central organ for foreign affairs. Banno describes the establishment of the *Yamen* as a 'turning point in China's foreign relations' because it represented an institutional change in China's conduct of foreign affairs and the end of the traditional tributary relations conducted among unequals.³⁹ In charge of all relations with the Western powers, the *Tsungli Yamen* was China's first formal and permanent office for the handling of foreign affairs.

For the West, institutions such as the *Tsungli Yamen* symbolized the hope for equal diplomatic relations conducted in terms of international law. For China, also, the *Yamen* came to represent the progressive desire to conform government institutions and international relations to Europe's accepted standard. Chinese and Western moderates shared an interest in preserving and maintaining the sanctity of treaty relations against the more chauvinistic factions in each of their societies. In this way, the *Tsungli Yamen* became a voice for moderation against both the reactionary conservatives in China (who opposed all attempts to modernize) and the vociferous Western merchants and military men (who sought to carve up the 'China melon' among private interests).

Trade matters from the treaty ports were directed to the *Yamen*, which grew from three members (Prince Kung, Wen-hsiang, and Kuei-liang) to ten members by 1869. The *Yamen's* internal organization and structure were formalized in 1864 and lasted until 1901. In 1901 as part of Articles 11 and 12 in the Boxer Protocol, the *Tsungli Yamen* became the Ministry of Foreign Affairs (*Waiwu Pu*). By imperial decree, it took precedence over the other Ministries. The foreign ministers in Peking thereby essentially bypassed the Manchu court and became a kind of government unto themselves.

A College of Foreign Languages or *T'ung-wen kuan* was established in Peking in 1862 as an adjunct office to the *Yamen*. The *T'ung-wen kuan*, commissioned to teach foreign languages to Chinese officials selected on a competitive basis, became the model when similar institutions were founded at Shanghai and Canton in 1863, and at Foochow in 1866.

³⁹ Banno, *China and the West*, p. 1.

The College of Foreign Languages was considered essential because few Chinese understood any of the Western languages, let alone the philosophies, culture, or political theory which shaped the Western approach to foreign relations with China. More immediately, the College of Foreign Languages was seen as necessary because Article 50 of the British Tientsin Treaty and Article 3 of the French Tientsin Treaty made English and French the authoritative and official languages of communication with the Chinese authorities.

The taking up of residency in Peking by Western diplomats, the establishment of the Chinese foreign affairs office, and the increased Chinese interest in Western languages and learning contributed to a growing Western view that China was becoming more 'civilized'. In the House of Commons on 18 March 1862, the Under-Secretary for Foreign Affairs, A. H. Layard, described the new Chinese policy as the 'first time a Chinese government had admitted the rights of foreigners and consented to treat them as equals'.⁴⁰ Approval of the Chinese government's efforts to modernize contributed to the West's willingness to intervene in a limited way on behalf of the Ching dynasty against the Taiping Rebellion.

The barriers to China's sending envoys abroad were at least as formidable as those surrounding Peking's permitting foreign ministers to take up permanent residence. Fifteen years elapsed between the establishment of the foreign legations in Peking and the sending of Chinese diplomatic missions abroad. The traditional Chinese attitude that diplomatic missions were unnecessary, the bureaucratic and scholarly opposition to such missions, the apparent unavailability of suitable men willing to serve, and Ching financial constraints all contributed to the delay.⁴¹

The first modern Chinese missions to the West went in 1868-70. The first mission was headed by the American, Burlingame, who agreed to represent China officially, and included two token co-envoys, a Manchu, Chih-kang, and a Chinese, Sung Chai-ku. The group left Shanghai on 25 February 1868 and travelled to San Francisco in May, to

⁴⁰ Debate on China in the House of Commons cited in Banno, *China and the West*, p. 241.

⁴¹ Hsu, *China's Entrance*, pp. 199-206.

England in November, and then to Paris, Stockholm, Copenhagen, The Hague, and Berlin.

The delegation was generally well received. In San Francisco, Burlingame exulted, 'the hour has struck, the day has come' when China was ready to extend its 'arms towards the shining banners of Western civilization'.⁴² Following a visit to the Tsar in St. Petersburg, Burlingame contracted pneumonia and died on 23 February 1869. His two fellow envoys finished their tour by visiting Brussels and Rome before returning to China in October 1870.

Other Chinese missions went to France in 1870, to the United States in 1872, to the International Exhibition at Vienna in 1873. These missions paved the way for the establishment of permanent legations abroad. The first Chinese Legation left from Shanghai on 1 December 1876 and arrived in London on 21 January 1877. Kuo Sung-t'ao led a retinue of fourteen men charged with the unhappy initial task of presenting an official Letter of Apology to Queen Victoria regarding the murder of a British consul named Margary. Kuo continued as the resident minister in Great Britain. Legations were established with the United States, Peru, Cuba, Japan, Germany, France, and Russia during the years 1875-80.

Even before the Republic of China was born in 1911, China attended The Hague Peace Conferences of 1899 and 1907; adhered to many multilateral conventions dealing with the law of war, the pacific settlement of disputes, and other matters; joined the Universal Postal Union (UPU) and the International Institute of Agriculture (IIA).⁴³ Beginning with the sixth meeting in 1878, it sent representatives to the Association for the Reform and Codification of the Law of Nations. Kuo Sung-t'ao, also China's first minister to England, was even elected honorary vice-president of the Association.

Domestic and International Law

As early as 1839 Lin Tse-hsu, the Imperial Commissioner in charge of the opium-suppression campaign in Canton, applied to the American medical missionary, Dr Peter Parker, for a

⁴² Ibid., p. 168.

⁴³ Cohen and Chiu, *People's China and International Law*, i. 12.

translation of three paragraphs of Vattel's *The Law of Nations*. These passages acknowledged that every state had the right to stop foreign nationals from importing noxious products into its territory by declaring those products contraband. But, Vattel prescribed, a state had first to notify the sovereign and request that he restrain his subjects. Accordingly, Commissioner Lin sent a letter to Queen Victoria pointing out the deleterious effects that opium was having on the local population and urging her to stop the trade. His letter was never acknowledged. Following the cessation of hostilities after the Opium War in 1842, Chinese interest in international law waned.

Westerners sympathetic to China recognized China's need for international law. One such person was W. A. P. Martin, an American missionary who had witnessed numerous Chinese blunders in diplomatic transactions. In 1862, Martin began translating Wheaton's *Elements of International Law*, which had been published as the first work of its kind in 1836, in the belief that his work might bring China closer to Christianity. He hoped that his 'work might bring this atheistic government to the recognition of God and His Eternal Justice; and perhaps impart to them something of the Spirit of Christianity'.⁴⁴

Martin was encouraged by the progressives under Prince Kung and by foreign ministers like Burlingame who saw sanctity of treaty relations as fundamental to peaceful Sino-Western relations. Other people were less certain about his work, S. W. Williams of the American Embassy was concerned that Martin's work could effect Western extraterritorial privileges. Williams worried that officials in both China and Japan would 'endeavour to apply its usages and principles to their intercourse with foreign countries', leading them to see 'how greatly the principle of extraterritoriality contained in their treaties modifies the usages in force between the Western and Christian powers'.⁴⁵ M. Klecsowsky at the French legation was angry: 'Who is this man who is going to give the Chinese an insight into our European international law? Kill him—choke him off; he will make us endless

⁴⁴ Ibid., p. 127. See also Wright, *The Last Stand of Chinese Conservatism*, pp. 237-8.

⁴⁵ Hsu, *China's Entrance*, pp. 136-7.

trouble'.⁴⁶ An editorial in the *North China Herald* said:

Whether we are supplying weapons which may at some future period be directed against ourselves, or which will only be turned to the acquisition of new conquests, cannot at present be decided.⁴⁷

Martin completed his translation of Wheaton in 1864. Three hundred copies under the title *Wan-Kuo Kung-Fa* (*Public Law of All States*) were distributed to the provinces for the use of local officials. Martin's Wheaton translation was introduced to Japan in 1865. For more than a decade, Wheaton was the only treatise on international law available in Chinese. Even after translations of Woolsey, G. F. de Martens, and other international law texts appeared, Wheaton remained the Bible on the subject for the *Tsungli Yamen*. Wheaton's was not merely a commentary on international law; it was international law in the Chinese mind. By the turn of the century, Martin had been appointed Professor of the Law of Nations at the Imperial College of Tung-wen and had begun courses in international law. China also sent students to study international law in Europe and America.

China achieved a first success using international law in 1864 while Prussia and Denmark were at war in Europe. The Prussian minister to China had seized three Danish merchant ships as war prizes. After Prince Kung used international law to argue China's neutrality, the Prussian minister returned the ships with compensation. This incident seemed to prove the utility of a knowledge of international law.

Nevertheless, China applied international law in only a limited fashion. China accepted the treaty port system and its undergirding system of international law more as a defensive means to keep the West from further encroaching on Chinese territory or sovereignty, than as a positive means of securing favourable treaty revisions. Further, China only gradually accepted international law as a means for dealing with its former tributary states. In 1866, when France mounted an expedition against Korea, of which China was the traditional suzerain, the Chinese Board of Rites handled communications with Korea according to the traditional

⁴⁶ Ibid., p. 138.

⁴⁷ *North China Herald*, 21 May 1864, cited in Hsu, *ibid.*

forms of the tributary system. However, in dealing with France and eventually with the other Western powers, the *Yamen* concentrated on the type of international legal reasoning employed in the West, citing such Western technical ideas as blockade and the duties and rights of neutrals.

The European forces made the newly established *Tsungli Yamen* and the promulgation of international law keys to treaty enforcement. China's immense interior necessitated the co-operation of the Chinese government in applying pressure on the provincial and local authorities to abide by treaty provisions such as those permitting trade and missionary work. The British had hoped that a resident minister in Peking could influence the Peking government to control the interior through normal bureaucratic channels. Similarly, Bruce argued in a dispatch of 8 September 1862:

Our true policy is to give weight and authority to the Foreign Board [the *Tsungli Yamen*], by compelling it to deal with foreign questions and to punish, if necessary, officials who violate Treaties, and thus to teach the latter to tremble when a consul threatens to bring a matter under the notice of the Minister at Peking.⁴⁸

The United States, Britain, France, and Russia joined in a 'Co-operative Policy' in the 1860s to secure treaty enforcement through diplomatic pressure exerted upon the Peking government. Western military force was to be used sparingly; consuls in the treaty ports were discouraged from using gunboats to enforce the treaties. Every effort was made to support Prince K'ung and the progressives working to modernize China.

China also came to insist on the sanctity of treaties. In the decade after the Tientsin Treaties were ratified in 1860, the Ching government 'accepted and mastered the principles and practices of Western diplomacy and succeeded in using them as the main bulwark of Chinese sovereignty'.⁴⁹ China recognized that observance of the treaties would not only remove the grievances which triggered Western punitive actions, but would also limit Western activities in China to those specified in treaty provisions. Thus, Wright argues:

⁴⁸ Banno, *China and the West*, p. 243.

⁴⁹ Wright, *The Last Stand of Chinese Conservatism*, p. 231.

Before 1860 the treaties had represented the minimum privileges that foreigners could expect—a line from which they could press forward in the further opening of China. During the 1860s the minimum became the maximum—a line behind which the Chinese government could find security.⁵⁰

At least initially, China upheld the sanctity of treaties and accepted diplomatic institutions and international law because acceptance of these requirements of the standard of 'civilization' was seen as necessary to maintain China's independence.⁵¹

Included in the growing Chinese appreciation of 'civilized' international law was an understanding of the institutions and normative rules of war. During the Opium War, different cultural concepts and conventions of war had caused both the Chinese and the British to consider the other uncivilized and morally treacherous.⁵² For example, the Chinese, especially untrained conscript troops in the field, were unfamiliar with the Western white flag of truce and consequently did not cease hostilities when it appeared. Similarly, the British did not understand the traditional Chinese convention of war which mandated frontal attacks on fortresses. Western manoeuvres to outflank Chinese forts were considered as perfidious by the Chinese as the Chinese attacks on Western parties moving under the white flag were by the Western powers. Also, the British were incensed when the Chinese placed some Western prisoners of war, including a woman, in cages and subjected them to public ridicule. Such traditional Chinese practices were replaced as Chinese conventions on the conduct of war, and on the treatment of prisoners of war, evolved in conformity with international law in general.

Though inertia hampered reform of China's domestic legal system, revisions along Western lines were well under way by the time of the 1911 Revolution. The Imperial Law Codification Commission (*Hsien Ching Pien-ch'a kuan*) directed the drafting of criminal, commercial, and procedural (civil and criminal) codes and the promulgation of the

⁵⁰ *Ibid.*, p. 243.

⁵¹ See John K. Fairbank, *China Perceived* (USA, Random House Vintage Books, 1976), pp. 115-38 *passim*.

⁵² Morse, *China's International Relations*, i. 264-6.

criminal code in 1909. In 1907 a law on the 'Provisional Regulations on the High Courts and the Subordinate Courts' was implemented, followed in 1909 by the other law which was a key to the establishment of the new court system, 'The Law on the Organization of the Judiciary'. After the 1911 revolution, the Revised Law Codification Commission (*Hsiu Ting Fa-lu kuan*) continued its work, enlisting French and Japanese advisers in 1914 to help make Chinese laws compatible with the general expectations of 'civilized' countries.

When the Commission on Extraterritoriality in China began its investigation on 12 January 1926, its delegates, representing thirteen countries, were given an extensive overview of China's constitutional laws (organic and political); its commercial, civil, and criminal codes; its codes for civil and criminal procedure; its laws and regulations for the organization of the judiciary; its principal administrative laws; and the summary of the cases decided by its Supreme Court and other tribunals. As impressive as these legal reforms were on paper, the treaty powers were still concerned by the 'continual dissension within the country, a consequent delay in perfecting the reformed Chinese judicial administration and legal codes, and a weakened central administration whose tenure was never assured'.⁵³ The intimate relation between the requirements of political organization and adherence to 'civilized' legal practices meant that China's political turmoil often frustrated its efforts to become a 'civilized', law-abiding state, domestically and internationally.

The Entry of China into International Society: Revising the 'Unequal Treaties' and Gaining 'Civilized Status'

The Chinese Position

Though the Republic of China was established on 1 January 1912, many saw the national revolution, which had begun only eighty-three days before with the uprising against the

⁵³ Wesley R. Fishel, *The End of Extraterritoriality in China* (USA, Berkeley and Los Angeles, University of California Press, 1952), p. 28.

Ching dynasty, as yet uncompleted. Though China had proclaimed itself a new state, it was not yet a full and 'civilized' member of the international society. On the day the Republic of China was formally inaugurated, Provisional President Sun Yat-sen announced that 'with the establishment of the Provisional government we will try our best to carry out the duties of a civilized nation so as to obtain the rights of a civilized nation'.⁵⁴

Even at Sun's death a decade later, however, 'unequal treaties' were still an issue. Sun's will, dated 11 March 1925, disappointedly admitted that 'the work of the Revolution is not yet done. For forty years', Sun wrote, 'I have devoted myself to the cause of the people's revolution with but one end in view, the elevation of China to a position of freedom and equality among the nations. Above all', he continued, 'our recent declarations in favor of the convocation of a National Convention and the abolition of unequal treaties should be carried into effect with the least possible delay'.⁵⁵

Growing nationalism naturally focused Chinese resentment on the 'unequal treaties' imposed by Western powers. Extraterritoriality was blamed both for China's internal weaknesses and for China's failure to attain full equality as a sovereign and 'civilized' nation. China's nationalists and their sympathizers maintained that abrogation of extraterritoriality would solve both problems by permitting China to build internal unity and international prestige, and thereby to become a sovereign and 'civilized' nation in fact as well as in name. Thus, because extraterritoriality became symbolic of the 'unequal treaties' and the treaty port system in general, demands that extraterritoriality be abrogated and that the 'unequal treaties' be revised mounted as Chinese nationalism increased.

In its efforts to revise the 'unequal treaties' and to abolish extraterritoriality, China purposefully entered the first World War on the side of the Allies, thereby voiding its treaties with Germany and Austria-Hungary and securing a place at the victory table. When the Paris peacemakers, despite Wilson's efforts to reverse the results of Japan's secret negotiations,

⁵⁴ Cited in Chiu, 'Chinese Views of Unequal Treaties', p. 244.

⁵⁵ Sun Yat-sen, *The Three Principles of the People (San Min Chu I)*, trans. Frank W. Price (Taipei, Taiwan, China Publishing Co., n.d.), p. i.

ceded Germany's former holdings to Japan on 28 April 1919, China's delegates refused to sign the Versailles peace treaty. The May 4th movement broke out throughout China to register disappointment at the apparent betrayal of the principles of open diplomacy and national self-determination.

At the Washington Conference in 1921, China's demand that extraterritoriality be abrogated became the focus of international controversy. The Conference debated at length China's Ten Points regarding territorial and administrative integrity, tariff autonomy, and leased areas, as well as the role of foreign troops and policy, and the relative merits of the West's control of China's communications and postal services. On 10 December 1921, the Powers adopted a resolution on extraterritoriality which instituted a Commission on Extraterritoriality to investigate progress in China toward the fulfilment of the standard of 'civilization'. The Powers also agreed 'to give every assistance towards the attainment by the Chinese government of its expressed desire to reform its judicial system and to bring it into accord with that of Western nations', and declared that they were prepared 'to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations "warranted" them in so doing'.⁵⁶

After the League of Nations was established, China became the first country to appeal to the Permanent International Court of Justice for revision of 'unequal treaties'.⁵⁷ On 16 April 1926, China informed Belgium that legal measures were being taken to revise their treaty of 2 November 1865 on the basis of 'equality and reciprocity'. Because the two countries concluded a new treaty on their own, the court never had to rule on their case.

The Western Position

Two additional factors—one practical, one ideological—made China's efforts to revise the "unequal treaties" and to abrogate extraterritoriality even more complex. One practical factor

⁵⁶ Westel W. Willoughby, *China at the Conference* (Baltimore, Johns Hopkins Press, 1922), pp. 118–19.

⁵⁷ Nozari, *Unequal Treaties in International Law*, p. 112.

was the factionalism which, even after Kuomintang leader Chiang Kai-shek loosely united the country in 1928 after the successful Northern campaign, still left China divided and unstable. Indeed, rising Chinese nationalism and the increasingly persuasive Chinese legal case against extraterritoriality put the Western powers on the defensive. They were publicly eager to recognize China as a sovereign equal but privately fearful to abrogate extraterritoriality prematurely.

Most Western defences of extraterritoriality stemmed from pragmatic concerns for life and property. For example, Rodney Gilbert argued that the 'unequal treaties' provided 'protection which every civilised state automatically affords'.⁵⁸ Sir Skinner Turner, a Judge of HBM Supreme Court for China, expressed deep concern for the 'absence of written laws, the different conceptions of jurisprudence between the Western world and the East (e.g., the doctrine of responsibility)', and the 'apparent lack of independence of the Chinese judiciary'.⁵⁹ The primary Western fear was plain:

There is no doubt that the foreigner feels safe under the existing extraterritorial system: he does not feel that he will be safe under a Chinese administration of justice, even in these 'Modern' courts; and it is practically certain that, once extraterritoriality is abolished, there will be no retracing the step.⁶⁰

Turner provided a classic summary of the Western position towards extraterritoriality when he continued:

And, in view of the past history of the administration of justice by the Chinese people, the foreigner, before he surrenders his present position, claims to be entitled to ask for reasonable certainty as to the laws under which he is to come; some harmony between those laws and those of the western world; an adequate supply of trained men to administer them and some assurance of their independence in the exercise of their judicial duties.⁶¹

Following this sympathetic challenge to China to permit the Western powers to abrogate extraterritoriality with peace of

⁵⁸ Rodney Gilbert, *The Unequal Treaties* (London, John Murray, 1929), p. vii.

⁵⁹ Sir Skinner Turner, 'Extraterritoriality in China', *British Yearbook of International Law*, X (1929), 61.

⁶⁰ *Ibid.*, p. 63.

⁶¹ *Ibid.*

mind, Turner concluded with a wish which was also an incisive statement of China's fundamental problem:

And above all of these, what is really wanted by every well-wisher of China, [is] a stable government whose writ runs over the whole country with a regular legislative machine.⁶²

In China, the Nationalists, Communists, and warlords were all aware of the problem. Nearby, in Japan, the military factions especially recognized that if China's nationalism resulted in genuine national unity, then Japan's aspirations and special interests in China would evaporate. Japan's invasion of Manchuria was in part an effort to control the area before China could enforce its claim that Manchuria was territorially part of a unified Chinese state.

A second factor was ideological. The goal of revising the 'unequal treaties' and of making China a 'civilized' country touched a highly emotional well-spring of Chinese humiliation. The now-classic complaint against the extraterritorial privileges flaunted in the treaty ports arose from the signs outside some Shanghai parks: 'No Dogs or Chinese Allowed'. Eyewitnesses of such signs remember their outrage as twofold: first, a sense of personal and cultural humiliation because Chinese people and mongrel dogs could be compared and, moreover, could be treated in the same manner; second, a sense of national humiliation because the unwanted foreign presence which was decisively undermining traditional Chinese society could not be expelled from what should have been Chinese territory.

Not surprisingly, immense political power and prestige was seen to accrue to the party or individual who could harness and direct the deep-seated feelings of China's masses. Accordingly, the priority of restoring China's territorial integrity and national sovereignty was espoused by leaders of all political persuasions, including Sun Yat-sen, Chiang Kai-shek, and Mao Tse-tung. Competition over the approach China should take toward the standard of 'civilization' became increasingly intense.

Further, in their own times and ways, the Western liberals and the Japanese also declared China's quest for treaty revision to be their own. The Western liberals created

⁶² Ibid.

sympathy for China in two ways. First, grass-roots committees such as the Citizens' League on the Abolition of Extraterritoriality in China campaigned with vigour and increasing persuasiveness in China, Great Britain, and the United States. Second, and less directly, after the First World War, they worked to limit or prohibit the aggressive use of military force, thus increasing general international sympathy for China's contention that its 'unequal treaties' had been wrongly imposed by military force. It is true that duress never constituted grounds for the vitiation of a treaty or for a treaty's being declared invalid *ab initio* in the League of Nations' legal system. However, people of the general sensibility which applauded the signing of the 1928 Kellogg-Briand pact to prohibit the use of armed force were also susceptible to China's argument that the powers should at least consider the revision of 'unequal treaties' imposed by military coercion.

Japan also attempted to employ Chinese resentment against 'unequal treaties' and extraterritoriality to its own advantage. Presenting itself as a model for China and the rest of Asia, Japan cited its success in dealing with the Western powers not only as their equal, e.g. the 1902 Anglo-Japanese alliance, but also in some ways as their superior, e.g. the decisive defeat of Russia in 1905-6. Further, Japan used the 'unequal treaties' issue to ridicule Western temporizing on the abrogation of extraterritoriality. As late as the summer of 1941, Japanese radio and newspaper propaganda insinuated that the Western powers intended to keep China at a semi-colonial status as long as possible. The Japanese also played on the racial issue by asserting that Asians would never receive fair or just treatment from Caucasians.

This burgeoning opposition guaranteed that extraterritoriality was eventually abolished in China. Less clear was which rival group and which competing ideology could claim the victory when the 'unequal treaties' were finally revised.

The End of Extraterritoriality

The end of extraterritoriality in China was only a matter

of time. China's argument that the 'unequal treaties' be revised and that extraterritoriality be abrogated came to be presented exclusively in the terminology, principles, and logic of international law. Grievances due to cultural differences may have remained important in the popular mind, but the government's efforts to remove the 'unequal treaties' were made within the framework of the international legal and political system of which China saw itself as a member. As early as the 1902 MacKay treaty, the Western powers expressed a willingness to abrogate extraterritoriality, conditional on China's ability to 'reform her judicial system, and bring it into accord with that of Western nations'.⁶³ Nonetheless, the negotiations dragged on through the 1920s and into the 1930s.

Concern for Japan's invasion of Manchuria in 1931 superseded the negotiations, which were broken off and remained in draft treaty form until the summer of 1942. After Japan attacked Pearl Harbor, a change occurred in the Western policy on extraterritoriality. On 25 April 1942, the British government took the initiative and suggested to the American Secretary of State, Hull, that negotiations for ending extraterritoriality be reopened. This decision was made public on 10 October 1942, China's 'Double Ten Day' national anniversary, and was formalized in treaties officially abrogating extraterritoriality on 11 January 1943.

The abrogation of extraterritoriality nominally completed China's efforts to revise the 'unequal treaties' and to be recognized as a 'civilized' state. Unforeseen was that the continuing struggles of civil war would bring yet another Chinese government to power and, with its rise, a new set of challenges to which standard of 'civilization' China should abide.

⁶³ 1902 MacKay treaty cited in Fischel, *Extraterritoriality in China*, p. 27.

VI

The Standard of 'Civilization' and the Entry of Japan into International Society

Introduction

Japan's meteoric rise to great power prominence is better known than its struggle to achieve 'civilized' legal status, though the two stories are closely related and illustrate the dual role Japan came to play in international society. On the one hand, Japan exemplified *par excellence* the East Asian country which conformed its governmental institutions, legal system, and general international practices to the interests, rules, and values of the 'civilized' international society. Indeed, Japan's modernization, Westernization, and 'civilization' (all three terms were used) was exceptional for its speed and apparent thoroughness. If the abrogation of extraterritoriality is used as an index of 'civilized' status, then Japan accomplished by 1899 what it took Turkey until 1923 and China until 1943 to complete.

On the other hand, Japan became sufficiently modern and powerful to challenge the interests of the European members of the international society, and to question whether or not the 'civilized' society was in fact only a European one with honorary non-European members on good behaviour. Determined to work with the European powers when possible and against them when necessary, it was Japan which launched the fleets that defeated the Russians at Tsushima and later challenged the Americans at Midway and Coral Sea, and which mustered the armies that drove from Manchuria to Singapore. Japan justified this military confrontation which hastened the decline of the West in Asia with moral and ideological arguments which portended the Asian and African revolt against Western dominance.¹

¹ This theme is discussed in Richard Storry, *Japan and the Decline of the West in Asia 1894-1943* (London, Macmillan Press, 1979), and Geoffrey Barraclough, *An Introduction to Contemporary History* (Harmondsworth, Penguin, 1967), especially Chapter Six.

And the whole process was compressed into the span of a single lifetime: someone, as a child, could have watched Perry's 'black ships' enter what is now called Tokyo bay and, at the end of a long life, have seen the USS *Missouri* anchored in the same harbour with MacArthur aboard to receive the Japanese surrender.²

Japan's modern foreign relations to the end of the Second World War can be divided into three phases: The Powers versus Japan, 1853-94; Japan among the Powers, 1894-1931; and Japan versus the Powers, 1931-45.³ This case study focuses on the years during which the Powers imposed 'unequal treaties' on Japan and thereby drew it into the international system; the humiliations of this formative period contributed to Japan's frustration as a power among the Powers, and eventually helped turn Japan against the Powers.

Japan turned against the 'civilized' Powers in part because it perceived itself to have struggled hard to join them, only to be denied a fair place after fulfilling the requirements set forth in their standard of 'civilization'. If anything, Japan took the standard too seriously and naively, on face value, not understanding that even 'civilized' international society was characterized by anarchy (the absence of a monopoly of legitimate violence) and hierarchy (because without civil society, rights depend largely on might).⁴ But this disillusionment came later. In the years between the coming of Perry and the abrogation of extraterritoriality and tariff restrictions, Japan worked diligently to become a 'civilized' state and to enter into international society on that basis.

Japan in the Confucian Family of Nations

Like their Chinese neighbours, the Japanese developed at an early date their own sense of cultural identity and their own definition and standard of civilization. Racial homogeneity,

²Dr Richard Storry, former Director of the St. Antony's Far East Centre, makes this graphic point.

³Ian Nish, *Japanese Foreign Policy 1869-1942* (London, Routledge and Kegan Paul, 1977) p. 3.

⁴Raymond Aron, *Progress and Disillusion: The Dialectics of Modern Society* (New York, Praeger, 1969), p. 160 cited in Tucker, *Inequality of Nations* pp. 3-4.

a feeling of common culture, and a tradition of hierarchical loyalty combined to give a strong sense of unity, of 'Japaneseness'. The geographical isolation of the Japanese home islands produced an early delineation of frontiers and boundaries, thereby protecting and nurturing this distinct Japanese identity.

Japan's role within the Confucian sphere of nations was often uncertain. Pre-modern Japan remained outside the inner network of a Chinese empire it could neither successfully challenge nor wholly ignore.⁵ Though China considered the Japanese *toi* (Eastern Barbarians), and Japan a vassal state, Japan did not formally accept China as its suzerain except during two periods (between the third and the beginning of the sixth centuries AD, and between the early fifteenth and mid-sixteenth centuries AD). Nevertheless, from the end of the ninth century until the signing of the Treaty of Peace and Amity in 1871, Japan and China regulated their diplomatic relations by hierarchical Confucian traditions.

When the Europeans came to Japan, they found a country which maintained a standard of civilization different from their own, by which it considered them 'barbarians'. Further, they found that Japan conducted its foreign relations, not in a vacuum of 'uncivilized' confusion or chaos, but according to the customs and practices of centuries of interaction, however unlike those of Europe. Japan's international perceptions were shaped by dominant features of Japanese civilization.⁶ Understanding these features—the basic *esprit* of Japanese tradition and culture⁷—helps to explain Japan's reaction to the European standard of 'civilization'. Because Japan projected its hierarchical social patterns into the realm of international relations, Japan experienced difficulty in perceiving and executing the Western concept of international equality. The emphasis Japanese society placed on 'uniformity of political belief and social behaviour'

⁵ See Seizabura Sato, 'The Foundations of Modern Japanese Foreign Policy', *The Foreign Policy of Modern Japan*, Robert A. Scalapino, ed. (USA, University of California Press, 1977.)

⁶ See Robert A. Scalapino, 'Perspectives of Modern Japanese Foreign Policy', *The Foreign Policy of Modern Japan*, Robert A. Scalapino, ed.

⁷ Charles A. Moore, 'The Enigmatic Japanese Mind', *The Japanese Mind*, Charles A. Moore, ed. (Honolulu, Hawaii, East-West Center Press, 1967), p. 307.

contributed both to the rapidity of the Meiji Restoration and to the xenophobic nature of Japanese public opinion during the 'unequal treaty' period.⁸ At the same time, quite unlike China, Japan's tradition of cultural borrowing left it less afraid to do so when it became advantageous or necessary.

Transition from Japanese Feudal System to Nation-State

1. Development of the Treaty Port System:

The Impact of the West

The Coming of Perry

While the West had made contact with Japan as early as 1542, Western interest in Japan intensified in the mid-nineteenth century only after the advocates of 'Manifest Destiny' had traversed the continental United States and established a northern Pacific trade route of burgeoning economic importance. By 1851 steamships were coming into wider use. Rumours of Japanese coal deposits and the need for ports made Japan increasingly attractive. The opening of ports in California and north China also dramatically reduced the journey which had before extended from New England to treaty ports like Canton in south China.

Commodore Perry left the United States for Japan on 24 November 1852. His squadron of four 'black ships' included two steamships, the *Susquehanna* and the *Mississippi*, and two sloops of war, the *Saratoga* and the *Plymouth*. When Perry returned to Japan in the early spring of 1854, he took three steamships, three sloops of war, and three store-ships—an imposing flotilla that hastened the signing of a treaty on 31 March 1854. Perry was unaware that Russian Admiral Putyatin had also appeared in Nagasaki in August 1853 and had reappeared with four ships in early January 1854. Concerned that the Western powers were preparing to converge *en masse*, Japan hastened to conclude an agreement with Perry, the first of its kind between Japan and any Western country. Thus ended more than two hundred years of Japanese isolation.

⁸Storry, *Japan and the Decline of the West in Asia*, p. 139.

The First Treaty Settlements

The twelve-article Treaty of Kanagawa which Perry secured in 1854 promised 'perfect, permanent, and universal peace and a sincere and cordial amity' between the United States and Japan. It opened the ports of Shimoda and Hakodate to US ships to coal, permitted an American Consul in Shimoda after eighteen months, but contained only minor provisions for trade. Clauses granting extraterritoriality were conspicuously absent, though a most-favoured-nation clause was attached. Even after additional measures to regulate the opening of Shimoda were agreed upon on 21 June 1854, Japan still congratulated itself on having conceded so little.

As in China and Siam, the first treaties between Japan and the Western powers became the foundation on which additional treaties were built. Through persistence and by playing on Japanese fears of Britain, the United States Consul General to Japan, Townsend Harris, secured a Convention on 17 June 1857 which opened Nagasaki to the United States, provided for the permanent residence of Americans at Shimoda and Hakodate, permitted the appointment of an American Vice-Consul at Hakodate, and secured extraterritorial privileges in criminal cases. Harris also secured a personal audience with Tokugawa Iesada, the thirteenth shogun, in Yedo on 7 December 1857 and, thereafter, the opportunity to negotiate treaty terms with Lord Inouye and Lord Iwasa until a Treaty of Amity and Commerce was concluded at Yedo on 26 February 1858. Japan's first formal Treaty of Amity and of Commerce was duly signed on 29 July 1858 on board the USS *Pawhattan*, after intense debate among the various Japanese factions whose differences remained unresolved even at the time Lord Ii Naosuke took the difficult decision to go ahead with the treaty's signing.

Included in the 1858 American-Japanese Treaty were:

the opening of Kanagawa (in place of Shimoda), Nagasaki, Hakodate, Niigata, and Hyogo (later Kobe) for trade, and of Yedo and Osaka for foreign residence;
 the appointment of a United States diplomatic agent at Yedo, and Consuls or Consular Agents at the treaty ports;
 the extension of extraterritorial privileges to cover civil as well as criminal cases;

the provision for the United States to mediate any difficulties between Japan and the European powers;
the option to revise the treaty, on the desire of either party and on one year's notice, after 4 July 1872;
various other provisions concerning the prohibition on importing opium, the right to freedom of religion, the right to circulate foreign coins in Japan, and the regulation of exchange at a specified rate.

In addition, appended to the treaty were trade regulations and a tariff schedule. Thereafter, the fixed tariff and the export regulations, along with the extraterritorial concessions, formed the heart of Japan's grievances against the 'unequal treaties' and the treaty port system.

The Netherlands, Russia, Britain, and France followed the American lead in signing new treaties within the year. Shortly thereafter, Portugal, Prussia, Sweden, Norway, Spain, Austria-Hungary, Hawaii, and Peru joined in signing treaties with Japan. These treaties transformed Japan's foreign relations from scattered and disparate arrangements with individual countries into a complex network of interlocking agreements. The treaties also gave the Western powers a common interest and legal framework in their position *vis-à-vis* Japan. Indeed, over time, these treaties became the 'thin edge of a wedge which was to be driven into the already-crumbling Tokugawa administration' by its numerous internal opponents.⁹ Hence Japan perceived the treaty powers to be 'foxes of the same hole' (*hitotsu ana no kitsune*) and worried that they would subjugate Japan, as they had China, by means of 'unequal treaties'.¹⁰

'Unequal Treaties'?

The provisions in Japan's treaties were no more unequal than those the Western powers enforced in China from 1842 and in Korea from 1882. The loss of tariff control and the loss of jurisdiction over foreign nationals due to extraterritoriality left Japan less than fully independent even at the beginning of the 1890s. Even that late, Japan remained 'hobbled by the

⁹ Nish, *Japanese Foreign Policy*, p. 10.

¹⁰ Richard T. Chang, *From Prejudice to Tolerance: The Japanese Image of the West* (Tokyo, Sophia University Press, 1970), p. 50. The term is Nariaki's, the Elder Prince of Mito (*Mito no roko*).

treaties concluded in earlier years with the foreign powers; treaties appositely described as "unequal", since they imposed limitations on the full exercise of Japan's sovereignty within her own territory'.¹¹

It is difficult to determine which restriction Japan considered more grievous. While the Meiji leaders saw tariff autonomy as fundamental, public opinion focused on the emotional issue of extraterritoriality. The Meiji leaders perceived:

the restrictions on their freedom to set tariffs as a major barrier to their schemes for modernization. Industrialization could be accelerated if tariff autonomy could be achieved, and this goal, the true basis of national power, was given priority over all others.¹²

Hence, a succession of foreign ministers, for example, Terajima, Inouye, and Okuma, traded continued Western extraterritorial privileges for relief from the 'less visible but more basic inequality of fixed tariffs'.¹³

However, this compromise was extremely unpopular with the Japanese people. Extraterritoriality quickly became a *cause célèbre*, 'perhaps the first issue in Japanese history to be influenced to a great extent by public opinion'.¹⁴ In 1899, after the promulgation of Japan's first constitution, newly-convened Diet members attacked the Cabinet for its failure to obtain revision of the 'unequal treaties'.¹⁵

It is true that military force was not used overtly to impose the unequal provisions of Japan's initial treaties. However, many Japanese, especially during the Bakumatsu period, believed that the 'West, mightier than Japan both militarily and economically, was contemplating aggression against her'.¹⁶ Shared by Bakumatsu *samurai* intellectuals such as Fujita Toko of Mito and Sakuma Shozan of Matsuhiro, this image of the West as a military power threatening

¹¹ Storry, *Japan and the Decline of the West in Asia*, p. 17.

¹² Marius B. Jansen, 'Modernization and Foreign Policy', *Political Development in Modern Japan*, Robert E. Ward, ed. (New Jersey, Princeton University Press, 1968), p. 176.

¹³ Ibid.

¹⁴ Jean-Pierre Lehmann, *The Image of Japan* (London, George Allen and Unwin, 1978) p. 26.

¹⁵ Storry, *Japan and the Decline of the West in Asia*, p. 18.

¹⁶ Chang, *From Prejudice to Tolerance*, p. ix.

Japan provided an impelling force behind the rapid emergence of Japan as a world power.¹⁷

The apparent determination of Perry and his squadron of 'black ships' to find satisfaction; the outcome of the Opium Wars and the Western readiness to employ superior firepower against defenceless coastal towns; and the perception that the Western powers would deal with Japan as a concert if not dealt with separately—all these factors suggested to the more perceptive Japanese leadership that peaceful accommodation was preferable to a war which Japan would inevitably lose. Though elaborate proposals for sabotage and defence were advanced—including a plan to place *samurai* under the floor of the house where Perry was conducting his negotiations, ready to spring out in an instant; a plot to draw the Europeans on to land where even rifles would leave them no match for human waves of armed *samurai*; and a scheme to slip *samurai* commandos on to the Western ships to silence their cannons by surprise attack—such plans were, fortunately for all, never employed.

Although military force and threats were not used overtly to impose Japan's 'unequal treaties', Western military prowess had occasion to be demonstrated after they were signed. After several foreigners were killed and the British and American legations burnt down, Britain demanded a formal apology and compensation. When Britain seized three small Japanese steamers during the negotiations, shore batteries opened on the seven-ship British squadron off Kagoshima. In returning fire, the British squadron levelled half the city to ashes, continuing the reprisal the following day. The different capacities of the Japanese and British cannon are noteworthy: the Satsuma guns had an estimated range of 1,200 yards while the British could bombard Kagoshima from 5,000 yards. Similarly, Perry's cannon enjoyed a range estimated four times greater than that of the Japanese.¹⁸

A second major show of Western military force occurred after Lord Mori of Choshu interpreted an Imperial Expulsion Edict to mean his men should fire on foreign vessels. A small American steamer, a French steam gunboat, and a Dutch steam sloop were attacked. After minor retaliatory efforts by

¹⁷Ibid.

¹⁸Ibid., p. 95.

individual countries, a joint expedition of seventeen vessels (nine British, four Dutch, three French, and one American) commenced attacking the Choshu shore batteries which guarded the Shimonoseki straits, the north-western gateway to the inland areas, on 5 September 1864. Within three days the batteries were destroyed and the Japanese cannons carried away. While superior military force had not played a major role prior to the signing of the treaties, it was clearly available.

While unequal provisions and superior military capability were clearly unequal elements in Japan's treaties, perceptions rooted in Japanese culture heightened the sense that the treaties were unjust treaties. 'Looking back' comments one historian, 'it would appear that Japanese leaders greatly exaggerated the threat which was posed by the foreign powers. Indeed, this threat became something of a national neurosis'.¹⁹ Exaggerated fears made 'rich country, strong army' (*fukoku kyohei*) the Japanese watchword as part of a 'chain reaction of fear and hostility' which 'motivated them to try to reduce the gap and achieve equality'.²⁰ These feelings stemmed from a Japanese consciousness 'both of the existence of more advanced cultures', e.g. China, and of 'their own homogeneity and uniqueness' which had 'developed in them a sense of belonging to Japan, and simultaneously, a feeling of inferiority'.²¹

Four related feelings of uncertainty and insecurity magnified the cultural sense of injustice and inferiority brought by the 'unequal treaties'. First, there was a feeling of racial inferiority. A proud people for whom a certain self-imputed racial superiority was an important aspect of identity, the Japanese:

resented bitterly the imputation of racial inferiority which they thought to lie behind the insistence of the occidental powers upon concessions from Japan which they neither claimed nor submitted to in their relations with one another.²²

¹⁹ Nish, *Japanese Foreign Policy*, p. 3.

²⁰ Chang, *From Prejudice to Tolerance*, p. ix.

²¹ Sato, 'The Foundations of Modern Japanese Foreign Policy', p. 375.

²² F. C. Jones, *Extraterritoriality in Japan* (New Haven, 1931; reprint edn., New York, AMS Press, 1970), p. 47.

The extent of Japan's concern for racial inferiority is evidenced by Takahashi Yoshio's 1884 book (which proposed improving the Japanese race through intermarriage) and the seeking by leading Japanese statesmen of Herbert Spencer's opinion on that subject in 1892.²³

Second, there was a feeling that Japanese society as a whole was backward and 'uncivilized'. When Ito Hirobumi, Inouye Kaoru, and others returned from Europe, they reported that the mercantile and industrial might they saw in London was the product of a whole pattern of British culture. The Western forces waiting off Japan's coasts were not isolated or unique displays of strength.

Third, the 'unequal treaties' created a deep-seated 'feeling that they [the Japanese] were dishonored as a nation so long as they permitted the [extraterritorial] system to continue'.²⁴ In April 1869 Iwakura warned:

We must guard our country's independence. Foreign troops have been stationed in our open ports, and even when foreigners who live in our country violate our laws, we are forced to stand by while agents of their governments exercise jurisdiction over them. Our country has never before known such shame and disgrace.²⁵

This propensity to see shame and disgrace and to use them as a means of regulating and motivating Japanese social behaviour has been described as 'evidently a cultural characteristic of the Japanese to be unusually self-conscious and anxious not to appear ridiculous in the eyes of foreigners'.²⁶ Every day it took the form of the admonition, 'You must not be laughed at by foreigners'.

A fourth dimension of uncertainty due to cultural factors arose from the ambiguous position Japan found itself in after deciding to accept Western standards of 'civilization'. The *Rokumeikan*, or 'Hall of the Baying Stag' where imported dance masters taught Japanese ladies bedecked in bustles how to sway in time to Western sounds and rhythms

²³ Donald H. Shively, 'Japanization of the Middle Meiji', *Tradition and Modernization in Japanese Culture*, Donald H. Shively, ed. (New Jersey, Princeton University Press, 1971), p. 94.

²⁴ Jones, *Extraterritoriality*, p. 47.

²⁵ 'Iwakura Jikki', Vol. 2, pp. 696-701 cited in Nish, *Japanese Foreign Policy*, p. 12.

²⁶ Shively, 'Japanization of the Middle Meiji', p. 82.

symbolized a whole movement to embrace Western diets, dress, religions, etc. Yet this adaptation of things clearly foreign was fraught with contradictions, some blatant, others more latent. There was what R. P. Dore has characterized as the problem of pride and pupillage; though Japan accepted the European standard of 'civilization', other Asians objected to the Japanese assuming airs since they were, after all, 'only Asians like us'.²⁷ Further, the acceptance of a Western standard compounded the sense that while it was the Westerners who were the barbarians before 1868, the Japanese leaders now became extremely sensitive to the fact that their own society appeared backward and barbaric to the West'.²⁸

Critics condemned the wholesale acceptance of Western civilization at the expense of traditional Japanese attitudes and values, and warned that Japan's position *vis-à-vis* the West would always be inferior and at best ambiguous. At the time of the Russo-Japanese war, one poet lamented with prophetic depth of feeling:

*Win the war,
And Japan will be denounced as yellow peril.
Lose it,
And she will be branded a barbaric land.*²⁹

Caught between the Scylla of its Asian traditions and neighbours and the Charybdis of the European powers with their definitions and standards of 'civilization', it is no wonder that Japan perceived the treaties to be 'unequal treaties' in ways which reflected its cultural perceptions and concerns.

2. Fulfilling the Standard of 'Civilization'

The impact of the West through the imposition of 'unequal treaties' and a treaty port system hastened the fall of the Tokugawa regime which was already crumbling due to a complex concatenation of largely internal factors.³⁰ As set

²⁷ Ronald P. Dore, 'Prestige Factor in International Affairs', *International Affairs* (April 1975), p. 16.

²⁸ Shively, 'Japanization of the Middle Meiji', p. 81.

²⁹ Lehmann, *The Image of Japan*, p. 179.

³⁰ See Richard Storry, *A History of Modern Japan* (Harmondsworth, Penguin Books, 1968), p. 94; Scalapino also sees internal factors as being ultimately decisive, though external pressures may have been the straw which broke the camel's back.

out in April 1868 in the Charter Oath, the Meiji restorers proposed that Japan abandon its previous isolationist policies by adopting five points: (1) an assembly widely convoked shall be established and all matters of state shall be decided by public discussion; (2) all classes high and low shall unite in vigorously promoting the economy and welfare of the nation; (3) all civil and military officials and the common people as well shall be allowed to fulfil their aspirations, so that there may be no discontent among them; (4) base customs of former times shall be abandoned and all actions shall conform to the principles of international justice; and (5) knowledge shall be sought throughout the world and thus shall be strengthened the foundation of the Imperial polity.³¹

The achievement of equality by the revision of the 'unequal treaties' and the achievement of security in the international community thus became primary Japanese foreign policy goals.³² To attain these goals, Japan had to become a 'civilized' power. The standard of 'civilization' guided Japan's remarkable programme of change and reform at home and abroad.

The Protection of Foreign Life, Liberty, and Property

Japan first attempted to guarantee the life, liberty, and property of foreign nationals through the treaty port and extraterritorial court systems. By restricting foreign movement and residence to the treaty ports, except for those with special passports, the Japanese government contended that attacks by robbers or xenophobic zealots would be minimized. Within the 25-mile radius of the treaty ports, foreign nationals could move freely, own property, and generally feel their lives were safe. Whether or not it was intended as a direct consequence, the 1870 ban on *samurai* wearing swords must have assuaged the fears of foreign nationals who felt exposed to the dangers of a quick and irate hand.

Changes in Political Organization

Of the many changes which occurred in Japan's political organization, two stand out. First, aided by its defined

³¹ W. G. Beasley, *The Meiji Restoration* (Stanford, Stanford University Press, 1973), p. 323.

³² See Kikujiro Ishii, 'The Permanent Bases of Japanese Foreign Policy', *Foreign Affairs*, II (January 1933), 220-9.

territory and its distinctly Japanese racial identity, Japan made the transition from numerous feudal kingdoms to unified nation. In a triumphant united front, the Satsuma, Choshu, Tosa, and Hizen clans gave a memorial surrendering their lands and their allegiance to the emperor and country, a *fait accompli* the smaller kingdoms had little choice but to follow. This memorial marked the end of feudal division and the beginning of Japan's national unity. When the 1877 Satsuma rebellion rallied 40,000 discontented conservatives under Saigo's colourful leadership, the government used its new peasant recruits to suppress the rebellion in a way which ended any doubt that Japan would be other than a single country.

Second, Japan quickly adopted the notion that 'a constitutional form of government with representative institutions' was 'the best way to impress the West with Japan's progress'.³³ The idea of representative institutions led to cautious experiments for electing prefectural assemblies in 1879 and municipal assemblies in 1880. In 1879 the emperor requested all councillors to submit proposals for a constitutional government. Shortly thereafter the government decided to adopt a constitution and create a national assembly by 1890. In 1884 a new nobility was created wherein the old court aristocracy and the *daimyo* were divided into five noble ranks and assigned places in the peerage; members of this group were to serve in the House of Peers, which was to balance the elected lower House of Representatives. In 1885 a civil service system and a cabinet system under the direction of a prime minister were adopted. Ito of Choshu, whose extensive European travels and study of Western political theory had given him a leading role in drafting the new constitution, became prime minister.

By 1888, a Privy Council, which was to prove a bulwark of imperial authority, was established. On 11 February 1889 the new constitution was promulgated as a gift from the emperor, who remained the sole source of authority in Japan to the people. The constitution created an entirely elected House of Representatives—though the requirement that

³³ Edward O. Reischauer, *Japan*, revised edn. (USA, Alfred A. Knoff, 1974), p. 138.

limited the electorate to men paying 15 yen or more in direct taxes meant that only 450,000 men, i.e. about 6 per cent of the adult male population, could vote. Of equal authority, the House of Representatives and the House of Peers were collectively referred to as the Diet. Though the Diet's powers were restricted to voting on matters of taxes and budget, its voice proved clamorous, something with which the government always had to reckon. Modernization of the government along Western lines to include a constitution and representative institutions brought approval from the treaty powers and provided an important step towards revision of the 'unequal treaties'.

Even the terminology used to describe these changes in political organization was imported. Japanese terms for 'political party', 'constitution', 'sovereignty', and 'national' were created by building new words of Chinese-character compounds. These words were first systematically collected in Shibata's dictionary in 1873. By 1888 a full new vocabulary was available; this represented a remarkable attempt not only to comprehend a new set of foreign political concepts but also to make them accessible in Japanese in less than fifteen years. Some of the old connotations inherent within the constituent characters carried over, blending with the distinctively Japanese meanings of the new political words to give them a flavour of the meeting of East and West which they symbolized.

The Establishment of Permanent Diplomatic Relations

Japan's early decision to improve its foreign relations through diplomatic channels meant four things in practice: (1) the establishment of permanent foreign legations in Japan; (2) the creation of diplomatic and foreign policy ministries and institutions in Japan; (3) the commissioning of resident Japanese diplomatic missions abroad; and (4) adherence to international conventions and conferences.

Provisions for permanent Western legations in Japan were written into the treaties from the time of Perry. For example, the 1854 treaty Perry signed provided for an American consul in Shimoda, while the 1857 Convention Townsend Harris secured granted permanent residence to Americans at Shimoda and Hakodate, and the appointment of an American

Vice-Consul at Hakodate. Virtually all the foreign powers which signed treaties thereafter gained similar rights. Initially, the American Minister Townsend Harris, the British Consul-General Rutherford Alcock, the French Minister Duchêne de Belle-court, and the Dutch Consul-General De Witt were housed in five Buddhist temples at Yedo. A Russian representative did not join them for a number of years.

While xenophobic *ronin* presented a problem for the fledgling legations in the beginning, the presence of foreign legations gradually became an accepted fact.

Japan's newly created diplomatic and foreign policy ministries and institutions soon proved effective. Before the treaties with the West were signed, Tokugawa Japan had felt little need for an institution or group of specialists concerned solely with foreign affairs. By 1858, however, a commissioner of foreign affairs (*gaikoku bugyo*) had been appointed to deal with foreign envoys. As did other commissioners, the five to ten men who served in the post did so on a system of monthly alternation and were ranked directly below the Council of Elders. When Kobe was opened in 1867, a chief commissioner (*gaikoku sobugyo*) was designated. As relations with the treaty powers became increasingly important, the monthly rotation system was abandoned and the position of director of foreign affairs (*gaikoku jimmu sosai*) established.

After the Meiji Restoration, it became clear that foreign relations required specialized attention. In the first Meiji governmental structure, a Bureau or Board of Foreign Affairs (*gaikoku kan*) was established on 25 January 1868. In the following month, foreign representatives were invited to meet the emperor in what was regarded as a 'symbolic act to indicate that the Tennos government was ready to open connections'.³⁴ When the *Dajokan* or imperial government was established on 8 July 1869, a Foreign Ministry was one of the six ministries set up with offices located in the new capital of Tokyo. A branch for dealing with foreigners was situated in Yokohama. While the hierarchy, ranking system, and bureaucratic regulations within the ministry continued to reflect Tokugawa period practices, the fact remained that

³⁴ Nish, *Japanese Foreign Policy*, p. 13.

'the Japanese found themselves adapting well to the complicated patterns of international diplomacy'.³⁵ That the Foreign Ministry was to be first-rank was evidenced by the appointment of Iwakura as Minister of the Right and as head of Japan's mission of senior statesmen to visit the treaty powers.

The 1871 Iwakura Embassy was Japan's first official diplomatic mission after the Meiji Restoration and its first diplomatic mission specifically designed to evidence its new understanding of Western diplomacy. To place its ministers on an equal and common diplomatic footing, Japan in 1871 created a series of diplomatic ranks to correspond with those in Western diplomatic practice. Accordingly, Iwakura Tomoni, then Minister of Foreign Affairs, was promoted to Minister of the Right, with the title of Envoy Extraordinary Ambassador Plenipotentiary (*tokumei zenken taishi*), the highest of the newly designated ranks. The embassy also included Ito Hirobumi, Kido Takayoshi, Okubo Toshimichi, and an entourage of more than a hundred lower level officials, bureaucrats, and clerks.

The embassy set out to visit the United States and Europe with a threefold mission: (1) a mission of friendship to the fifteen countries with which Japan had official diplomatic relations as of October 1871; (2) a mission of exploration into the possibility of revising the 'unequal treaties'; and (3) a mission of learning to provide a philosophy and blueprint for modernization. The embassy travelled to nine major cities in the United States, plus England and Scotland, France, Belgium, the Netherlands, Germany, Russia, Denmark, Sweden, Italy, Austria, and Switzerland. Only the Spanish Civil War prevented the planned visits to Spain and Portugal.

The embassy learned quickly. It took only one appearance before President Grant of the United States on 4 March 1872 to convince them that Western custom dictated Western-styled dress, not silk and satin court kimonos. The group did not appear publicly in kimonos again. Throughout the journey the industrial and institutional strengths of the West became more apparent, though these revelations were tempered by the shrewd Japanese recognition that Western

³⁵ *Ibid.*, p. 14.

wealth and prosperity were only a recent phenomenon. While Japan was behind the West in certain types of development, the industrial revolution had come to the West only fifty years earlier. As Kume Kunitake pointed out, 'the present wealth of the Europeans is something that has developed since 1800'.³⁶

The message with which the Iwakura Embassy returned was clear: catching up with the West would require dedication and sacrifice, but it could be done. In this way the embassy helped silence the critics of borrowing from the West and helped make *bummei kaika* ('civilization and enlightenment') one of Japan's slogans for progress. It also underscored the point that Western assistance would be forthcoming as permanent channels of communication were established.

Japan's first generation of foreign policy makers came entirely from the inner leadership group which directed Japan's affairs, domestic and foreign. These Meiji elder statesmen or *genro* had sufficient direct experience with the foreign powers and their representatives to permit the slow development of a specialist corps. While an official from the foreign office named Hayashi proved more successful than the elder statesman Ito when Japan was simultaneously negotiating with Britain and Russia in 1902, it was not until 1915 that Foreign Minister Kato first succeeded in challenging the close supervision the *genro* exercised in foreign affairs. Before that time, the stability and continuity of Japan's Meiji leadership made for unified, competent, and careful foreign policy, according to those leaders' growing understanding of Western international practices.

Adherence to Domestic and International Law

In seeking to comply with the standards of 'civilized' European law, Japan faced three major challenges: to bring its domestic law into line with prevalent European expectations; to demonstrate its willingness and ability to uphold international law; to abide the 'civilized' laws of war so as to gain recognition as a 'civilized' power. Japan's initial priority was relief from the humiliation and restrictions of the

³⁶ Marius B. Jansen, 'Modernization and Foreign Policy', p. 154.

'unequal treaties'; its ultimate ambition was a place among the ranking great powers of 'civilized' international society.

The transition from the 'rule-by-status' Tokugawa system of law to a Meiji 'rule-by-law' system has been described as a four-phase process: (1) the creation of a centralized administrative system, plus an auxiliary criminal law and court hierarchy; (2) the levelling of the old status hierarchy to a single *legal* (but not social) status, i.e. the Japanese imperial subject (*shimmin*); (3) the promulgation of a constitution to codify the developments in (1) and (2) above; and (4) the systematic enactment of an extensive body of code law for the private law field.³⁷

These four phases occurred in two stages: the administration-building and status-levelling functions, together with some enactment of criminal laws, were achieved between 1868 and 1882; the promulgation of a constitution and of private law codes took place between 1882 and 1898. The abrogation of extraterritoriality in 1899 came as a direct result of the 'civilized' states accepting Japan's reformed legal system.

Japan's myriad domestic legal reforms began in earnest in 1870 when the bureau of investigation translated the French codes and offered the 'first comprehensive notions of the nature of Western legal thought'.³⁸ The early Meiji leaders issued a set of 'Chief of the New Fundamental Laws', reduced the number of capital crimes, lightened other punishments, and sent three prison officials to visit British penal systems in India, Hong Kong, and Singapore. A revised Penal Code followed in 1873; it abolished the use of torture, reduced further the number of capital offences, and minimized corporal punishment.

Even after these reforms, problems remained. The Europeans objected that rice gruel, a diet Japanese prisoners found barely adequate, was totally unsuitable for Europeans. Further, the Europeans argued that Japanese law discriminated on the basis of social class and family position, for instance, parents and grandparents could beat children with

³⁷Dan Fenno Henderson, 'Law and Political Modernization in Japan', *Political Development in Modern Japan*, Robert E. Ward, ed. (Princeton, Princeton University Press, 1968) pp. 412-39 *passim*.

³⁸Sansom, *The Western World and Japan*, p. 444.

minimum punishment; that decapitation and the public display of severed heads were barbaric; that acts of revenge for the death of parents or others to whom duty was owed were ignored by the law; and that capital punishment was maintained for moral crimes such as adultery. These objections were gradually overcome as the Outlines of the New Criminal Law (*Shinritsu koryo*) were issued in 1870, the Amended Criminal Regulations (*Kaitei ritsurei*) in 1873, and the so-called Old Criminal Code and the procedural Code of Criminal Instruction (*Chizaiho*) in 1882.

Although outside the criminal codes *per se*, a body of special laws, the violation of which constituted criminal offences, was also stipulated, including the Police Regulations on Public Meetings (1880, revised 1893), the Press (1875, revised 1887 and 1897), Libel (1875), Book Censorship (1869, revised 1887 and 1893), and Peace Preservation (1877).³⁹

In 1875, an official committee was appointed to compile a new civil code, with a draft to be given to the government in 1878. Its members 'gathered materials from all parts of the civilised world and freely adopted rules or principles from the laws of any country, whenever it saw advantage in doing so'.⁴⁰ After examining over thirty foreign codes or drafts of foreign codes, the committee submitted its work in 1888. Its draft was embodied in law in 1890 and went into effect in 1893 as the first code of private law in Japanese history.

Townsend Harris, the first American minister to Japan, began instructing the Japanese concerning the law of nations in 1858. By the late 1860s, translations of Wheaton's *Elements of Law* (1836) and Phillimore's *Commentaries on International Law* (1854-7) were being circulated. Some of the early copies of Wheaton were those translated into Chinese by Martin. Appreciating the importance of international law, the Japanese government had translations of Great Britain's recent treaties prepared so it could compare the provisions Britain granted to other countries with those granted to Japan.

³⁹ Henderson, 'Law and Political Modernization in Japan', p. 419.

⁴⁰ Sansom, *The Western World and Japan*, p. 446.

An initial burst of enthusiasm by some Japanese Confucian scholars for international law facilitated its acceptance. Fukuzawa, for instance, praised the terminology of the international legal texts as consistent with neo-Confucian morality. However, the belief in a world governed by the rational norms of international law did not last beyond the Meiji period. Bismarck's comment to the Iwakura Mission had been an initial warning:

Although people say that so-called international law safeguards the rights of all countries, the fact is that when large countries pursue their advantage they talk about international law when it suits them, and they use force when it does not. . . .⁴¹

The reluctance of the treaty powers to revise the 'unequal treaties' and the Triple Intervention after the Sino-Japanese war proved beyond doubt that Japan needed military strength in an international society which characterized itself as 'civilized' but apparently paid only lip-service to international law.

If initially disappointed when international law did not hold full sway, Japan was quick to exploit the law to its own advantage. Recognizing that international legal protection extended only to the 'civilized', Japan derided the 'barbaric' Chinese during the Sino-Japanese War and denounced Russia as an 'uncivilised country still sunk in barbarism' prior to the Russo-Japanese war.⁴²

Recognizing an advantage in employing international law in Korea, Japan modelled the 'unequal treaty' it imposed on Korea after the 'unequal treaties' the West had imposed on Japan. On 26 February 1876 a treaty of amity, friendship, commerce, and navigation was signed at Hanghwa by Sin Hun for Korea and General Kuroda Kiyotaka for Japan. This treaty provided for the exchange of diplomatic emissaries, the opening of two ports besides Pusan to Japanese ships, and the granting of extraterritorial rights for Japanese citizens in Korea.⁴³

⁴¹ Jansen, 'Modernization and Foreign Policy', p. 158.

⁴² Ibid., p. 186.

⁴³ See C. I. Eugene Kim and Han-Kyo Kim, *Korea and the Politics of Imperialism: 1876-1910* (Berkeley and Los Angeles, University of California Press, 1967) for a discussion of Japanese policies towards Korea.

Further, Japan challenged the traditional system of international relations in North-east Asia by denying China's historic suzerain role over Korea in Article I of the treaty which stated, 'Corea being an independent State enjoys the same Sovereign rights as does Japan'. Seeds were thus sown for the 1894 Sino-Japanese War which began in large measures over the issue of whether Korea owed allegiance to Japan or China.

Japan's motivations for accepting and employing international law were complex. On the one hand, one senses that Japan followed the other treaty powers in exacting concessions from China and Korea simply for selfish purposes. On the other hand, Japan seems to have felt that part of its mission was to lead the rest of Asia in becoming strong enough through reform and modernization to hold off the predatory Western powers. When the 1871 Sino-Japanese Treaty of Friendship was ratified, the Japanese Foreign Minister lectured Li Hung-chang, the Chinese Foreign Minister, on international law and diplomacy as practised by Western nations. When Korean and Chinese conservatives appeared to betray the cause of united Asian strength, Japan saw little alternative to teaching them a military lesson. It was thus somewhat ironic that the 1894 Sino-Japanese war was precipitated in part by Korea's efforts to honour China's ritual demands, including the rejection of Japan's attempt to convert the Pusan trading station into a modern consulate.

Japan was careful to document its efforts to abide by the generally accepted international practices regarding war in both the 1894-5 Sino-Japanese War and the 1904-5 Russo-Japanese War. In his *Cases on International Law During the Chino-Japanese War*, Mr Sakuye Takahashi, trained in Cambridge and sent from the Japanese naval college to advise the Japanese fleet commander during the Sino-Japanese War, used the language and logic of international law to present Japan's case to the international legal community. 'During the Chino-Japanese war of 1894-5', Takahashi stresses, 'Japan acted consistently with the law of nations in carrying on hostilities, in maintaining her own rights and in discharging her duties towards neutrals'.⁴⁴ Indeed, he points out,

⁴⁴ Sakuye Takahashi, *Cases on International Law During the Chino-Japanese War* (Cambridge, Cambridge University Press, 1899), p. vii.

'A law abiding spirit, especially in war, has been from ancient times, as history shows, a characteristic of Japan'.⁴⁵ Further, an Imperial Rescript issued at the opening of the Sino-Japanese conflict commanded:

Each and all of our competent authorities, in obedience to our wish and with a view to the attainment of that aim, to carry on hostilities by sea and land with all means at their disposal, consistently with the law of nations.⁴⁶

After summarizing that Japan refrained from employing volunteers, prohibited the use of privateers in reprisals, strictly forbade plunder, treated the wounded well, and governed captured districts with equanimity, Takahashi deferentially acknowledges:

It must be confessed that this generosity is chiefly owed to European civilisation, which was introduced thirty years ago, but in general it may be said that if the graft was from Europe, the stock was an ancient one, deep-rooted in Japan from the earliest times.⁴⁷

Thus presented, Japan's case won Takahashi's book a Preface from T. E. Holland and an Introduction from John Westlake. Writing from Oxford on 20 January 1899 Professor Holland was praising:

The war was conducted on the part of the Japanese with an anxious desire that their forces should conform to the highest standards of loyalty and humanity.⁴⁸

Professor Westlake also approved:

Japan presents a rare and interesting example of the passage of a state from the oriental to the European class. By virtue of treaties already concluded with the leading Christian states of Europe and America, she will shortly be freed from the institution of consular jurisdiction, and in her recent war with China she displayed both the disposition and in the main the ability to observe Western rules concerning war and neutrality.⁴⁹

Not unsurprisingly, other international lawyers followed suit and appropriate editions of Wheaton, Phillimore, Hall, Oppenheim, and others all register their recognition of

⁴⁵ *Ibid.*, p. 1.

⁴⁸ *Ibid.*, p. v.

⁴⁶ *Ibid.*

⁴⁹ *Ibid.*, p. xvi.

⁴⁷ *Ibid.*, p. 4.

Japan's disposition and ability to observe international practices concerning war and neutrality.

Adherence to Generally Accepted Norms of Civilization

Japan's attitudes toward Western standards of 'civilization' changed rapidly. During the 1850s and 1860s, after sustained contact with the West and before the Meiji restoration, a certain xenophobia permeated Japanese attitudes. Even during the first and second years after the Meiji restoration, 'there persisted in the public mind the feeling that to be for opening the country was to be irresolute, to be for expelling the barbarians was to be righteous'.⁵⁰ However, by the fifth and sixth years after the restoration, a 'remarkable reversal had taken place. Public opinion now worshipped what was called "civilization and enlightenment"'.⁵¹ Whereas the final years of the Bakufu had witnessed the slogan 'Revere the Emperor; expell the barbarians', Japanese cultural historians usually designate the period from 1873-7 where Japan devoted its energies to following the West as the age of 'civilization and enlightenment'.

A list of dates and reforms can only symbolize this 'clash and fusion of two cultures'.⁵² No synopsis of the multi-faceted flurry of activity which took place can capture the psychological adjustments born of attempts to dissociate and to reconcile the widely disparate material and moral cultures of the East and West. More straightforward are the physical manifestations of Japan's efforts to become 'civilized' and thereby modern and strong according to European standards: the abolition of territorial clans (July 1871) and the establishment of a modern prefectural system; first the subordination of the Department of Shinto to the Council of State and then to the abolition altogether of an official religious Shinto Department (March 1872); and the promulgation of the Conscription Law (1872), of a modern school system, and of land tax reform (1873). In 1871 a postal system replaced the system of runners between Tokyo,

⁵⁰ Masaaki Kosaka, *Japanese Culture in the Meiji Era* Vol. IX, 'Thought', David Abosch, trans. (Tokyo, Pan-Pacific Press and Kasai Publishing and Printing Co., 1958) p. 53.

⁵¹ Ibid.

⁵² Sansom, *The Western World and Japan*, p. 3.

Kyoto, and Osaka. In 1872 a railway system linked Shimbashi station in Tokyo to Yokohama. By 1873 soaps, watches, gold chains, umbrellas, Western hats, jackets, trousers, and shoes were the veneer of an adoration of things Western that went deeper to include Western literature, philosophies, politics, religion, architecture, painting, sculpture, and music. By 1875 gas lamps flickered at the Imperial Palace gates and the first brick buildings had been erected on the Ginza. In short, the changes in Japan's political organization, and in its diplomatic and legal sectors, were part of a much larger movement to emulate the general civilization of the West.

A consequence of Japan's acceptance of European standards of 'civilization' was the Japanese recognition that they were 'uncivilized' and 'backward'. Emphasizing the universal, scientific nature of 'civilization' in general (as some nationalists tried to do) did not belie the fact that to embrace the ideas, institutions, and material symbols of European civilization meant to 'move away from tradition, to relegate some of its (Japan's) inherited ideas and institutions to history, usually with some dismissive phrase describing them as "old-fashioned" or "out of date"'.⁵³ As W. G. Beasley further notes:

To become modern, if you are not a Westerner, means approximating to *Western* norms, adopting other people's values. For us the difference between modern and traditional is a difference between our own present and our own past. To Japanese the difference is one between *our* present and *their* past. Tradition is Japanese. Modernity is alien, imported. More than any Western country, Japan has two cultures; and reconciling them is one of the great problems of social and political stability.⁵⁴

The Entry of Japan into International Society: Revising the 'Unequal Treaties' and Gaining 'Civilized' Status

The Western and Japanese Positions

Extraterritorial privileges were claimed in treaties signed with Japan by foreign powers anxious to guarantee the

⁵³ W. B. Beasley, 'Tradition and Modernity in Post-War Japan', *Asian Affairs* XI (Old Series Vol. 67), Part I (February 1980), pp. 5-6.

⁵⁴ *Ibid.*, p. 6.

rights and protection they enjoyed in Europe. However, the treaty powers came to interpret the extraterritorial provisions in the treaties broadly and to their own advantage. In time, despite Japan's efforts, extraterritorial jurisdiction came to include: (1) civil matters in which nationals of treaty powers were being sued by Japanese; in which nationals of the same treaty powers were involved; or in which nations of different treaty powers were involved, and (2) criminal cases in which foreigners, whether or not nationals of treaty powers, were victims of crimes by Japanese or in which nationals of treaty powers were charged with violating treaty provisions or trade regulations.

The treaty powers agreed that maintaining and extending their extraterritorial privileges was to their individual and collective advantage. The natural inclination of those advising their home governments from abroad was to urge a united front. Indeed, it often seemed that 'the treaty powers stood together when the general question of the continued existence of extraterritorial jurisdiction came up; on most other matters each went its own way'.⁵⁵ The most-favoured-nation clause enjoyed by individual treaty powers also made it difficult for Japan to deal with them separately and provided a legal reason for seeing them as a unified group.

This kind of Western unity later caused K. M. Panikkar to attribute a 'common feeling of Asianness' (among Afro-Asian 'Third World' countries) to the earlier emphasis European nations placed on 'their solidarity, their *Europeanness* in dealing with Asian countries'.⁵⁶

Even up to the time the 'unequal treaties' were revised, many Westerners still felt that extraterritoriality was necessary. A letter in *The Times* of 28 December 1889 argued: 'It is no exaggeration to say that the administration of justice, as understood by us, is wholly foreign to them, to their habits, their traditions, and their modes of thought'.⁵⁷ Further, Japan's position was somewhat unique: 'It is too

⁵⁵ Jones, *Extraterritoriality*, p. 58.

⁵⁶ K. M. Panikkar, *Asia and Western Dominance* (London, George Allen and Unwin, 1953), p. 494. Italics in original. Pannikar's point is that European nationals saw themselves more as Europeans than as nationals of specific European countries, e.g. Frenchmen or Englishmen, when dealing with Asians.

⁵⁷ Lehmann, *The Image of Japan*, p. 29.

often forgotten that Japan is the first Oriental State which has claimed the abolition of Consular Jurisdiction; Turkey has acquiesced in the system for centuries; it exists in China, Morocco, Siam, and elsewhere, it is about to be created in Persia'.⁵⁸ An oriental state claiming the abolition of extra-territoriality raised new questions for the West, particularly in an age when the distinctions between one oriental state and another were not very clear and when it was possible that what was demanded by and granted to one might subsequently be demanded by all.

The West's recognition that the abrogation of extra-territoriality was irreversible and the caution that realization engendered did not mean that the extraterritorial system was without Western critics. Many practical problems existed. For example, chosen for their linguistic abilities, Western consuls tended to be better versed in the Japanese language than in the intricacies of law. Distances were long; appeals to the British Supreme Court had to go to Shanghai, appeals to the US Consular Courts to San Francisco. Foreign nationals were disinclined to testify against other foreign nationals; foreign consuls found it difficult to rule against fellow nationals, most of whom were peers in the foreign community. And witnesses could not testify against foreign nationals for crimes committed in the interior regions of Japan without travelling to the consular courts in the treaty ports.

Japan objected to the extraterritorial system for other reasons as well. The fundamental anti-foreign distaste at having to grant extraterritorial privileges in the first place only gradually dissipated. Included in the anti-foreign arguments were fears of compromised traditional values and life-styles if foreign penetration or renewed Christian influence occurred. In some cases, simply the presence of 'ugly foreign barbarians' gave rise to blind hatred.

Nor were the issues ever completely straightforward. Japanese nationalists detested the extraterritorial privileges as a sign of Japan's 'backwardness'. Japanese Buddhists feared the end to restrictions on the foreigners would diminish Buddhist influence in the interior.

In time, on international legal grounds, Japan argued that tariff restrictions and extraterritoriality unfairly compromised its independence and sovereignty. Whether because of traditional standards of 'civilization' or because of national shame at being considered and feeling 'barbaric' according to recently imbibed European standards, the Japanese consensus made revision of the 'unequal treaties' a fundamental goal of both domestic and foreign policy.

Revising the 'Unequal Treaties'

For this discussion of Japan's entry into international society, it is more germane to summarize the broad outlines of Japan's attempts to revise the 'unequal treaties' than it is to detail the specific proposals and counter-proposals which spanned thirty years of negotiations. During the years between the Meiji Restoration and the abolition of extraterritoriality, revision of the 'unequal treaties' lay at the heart of Japan's foreign policy, and Japan's foreign policy at the centre of its thrusts to modernize. From the time of the Iwakura Mission in 1871 to the actual signing of the Aoki-Kimberley Treaty in 1894, treaty revision was a first priority.

In time, three broad approaches emerged in response to the specific challenge of revising the 'unequal treaties' and to the broader question of Japan's entering the 'civilized' international society.⁵⁹ In a document dated 9 July 1887, Foreign Minister Inouye put his answer both bluntly and hopefully:

The only independent countries left in the east are Japan and China. All countries of the West have schemes for engulfing the east by force and we must devise plans for defense against them. To do this we must set up a new 'civilised state' here. . . . We need to build up a European civilisation here on a par with that of European civilised states.⁶⁰

Yamagata Aritomo's assessment was less hopeful: 'No matter how you look at the present situation in East Asia from the point of view of our diplomatic strategy, the most critical

⁵⁹ Jansen, 'Modernization and Foreign Policy', pp. 173-8 *passim*.

⁶⁰ Nish, *Japanese Foreign Policy*, p. 269 (Documents).

need we have is to build up our military strength'.⁶¹ A third position was espoused by Tani Kanjo, minister of agriculture, who foresaw that the coming war in Europe would permit Japan to 'strike a balance in the East' by remaining aloof from the conflict and thereby achieving sufficient power in the Orient that the other countries would respect her.⁶²

Japan's early efforts to affect treaty revision have been characterized as naive efforts by diplomats still 'unfamiliar with the intricate and delicate procedure of Western diplomacy'.⁶³ At their first conference, for example, Prince Iwakura presented the United States Secretary of State, Hamilton Fish, with a memorandum listing changes Japan hoped to negotiate, including tariff autonomy, definition of neutrality in time of war, and relinquishment of extraterritoriality upon the establishment of a national code based on the best laws of the United States and European countries.⁶⁴ The eleven American counter-proposals ignored Japan's requests and sought extended rights. The US Secretary of State underscored the fact that treaty relations would not change until Japan exhibited 'a system of jurisprudence and of judicial administration'.⁶⁵ Although treaty revision had been listed as the first of its three missions, the Iwakura Embassy returned primarily with an appreciation of how difficult such revision would be.

Attempts to renegotiate the American treaties were dropped after Ito and Okubo returned from Japan with new directions from their government that Japan would negotiate with the powers as a block, not one by one. The American-Japanese Revised Convention of 1878, which provided for Japan's tariff autonomy contingent on agreement from the other European powers, was stillborn due to the opposition of the other powers. The foreign minister who negotiated the revised convention, Terashima Munemori, was subsequently forced by the Japanese press to resign for not taking up the extraterritorial issue.

⁶¹ Jansen, 'Modernization and Foreign Policy', p. 176.

⁶² Ibid., p. 177. See the Memorandum of Tani Kanjo, 3 July 1887, in Nish, *Japanese Foreign Policy*, p. 268 (Documents).

⁶³ Roy Akagi, *Japan's Foreign Relations 1542-1936: A Short History* (Tokyo, The Hokuseido Press, 1936), p. 85.

⁶⁴ Ibid.

⁶⁵ Jones, *Extraterritoriality*, p. 83.

In the hope that bargaining with the treaty powers collectively might break the deadlock of negotiating with them individually, the new foreign minister, Inouye Kaoru, convened multilateral conferences in Tokyo in 1882 and 1886 to propose revised treaties. At the first conference, Inouye argued that international law permitted Japan to demand that extraterritoriality be abandoned within five years of the time it ratified its new legal codes, and to demand that Japanese jurisdiction in all cases not covered by the treaties or between foreigners of different nationalities be recognized immediately. In return for such concessions, Japan would offer land tenure in the treaty ports and permission for free travel.

At the second Tokyo conference, armed with a complete draft treaty, Inouye expanded the 1882 proposal to include the provisions that consular jurisdiction outside the treaty ports be abolished as soon as the English version of the New Japanese Civil Code was published; that consular courts enforce Japanese laws; and that the abolition of consular courts occur three years after ratification of the treaty. This offer was partly in response to the notification Japan received in 1884 that the treaties would not be discarded until its law codes met the standards accepted in the West. Japan further offered to allow that mixed courts including foreign judges be established; that its territory be opened fully to foreign trade and residence; and that foreigners be allowed to hold real estate.

At this point strident Japanese domestic opinion intervened, as it was to do in subsequent attempts at treaty revision. When the secret proposal for mixed courts was leaked to the press, those opposing the government's approach to treaty revision rallied in strong protest. In July 1887 Viscount General Tani Kanjo (Takeki) resigned as minister for agriculture on grounds that the government had disregarded his disagreement with its policies. The incident further inflamed those who feared that the 'high-collars' in the government's diplomatic corps would be 'easy-going towards foreigners but harsh towards their own nationals' (*gaiji naiko*). The controversy forced Inouye to defer the negotiations and brought the conferences to a close without agreement. In August 1887 Inouye resigned.

As the new foreign minister, Okuma Shigenobu changed Japan's strategy toward treaty revision. He emphasized individual negotiations rather than conferences, stressing that an initial success would lead to others. Just as the other powers had followed an American lead in signing the early treaties with Japan, so they would follow a great power's lead in revising their treaties. Sent to double as minister to Washington and Mexico in 1888, Mutsu Munemitsu soon signed an 'equal' treaty with Mexico which provided for reciprocal freedom of commerce and navigation, reciprocal duties on imports and exports, retention by Japan of full judicial autonomy within its territory, and immediate effectiveness.

Okuma emphasized that Japan's trade concessions to Mexico derived in large measure because Mexico was willing to forgo extraterritorial privileges. When the other treaty powers complained that extraterritoriality had protected less than twenty Mexican nationals, Japan replied firmly that any treaty power which accepted the restrictions Mexico did could enjoy the same rights Mexico did. Instead of accepting both the Japanese concessions and restrictions, the treaty powers tried to claim only the extension of privileges granted in the Mexican treaty by appeal to most-favoured-nation status. The 1889 'equal treaty' signed between Japan and the United States was never ratified for the same reason that the efforts to portray the Mexican treaty as a major breakthrough in treaty revision failed.

A second prong to Okuma's approach was to insist on strict legalistic interpretations of the existing treaties in an effort to make their inadequacies unpalatable to the treaty powers. For instance, Okuma permitted disregard for foreign trade marks and copyrights since the treaties did not provide for their recognition. Reversing the relaxed interpretation which had flourished in practice, Okuma demanded strict enforcement of the laws which limited foreign residence, travel, and ownership of property to the treaty ports.

In April 1899, publication in *The Times* of Japan's new treaty proposals revealed that the Japanese government would still agree to foreign judges sitting in the mixed courts. In Japan, public dismay again broke loose. Three hundred memoranda bearing 57,000 signatures called on the government to

abandon the proposed treaties. The Cabinet was split. The promulgation of the constitution on 11 February 1889, and the opening of a Diet critical and suspicious of the government's approach to treaty revision, introduced a domestic pressure which Inouye had earlier tried to forestall. While the establishment of a constitution with representative institutions evidenced Japan's advances in 'civilized' government, it also provided critics with an official platform from which to rail against governmental policies. The immediate crisis ended when a dynamite bomb was thrown into Okuma's carriage on 18 October 1889 resulting in the amputation of one of his legs and the resignation of his party. From that point on, internal difficulties were to prove a greater obstacle to treaty revision than foreign reluctance.

When Mutsu Munemitsu became foreign minister in 1892, his previous experience helped confirm his determination to: (1) take the initiative for treaty revision out of the hands of party politicians; (2) negotiate with the treaty powers individually in their own capitals, in secret when possible; (3) aim for a complete settlement which conferred equal rights and obligations, rather than for a short-term compromise; and (4) take advantage of the fact that negotiations in the foreign capitals freed the talks from the local prejudices prevalent in the treaty ports, and permitted Japanese diplomats to exploit jealousies among the powers, e.g. the Anglo-German rivalry. By July 1893, Mutsu had gained Cabinet approval for his new draft treaty. The new proposal's main feature was that extraterritoriality would lapse only after the Japanese legal codes had been revised and brought into full effect. When renewed anti-foreign outbursts threatened Mutsu's work in December, the Cabinet suspended the Diet—twice, for ten days each time—to preserve his chance for success.

The actual task of approaching the treaty powers fell to Aoki Shuzo, the minister to Germany and Britain, who was thought to be the most experienced and able of Japan's diplomats abroad. Germany reacted negatively to Aoki's overtures, but the British foreign office permitted Aoki to conduct private discussions with the British Minister to Japan, Hugh Fraser, who was on furlough in London. With the crisis between China and Japan rapidly approaching open

hostilities, the negotiations were tense for Aoki, but a treaty was finally signed on 16 July 1894. The Aoki-Kimberley Treaty made Great Britain the first power to relinquish extraterritoriality in Japan as of 1899 when the new Japanese legal codes became fully operational. The other powers, as Mutsu had predicted, followed suit in signing similar treaties. The US Senate approved a new treaty in February 1895; Germany did the same in April; Russia in June; France in August of 1896. On 30 June 1899 an Imperial Rescript was issued to recognize the actual passing of extraterritoriality:

Assisted by the surviving influence of the virtues of Our Ancestors, it has been our good fortune to uphold the reign of sovereign rule and to disseminate the benefits of orderly administration, resulting at home in the increased prosperity of the nation, and abroad in the strengthening of our relations with foreign powers. As to the revision of Treaties, our long-cherished aspirations, exhaustive plans, and repeated negotiations have at last been crowned by a satisfactory settlement with the Treaty Powers. . .⁶⁶

Under the provision that unilateral revision of tariff restrictions could occur in twelve years, Japan gave notice to the treaty powers in July 1910 of intent to renegotiate its tariffs. On 21 February 1911 the United States agreed to a new treaty; Britain followed on 3 April; and most of the other powers by July of that year. Japan's goals of revising the 'unequal treaties', namely ending extraterritoriality and regaining tariff control, and of entering international society as a 'civilized' equal, were at least nominally fulfilled.

Gaining Full 'Civilized' Status

The signing of the 1894 Aoki-Kimberley Treaty by which Britain became the first power provisionally to renounce extraterritoriality is usually seen as a milestone in Japan's struggle to enter international society. It was so viewed by Japan's leaders at the time. In a communication from London to Foreign Minister Mutsu on 19 July 1894, Aoki noted that, under the new treaty, Japan 'can disregard the insults we have suffered over the last thirty years and at one go enter the "Fellowship of Nations." From now on', he

⁶⁶ *Ibid.*, p. 14.

further advised, 'we must try to make our government and people act in accordance with "the Laws of Nations" and thereby cause civilization to flourish increasingly in our land'.⁶⁷

The euphoria over the revised treaties was soon challenged by war and its aftermath. Though Japan's preparations for the impending war with China had complicated Aoki's negotiations, Mutsu had still been able to obtain 'assurances from Great Britain and other powers of nonintervention in the event of war between Japan and China'.⁶⁸ It would be interesting to know whether or not Japan's success in gaining the degree of 'civilized' status that abolition of the 'unequal treaties' conferred influenced the powers not to intervene in the war on China's behalf. Whatever the case, within a week of the signing of the Aoki-Kimberley Treaty, a Japanese 'mixed brigade', containing more men than was commonly known in the Cabinet, went to Seoul. Two days later, on 25 July, the first naval encounters off Asan occurred. By 1 August an Imperial Rescript was issued in Japan and an Imperial Decree in China, both to declare war.

Particularly in the light of the great powers' promise not to intervene, Japan's shock at the 1895 Triple Intervention (where Russia, Germany, and France collectively threatened military action if Japan did not return the Liaotung peninsula to China) was immense. After conforming wholeheartedly to the spirit and letter of international law and diplomacy, Japan seemed forced to conclude that, in the end, only force mattered in international relations. Sir Ernest Satow, Minister in Tokyo 1895-1900, lamented, 'They [the Japanese] do not seem to appreciate the value of diplomacy except as a preliminary to the use of force'.⁶⁹ As a Japanese journalist named Tokutomi recorded, 'What it came down to was that sincerity or justice didn't amount to a thing if you weren't strong enough'.⁷⁰ Indeed, as one historian has noted, 'No understanding of twentieth century Japanese nationalism is possible without some comprehension of the bitterness and sense of humiliation that swept the country in the

⁶⁷ Nish, *Japanese Foreign Policy*, pp. 270-1 (Documents).

⁶⁸ Storry, *Japan and the Decline of the West in Asia*, p. 23.

⁶⁹ *Ibid.*, p. 32.

⁷⁰ Jansen, 'Modernization and Foreign Policy', p. 184.

wake of the Triple Intervention'.⁷¹ Indeed:

the psychological effect of the Triple Intervention lasted for decades, and may not have disappeared entirely even today. Western nations had been feared usually, and disliked very often. But on the whole they had been respected by Japan. Now they were distrusted, despised even, as hypocrites.⁷²

When the great powers began claiming ports in China in the same territory that they had prevented Japan from occupying, e.g. Weihaiwei, Port Arthur, and Kiaochow, their blatant hypocrisy rubbed salt into old Japanese wounds.

Only one step beyond the Japanese perception that diplomacy was merely a preliminary to the use of force was the rationalization that force could just as soon be followed as preceded by diplomatic communication. The Russians got a first taste of this 'realistic' Japanese diplomacy in 1904, with the opening of the Russo-Japanese war. Victorious at the war's end, the Japanese took vindictive pleasure in phrasing diplomatic correspondence to the Russians concerning the 1905 Treaty of Portsmouth in the same terms as the Russians had earlier dictated the Triple Intervention to them. The Americans got a similar lesson at Pearl Harbor, after the appeals of moderates like Shidehara to normal diplomatic channels were seen as completely discredited in the 1930s. Acceptance of the diplomatic practices of 'civilized' countries did not come easily for Japan.

For this reason, the 1894 treaty (which provided for the abolition of the 'unequal treaties') and the 1895 Triple Intervention (which belied Japan's new-found equal status) symbolize the two sides of the ambiguous position Japan found itself in on entering the 'civilized' international society. The 1894 treaty marked the culmination of more than a quarter of a century's effort to abrogate the 'unequal treaties' and to be recognized as a 'civilized' country by the foreign powers; the Triple Intervention marked a first bitter episode during Japan's initial foray into international affairs. Many in Japan felt betrayed, that their efforts to become a 'civilized' equal had been for nought, that the worst suspicions of

⁷¹ Storry, *Japan and the Decline of the West in Asia*, p. 29.

⁷² Storry, *A History of Modern Japan*, p. 127.

those who had warned of cunning and deceitful 'foxes from the same hole' had proven true.

Japan's frustration at the apparent 'double standard' of 'civilization' is outlined in an illuminating article entitled 'The Permanent Bases of Japanese Foreign Policy'. Written by Viscount Kikujiro Ishii in 1933 during the Manchurian crisis, a turning-point in Japan's relations with the West, the article begins, 'Ever since Japan's entrance into the family of modern nations in the middle of the nineteenth century her diplomacy has striven, and still strives, to attain two objectives—equality and security.'⁷³ Even Ishii's use of the term 'modern nations' is important; Japan is indisputably modern though it has not entered, at least in Ishii's argument, the family of 'civilized nations'. He defines equality to mean that Japan not be made the 'object of discrimination and derogatory treatment'.

Ishii's concern is 'whether Japan shall be accorded the courteous treatment which is due to her as one of the civilized Powers of the world'.⁷⁴ He notes:

Ever since we entered into the family of nations at the instance of Commodore Perry, we have spared no efforts toward internal readjustment and reform, so that the civilized Powers may admit us into their circle upon an equal footing.⁷⁵

But, Ishii argues, although Japan has become a 'civilized power' and been nominally accepted as such, the other powers have failed to treat her so. Japanese immigrants were discriminated against in the 'Gentlemen's Agreement', in the 1913 and 1917 California citizenship acts, and in the 1924 American Immigration Act. Japan's efforts to secure first a 'racial equality' clause in the League Covenant, and then a simple endorsement of the 'principle of equality of nations and just treatment of their nationals' failed at the Paris Peace Conference, despite a majority of eleven of the seventeen states voting in favour. In Ishii's argument, Japan had been 'singled out for discrimination' after being recognized by 'common consent as one of the civilized powers of the

⁷³ Viscount Kikujiro Ishii, 'The Permanent Bases of Japanese Foreign Policy', *Foreign Affairs*, II (January 1933), p. 220.

⁷⁴ *Ibid.*, p. 223.

⁷⁵ *Ibid.*

world'.⁷⁶ Although Japan had fulfilled the standard of 'civilization', the other 'civilized' nations were disregarding the standard in their treatment of Japan.

This perception of unequal treatment by the other powers helps Ishii justify, at least in his own mind, the view that security concerns necessitated Japanese control over Manchuria. When the League of Nations decided against Japan, Japan left it. This failure by those who advocated international diplomatic methods contributed to the ascendancy of Japan's militarists in the following decade. Japan's leaving the League did not make the Pacific war inevitable, of course, but, retrospectively, it was at least a turning-point when Japan, unable to feel satisfactory treatment as an equal 'civilized' nation, turned to its own brand of culturally-influenced militarism and embarked on an independent revisionist course.

These contradictions make pin-pointing the date of Japan's entry into international society extremely difficult. On the one hand, important steps in Japan's entry into international society include the 1894 treaty which provisionally abolished the 'unequal treaties'; the actual passing of extraterritoriality in 1899; the signing of the 1902 Anglo-Japanese military alliance on an equal basis; attendance at the 1899 and 1907 Hague Conferences; the 1895 victory over China and the 1905 one over Russia; and the great power position accorded it at the opening of the League of Nations.

On the other hand, these evidences of Japan's entry into the international society must be juxtaposed with Japan's perception of the 1895 Triple Intervention; the 1919-20 denial of a racial equality clause in the League Covenant and the struggle to secure its share of the spoils of war; and the 1924 ('severest cut of all') passage of the ostensibly anti-Oriental but pointedly anti-Japanese American Immigration Act.⁷⁷ Whereas the other powers may have considered Japan a recently 'civilized' country with full international legal rights after 1899, and a great power after 1905, Japan had difficulty recognizing that it had entered an international society that was still both anarchical and hierarchical.

⁷⁶ *Ibid.*, p. 224.

⁷⁷ *Ibid.*, p. 223.

Whether because Japan's conceptions of 'civilization' and 'civilized international society' were incongruous with what it actually discovered, or whether because its innate sense of racial distinctiveness and of inferiority prevented it from feeling fully part of a European-dominated international community, it is easier to date Japan's entry into international society from the perspective of the other powers than it is from its own. Whether or not Japan ever felt itself an accepted member of international society—and the extent it feels or is so even today—remains enigmatic. Indeed, the ambiguity of Japan's current international position appears to parallel its historical difficulties in conforming to a standard of 'civilization' ultimately seen as foreign.



TREE of LIBERTY
SOCIETY

VII

The Standard of 'Civilization' and the Entry of Siam into International Society

Introduction

As in China and Japan, the coming of the European powers to the Kingdom of Siam forced the leaders there to re-evaluate their perceptions about themselves and the world around them. For Siam this re-evaluation was so pervasive as to result in the Thai accepting a foreign appellation for their country. 'Siam', a word foreign to the Thai language, is the Sanskrit term first used by the Indians and later copied by the Chinese and others. Sir James Lancaster used the term during his first Far East voyage in 1592; by the seventeenth century, 'Siam' had become the accepted name for the Thai kingdom among Europeans.

When King Mongkut signed the Bowring treaty with Great Britain on 18 April 1855, he used the name *Muang Thai* to designate his country. When the treaty was ratified on 5 April 1856, however, the name 'Siam' had been substituted for *Muang Thai*. It continued to be used officially until 25 June 1939.¹

In June 1939, the Thai government issued State Convention Number One to change the name of its country from *Prades Sayam* (Siam), the name that had been used for less than a hundred years, to *Prades Thai* or Thailand. The decision to abandon the foreign name in favour of the native title is indicative of Thailand's perception of its twentieth-century identity and position in international society. The Thai name means 'Land of the Free'. Contemporary Thai publications stress that 'Thailand is the only country in

¹ Kachorn Sukhbanij, 'Siam, Her Formation . . . A Synthesis', *Proceedings Seventh IAHA Conference* (Bangkok, Chulalongkorn University Press, 1979), p. 951.

South-east Asia that has never been colonized'.² This point of pride for the Thai people is also a significant departure point in a case study of Siam's entry into international society. To avoid the colonial fate that had befallen their neighbours, Siam's perceptive leaders, particularly King Mongkut and his son Chulalongkorn, deliberately sought to 'civilize' their country according to the requirements of the standard of 'civilization'.

Siam in the Old World Order

From the dawn of their existence, the Thai states were part of at least three different orders: they were on the periphery of the Chinese commercial and cultural order; in the path of the Indian religious, philosophical, and commercial influence; and part of the multi-centred, multicultural collage of South-east Asia. Early on, a well-established South-east Asian trade network linked the Thai coastal communities to cultural and commercial centres from Ceylon in the south to China and Japan in the north and east. These networks also provided regional communication and maritime commerce vital to the rulers of the Ayutthaya and Bangkok periods.

Medieval South-east Asia was a patchwork of overlapping *mandalas*, or spheres of influence, the leaders of which each claimed authority throughout the cosmos. 'Each leader was seen in his own country as enjoying a unique claim to universal sovereignty, derived from a single and indivisible divine authority'.⁸ During the Ayutthaya and Bangkok periods, strong kingdoms in Burma and Vietnam posed major threats to Siam, the third traditional power centre in the region. The territories of the Khmer, Shan, Mon, and Chan peoples who lived between these three major power centres became arenas of competition. Stronger kingdoms exacted tribute

² Likhit Dhiravegin, *Siam and Colonialism (1855-1909): An Analysis of Diplomatic Relations* (Bangkok, Thai Watana Panich Co., 1975), p. 1, for one of many examples.

³ O. W. Wolters, 'Culture, History, and Region in Southeast Asian Perspectives', *ASEAN Identity, Development, and Culture*, eds. R. P. Anand and Purification V. Quisumbing (Philippines, University of the Philippines Law Center and the Cultural Learning Institute of the East-West Center, 1981), p. 9.

from the lesser kingdoms on the periphery of the king's sphere of influence by conquest, diplomacy, and marriage alliances.

Siam itself paid periodic tribute to China. From the sixth century BC onwards, Chinese annals refer to the Thai as the 'barbarians' south of the Yangtze. In 1282, Sukhothai established diplomatic relations with China. Though Chinese influence was limited, neither the Chinese nor the Thai were so fraternal or naive as to believe that 'in fact the gifts given in friendship by the Thai until the reign of Rama IV were misunderstood by the Chinese as tribute'.⁴ However, relations between the Kingdom of Sukhothai and the Chinese court were basically cordial. The annals record two visits by the Thai King Ramkamhaeng to the Chinese Emperor: the first in 1294 AD while Kublai Khan was alive, and the second in 1300 AD.

After a century of glory, Sukhothai declined and in 1350 Ayutthaya emerged as the new kingdom of the Thai. It had extensive contacts with both East and West. It enjoyed amicable relations with China and profitable trade with Japan. Its first European envoys were ambassadors sent by Don Affonso d'Albuquerque in 1511. It granted a treaty permitting the Portuguese to reside and trade and greeted its first Portuguese missionary in 1606. The Portuguese were followed by the Japanese, Dutch, French, English, and Spanish.

Ayutthaya also sent envoys to Europe. While some evidence dates the first Siamese embassy to Europe in 1601, the embassy of 1608 is better known.⁵ In 1608, by the command of King Ekatotsarot, a Thai delegation of twenty people travelled by Dutch ship on a seven-month journey before being received at The Hague by the Stadholder, Prince Maurice, on 10 September. The Dutch first signed a treaty with Siam on 12 June 1617, thereby facilitating trade of European cotton goods for Thai hides and pepper.

Thai embassies went to Versailles in 1684 and 1685. In the 1680s King Narai engaged a Greek adventurer, Constantine Phaulkon, whose pro-French attitudes and gift

⁴ Likhit, *Siam and Colonialism*, p. 6.

⁵ Sumet Jumsai, 'The First Siamese Embassy to Europe', *The Voice of the Nation* (Bangkok), 17 February 1974, p. 5.

for persuasion led the king to accept French troops to garrison Thai forts. Louis XIV, anxious to convert the Thai to Catholicism and hopeful of establishing a foothold in Asia, sent rather more help than the Thai king asked for. The resulting fiasco spawned anti-foreign sentiment, led to the expulsion of the French, and all but closed Siam's doors to Western influence. General Phra Phetraraja led a successful *coup d'état* against the king in 1688, succeeded to the throne, and shortly thereafter had Phaulkon killed and all *farang* (Westerners) banished.

This pattern—sixteenth- and early seventeenth-century contact with Europe followed by a period of self-imposed isolationism lasting into the nineteenth century—finds a parallel in the case studies of China and Japan. From the time the 1688 *coup* ended diplomatic relations between Siam and the West, until the 1824-26 Anglo-Burmese war resulted in a strong British presence in the region, Siam's kings discouraged commercial and diplomatic contacts with the West. As it did in Japan, Western pressure opened closed doors when astute Siamese leaders recognized that domestic modernization and revised foreign policies were required to accommodate the West. Once Europe recovered from the Napoleonic wars, it again turned East. Great Britain, having acquired Singapore in 1819 and Malacca in 1824, was in the vanguard of the European Powers determined to sign treaties with Siam.

In 1821, near the end of King Rama II's reign, the Governor-General of India appointed John Crawfurd to negotiate a treaty with Siam on behalf of the East India Company. Although experienced in things Asian, Crawfurd was stymied by the fact that no interpreter at the time could translate between Thai and English directly. A further difficulty for Crawfurd was that Burma, not England, was still Siam's dominant foreign policy concern, particularly since the Siamese king had recently launched a punitive expedition against a threatened Burmese attack. Not surprisingly, Crawfurd's negotiations broke down and he left Bangkok on 16 July 1822 after four frustrating months.

As the balance of power in South-east Asia changed over the next few years, so did Siam's foreign policy priorities. The first Anglo-Burmese war of 1824-26 established a

British foothold in Burma that so weakened the country as to preclude its threatening Siam. Unrest in the Malay states and the growing British presence there also impressed Rama II. He ordered his ministers to be friendly toward the second British envoy, Captain Henry Burney, sent by the East India Company in 1826 to negotiate a treaty of friendship and commerce. Thus expedited, the negotiations between Siam and Britain proceeded to the signing of a treaty on 20 June 1826. The first treaty in modern times between Siam and a Western nation, it was followed on 20 March 1833 by a treaty between Siam and the United States.

The provisions in these early treaties were essentially equal. As in Article One—'The Siamese must not meditate or commit evil, so as to molest the English in any manner. The English must not meditate or commit evil, so as to molest the Siamese in any manner'—so too in the other thirteen articles. There was a basic symmetry in the pledges, the responsibilities, and the duties of each party.⁶ However, Siam did agree to replace all other taxes on trade, whether inland tax, transit duty, or export duty, by a standard duty of 1,700 *baht* for each fathom of a ship's beam. Free trade was to be carried out according to the custom of the region, but Britain had no right to import opium or to export rice from Siam.

Both Britain and America were disappointed by these first treaties, which abolished neither the royal monopolies on sugar and other commodities, nor the prohibitions on the teak trade. Further, Chinese merchants, unbound by treaty obligations, obtained privileges from local Siamese officials which gave them a competitive advantage over their British and American counterparts. The British and Americans also failed to gain the extraterritorial jurisdiction they desired. Appointed by President Zachary Taylor as a special envoy, Joseph Balesier arrived at Bangkok on 24 March 1850 but soon reached an impasse. Dispatched by Queen Victoria, Sir James Brooke, the 'White Rajah' of Sarawak, arrived in Bangkok on 10 August 1850, where he stayed for six unsuccessful weeks. Balesier's and Brooke's negotiations were

⁶ Walter F. Vella, *Siam under Rama III 1824-1861* (New York, J. J. Augustin, 1957), p. 120.

partially hamstrung by the illness of King Rama III, without whose consent no new treaty could be concluded.

By this time, the European powers were prepared to employ 'gunboat diplomacy'. Balestier arrived at the mouth of the Chao Phya river outside Bangkok on a warship. After his negotiations failed, Brooke threatened drastic military action. Both Brooke and Balestier advised their governments that only a warlike demonstration would move the Siamese. Townsend Harris, who later negotiated the 1858 United States treaty with Japan, agreed:

The proper way to negotiate with the Siamese is to send two or three men-of-war of not more than sixteen foot draft of water. Let them arrive in October and at once proceed up to Bangkok and fire their salutes. In such case the treaty would not require more days than I have consumed weeks.⁷

The West's success in opening China and Japan contributed to the feeling that similar forceful policies would 'make the Siamese willing to conclude *unequal treaties*, the same type of treaties the western powers concluded with the Chinese Empire'.⁸

But, before military force was needed, Siam's isolationist policies ended with the death of Rama III in 1851. A new king ascended the throne who encouraged Siam to open voluntarily to the West. Rama IV, better known as Mongkut, introduced policy changes which have earned him respect not only as one of the most enlightened monarchs of the Chakri line but as one of the most influential leaders in modern Thai history.

Prince Mongkut was born on 18 October during the first reign of the Chakri dynasty, the eldest royal son of the first queen. As a royal prince, he was educated in the Grand Palace, where he studied Thai and the sacred language of Buddhism (Pali), elephant craft and related aspects of military science, and other fundamental skills of his office. Because Mongkut was only twenty years of age when his father, King Rama II, died in 1824, his half-brother took the

⁷James V. Martin, *A History of the Diplomatic Relations between Siam and the United States of America 1833-1929*, p. 86 cited in Likhit, *Siam and Colonialism*, p. 11.

⁸Likhit, *Siam and Colonialism*, p. 12 (italics in original).

throne as Rama III. Mongkut entered the Buddhist priesthood and remained there for twenty-seven years. (When he became king, Mongkut's recognized expertise and academic distinction in Buddhism facilitated his carrying out religious reform.)

As a Buddhist monk, Mongkut was able to travel widely within his kingdom. His extended pilgrimages and visits took him among all classes of people. Mongkut's hiatus from court life also gave him an opportunity to broaden his horizons through secular study. While at Wat Samoria, he studied Latin. In 1845, at the age of forty, he began studying English with American missionaries so that he could follow events in the West. Mongkut thus became the first king of Siam and the first ruler in Asia able to read, write, and speak English. Mongkut translated the official correspondence during the negotiations between Rama III and Brooke. Mongkut also corresponded with Colonel Butterworth, the Governor of Singapore. Mongkut was thus prepared for the tasks which lay ahead when he became king on 3 April 1851.

Transition from Siamese Kingdom to Nation-State

1. Development of the Treaty Port System:

The Impact of the West

The 1855 Bowring Mission

By the time Mongkut became king, the European powers had all but encircled Siam. To the south, the British were well established on the Malay Peninsula. In the west, they were engaged in a second Anglo-Burmese war, which by 1852 had resulted in Burma's defeat and the cession of much of its territory to Britain's control. Up-river and in Cochin China to the east, the French were increasingly aggressive but had not yet supplanted the authority of the local governments. The English newspapers from Singapore and Hong Kong and the traditional channels of communication in South-east Asia kept Mongkut well aware that changes were occurring. 'Unequal treaties' had already been imposed upon Japan and China. If neither Japan nor the region's traditional dominant power, China, had been militarily able to resist the European advance, then, Mongkut knew, Siam would be even less able to do so.

Accommodation with a powerful European sponsor seemed Siam's best hope. 'It is for us to decide', Mongkut declared, 'what we are going to do; whether to swim up river to make friends with the crocodile or to swim out to sea and hang on to the whale'.⁹ When Bowring arrived in Bangkok in April 1855, Mongkut had already decided to hang on to the British whale rather than to risk Siam's future in the jaws of the French crocodile. Mongkut prepared to sign a treaty with Britain.

Still, Mongkut was concerned that negotiating with Britain should not jeopardize Siam's position in the traditional South-east Asian order. Mongkut's prestige in dealing with other Siamese élites, with Bangkok's suzerain territories, and with Siam's long-standing enemies, e.g. Cochin China and the now less powerful Burma, derived in part from traditional assumptions that the king's authority and power were part of a cosmological whole. Traditional protocol required those granted audience with the king, including foreign envoys, to remove swords and shoes upon entering the hall of audience, to crawl to his throne, and to remain prostrated before him. Much as the kowtow did in China, these court formalities and ceremonial manifestations of obsequiousness symbolized and reaffirmed the king's absolute power in the traditional order.

Though concerned that undue changes in these court ceremonies might result in lost prestige, Mongkut was unwilling to press the issue. Criticism or lessened prestige were less important than the certain humiliation of military confrontation. Bowring's recent knighthood and the fact that his authority to negotiate a treaty came directly from Queen Victoria helped reduce the loss that Siam's prestige and Mongkut's personal influence would otherwise have suffered.

Mongkut hoped to forestall military confrontation by presenting Siam as a friendly country, eager to be accommodating. Thus when Bowring, then Governor of Hong Kong and minister to China, first arrived, he was greeted by the Siamese Prime Minister who presented him with handwritten letters from Mongkut and with 424 coconuts,

⁹ Noel Busch, *Thailand: An Introduction to Modern Siam* (Princeton, NJ, D. Van Nostr and Company, 1959), pp. 67-8 cited in Likhit, *Siam and Colonialism*, p. 22.

thirty pomeloes, thirty-four bunches of plantains, ten bags of sugar, and one chest of tea. The captain of HMS *Rattler*, on which Bowring arrived, noted in his diary that the Prime Minister 'bowed to the Guard when they presented arms to him with a dignity that I have often missed in great men of more civilised countries'.¹⁰ Mongkut was determined that Siam earn Bowring's personal confidence and thereby Great Britain's support by demonstrating that his country was civil, if not yet completely 'civilized' by European standards.

For his part, Bowring wanted to conclude an 'equitable treaty'.¹¹ Concerned with questions of prestige and ceremony, he was determined to have an audience with Mongkut without compromising his dignity as Her Majesty's envoy to do so. Bowring was also resolved to take the *Rattler* up river during the negotiations, ostensibly to render a twenty-one-gun salute to the king and to allow Siamese military personnel to examine the steamer's modern technology. Bowring's journal admits, however, his realization that the presence of his ship would strengthen his negotiating position.

Prior to their first private audience in Bangkok, Bowring and Mongkut corresponded through private intermediaries. The compromises reached through these channels reflected Bowring's superior bargaining position and Mongkut's readiness to accommodate British demands. It was decided that Bowring would leave the *Rattler* at Paknam and be conveyed from there to Bangkok in royal state barges, in accordance with Siamese custom. After twenty-four hours (the longest interval the British would admit), the vessel of war would proceed to Bangkok. Mongkut would allow the *Rattler* to fire a twenty-one-gun salute, but only on the condition that he first issue a royal proclamation so that his people, seeing and hearing an armed steamship at the capital, would not think the city was being shelled.¹² It was also

¹⁰Nicholas Tarling, 'The Bowring Mission: Captain A. Mellersh, Commander of HM Steam Sloop, *Rattler*', *Journal of the Siam Society*, 63 (January 1975), 110.

¹¹The term 'equitable treaty' appears in the letter from Sir James Brooke to Sir John Bowring, 28 July 1854 regarding Britain's treaty proposals cited in M. L. Manich Jumsai, *King Mongkut and Sir John Bowring* (Chalermnit, Bangkok 1970), p. 36 (full text appears pp. 32-9).

¹²Manich, *King Mongkut and Sir John Bowring*, p. 71. Mongkut issued the proclamation himself, noting that it was published on thin paper, a copy and translation of which he provided for Bowring.

agreed that, during his audience with the king, Bowring would not remove his shoes or sword, nor would he have to crawl on all fours. Instead, he would be given a place of honour equal to that of the highest officials in the court.

Thus the way was paved for the first official audience between Mongkut and Bowring on 4 April 1855. Two state barges with twenty or thirty rowers each carried Bowring, his son and personal secretary J. C. Bowring, and Mr Harry Parkes, the British Consul at Amoy, past troupes who presented arms to orders given in English while others played 'God Save the Queen'. At the hall of audience, Bowring was conducted through multitudes of prostrated nobles to the throne where Mongkut took his hands and guided him to a place of honour. Mongkut's gesture dramatized a volte-face in a country where the death penalty was traditional for unauthorized persons who looked at, let alone touched, the royal person.

After Bowring was seated, Mongkut and his foreign minister carried out a carefully arranged plan. While Mongkut poured Constantine wine and offered cigars, Phya Montri Surawong subtly displayed his knowledge of European affairs and politics, particularly stressing the advantages of free trade philosophies. That Bowring was impressed is clear from his letter to Lord Clarendon, which marvelled how 'your cigars are handed to you out of gold cases blazoned with diamonds. . .'.¹³

On 6 April Mongkut gave Bowring another private audience and announced that a commission had been appointed to discuss treaty terms with the ambassador. Mongkut saw the commission's draft treaty on the evening of 15 April and approved it immediately. The treaty, in Thai and English, was signed on 18 April 1855, to come into force on 6 April 1856.

The First Treaty Settlements

The 1855 Bowring Treaty closely resembled treaties signed with China and Japan only a few years earlier. The treaty system for which it became a fountain-head established that

¹³ Manich, *King Mongkut and Sir John Bowring*, p. 80, citing a letter from Bowring to Lord Clarendon of 25 April 1855.

the standard of 'civilization' would also be enforced in Siam. Article I of the 1855 treaty guaranteed that British subjects would receive 'full protection and every assistance to enable them to reside in Siam in all security, and trade with every facility. . .'.¹⁴ Article IV permitted British subjects to reside at Bangkok, rent land, buy or build houses, construct buildings, subject to some limitations of geographical proximity to the city walls and duration of time lived in Siam.

There were two even more important articles. Article II overturned an important tenet of equality of the Burney treaty by placing British subjects 'under the regulation and control of a Consul, who will be appointed to reside at Bangkok'.¹⁵ The Consul was to judge British subjects by English laws and hear and determine disputes between British and Siamese subjects, in conjunction with the proper Siamese officials. This article paved the way for Western extraterritorial regimes to be established.

Article VIII removed tariffs and duties from Siam's control. It limited import duty to 3 per cent of the market value of the goods. All export articles were subject to a one-time levy, regardless of earlier inland taxes, transit duties, or export duties. As in Japan and China, the loss of tariff and duty control restricted Siam's economy at a time when revenues from increased trade might have furthered its development. The other articles of the twelve-article treaty permitted British merchants to buy and sell directly with individual Siamese without interference from any third persons (a provision paralleling the abolition of the *cohong* system in China). A most-favoured-nation clause was also attached.

Other countries soon followed Britain's lead. Between 1856 and 1870, new treaties were concluded with the United States, France, Denmark, the Hanseatic Republic, Prussia, the Grand Duchies of Mecklenburg-Scherin and Mecklenburg-Strelitz, Sweden and Norway, Belgium, Italy, Austria-Hungary, and Spain. These treaties were all modelled on the 1855 Bowring Treaty and the 1856 Supplementary Agreement. 'While there are variations in language', commented

¹⁴Treaty of Friendship and Commerce between Her Majesty and the Kings of Siam, 18 April 1855, cited in Likhit, *Siam and Colonialism*, Appendix A, p. 88.

¹⁵Ibid.

Eldon R. James, Adviser in Foreign Affairs to the Siamese government, 'there is little, if any, difference in effect'.¹⁶

These treaties all contained extraterritorial provisions, fixed duty schedules, and restricted import tariffs; were without time limit; and were irrevocable. As they had done in China, Japan, and other Asian countries, the European treaty powers soon used their extraterritorial and trade privileges to create a kind of *imperium in imperio* in Siam. While Siam preserved its nominal independence, it lost its judicial and fiscal autonomy outright, and had its political freedom compromised.

'Unequal Treaties'?

'Unequal treaties' are characterized by three elements: imposition through the use or threat of force; unequal obligations in practice; and the perception that the treaty is an 'unjust treaty', often because it impairs the sovereignty of one of the parties. These elements were not static, but changed with the changing circumstances under which 'unequal treaties' were signed with China, Japan, Siam and other non-European countries. For this reason, an assessment of the extent to which Siam's treaties were 'unequal treaties' requires that they should be viewed in relation to the 'unequal treaties' signed by China and Japan.

Mongkut kept abreast of European actions as they unfolded not only in China and Japan, but also in nearby Burma. These cases established a clear precedent of European willingness to employ overwhelmingly superior military force in opening treaty relations with Asian countries. For this reason, one historian suggests 'the Opium War, which followed the Burmese successes of the British, was the turning point in Siam's relations with the West'.¹⁷ When the Europeans arrived in Bangkok, they did not have to prove yet again that military resistance would be futile.

When Bowring anchored an armed steamer near Bangkok and insisted on twenty-one-gun salutes, he played on a fear of British power among the people and among the king and

¹⁶ Eldon R. James, 'Jurisdiction over Foreigners in Siam', *American Journal of International Law*, XVI (1922), p. 591.

¹⁷ Virginia Thompson, *Thailand: The New Siam*, 2nd edn. (New York, Paragon Book Reprint Corp., 1967), p. 34.

his commissioners who, as had the ruling houses in China and Japan, would be discredited if they proved unable to defend the country. Although no direct use or threat of force was employed against Siam, Mongkut might justly have felt Siam's treaty was concluded under some duress.

By studying the treaties the West signed with China and Japan, Mongkut anticipated the obligations that would be demanded of his country. He knew that 'amity and commerce' meant guaranteeing the life, liberty, and property of the foreign nationals in Siam and agreeing to open trade by accepting restrictions on import duties. He therefore 'voluntarily reduced the measurement duty on ships calling at Bangkok, removed the ban on rice exports, and abolished a number of government monopolies before the Bowring Treaty was negotiated without a request for a *quid pro quo*'.¹⁸

Shrewdly realizing that treaty relations with the European powers were inevitable, Mongkut sought to strengthen Siam's otherwise weak position by entering such relations peacefully and in a spirit of voluntary accommodation. From the start, Mongkut offered inviting concessions in hopes both of minimizing the overall threat to Siam's independence and of winning a powerful British benefactor and protector. Thus he agreed to permit the *Rattler* to continue up river, though the Siamese forts and chains across the river had earlier proved daunting enough to prevent other Europeans from passing; waived the court protocols to let Bowring walk into the hall of audience and take a place of honour; and helped negotiate and approved the draft treaty within a few days.

Regardless of how voluntarily Mongkut signed Siam's first treaty, it was still decidedly unequal in both obligation and practice. Article I of the Bowring Treaty stood alone in its reciprocal guarantee of Siamese and British life, liberty, and property. Other regulations concerning freedom of worship, the entry of warships into the river, the permission to import opium, the limitation of the measurement duty, and the most-favoured-nation clause were viewed as unequal even by the Siamese who had to defend them against the

¹⁸ James C. Ingram, *Economic Change in Thailand 1850-1970*, New Edition (Stanford, Stanford University Press, 1971), p. 7.

more conservative and hostile factions at court. Though the Siamese prime minister could argue that increased volume of trade would offset severely reduced and limited duties, he could not hide the fact that Siam had surrendered control over important sectors of its economy. Similarly, European establishment of extraterritoriality clearly indicated Siam's unequal status.

Mongkut's deliberate policy to avoid military confrontation by willingly granting treaty provisions that could not ultimately be withheld makes it difficult to know whether he perceived Siam's early treaties as 'unjust treaties'. It has been asserted that:

Unlike China and Burma, and other Asian countries, King Mongkut had realized Siam's weakness and backwardness and so was willing to conclude an unequal treaty. He also admitted that some of Siam's traditions had to be abolished or modified.¹⁹

In this view, Siam's leaders, starting with Mongkut himself, were more like Japan's Meiji restorers than China's T'ung-chih conservatives, in their acceptance of the standard of 'civilization'. While many in Siam objected to the fiscal and jurisdictional restrictions which resulted from the treaties, they accepted them in part because the Siamese government's extensive reform programmes indicated at least the tacit recognition that some 'unequal' obligations were to be expected until Siam proved itself 'civilized'. Also, popular outcry against Siam's 'unequal treaties' remained minimal because public opinion never played the role in Siam that it did in Japan and because the absolute authority of the Siamese monarchy was not seriously questioned until well into the twentieth century.

An Independent Buffer State?

A brief assessment of the three explanations usually given for the fact that Siam remained independent during the colonial period illuminates the role played by the standard of 'civilization' in Siam's entry into international society.

The conventional wisdom maintains that Siam remained an independent buffer state between jealous British and

¹⁹ Likhit, *Siam and Colonialism*, pp. 16-17.

French rivals anxious to avoid the further difficulty of a common frontier in their South-east Asian holdings. This view stresses Siam's fortuitous geographical placement and the shared British and French sentiment, after crises over territory approached war in 1893 and 1895, that an Asian war was in neither of their interests. Accordingly, on 15 January 1896, the governments of Britain and France signed a declaration that neither would, 'without the consent of the other, in any case, or under any pretext, advance their armed forces into the region' of the basin of the Menam River and adjacent streams. Mong Sing, the area which had precipitated the 1895 crisis when a British delegation hauled down a French flag and hoisted the Union Jack, went to France.

The 1896 declaration was followed by a declaration concerning Siam, Madagascar, and the New Hebrides which formed part of the Anglo-French *Entente Cordiale* of 8 April 1904. A continuation and completion of the 1896 declaration, the 1904 declaration divided Siam along the Menam valley into a kind of buffer state between two spheres of influence. The two powers agreed that the 'influence of Great Britain shall be recognized by France in the territories situated to the west of the basin of the River Menam, and that the influence of France shall be recognized by Great Britain in the territories to the east of the same region'. Further, the two contracting parties disclaimed 'all idea of annexing any Siamese territory', though such restraint was not to hinder their respective 'liberty of action in their spheres of influence as above defined'.²⁰

Thai writers argue that it is 'incorrect and misleading' to maintain that the 1896 Anglo-French Treaty guaranteed Siam's independence.²¹ They stress that Siam had no part in the declaration; it amounted only to a temporary agreement between the two powers that they would not encroach

²⁰ See the declaration between the United Kingdom and France concerning Siam, Madagascar, and the New Hebrides, signed at London, 9 April 1904 (the '*Entente Cordiale*') Article I, cited in Michael Hurst, ed., *Key Treaties for the Great Powers 1814-1914*, p. 764.

²¹ See, for example, Likhit, *Siam and Colonialism*, p. 55; Manich Jumsai, *History of Anglo-Thai Relations* (Bangkok, Chalermnit, 1970), pp. 234-52 *passim*; Kullada Kesboonchoo, 'The Patterns of Thai Diplomacy: A Historical Study', *The Journal of Social Sciences* X (October 1973), 42-53.

on Siam's sovereignty and independence without the consent of the other. Thai writers also emphasize that Mongkut's policy was not to play the powers against each other, but to lean towards the stronger, 'to hang onto the whale'. Thus, it may have seemed to observers that Siam was 'playing off one power against another. But actually she tried very hard to bring Britain to protect her'.²²

The classic explanation for Siam's independence is turned on its head when attention is focused on what Siam had to surrender while a 'buffer state'. In this view, it is a misleading 'cliché' to argue that Siam 'maintained its independence and retained its domain throughout the European colonial period in Southeast Asia' because of its 'buffer state' role.²³ Twin points are underscored: first, that pre-'buffer state' Siam lost approximately one half of its remaining territory to the colonial powers; second, that Siam, though nominally free, lost political control over half its remaining territory even after adopting its 'buffer state' role.²⁴ Indeed, Barton continues, 'After the Second World War, when European colonialism had ended in Southeast Asia, Thailand was the only country in continental Southeast Asia smaller in size than it was before the European colonial builders entered the area'.²⁵

There seems little alternative but to acknowledge the above qualifications both to the conventional notion of Siam as a 'buffer state' and to the assertion that it remained 'free and independent' throughout the colonial era. There is no question but that Siam traded territory and treaty concessions for time and European goodwill. Nevertheless, the limitations on Siam's freedom and independence imposed by British and French demands must ultimately be seen not only in terms of those demands, but also in terms of Siam's domestic and foreign policy reforms. As had Japan's Meiji leaders, Siam's leaders made modernization according to European standards part of their policy for defence. By the time of Chulalongkorn:

²² Kesboonchoo, 'The Patterns of Thai Diplomacy: A Historical Study', p. 47.

²³ Thomas Frank Barton, 'Siam: Buffer State or Gradual Piecemeal Consumption?', *The Journal of Geography* LXIII (October 1964), p. 203.

²⁴ Ibid.

²⁵ Ibid.

through the king's personal diplomacy with the monarchs and governments of Europe, and through the workaday consular and embassy contacts . . . Thailand cultivated a reputation abroad for responsibility and for willingness to accommodate to Western demands and to reform along Western lines.²⁶

Thus, a third explanation for Siam's independence focuses on its willingness and ability to conform its domestic society to the expectations of the 'civilized' international society.

2. Fulfilling the Standard of 'Civilization'

More like Japan's than China's, Siam's entry into 'civilized' international society can be characterized as essentially voluntary accommodation in the face of less desirable alternatives. As Wyatt argues in *The Politics of Reform in Thailand*, Siam's modernization and political survival was due to even more than a combination of 'fortuitous historical circumstances' (geographical position and great power rivalry) and the ability of an 'absolute, but Westernized, monarch to force the introduction of Western institutions and techniques suggested by his numerous foreign advisers'.²⁷ Nevertheless, in some ways like Japan's Meiji oligarchy, three progressive monarchs became the nucleus of Siam's efforts to enter the international society during the crucial years 1851-1925: Mongkut as Rama IV (1851-68), his son Chulalongkorn as Rama V (1868-1910), and, though to a somewhat lesser degree, Chulalongkorn's son Vajiravudh as Rama VI (1910-25).

Mongkut first oriented Siam towards the West; 'under his aegis Siam passed from medieval to modern times'.²⁸ Part of Mongkut's task was to 'reeducate the resisting ruling classes as well as the humbler and unresisting people to changes that played havoc with tradition and privilege'.²⁹ Mongkut also personally trained Chulalongkorn to ascend the throne. Chulalongkorn's experience 'lay entirely in a world in which

²⁶ David Joel Steinberg *et al.*, *In Search of Southeast Asia* (London, Pall Mall Press Ltd., 1971), p. 178.

²⁷ David K. Wyatt, *The Politics of Reform in Thailand: Education in the Reign of King Chulalongkorn* (New Haven, Yale University Press, 1969), p. 1.

²⁸ Thompson, *Siam*, p. 35.

²⁹ *Ibid.*

European trading ships and diplomats, foreign languages and newspapers, and international affairs were commonplace'.³⁰ Once Chulalongkorn had 'determined to embark upon a program of fundamental reform that went far beyond that which his father had initiated', his course of action 'sent him into collision with both the progressives and conservatives of his father's generation'.³¹ Like his grandfather and father, King Vajiravudh had to balance the forces and influences of domestic and foreign affairs as he continued the modernization and 'civilization' process.

The changes, accommodations, and adaptations Siam made as it entered the international society were complex and far-reaching and hence difficult to describe. Observers in this half of the twentieth century struggle to characterize the multifarious changes with words like 'modernization', 'westernization', and 'industrialization'.³² Such words pay deference to notions of cultural equality by leaving aside intractable normative assessments of the now unfashionable term 'civilization'.

But European and Thai writers of the period discussed these processes of change in terms of progress towards 'civilization'. European consuls wrote of the progressive leaders of the period as 'Siam's great hope for civilization'.³³ A Bangkok English-language newspaper hailed Chulalongkorn as Siam's Peter the Great.³⁴ The French commander-in-chief in Chochin China applauded the regent's family as '*L'élément civilisateur dans l'extrême Orient*'.³⁵

Thai writers describe the reigns of Mongkut, Chulalongkorn and Vajiravudh in similar terms. One writer suggests, for example, that the 'Thai government in attempting, by every way and means, to obtain from other nations a recognition that Thailand was a fully sovereign state' was trying to show it

³⁰ David K. Wyatt, 'Education and the Modernization of Thai Society', *Change and Resistance in Thai Society* (Ithaca, Cornell University Press, 1975), p. 131.

³¹ *Ibid.*, p. 132.

³² See Fred W. Riggs, *Thailand: The Modernization of a Bureaucratic Polity* (Honolulu, Hawaii, East-West Center Press, 1967), p. 367.

³³ Noel Alfred Battye, 'The Military Government and Society in Siam 1868-1910: Politics and Military Reform during the Reign of King Chulalongkorn' (Cornell, Ph.D. Thesis), 1974.

³⁴ *Ibid.*, p. 118.

³⁵ *Ibid.*, p. 108.

'was as progressive as any civilised nation'.³⁶ Another Thai writer considers the years 1868-1910 to be 'a significant beginning of the country's political, economic, and social development as a civilized country'.³⁷ In his 1960 South-East Asia Treaty Organization lectures, His Highness Prince Dhaninivat summarized how and why Siam worked so hard to fulfil the standard of 'civilization':

Revising her laws she issued new codes of criminal, civil, and commercial legislation; she was careful in the administration of justice; she took pains to promote security of life and property; she continued her tradition of tolerance towards all beliefs within the kingdom; she upheld national traditions along judicious standards. Without these measures, an attitude of nonconfidence and suspicion of barbarity was always lurking among the treaty powers.³⁸

It is worth examining in greater detail how Siam fulfilled the requirements of the standard of 'civilization'.

Protection of Foreign Life, Liberty, and Property

European rights to trade, travel, property, etc., were guaranteed in the early treaties. King Mongkut established a special police force and charged some of Siam's army with the specific duty of protecting the life and property of Europeans in Bangkok. The Siamese also acquiesced in the extra-territorial system which the Europeans saw as the key to protecting themselves from backward legal codes and prejudiced court systems.

Political Organization

While Mongkut had attempted to accommodate the European powers directly through treaty concessions, it was Chulalongkorn who directed Siam's transition in political organization from traditional kingdom to modern sovereign-state. While Chulalongkorn's accomplishments are sometimes called 'reforms', Wilson emphasizes that:

³⁶ Anchalaporn Komonsewin, 'Thailand's Foreign Relations in the Reign of King Vajiravudh' (Chulalongkorn University Masters thesis, 1975), p. vii.

³⁷ Kanjane Somkiatkul, 'Corruption: An Analysis of the Modernization During the Reign of King Rama V (1868-1910)' (Chulalongkorn University Masters thesis, 1976), original in Thai (from the abstract).

³⁸ His Highness Prince Dhaninivat, 'Siamese History and Culture of Siam', *SEATO Lectures* (1960), p. 41.

From the point of view of international relations, however, he really made the kingdom over into a new kind of state: a state which was based on territory, which was national (or at least implicitly national), and which was the appropriate form of political organization within the framework of international relations for the time.³⁹

These changes affected four fundamental sectors of the traditional Siamese polity.

First, Chulalongkorn paved the way for the dissociation of the legitimacy of the ruling regime from the person of the king. Because Chulalongkorn ascended to the throne when as young as fifteen, a man called Chao Phya Srisuriyawongse acted as Regent for five years. On coming of age in 1873, Chulalongkorn was crowned a second time as he began direct rule of the kingdom. On the occasion of his enthronement, Chulalongkorn abolished the ancient custom of prostration, with its attendant crouching and crawling, as a means of showing the king respect. In its place he substituted the consciously Western practice of standing, bowing, and lifting the hat. He made his ministers sit on chairs. These changes in court formalities helped separate the political legitimacy of the regime from his person.

Second, the year after his enthronement, Chulalongkorn established two state councils—the Council of State and the Privy Council. Both these councils were modelled on European lines to perform advisory functions in modern bureaucratic fashion. Although the Council of State and the Privy Council did not function as expected, they were the forerunners of the Cabinet and oversaw governmental innovations in providing electricity, irrigation, and universal education. However, that a fundamental change had occurred was evident when the newly-appointed councillors took their oaths of office: each was required to give allegiance, not to the king, but to the state.

In 1892, Chulalongkorn transformed a third sector of Siam's government by replacing outdated traditional government departments with Western-style functional ministries. The Department of Foreign Relations became the Ministry of Foreign Affairs. The territorial departments of the North,

³⁹ David A. Wilson, 'The Evolution of Foreign Relations', *Asia* (Spring 1976), p. 58.

South, and West were consolidated under a unified Ministry of the Interior. Separate Justice, Finance, and War ministries were formed. Two new functions of state were taken by new ministries: the Ministry of Public Works and the Ministry of Education. Eventually ten ministers were made directly responsible to the king as virtual prime minister, a role he later defended against those who wanted even a greater share of governmental power. During the 1890s, these new ministries and Council of State organized Siam's railways, telegraphic and postal services, and other important administrative, communication, and transportation networks.

Foreign advisers helped reform a fourth basic sector in Siam, the military. Since 'civilized' countries were expected to have a political organization with some capacity for self-defence, Siam attempted to establish armed forces along European lines and to learn the conventions governing warfare between 'civilized' states. Mongkut began with a small army consisting of a regiment each of Infantry, Artillery, and Marines. The Infantry was trained by an English officer, Captain Impey, who gave commands in English. Mongkut also introduced steamships for a small navy.

During Chulalongkorn's reign, steam-driven men-of-war were built on British models and the army was enlarged. Chulalongkorn himself conferred commissions and dubbed shoulders with the 'doubled-edged Sword of Glorious Victory, initiating officers into a knighthood self-consciously modeled after the English'.⁴⁰ When Chulalongkorn took members of the military to visit European colonies in South-east Asia, he required them to dress '*à l'euro péen* in tunics, phanangs, white stockings, black leather shoes, bucket helmets and side arms'.⁴¹ Further, he required them 'to give up betel-nut chewing lest it make a barbaric impression on the "civilized" world'.⁴²

Many of these changes in political organization were apparently inspired by Chulalongkorn's firsthand view of European colonial organization during his 1871-2 visit to Singapore, the Dutch East Indies, Malaysia, Burma, and India. He returned with a vision 'that he might be able to

⁴⁰ Battye, 'The Military Government and Society in Siam', p. 128.

⁴¹ *Ibid.*, p. 118.

⁴² *Ibid.*

turn his kingdom into a miniature European colony, without the Europeans, making it a modernized, "civilised" [in Western terms], Asian state'.⁴³ For the king and the men who accompanied him, having seen the 'science of government' functioning in the European colonies, 'their standards of Civilization, Order and Progress would not be quite the same again'.⁴⁴

Domestic and International Law

The increasing influence of Western legal approaches brought three major changes in Siam.

First, Siam's traditional system of 'monarchical paternalism', the 'symbiotic relationship of duty to rule and duty to be ruled', was radically altered.⁴⁵ According to this system of authority and legitimacy, all law was sacred law; sacred law, as embodied in the *thammasat*, legitimated the king's rule; and the king in turn legitimated the laws of the kingdom as the protector and interpreter of the *thammasat*. Indeed, 'monarchy was the center, the nucleus, the purpose of the government itself'.⁴⁶ Rather than a rule by law *per se*, it was rule by the person of the ruler in whom the law was incarnate. He was 'above the law' in the sense that only he could translate the general precepts of the *thammasat* into specific rules of conduct.

By the time of Chulalongkorn's death in 1910, this traditional theory of royal legitimacy had changed irrevocably. As symbolized by the end of the court prostration, Siam's political structure was reformed with an eye to establishing a legal regime rather than one dependent solely on the king's person or personal pleasure. Before long, the separation of the king's person and the authority to rule was sufficient that many believed 'the rule of law was superior to the power of kingship itself, that the laws existed apart from the king

⁴³David K. Wyatt, 'King Chulalongkorn the Great: Founder of Modern Thailand', *Thailand Since King Chulalongkorn*, ed. Skinner and A. T. Kirsh (Ithaca, Cornell University Press, 1975), p. 8.

⁴⁴Battye, 'The Military Government and Society in Siam', p. 121.

⁴⁵Sarasin Viraphol, 'Law in Traditional Siam and China', *Law Journal of Maruít Bunnag International Law Office* IV, No. 3 (1975), p. 24.

⁴⁶David M. Engel, 'Law and Kingship in Thailand during the Reign of King Chulalongkorn', *Michigan Paper on South and Southeast Asia Studies* (Ann Arbor, University of Michigan Press, 1975), p. 119.

and that the people possessed certain rights which even the king could not disregard'.⁴⁷

While it is unlikely that this theory of kingship derived totally from European political or legal philosophies, it is probable that the expansion of human rights under Chulalongkorn, the new rules of judicial due process, and the doctrine that all persons be governed equally by the laws of the kingdom resulted in large measure from Siam's efforts to employ 'civilized' legal standards. And it is possible that this dissociation of political legitimacy from the person of the king reached its logical conclusion in 1932 with the overthrow of the reigning monarch and the establishment of a constitutional monarchy.⁴⁸

Second, Siam exerted great effort to bring its domestic legal codes and court system into line with 'civilized' expectations. Revising its entire legal system required changing the whole country's legal outlook and training. Monsieur Rolin-Jaequemyns, his assistant, M. A. J. Kirkpatrick, and 'Father of Thai Law' Prince Rabi, an Oxford graduate who became Minister of Justice, spearheaded the modernization of Siam's legal system. Prince Rabi supplied the law schools with textbooks and arranged for government and private students to be sent abroad for legal training. The Ministry of Justice was established in 1892 followed by a law school in 1897. A law on the Organization of the Courts of Justice was enacted in 1895 and updated in 1908. The sixteen courts in the capital were consolidated into seven, and only the navy, army, and palace courts remained under separate control. A Department of the Attorney General was decreed. Western advisers were employed as judges and advisers.

A court system was also organized in the provinces. The court of first instance in each province was called the *changwad*; appeal could be made from a *changwad* court to a *monthon* court, from there to a special court of appeal, and as necessary to the Supreme Court. For the first time, the judiciary was clearly separated from the executive branch of government, a point especially important to the European powers, in Siam as in China and Japan.

⁴⁷Ibid., p. 123.

⁴⁸Ibid., pp. 119-23 *passim*.

Revision and codification of Siam's laws continued. Beginning in 1896, special commissions composed of Siamese officials and foreign advisers were appointed to determine regulations, deal with legal problems, and formulate new legal procedures. The Mining Law and Local Administration Law for the provinces were issued in 1897. The Pension Law for Government Officials, Law on Pawnbrokers in the City of Bangkok, and Law on Land Titles and their Registration were ready by 1901; the laws on Land Taxes, Harbour Regulations, and Navigation by 1905; and the Law adopting the gold standard and the Bankruptcy Law in 1908.

Beginning in 1905, the civil and criminal laws, laws on civil and criminal procedures, and laws on the organization of the courts underwent systematic codification and revision. By 1908, the Civil Procedure Code, the Law on the Organization of the Courts, and the Penal Code had been enacted. By the time of Chulalongkorn's death in 1910, the Criminal Procedure Code and the Civil and Commercial Code were close to completion. All these efforts were seen as important steps in Siam's efforts to conform its domestic legal system to 'civilized' standards.

A third arena of legal reform stemmed from Siam's awareness that the standard of 'civilization' required adherence to international law, including the laws of war. When the diplomatic relations Chulalongkorn had established with Tsar Nicholas II resulted in Siam's being invited to the Hague Peace Conference, Siam joined China, Japan, Persia, and the Ottoman Empire in the select group of non-European participants. Siam's subscription to the Hague Conventions was taken as evidence of willingness to abide by international law and as a major step toward 'civilized' status. The 1917 Siamese declaration of war on Germany was issued according to the proper protocol and so little offended Germany that diplomatic ties between the two countries were quickly resumed when the war ended.

Thus, Siam changed the fundamental conception of its polity to make a legal regime; systematized its domestic law codes, revised its prison and court systems, and re-oriented its entire society to Western legal philosophies; and subscribed to 'civilized' international law in its treaty

relations and international affairs. Clearly, Siam was becoming a legally 'civilized' nation.

Diplomatic Relations and International Conventions

Diplomatic relations have been described as *par excellence* the international institution based on and contributing to reciprocal benefits. Even Rama III, before Mongkut, advised that strong relations with the European powers were necessary to Siam's survival as an independent entity. Mongkut realized that not even gold mines could provide ships to fight the European powers who would have to supply them. This meant that, 'The only weapons that will be of real use to use in the future will be our mouths and our hearts constituted so as to be full of sense and wisdom for the better protection of ourselves'.⁴⁹ Such a policy depended on effective diplomatic relations.

Both Mongkut and Chulalongkorn personally emphasized the need for diplomatic interchange and communication. During the five years that a Regent ruled Siam, Chulalongkorn travelled to Singapore, Java, and India. After gaining full powers on coming of age, he toured Java in 1896 and 1902, and Singapore in 1902. Chulalongkorn thus became the first Siamese monarch to leave his country for a cause other than war, and Siam's first king to tour Europe, doing so twice.

In 1897 he personally contacted various European heads of state, including Emperor William II of Germany, Tsar Nicholas II of Russia, President Loubet of France, and the Prince of Wales, who was four years later crowned King Edward VII of Great Britain. Chulalongkorn's fluency in English enhanced the impression he made as a unique and progressive oriental monarch. His 1907 second European tour renewed and strengthened these European relations. Those with Russia proved particularly important as Chulalongkorn's friendship with Emperor Nicholas resulted in Russia's willingness to help restrain the territorial demands made by its French ally in Siam.

In his first discussions with Bowring, Mongkut indicated a desire to send embassies and eventually ministers to Europe. The first embassy from Siam to Britain since the

⁴⁹ Busch, *Thailand*, pp. 67-8.

days of James II in 1684 was received by Queen Victoria at Windsor on 19 November 1857. Concerned that no one in Siam's twenty-eight-member delegation understood English customs, Mongkut wrote an eight-page letter to the Earl of Clarendon begging his forgiveness for their rude manners and enlisting his help to teach them how to behave. During their audience with the Queen, the Siamese delegation members, attired in their traditional manner, did surprise everyone by crawling on all fours from the entrance of the hall of audience to the throne. Upon the manager of the Claridge Hotel, where the delegation stayed, fell the delicate responsibility of instructing the group, none of whom had ever been in other than an equatorial climate, of the need to wear woollen underwear during the British winter.

So began Siam's modern diplomatic relations. In time Mongkut sent two embassies to Great Britain and two to France in his effort to strengthen political ties and feelings of amity.

Chulalongkorn extended his father's diplomatic policy by subscribing to the standard European practice of stationing resident ministers in the capitals of countries with which diplomatic relations were maintained. Foreign ministers had been welcome in Bangkok from the time of the Bowring Treaty, but it was not until 16 March 1882 that the Siamese government designated HRH Prince Prisdang Chumsai to be the first resident envoy extraordinary and plenipotentiary to the treaty powers of Europe and America. His new appointment made the prince minister to Great Britain, France, Italy, Germany, the Netherlands, Belgium, Austria-Hungary, Denmark, Sweden-Norway, Spain and Portugal, with headquarters in London. In 1885 HRH Prince Naresvoraridhi became the first Siamese minister to the United States; Phya Suriyanuwat went to Russia in 1897; Phya Riddhirongronnachet to Japan in 1899.

Though scarcity of trained personnel necessitated Prince Prisdang's taking responsibility for so many countries, the Siamese government considered direct though limited representation preferable to no direct representation at all. Siam required direct diplomatic representation in Europe to counterbalance the power wielded by the foreign consuls in Siam. The consuls especially of England, France, and

Portugal gradually acquired great influence as they extended protection and jurisdiction not only to their own nationals but also to their Asian colonial subjects in Annam, Cambodia, and Laos; in Burma and on the Malay Peninsula; and in Macao, respectively. Further, where they sometimes had a vested interest, e.g. gambling and the importation of spirits, the consuls often neglected to relay Siam's protests to their home governments that treaties had been violated.

Besides desiring the practical benefits thought to derive from direct representation in foreign capitals, Siam also recognized the need to fulfil the requirement in the standard of 'civilization' that specified the establishment of permanent diplomatic relations. The foreign consuls in Siam helped spur Siam's resolve to fulfil that requirement by ridiculing its diplomatic service as 'uncivilized'. Hence, in the words of a Chulalongkorn University Professor of History, 'The reason for the appointment of resident ministers to the Western countries was to show that Siam was a modern state which should be a worthy member of the family of nations according to international law'.⁵⁰

Siam sent delegates to various international conferences for similar reasons. At the Lisbon Conference in 1885, Prince Prisdang subscribed to the International Postal Union Convention and arranged that Siam's newly-established Post and Telegraph Office could send and receive telegrams and letters from around the world. Although some in Siam argued that subscription to the Postal Union Convention was sufficient evidence of law-abiding character for Siam to assume full and 'civilized' international status, most international lawyers of the time agreed that the Convention was only a technical document and could not be so construed. On 10 August 1885 Prince Prisdang attended the Telegraph Congress at Berlin. Siam further demonstrated its willingness and ability to subscribe to international conventions at the Hague Peace Conferences.

Adherence to General Norms of 'Civilized' Behaviour

The requirement that Siam's domestic practices conform to the generally accepted norms of 'civilized' behaviour also

⁵⁰ Rong Syamananda, *A History of Thailand* (Bangkok, Thai Watana Panich Co., 1977), p. 135.

encouraged extensive reform in three additional areas: in traditional daily customs, and in the institutions of slavery and of polygamy.

As might be expected, Siam's tropical climate produced dress styles designed more for comfort in the heat than for modesty by European standards; these required modification. Reforms in dress occurred as part of the general programme to introduce European customs into Siamese life, with the royal family in the vanguard. Reminiscent of Japan's Meiji leaders and Russia's Peter the Great, Chulalongkorn requested that princes, officials, and their spouses begin dressing in a 'civilized manner'; that Siamese noblemen wear their hair according to Western styles instead of having it closely cropped; that they don white cotton coats closed up to the neck; and that they wear socks and shoes. Siamese women began wearing blouses and foot-gear at important functions. Chulalongkorn saw fluency in European languages as an important component of 'civilized' behaviour; he required that his children, in their preparations to serve the state, study English together with French or German. Many of Siam's royal family attended military academies or universities in England, Germany, Russia, Denmark, or other European countries.

More difficult to change than dress styles was the institution of slavery. Certainly Mongkut was aware that Europe disapproved of slavery at the time he offered President Lincoln a group of elephants to use in fighting the American Civil War. Despite opposition by the court, Chulalongkorn was determined that slavery must eventually disappear. He issued a royal decree on his first enthronement in 1868 that all people born in his reign would be free. At the time, slavery was still an elaborate institution with at least seven categories of slaves, ranging from children born of slave parents to people who had sold themselves to pay debts.

Driven by the feeling that slavery was a primitive institution that was by no means suited to a civilized country, the King convened a meeting of senior civil servants acting as Advisors on State Affairs on Wednesday 12, July B.E. 2417 (A.D. 1883), at Sommot Devaraj Upatat house so as to seek ways and means for a genuine and complete abolition of slavery.⁵¹

⁵¹ Prachoom Chomachi, *Chulalongkorn the Great* (Tokyo, Center for East Asian Cultural Studies, 1965), p. 128.

During this period, missionary and other foreign groups worked closely with a Siamese government eager to demonstrate humanitarian and 'civilized' behaviour. In 1905 Chulalongkorn issued a law abolishing slavery entirely.

The institution of polygamy was also deeply rooted in the traditional Siamese polity and culture. In traditional Siam, 'the prestige of a man was measured by the number of wives and women who served him'.⁵² Naturally, royalty provided the most dramatic display of this practice. Estimates of Mongkut's harem vary from Bowring's surely exaggerated total of 600 wives and concubines to Abbot Moffat's more conservative list of twenty-seven royal mothers, thirty-four concubines and seventy-four daughters of noblemen presented to serve as attendants.⁵³

Polygamy was also important because marriage and concubinage served to balance power at the court, and to secure the kingdom's perimeters. Diplomatic marriages linked court and province. Vassal rulers seeking Siam's protection offered female relatives to the monarch as pledges of loyalty. Thus, polygamy fitted into a political system which encouraged the king to exhibit his own and his kingdom's virility; established relationships of influence, obligations, and access between the monarch and other power centres in the kingdom; and, finally, was defended by some as offering a way for women brought into royal service to discover social refinement and social advancement.⁵⁴

Polygamy's central role in Siamese society made it difficult to eliminate, despite determined efforts to bring about its abolition. At the time of Rama I's 1805 'Three Seal Law Code', polygamy was a recognized legal practice. It was the Europeans who introduced the opinion that polygamy was exotic, self-indulgent and 'uncivilized'. To counter mounting European criticism, Mongkut wrote articles to defend himself, citing the fact that he had fewer wives than his brother, the Second King. Mongkut also

⁵² Craig J. Reynolds, 'A Nineteenth Century Thai Buddhist Defense of Polygamy', *Proceedings Seventh IAHA Conferences* (Bangkok, Chulalongkorn University Press, 1979), Vol. 2, p. 963.

⁵³ Abbot Moffat, *Mongkut, King of Siam* (Ithaca, Cornell University Press, 1961), pp. 134-5.

⁵⁴ Reynolds, 'Polygamy', pp. 937-9.

issued decrees on 7 November 1858 and 21 March 1868 that permitted women in the palace to resign and re-enter society if they wished; that stipulated that a wife could not be sold by her husband, parents, or guarantor without her consent; and that initiated the direction for the more comprehensive emancipation decrees promulgated in Chulalongkorn's reign. Though Chulalongkorn was Siam's last polygamous king, polygamy was not formally made illegal until 1 October 1933 with the adoption of the new Civil and Commercial Code. Even at that late date, certain legal ambiguities regarding polygamy remained.⁵⁵

In part, Siam had to be 'attentive to Western morality because that was what the West wanted'.⁵⁶ The laws and morals regarding marriage customs, like other aspects of Siam's diplomatic and commercial interaction with the West, became part of *realpolitik*. For an admixture of reasons, then, fulfilling the requirements necessary to be recognized as a 'civilized' country provided much of the impetus and direction of Siam's modernization.

The Entry of Siam into International Society: Ending Extraterritoriality and Gaining Full International Status

The Establishment of Extraterritoriality

As in China and Japan, extraterritoriality in Siam became widespread and significant only in the nineteenth century, following the signing of treaties with the European powers. Siam's extraterritorial system gave rise to sharp criticisms and spirited defences. Siam argued that extraterritorial privileges were abused both by Europeans and by their Asian subjects. Particularly unfair in Siamese eyes was the problem caused by Chinese merchants whose foreign sponsorship gave them a tremendous competitive edge over Thai nationals.

The Siamese government also felt that foreign consuls favoured their own nationals, obstructed treaty reform (for example, customs legislation was delayed fourteen years before coming into effect), and lorded their alleged superiority

⁵⁵ Reynolds, 'Polygamy', p. 951.

⁵⁶ *Ibid.*

over local residents. Indeed, one Thai writer argues that it was only for the 'dignity and power of their countries' that the European powers demanded the special privileges which 'marked the beginning of the humiliating events in the annals of the history of Siam with the Western powers in the nineteenth century'.⁵⁷ For these reasons Siam sought to emulate Japan in effecting treaty revisions.

The End of Extraterritoriality

The Siamese government took a three-pronged approach to ending extraterritoriality, all based on a common underlying policy. Put simply, 'it was the policy of the Siamese government to appeal to the West on its own terms and in its own language'.⁵⁸ Since the government perceived that 'the Western treaty powers had imposed Western standards upon Siam',⁵⁹ it was logical and practical for Siam to: (1) underscore that its reforms fulfilled the standard of 'civilization'; (2) demonstrate responsible international behaviour; and (3) involve foreign advisers in domestic reform and international negotiation. Japan provided at least a symbolic model of how to revise 'unequal treaties'. Indeed, as King Chulalongkorn noted on 21 September 1908 in a royal rescript regarding legal reform in Siam:

When all the nations noticed that the Japanese legal and court systems were well-organized in the same way as those of the Western nations, they agreed to revise the treaties, to abolish consular jurisdiction, and to transfer the control of the foreign subjects residing in Japan to the Japanese legal system. Japan, in so doing, brought about the abolition of consular jurisdiction. The nations which are suffering from similar difficulties will be able to proceed in the same way.⁶⁰

Likewise, Prabat Somdech Pra Chomklao Chaoyahua reported to his government that:

⁵⁷ Luang Nathabanja, 'Extraterritoriality in Siam', *Bangkok Daily Mail*, 1924, pp. 37-8.

⁵⁸ Peter Oblas, 'Treaty Revision and the role of the American Foreign Affairs Advisors, 1909-1925', *Journal of Siam Society* (January 1972), p. 186.

⁵⁹ Ibid.

⁶⁰ Akira Nagazumi, 'Toward the Abolition of the Unequal Treaties—the cases of Japan and Thailand', *Conference Proceedings: The Emergence of Modern States, Thailand and Japan* (Bangkok, Chulalongkorn University Press, 19-20 March 1976), p. 45.

In all countries having concluded similar treaties there have arisen difficulties out of consular power and all such countries share the same desire to find a device for abolishing foreign consular courts so as to bring all those who live in the countries, irrespective of their nationality, under their legal protections under the jurisdiction of national courts.⁶¹

Even with Japan as a kind of model, treaty revision was difficult for Siam. Arguing that its fulfilment of the standard of 'civilization' removed the *raison d'être* for consular jurisdiction and tariff restriction was Siam's standard negotiating approach. The negotiators stressed Siam's diligence in codifying its laws, reconstructing its courts, and improving the quality of its bench. They emphasized the alteration and improvement of Siam's currency, the establishment of a tax system based on modern economic principles, the promulgation of a detailed budget, and the separation of state from court expenditures.⁶² Western dress, languages, customs, and moral values found eloquent expression in the sophisticated persons of suave Siamese negotiators such as Foreign Minister Devawongse or Siam's Minister in Paris, Prince Charoon.

Besides demonstrating its qualifications as a 'civilized' state, Siam attempted to demonstrate its willingness and ability to join the international society as a responsible member. During the last year of Chulalongkorn's life, Siam signed a treaty with Britain which marked a 'first move toward the recognition of the kingdom as a full state in the so-called "family of nations"'.⁶³ During the fifteen years following the signing of this treaty, 'the principle task of foreign policy was to extend and develop completely an international awareness of Thailand's increasing stature within the system of nation-states'.⁶⁴ At the same time, 'the underlying determinant of Siamese foreign policy was the acute awareness by the officials of the Ministry of Foreign Affairs and the Minister of Foreign Affairs

⁶¹ Prachoom, *Chulalongkorn the Great*, p. 128.

⁶² Peter Oblas, *Siam's Efforts to Revise the Unequal Treaties System in the Sixth Reign (1910-1925)* (University of Michigan Ph.D. thesis 1975, University Microfilms), p. 119.

⁶³ Wilson, 'The Evolution of Foreign Relations', p. 58.

⁶⁴ *Ibid.*

himself that Siam was just a small part of world affairs'.⁶⁵

To compensate for its weak bargaining position and to improve its international position, Siam entered the Great War. Following the decision of King Rama VI, Siam declared war on Germany and Austria-Hungary on 22 July 1917. It was the fifteenth nation to join the Allies, though the first absolute monarchy to participate in the war. Included in the Royal Proclamation of Siam's entry into the war was a skilfully inserted case for treaty revision:

When the War was first declared, Siam declared her neutrality and meant strictly to preserve it. But as the Central Powers persisted more and more in despising the rules of humanity, in breaking international customs and in violating international conventions, Siam could not abstain from the struggle. Having appended her signature to the Hague Conventions, she must uphold the sanctity of international engagements.⁶⁶

In short, Siam was a responsible and responsive member of the international community of 'civilized' nations which honoured the rules of humanity, international customs, and the Hague Conventions.

Initially, the Allies suggested that Siam provide manpower for pony trains to transport goods and supplies overland. Finding that assignment demeaning, the Siamese government proposed that its volunteer expeditionary force of 1,700 men participate as a Motor Transport Corps and as air pilots. Although the pilots were still being trained in south France when the war ended and never saw action, the Motor Transport Corps served with the French army. Contingents of Siamese soldiers participated in the victory marches in Paris, London, and Brussels. On their return to Siam, they were personally congratulated by the king.

It remains unclear whether Siam participated in the Great War primarily to gain advantages in treaty negotiation or primarily to enhance its general international standing. In 1971, Prince Wan gave his opinion that King Rama VI entered the war solely for the larger interest of Siam's

⁶⁵Peter Oblas, "'A Very Small Part of World Affairs", Siam's Policy on Treaty Revision and the Paris Peace Conference', *Journal of Siam Society* (July 1971), p. 73.

⁶⁶Oblas, 'Siam's Efforts to Revise the Unequal Treaty System', p. 119.

international position.⁶⁷ As it also had for China, however, Siam's participation in the Great War meant the automatic abrogation of its 'unequal treaties' with Germany and Austria-Hungary. This first success for Siam in securing autonomy in tariff rate and consular jurisdiction was formalized by Article 135 of the Treaty of Versailles. Siam also took the occasion of the Paris Peace Conference to address a Memorandum to Balfour which based demands for treaty revision on an appeal to Western justice. When the Siamese delegation approached President Wilson, he is reported to have listened sympathetically and then to have said, 'You are right. America will give to Siam a new treaty relinquishing the old extraterritorial rights; and she will give it as an act of justice, freely and without price'.⁶⁸

Heartened by Wilson's response, Siam opened treaty-revision negotiations with the United States. This step was consistent with Siamese Foreign Minister Prince Devawongse's new strategy to follow Japan's example of 'divide and conquer' in revising its 'unequal treaties'—to secure a new treaty from a major power as a means of inducing the other powers to follow suit. Also, after Versailles, both Devawongse and Charoon were more inclined to separate tariff and jurisdictional matters in their negotiations as a means to assure the treaty powers that changes would be gradual.

While its role in World War I had been minimal, Siam's participation resulted in a new and ultimately successful approach to treaty revision. Phya Prabhakorawong, Siam's Minister at Washington, took charge of the negotiations with the United States. He observed that time and politics were of the essence, reporting to his Foreign Minister on 7 June 1920 that:

The [American] President has shown greater interest in our business and I have learnt from trustworthy persons that he has a real intention to conclude this treaty before he leaves the Presidency. If we miss this important opportunity to recover the two-fold autonomy for judicial affairs and the export tariff, during the time of President Wilson, I am afraid there will be no hope to get such autonomy when the President is a Republican.⁶⁹

⁶⁷ Oblas, *op. cit.*, p. 73.

⁶⁸ Francis B. Sayre, *Glad Adventure* (New York, Macmillan, 1957), p. 107.

⁶⁹ Rong, *A History of Thailand*, p. 152.

Though the correspondence between President Wilson and his Secretary of State Polk shows that they approached treaty revision with Siam with caution and prudence, it also indicates that they moved ahead purposefully, signing a new treaty on 16 December 1920 to abrogate American extraterritoriality in Siam. The Harding administration did not interfere with the ratification of the new treaty, which occurred on 27 April 1921. The new treaty made all Americans subject to the jurisdiction of Siamese courts, though the United States consul maintained the right of evocation until five years after the promulgation of the Siamese legal codes. In addition, the revised American treaty renounced all fiscal and tariff restrictions on Siam and provided that either party could terminate the treaty in ten years after submitting one year's notice.

The next step for Siam was to convert the breakthrough of the American treaty into agreements for treaty revision with the other Western powers. On 19 March 1924, Japan signed a new treaty abrogating existing extraterritorial rights, subject to the same right of evocation as the American treaty. With the precedent of two great powers having revised their treaties, Siam approached the other powers to do the same.

One difficulty, however, was that the other powers gave Siam only a low priority. For instance, in autumn 1921, Jacques Seydoux, Quai d'Orsay's commercial affairs expert, confessed to Prince Charoon that preoccupation with European reparations would preclude his studying Siam's treaty proposals for at least a year. Still, despite the delays due to Siam's only tangential relevance to French foreign policy following the First World War, it was clear that 'the prestige value of a big power agreement strengthened Siam's case in the eyes of the French government and caused the French to inquire into terms which previously they had been unwilling to consider'.⁷⁰ Copies of Siam's new treaty with the United States were given to Philippe Berthelot, Secretary-General of the French Foreign Office, for reference purposes after his negotiations with Prince Charoon opened on 9 February 1921.

⁷⁰ Oblas, 'A Very Small Part of World Affairs', p. 72.

Siam's third approach to treaty revision was to use foreign advisers, though at no point did the Siamese government depend solely upon these advisers to implement its foreign policies. Earlier, such advisers had helped direct domestic reforms in Siam. Experience had taught that such negotiators could transcend the limitations of Siam's international inexperience and the prejudices of the local foreign community in Bangkok. For example, Sir John Bowring negotiated some of Siam's early treaties with the European powers. In the same tradition, Edward Stroble, Jens Westengard, Eldon James, and Francis B. Sayre—each serving as American Adviser in Foreign Affairs—helped lay the groundwork for the revision of Siam's treaties.

Early in 1925, Siam sent Sayre to negotiate new treaties directly with Foreign Offices in Europe. Sayre's main approach was to concede all points at issue which were not directly relevant to the recovery of Siam's autonomy. For example, France requested seven guarantees before presenting Siam with an offer for treaty revision. Siam granted six of the points without hesitation; the seventh was met by a promise to engage French advisers in the branches of Siam's government service which were still thought deficient. Similarly, Siam agreed to three additional guarantees in the French jurisdictional proposal, namely: (1) the extension of the right of evocation until five years after promulgation of the codes; (2) the presence of legal advisers in Siam's courts until codification of Siam's legal codes; (3) the need, for a limited time, to have the signatures of two foreign judges in appeal cases involving French citizens. By agreeing to these conditions, Siam paved the way for the signing of a new French treaty in February 1925. Negotiated in the same context but covered in a separate document was a new French-Siamese frontier treaty signed in August 1926.

Sayre then approached the British Foreign Secretary with a similar offer of extended rights of evocation and of guarantees of maximum tariff on certain products for a specified period of time. The foreign office request for further assurances brought encouraging reports from the British minister in Bangkok. Slowly Sayre gathered the concurrent consent of the foreign office, the colonial office, the India office, and the board of trade. After an exchange of letters in which

Britain reserved the right to request further guarantees in the future and in which Siam promised to safeguard British interests as far as possible, the two countries concluded a new treaty in July 1925. Britain renounced its extraterritorial privileges and withdrew British advisers at the law court immediately, and maintained evocation rights only until Siam's legal codes had been promulgated.

Following the new treaties signed by the United States, France, and Britain, Sayre's shuttle diplomacy resulted in five more treaties signed by European countries in 1925 and an additional four in 1926. These treaties, based on the model of the American treaty, were to remain in force for ten years, after which they could be terminated unilaterally upon one year's notice. Thus, after the Siamese legal codes were completed and came into force in October 1935, it was only five years before the right of evocation from Siamese courts became null. In November 1936, the Siamese government notified all remaining treaty powers of its intention to abrogate the remaining extraterritorial provisions in existing treaties. With the United States again taking the lead, new treaties were negotiated to end all special treaty rights in Siam in 1937. By 27 January 1939, with France ratifying its new treaty, extraterritoriality in Siam came to an end.

An arduous effort to fulfil the 'standard of civilization' and to be recognized as a 'civilized' state; a determined attempt to place Siam on the world map as a responsible and respectable member of the international society; and a shrewd use of foreign advisers and flexible approaches to negotiating treaty revisions—all catching the crest of the wave of hope for a more fair and more equal world during the optimism of the early inter-war period—brought the end of extraterritoriality in Siam.

Siam's entry into international society was thus accomplished. 'Certainly by the 1930s, Thailand had become fully recognized by the world powers as a participant in the family of nations as a totally sovereign state which had the right to conduct its own affairs as it saw fit, within the framework of the international legal apparatus of the time'.⁷¹ The only South-east Asian country ever to join the League of Nations, Siam remained independent in large measure because it subscribed to the standard of 'civilization'.

⁷¹ Wilson, 'The Evolution of Foreign Relations', p. 60.

VIII

Conclusions

The need for symbiosis, more than the demand for dialectic, requires that the role played by the standard of 'civilization' in international society be examined from both European and non-European perspectives. This book has sought to demonstrate that the standard of 'civilization' was central to the changes within the European international society and within the non-European countries which sought to enter it. In turn, these changes were aspects of the greater global transformation which paralleled the expansion of the previously European international society into a global 'civilized' society.

During the period that Europe considered itself the political and cultural centre of the world, its standard of 'civilization' became an integral part of the doctrines of recognition in the prevailing international law. The standard of 'civilization' thereby helped define the internal identity and external boundaries of the nineteenth century's dominant international society. Initially identified with Christendom and Europe, the international society of European countries had, in the process of its expansion, added non-European members, thereby coming to consider itself in more general terms, as the society of 'civilized' countries. The 'law of Christian nations' and the 'public law of Europe' likewise became known as the 'law of "civilized" states'.

The standard of 'civilization' regulated the admission of new members into the 'civilized' international society, according to their supposed ability to fulfil the standard's requirements. Positivist legal conceptions made fulfilment of the standard a prerequisite for recognition in international law and for entry into the Family of Nations. In the cases of Russia and the Ottoman Empire, the standard's requirements were not spelled out explicitly. It was assumed that countries familiar with Europe would understand by experience the requirements for admittance to its society. It was also

assumed that candidate or provisional members of the 'civilized' international society would naturally adhere to that society's principles, precepts, and institutions.

The standard of 'civilization' thus became a symbol of the early years of formal relations between the European and non-European countries. 'Unequal treaties', one manifestation of the standard in state practice, were imposed by the West for a full century on a proud and isolationist China; for half a century on a wary and initially resentful Japan; and for three-quarters of a century on a resigned and diffident Siam. Capitulation and protectorate regimes likewise enforced the standard in the Levant and in Africa.

From the European perspective, the standard initially served to guarantee European life, liberty, and property in non-European countries; later, it specified the requirements necessary for non-European countries to enter the international society of 'civilized' countries. From the non-European perspective, the standard was both a guide-line and a stimulus to reform. It gradually if forcibly drew the non-European countries into the European international system, while introducing them to the basic elements of the 'civilized' international society. Japan and Siam accepted the challenge to fulfil the standard's requirements and entered the international society as 'civilized' states. Only after its 'unequal treaties' were finally abrogated in 1943 was China granted 'civilized' status, four years after Siam, and nearly fifty years after Japan.

Despite the arguments of Alexandrowicz and others to the contrary, the nineteenth-century Family of Nations did not constitute a global international system, much less a global international society. Studying the process by which non-European countries entered the international society confirms that the classic view of the Family of Nations was more the conceptual creation of the international theorists than the product of universally-sustained international relations. Hence, the superseding of natural law theories by positivist legal doctrines was responsible neither for the shrinking scope of international law nor for the ostracism of historic non-European countries from a Family of Nations.

On the contrary, the nineteenth-century international lawyers tried heroically to expand the domain of international

law to include the non-European countries which had not before fallen within its aegis. Indeed, at least initially, most non-European countries were unfamiliar with the customs, precepts, and institutions of the European international society. This required that the international society of European states make its otherwise implicit standard explicit in precise legal terms.

This book traced the two-stepped process by which the standard of 'civilization' emerged as an explicit legal principle. The first step included the codification of the standard's requirements in the early treaties signed with non-European countries, and the crystallization of those requirements into rules of customary international law. The second step involved the gradual articulation of the standard's increasingly explicit requirements by the most highly qualified international lawyers of the day. This book then argued that Japan, its 'unequal treaties' abrogated in fact by 1899 and its great power status assured by 1905 if not by 1895, became the first non-European country to gain full international status and full recognition as a 'civilized' power. Even before the Ottoman Empire, it was Japan which first fulfilled the requirements of an explicit standard of 'civilization', codified in treaties, embedded in customary international law, and articulated by the publicists.

Despite the conventional wisdom that an explicit standard existed in 1856 when Europe signed the Treaty of Paris with the Ottoman Empire, two significant facts suggested otherwise. First, 'civilized' legal status was long in coming for the Ottoman Empire. The Ottoman capitulations remained an anomaly after 1856, and unlike Japan's 'unequal treaties', were not abrogated until 1923. Second, the Ottomans were thoroughly familiar with the workings of the international society through centuries of customary intercourse. This suggests that the Ottomans were formally admitted into a society of states of which they were already functionally a part, the standard of which had not been articulated explicitly to them because it had not needed to be.

Close examination of leading nineteenth-century international legal texts corroborated the assertion that the standard of 'civilization' emerged as an explicit legal principle not at the middle, but at the end of the nineteenth century.

It was no coincidence that the standard emerged during the same years (1895-1905) that the United States and Japan entered the international scene. The rise of the United States and Japan, two powerful extra-European international actors, decisively challenged the traditional belief that, in overflowing its banks into the world beyond, Europe would continue to make the ultimate decisions simply by transposing the balance of power from a European to a global plane.

Japan was clearly not a Christian country; neither Japan nor the United States could with complete accuracy be called European powers. However, both could be characterized as 'civilized' states. As such, they joined the ranks of the other 'civilized' states which collectively comprised the 'civilized' international society which met at the Hague Conferences; which jointly suppressed the Boxer attack on the standard of 'civilization'; which attempted to codify laws of war among 'civilized' nations; and which administered the 'sacred trust of civilization'.

Although vestiges of the old standard of 'civilization' still appear in the United Nations Charter and in the Statute of the International Court of Justice (as they appeared in the League of Nations Covenant and the Statute of the Permanent Court of International Justice), Chapter III advanced two explanations for the 'evanescence of the standard of "civilization"'. The first hypothesis is that the standard has long since outlived its usefulness; the countries of the contemporary international society are, by and large, 'civilized' states. Second, (whether because of the standard's nineteenth-century colonial overtones; because of the 'collective hypocrisy' which surrounds the horrors perpetrated by Germany, Italy, and Japan, and from which the other 'civilized' countries did not escape; or because of the continuing 'balance of terror', or whatever one calls the nuclear spectre which haunts this half of the present century) the standard of 'civilization' has been undermined to the point that it is today neither credible nor applicable—at least by that name.

To accept the view that the frontier of the international society is now closed, at least in terms of differences of civilization, is to recognize that most countries are now 'civilized' according to the old standard. They maintain

sufficient domestic law and order that the lives, liberty, and property of foreign nationals do not suffer capricious violation; they have brought their political organizations into conformity with the Montevideo Convention; they have participated in the Vienna Convention on the Law of Treaties and other multinational legal conventions, and are sufficiently involved in the daily practice of international law so as to leave only academic doubts as to whether or not it is law properly so-called; they maintain foreign offices and trained foreign service corps at home and abroad according to accepted diplomatic practices, participate in myriad international convocations, and support the United Nations and its specialized agencies, sometimes politicizing them in the process; and in general, within the broad parameters of their different and sometimes competing political philosophies, they conform or pay lip-service to the contemporary concerns for human rights and non-discrimination, and to the prevalent international mood that the benefits of increasing and modern standards of living should be justly distributed to all. In each of these areas, it would appear that the old standard has served its purpose and has withered away because most of the world's countries, at least to a rudimentary degree, have fulfilled its requirements.

To accept the second explanation, that the standard has become unfashionable in part because of its nineteenth-century colonial overtones, is to recognize that common resentment towards the standard and what it symbolized gives common cause to the 'Third World'. It is also to question what role if any cultural factors play in contemporary international relations. To the extent that a discipline is ultimately the history of that discipline, as R. G. Collingwood formulated, then contemporary international law can no more be dissociated from its nineteenth-century past than the contemporary international society can be separated from the society of states out of which it is still evolving. To deny determinism is not to deny that historical time and space continue to influence, perhaps in subtle ways, events still in the process of occurring.

For example, the 'crisis of international law' which transpired in the 1960s was a direct result of an earlier 'crisis of international law'. Indeed, Europe's effort in the nineteenth

century to place burgeoning relations with non-European countries within the familiar framework of international law constituted the law's first crisis. This first 'crisis of international law' derived from the contradiction inherent within the law's universal aspirations and its requirement that only 'civilized' countries could fully be its subjects.

The non-European countries recognized that a central requirement in the European standard of 'civilization' was adherence to international law. But adopting the legal principles of a foreign standard of 'civilization' posed two unattractive choices. Either it meant surrendering historic legal philosophies and traditions (for the promise of eventual entry into the international society), or it meant rejecting the European law (and facing the threat of being left outside the pale of the law's protection, subject to the possible caprice of unregulated European power). China, Japan, and Siam saw little alternative, especially after the second Opium War and the shelling of Kagoshima, to accepting Europe's international law.

Even had the non-European countries embraced Europe's international law whole-heartedly, it is unlikely that they would have adopted it wholly. The publicists were rightly sceptical (though for the wrong reasons) that the cultural experience and background of some non-European countries would preclude their accepting European law. In many ways, the solution to the first 'crisis of international law' sowed the seeds for the second 'crisis of international law', which began a century later. It should have surprised no one when the newly independent non-European countries sought to use their new memberships in the United Nations and other international bodies to modify the international law which they had earlier perceived to be both foreign and discriminatory.

In this sense, there need be nothing mystical about the concept of cultural factors in international relations. In earlier years, culturally diverse non-European countries defined and distributed political power, domestically and internationally, according to their own standards of 'civilization'. Confrontation with the European standard meant a fundamental clash of cultural and political values. In many non-European countries, power shifted to the progressives

and Western-styled élites. Significantly, as the international society became global, the myriad perceptions of what constituted national power narrowed; the ideas about how that power should be used in the international arena also began to converge.

There is sometimes a tendency to present the historic civilizations of the non-European countries as though they were staid and unchanging before the advent of the West; as though they imbibed Western values and institutions indiscriminately; or as though they were the only countries affected in the European and non-European interaction. Such a view overlooks rich, indigenous sources of change; the process of 'syncretic compromise' which occurred as the non-European countries fulfilled the standard of 'civilization'; and the dynamic accommodation inherent in the mutual interaction of the European and the non-European countries.

Nevertheless, the contemporary international society remains multicultural (as opposed to completely cosmopolitan). Differences in culture, historic and contemporary, continue to affect current international relations. Indeed, an underlying theme throughout this book has been that the politics of culture have been too long overlooked and underestimated. Accordingly, this book has considered four dimensions of the politics of culture.

First, what was true for Siam was also true for China, Japan, and other non-European countries which perceived the European standard of 'civilization' to be different from their own. As Wyatt describes it, implicit in the criticisms of Westerners who worked in Siam during Chulalongkorn's reign was 'a demand that the Thai cease being Thai and become "civilized" like themselves'.¹ As they did in China, in Japan, and in other non-European countries, and even as they had at the time of Peter the Great in Russia, the rulers in Siam:

both admired and feared the West; they wanted to be both Thai and modern; they were asked to move closer to 'civilised' standards yet wished to maintain the continuity that bound them to the values and traditions of their own civilisation; and they wished to be accepted

¹ Wyatt, *The Politics of Reform in Thailand*, p. 377.

by the West as equals, yet were reluctant to pay the high cost of such acceptance.²

In countries throughout the world, cultural compromise meant the fusing, sometimes consciously but often not, of the desirable elements of the European standard with the desirable elements of their own historic standards of 'civilization'. The challenge was (and is) to create 'modern' states without severing historical and cultural roots.

To recognize the resilience of non-European civilizations and to argue that historical and cultural influences still affect contemporary international relations is not pessimistically to predict future Islamic revolutions or Boxer rebellions. However, it is to note that the mobs which attacked the foreign legations during China's Cultural Revolution shouted slogans not dissimilar to those of their Boxer predecessors. And it is also to notice that in Indonesia, to take one example, the upcoming generation of lawyers and government civil servants are unafraid to appeal to traditional elements of customary *adat* law in deciding how local justice can best be served. Traditional, non-European jurisprudential concepts and practices are again finding their place. The confidence of non-European élites in their indigenous cultural roots is increasing. Continuing cultural synthesis suggests resurgent culturalism as much as it does nascent nationalism.

Second, especially from the non-European perspective, one cannot speak of 'modernization' or the 'process of becoming modern' in any kind of historical perspective without referring to what an earlier age called 'civilization' and the 'process of becoming "civilized"'. This historical perspective emphasizes that there are no value-free models of development. Non-European countries especially have long since learned better. Such models are always value-laden; they do not become more objective for being more detached in their terminology or theories. Economic and cultural development are integral; they must not be estranged from human values and norms. Freedom to make better and more human choices must be enhanced by whatever choices are made. It is in this sense correct that political alternatives

² Ibid., p. 380.

now surround the very definition of human rights and the ways that they can best be implemented. As always, the challenge is to match rhetoric to tangible progress in the human condition.

Demands are now being made through the United Nations and its specialized agencies for a new international economic order, a new international information order, and a new international cultural order. A common thread binding the otherwise loose coalition of states commonly called the 'Third World' is their enduring sense of having been measured against a foreign standard of 'civilization' and been found wanting. It was a double insult. It was humiliating for non-European countries to have been declared 'uncivilized', whether 'barbarous' or 'savage'. Further, it was even more agonizing for them to have had their traditional standards of 'civilization' cast aside as effete or inferior. The continued association of military and moral superiority—and of military and moral inferiority—lingers on.

A third dimension of the politics of culture derives from the fact that, in our own day, different ideologies, vying with each other in a struggle for power, have again made cultural standards and norms an issue of confrontation. No country willingly submits to what it considers to be cultural imperialism. Certain countries have come to view any initiative by the West concerning international norms, for instance, those concerned with human rights, as merely a disguised form of 'cultural imperialism'.

Yet, beyond politics, a genuine question remains: How can international norms be delineated and promulgated without infringing on legitimate cultural sovereignty? China's T'ung-Chih reformers searched valiantly but failed to find answers to these questions within China's traditional political culture. Similarly, the old guard in many non-European countries fared poorly in their confrontation with the European standard of 'civilization'. Even in Thailand where Mongkut, Chulalongkorn, and Vajiravudh were in the vanguard of change, the reforms they instituted presaged their own later displacement by a system of constitutional monarchy.

Can societies based on traditional values and historic mores survive in a 'modern' international society? Are such

countries in fact staging a comeback to protect their customary ways of doing things? How historical and cultural factors influence legitimacy today remains crucial to assess, whether from the position of those who actually wield political power, or from the perspective of those who merely exercise its ceremonial trappings.

Because the realm of cultural sovereignty may become the next major arena in the struggle for spheres of influence, historical interpretations of the European confrontation with the non-European world will be increasingly important. In recent times, two theories of how the standard of 'civilization' was promulgated have been advanced to explain Europe's earlier domination of so much of the non-European world. First, as suggested by Alexandrowicz, one line of argument blames positivist trends in international law for Europe's use of coercive military force in imposing the standard on non-European countries. Chapter II of this book argued, in contrast, that, from the time of Vitoria, European international lawyers believed that certain basic rights could and should be defended, by military force when necessary. What changed in the nineteenth century was not so much Europe's willingness to enforce a standard of 'civilization' as Europe's ability to do so.

A more subtle second explanation for the global dissemination of the European standard focuses on the alleged superiority of certain aspects of European civilization and culture, of which military supremacy was only a symbolic part. It is thus sometimes asserted that it was not so much superior European fire-power as superior European organization, health, and bravado which provided the foundation for Europe's success in subduing the non-European countries. Though this kind of explanation rightly emphasizes the importance of social and cultural factors in the interaction between the European and non-European worlds, it may, if taken too far, become a modern apology for the old standard of 'civilization'.

A fourth factor which affects the role that historical and cultural influences play in contemporary international relations stems from increased concern for ethnic differences and cultural pluralism, both in the 'First' and 'Third' Worlds. Beginning for the United States in 1954 with the Supreme

Court decision against segregation in *Brown v. Board of Education*, successive waves of concern for blacks, hispanics, and other racial minorities, and then of concern for women, the aged, children, and other minority groups swept the country. In Great Britain and in other parts of Western Europe, similar issues have become increasingly significant.

It is also quite possible that 'Third World' foreign nationals, following educations in the United States and in Western Europe, are returning to their home countries newly self-conscious of their own ethnic identities, just as Chou Enlai and Ho Chi Minh returned from Europe with revolutionary ideas in their day. Concerns for cultural integrity certainly find historical roots in the non-European countries, but it would be ironic if their modern manifestations in 'Third World' rhetoric found their genesis in what were formerly the European metropolises.

Even so, the politics of culture are not responsible for making the concept of a standard of 'civilization' (though no longer by that name) an important element within the contemporary international society. Rather, particularly when it is not restricted to a narrow legal definition, the concept of the standard (by whatever name) is not new, nor will it ever become old. Some standard of civilization will remain a feature of any international society wherein cultural diversity and pluralism exist coetaneously with hierarchy and anarchy, regardless of how strong the ties of society become.

Abbreviations

<i>A.J.I.L.</i>	<i>American Journal of International Law.</i>
Br. and For. St. Papers	<i>British and Foreign State Papers</i> (Hertslet), vol. i. (1841), continued up to date.
Brierly	Brierly, <i>The Law of Nations</i> , 3rd edn.
Browlie	Browlie, <i>International Law</i> , 3rd edn. (1979).
B. Y.	<i>British Yearbook of International Law.</i>
Chen	Chen Ti-chiang, <i>The International Law of Recognition</i> (1951).
Dickinson	Dickinson, <i>The Equality of State in International Law</i> , (1920).
Fiore	Fiore, <i>International Law Codified</i> . Translation by Borchard from the 5th Italian edition (1918).
Garner	Garner, <i>Recent Development in International Law</i> (1925).
Grotius	Grotius, <i>De Jure Belli ac Pacis</i> (1625).
Grotius Society	<i>Transactions of the Grotius Society.</i>
Hall	Hall, <i>A Treatise on International Law</i> , edition as specified.
Hertslet's Commercial Treaties	Hertslet, <i>Collection of Treaties and Conventions between Great Britain and Other Powers, so far as they relate to Commerce and Navigation</i> , vol. i. (1820), continued to date.
Holland, <i>Lectures</i>	Holland, <i>Lectures on International Law</i> (1898).
Holland, <i>Studies</i>	Holland, <i>Studies in International Law</i> (1898).
Holtzendorff	Holtzendorff, <i>Handbuch des Völkerrechts</i> , 4 vols. (1885-1889).
I.C.J.	International Court of Justice.
<i>I.C.L.Q.</i>	<i>International and Comparative Law Quarterly.</i>
Lauterpacht	Lauterpacht, <i>Recognition in International Law</i> (1947).
Lindley	Lindley, <i>The Acquisition and Government of Backward Territory in International Law</i> (1926).
L.N.T.S.	League of Nations Treaty Series. Publication of Treaties and International Engagements registered with the Secretariat of the League of Nations.
Lorimer	Lorimer, <i>The Institutes of the Law of Nations</i> , 2 vols. (1883-1884).
McNair	McNair, <i>The Law of Treaties: British Practice and Opinions</i> (1938).
Moore	Moore, A., <i>Digest of International Law</i> , 8 vols. (1906).

Off. J. Oppenheim	Official Journal of the League of Nations. Oppenheim, <i>International Law</i> , edition as specified.
PCIJ	Publications of the Permanent Court of International Justice: Series A — Judgments. B — Advisory Opinions. A/B — Cumulative Collection of Judgments and Advisory Opinions given since 1931. C — Acts and Documents relating to Judgments and Advisory Opinions. D — Collection of Texts governing the Jurisdiction of the Court. E — Annual Reports.
Schwarzenberger, A Manual	Schwarzenberger, <i>A Manual of International Law</i> , edition as specified.
Schwarzenberger, Dynamics	Schwarzenberger, <i>The Dynamics of International Law</i> (1976).
Smith	Smith, <i>Great Britain and the Law of Nations, a Selection of Documents</i> , vol. i. (1832), vol. ii. (1935).
Treaty Series	<i>United Kingdom Treaty Series</i> , vol. i. 1892, and a volume every year.
U.N.T.S.	<i>United Nations Treaty Series</i> .
Vattel	Vattel, <i>The Law of Nations</i> (1934).
Vitoria, Franciscus de	Vitoria, Franciscus de, <i>De Indis et de Iure belli: Relectiones</i> (1917).
Westlake, Papers	<i>The Collected Papers of John Westlake on Public International Law</i> , ed. by L. Oppenheim (1914).
Wheaton	Wheaton's <i>Elements of International Law</i> , edition (English or American) as specified.

Select Bibliography

BOOKS

- Akagi, Roy Hidemichi. *Japan's Foreign Relations 1542-1936, A Short History*. Tokyo, Hokuseido Press, 1936.
- Akehurst, Michael. *A Modern Introduction to International Law*, 3rd edn. London, George Allen and Unwin, 1978.
- Alexandrowicz, C. H. *The European-African Confrontation*, Leiden, A. W. Sijthoff, 1973.
- *An Introduction to the History of the Law of Nations in the East Indies*. Oxford, OUP, 1967.
- Anand, R. P. and Quisumbing, Purification V., eds. *ASEAN Identity, Development, and Culture*. Philippines, University of the Philippines Law Center and East-West Center, 1981.
- Aron, Raymond. *Progress and Disillusion: The Dialectics of Modern Society*. New York, Praeger, 1969.
- Auty, Robert, and Obelensky, Dimitri, eds. *An Introduction to Russian History*. Cambridge, Cambridge University Press, 1976.
- Banno, Masataka. *China and the West. 1858-1861. The Origins of the Tsungli Yamen*. Cambridge, Mass., Harvard University Press, 1964.
- Barracrough, Geoffrey. *An Introduction to Contemporary History*. Harmondsworth, Pelican Books, 1967.
- Beasley, W. G. *The Meiji Restoration*. Stanford, California, Stanford University Press, 1973.
- Beeching, Jack. *The Chinese Opium Wars*. New York, Harcourt Brace Javanovich, 1975.
- Beer, G. L. *African Questions at the Paris Peace Conference*. New York, Macmillan Co., 1923.
- Bozeman, Adda Bruemmer. *The Future of Law in a Multicultural World*. Princeton, NJ, Princeton University Press, 1971.
- *Conflict in Africa: Concepts and Realities*. Princeton, NJ, Princeton University Press, 1971.
- Brierly, J. L. *The Law of Nations*. Oxford, OUP, 1928.
- Brandel, Fernand. *Structure of Everyday Life*, vol. 1. New York, Harper and Row, 1982.
- Brownlie, Ian. *International Law*, 3rd edn. Oxford, OUP, 1979.
- *International Law and the Use of Force by State*. Oxford, OUP, 1963.
- Bull, Hedley. *The Anarchical Society*. London, The Macmillan Press, 1977.
- Butterfield, Herbert, and Wight Martin, eds., *Diplomatic Investigations*. London, George Allen and Unwin, 1966.

- Cady, John F. *The History of Post-War Southeast Asia*. Athens, Ohio, 1974.
- *Southeast Asia: Its Historical Development*. USA, McGraw-Hill Book Company, 1964.
- Chadwick, Owen. *The Secularization of the European Mind in the Nineteenth Century*. Cambridge, Cambridge University Press, 1975.
- Chang, Hsin-pao. *Commissioner Lin and the Opium War*. Cambridge, Mass., Harvard University Press, W. W. Norton and Co., 1970.
- Chang, Richard T. *From Prejudice to Tolerance*. Tokyo, Sophia University Press, 1970.
- Chen, Ti-chiang. *The International Law of Recognition*. London, Stevens and Sons, under the auspices of the London Institute of World Affairs, 1951.
- Chiang Kai-shek. *China's Destiny*, trans. Wang Chung-hui. New York, Macmillan Co., 1947.
- *Soviet Russia in China*, revised edition. Taipei, Taiwan, China Publishing Co., 1969.
- Chien, Frederick Foo. *The Opening of Korea: A Study of Chinese Diplomacy*. Hamden, Conn., The Shoe String Press Inc., 1967.
- Chowdhuri, R. N. *International Mandates and Trusteeship Systems*. The Hague, Martinus Nijhoff, 1955.
- Cohen, Jerome Alan, and Chiu, Hungdah. *People's China and International Law*. 2 vols. Princeton, NJ, Princeton University Press, 1974.
- Collingwood, R. G. *The New Leviathan*. Oxford, Clarendon Press, 1942.
- Curtain, Philip D. *The Image of Africa*. USA, University of Wisconsin Press, 1964.
- Davidson, Roderic H. *Reform in the Ottoman Empire 1856-1974*. Princeton, NJ, Princeton University Press, 1963.
- Dehio, Ludwig. *Germany and World Politics in the Twentieth Century*. New York, Knopf, 1959.
- Dickinson, Edwin DeWitt. *The Equality of State in International Law*, Harvard Studies in Jurisprudence Vol. III. Cambridge, Mass., Harvard University Press, 1920.
- Donelan, Michael, ed. *The Reason of States*. London, George Allen and Unwin, 1978.
- Edwards, Michael. *Asia in the European Age 1498-1955*. London, Thames and Hudson, 1961.
- Elvin, Mark and Skinner, G. William, eds. *The Chinese City Between Two Worlds*. Stanford, California, Stanford University Press, 1974.
- Engles, David M. 'Law and Kingship in Thailand', *Michigan Paper on South and Southeast Asia*, No. 9. Ann Arbor, University of Michigan, 1975.
- Fairbank, John K. *China Perceived*. USA, Random House, Vintage Books, 1976.
- ed. *Chinese Thought and Institutions*. Chicago, Chicago University Press, 1957.
- ed. *The Chinese World Order*. Cambridge, Mass., Harvard University Press, 1968.

- Fairbank, John K., ed. *Trade and Diplomacy on the China Coast: The Opening of the Treaty Ports 1842-54*. Cambridge, Mass., Harvard University Press, 1953.
- Fiore, Pasquale. *International Law Codified*, 5th Ital. edn., trans. Edwin S. M. Borchard. New York, Baker, Voorhis and Company, 1918.
- Fishel, Wesley, R. *The End of Extraterritoriality in China*. Berkeley and Los Angeles, University of California Press, 1952.
- Fitzgerald, Charles P. *The Chinese View of Their Place in the World*. London, Royal Institute of International Affairs, 1964.
- Flint, John, *Cecil Rhodes*. London, Hutchinson, 1976.
- Frowde, Henry, ed. *The Works of the Right Honourable Edmund Burke*, vol. III, Oxford, OUP, 1906.
- Gann, L. H. and Duignan, Peter, eds. *Colonialism in Africa, 1870-1960*, 5 vols. Cambridge, Cambridge University Press, 1969-73.
- Garner, James, W. *Recent Developments in International Law*. Tagore Law Lectures, 1922. India, University of Calcutta, 1925.
- Geertz, Clifford. *The Interpretation of Cultures*. London, The Anchor Press Ltd., 1975.
- Gilbert, Rodney. *The Unequal Treaties*. London, John Murray, 1929.
- Gray, Jack, ed. *Modern China's Search for a Political Form*. London, OUP, under the auspices of the Royal Institute of International Affairs, 1969.
- Grey, Ian. *Peter the Great*. London, Hodder and Stoughton, 1962.
- Grosse-Aschhoff, Angelus. *The Negotiations Between Ch'ü-Ying and Lagrené 1844-1846*. New York, The Franciscan Institute, 1950.
- Hall, H. E. Duncan. *Mandates, Dependencies and Trusteeship*. London, Stevens and Sons, 1948.
- Hall, William Edward. *A Treatise of International Law*, 2nd edn. Oxford, Clarendon Press, 1884; 3rd edn. Oxford, Clarendon Press, 1890; 4th edn. Oxford, Clarendon Press, 1895; 5th edn. edited by J. B. Atlay. London, Stevens and Sons, 1904; 6th edn., edited by J. B. Atlay. London, Stevens and Sons, 1909.
- Hardie, Frank. *Abyssinian Crisis*. London, Batsford, 1974.
- Hay, Denys, *Europe: The Emergence of an Idea*, revised edn. Edinburgh, Edinburgh University Press, 1968.
- Hingley, Ronald. *A Concise History of Russia*. London, Thames and Hudson, 1972.
- Hinckley, Frank E. *American Consular Jurisdiction in the Orient*. Washington DC, W. H. Lowdermilk and Co., 1906.
- Holbraad, Carsten. *The Concert of Europe*. London, Longman, 1970.
- Holland, T. E. *Studies in International Law*. London, Clarendon Press, 1898.
- *Lectures on International Law*. London, Sweet and Maxwell, 1933.
- Hsu, Immanuel C. Y. *China's Entrance into the Family of Nations*. Cambridge Mass., Harvard University Press, 1960.
- *Readings in Modern Chinese History*. New York, OUP, 1971.
- Hughes, H. Stuart, *Consciousness and Society: The Reorientation of European Social Thought*. London, MacGibbon and Kee, 1959.

- Hull, William I. *The Two Hague Conferences*. Boston, Ginn and Company, 1908; reprint edn. New York, Kraus Reprint Co., 1970.
- Ingram, James C. *Economic Change in Thailand 1850-1970*. new edn. Stanford, Stanford University Press, 1971.
- Iriye, Akira. *Power and Culture*. Cambridge, Mass., Harvard University Press, 1981.
- Jansen, Marius B. *Changing Japanese Attitudes Toward Modernization*. Princeton, NJ, Princeton University Press, 1965.
- Jones, A. H. M. and Monroe, Elizabeth. *A History of Abyssinia*. Oxford, Clarendon Press, 1935; reprinted 1978.
- Jones, F. C. *Extraterritoriality in Japan and the Diplomatic Relations Resulting in its Abolition 1853-1899*. New Haven, 1931; reprint edn. New York, AMS Press, 1970.
- Keeton, G. W. *The Development of Extraterritoriality in China*, 2 Vols. London, Longmans, Green and Co., 1928.
- Kiernan, V. G. *The Lords of Human Kind*. London, Weidenfeld and Nicolson, 1969.
- Keith, Arthur Berriedale. *The Belgian Congo and the Berlin Act*. Oxford, OUP, 1919.
- Kim, C. I. Eugene, and Kim, Han-kyo. *Korea and the Politics of Imperialism 1876-1910*. Berkeley and Los Angeles, University of California Press, 1967.
- Kim, Key-Hiuk. *The Last Phase of the East Asian World Order*. USA, University of California Press, 1980.
- Kluchevsky, V. C. *A History of Russia*, trans. C. J. Hogarth. New York, Russell and Russell, 1960.
- Koch, H. W. *Origins of the First World War*. London, Macmillan Press, 1972.
- Kosaka, Masaaki, ed. *Japanese Culture in the Meiji Era*, Vol. IX, 'Thought', trans. David Abosch. Tokyo, Pan-Pacific Press and Kasai Publishing Co., 1959.
- Lauterpacht, H. *Recognition in International Law*. Cambridge, Cambridge University Press, 1947.
- Lehmann, Jean-Pierre. *From Feudal Isolation to World Power, 1850-1905*. London, George Allen and Unwin, 1978.
- Lewis, Bernard. *The Emergence of Modern Turkey*. Oxford, OUP, 1962.
- *The Middle East and the West*. London, Weidenfeld and Nicolson, 1964; reprinted 1968.
- Likhit, Dhiravegin. *Siam and Colonialism (1855-1909): An Analysis of Diplomatic Relations*. Bangkok, Thai Watana Panich Co., 1975.
- Lindley, M. F. *The Acquisition and Government of Backward Territory in International Law*. London, Longmans, Green and Co., 1926.
- Liu, Shih-shun. *Extraterritoriality: Its Rise and Decline*. New York, Columbia University Press, 1925.
- Lockhart, John Gilbert and Woodhouse, C. M. *Cecil Rhodes*. New York, Macmillan, 1963.
- Lorimer, James. *Institutes of Law*, 2nd edn. Edinburgh and London, William Blackwood and Sons, 1880.

- Lorimer, James. *Institutes of the Law of Nations*. Vol. I-II. Edinburgh and London, William Blackwood and Sons, 1883.
- Luard, Evan. *Types of International Society*. New York, The Free Press, 1976.
- Macartney, Lord George. *An Embassy to China*, ed. J. L. Cranmer-Byng. London, Longman, 1962.
- Manich Jumsai. *History of Thai-German Relations*. Bangkok, Charlemnit, 1978.
- *King Mongkut and Sir John Bowring*. Bangkok, Charlemnit, 1970.
- Massie, Robert K. *Peter the Great: His Life and World*. New York, Knopf, 1980.
- Moffat, Abbot L. *Mongkut, the King of Siam*. New York, Cornell University Press, 1969.
- Moore, Charles A., ed. *The Japanese Mind*. Honolulu, East-West Center Press, University of Hawaii, 1967.
- Morley, James W. *Japan's Foreign Policy 1868-1941*. New York, Columbia University Press, 1974.
- Morse, Hosea Ballou. *The International Relations of the Chinese Empire*, 3 vols. London, Longmans, Green, and Co., 1910.
- and MacNair, Harley Farnsworth. *Far Eastern International Relations*. Cambridge, Mass., Houghton Mifflin Co., 1931.
- Nelson, M. Frederick. *Korea and the Old Orders in Eastern Asia*. Louisiana, Louisiana State University Press, 1945.
- Nish, Ian. *Japanese Foreign Policy 1869-1942*. London, Routledge and Kegan Paul, 1977.
- Nozari, Fariborz. *Unequal Treaties in International Law*. Stockholm, S-Byran Sundt and Co., 1971.
- Nussbaum, Arthur. *A Concise History of the Law of Nations*, revised edn. New York, Macmillan, 1962.
- Oakes, Augustus, ed. *The Great Treaties of the 19th Century*, reprint edn. Oxford, OUP, 1970.
- Ojha, Ishwer C. *Chinese Foreign Policy in an Age of Transition: The Diplomacy of Cultural Despair*. Boston, Beacon Press, 1971.
- Oppenheim L. *International Law*. London, Longmans, Green and Co., 1905; 2nd edn. 1912; 3rd edn., Ronald F. Roxburgh, ed., 1920; 4th edn., Arnold B. McNair, ed. 1928; 5th edn., H. Lauterpacht, ed. 1937; 6th edn., H. Lauterpacht, ed. 1947; 7th edn., H. Lauterpacht, ed. 1948; 8th edn., H. Lauterpacht, ed. 1955.
- Panikkar, K. M. *Asia and Western Dominance: A Survey of the Basco Da Gama Epoch of Asian History 1498-1945*. London, George Allen and Unwin, 1953.
- Parry, Clive. *Sources of International Law*. Manchester, Manchester University Press, 1965.
- Pelcovits, Nathan. *Old China Hands and the Foreign Office*. New York, Kings Crown Press, 1948.
- Philimore, Robert. *Commentaries on International Law*. London, William G. Benning and Co., 1854.
- Pluvier, Jan. *South-East Asia from Colonialism to Independence*. Kuala Lumpur, OUP, 1974.

- Price, Don C. *Russia and the Roots of the Chinese Revolution 1896-1911*. Cambridge, Mass., Harvard University Press, 1974.
- Prachoom Chomchai. *Chulalongkorn the Great*. Tokyo, East Asian Cultural Studies Series No. 8, 1965.
- Proceedings: Seventh IAHA Conference, Bangkok 22-26 August 1977*. Bangkok, Chulalongkorn University Press, 1979.
- Reischauer, Edwin O. *Japan*, revised edn., USA, Alfred A. Knoff, Inc., 1974.
- Riggs, Fred W. *Thailand: The Modernization of a Bureaucratic Polity*. Honolulu, East-West Center Press, 1967.
- Roling, B. V. A. *International Law in an Expanded World*. Amsterdam, The Netherlands, Djambatan N.V., 1960.
- Rong Syamananda. *A History of Thailand*. Bangkok, Thai Watana Panich Co., 1977.
- Rosenne, Shabtai. *The International Court of Justice*. Leiden, The Netherlands, A. W. Sijthoff, 1957.
- Sansom, G. B. *The Western World and Japan*. London, The Cresset Press, 1950; reprint edn., 1965.
- Sayer, Francis B. *Glad Adventure*. New York, Macmillan, 1957.
- Scalapino, Robert A., ed. *The Foreign Policy of Modern Japan*. USA, University of California Press, 1977.
- Schram, Stuart. *Mao Tse-tung*. Harmondsworth, Pelican Books, 1975.
- Schwarzenberger, Georg. *A Manual of International Law*. London, Stevens and Sons, 1947; 2nd edn. 1950; 3rd edn. 1952; 4th edn., 2 vols. 1960; 5th edn. 1967; 6th edn. (with Brown, E. B.). Abingdon, Professional Books, 1976.
- *The Dynamics of International Law*. Abingdon, Professional Books, 1976.
- Scott, Gary L. *Chinese Treaties*. New York, Oceana Publications, Dobbs Ferry, 1975.
- Shively, Donald H., ed. *Tradition and Modernization in Japanese Culture*. Princeton, Princeton University Press, 1971.
- Siffin, William. *The Thai Bureaucracy Institutional Change*. Honolulu, East-West Center Press, 1966.
- Simon, W. M. *European Positivism in the 19th Century*. New York, Cornell University Press, 1966.
- Skinner, George W. and Kirsch A. T. ed. *Change and Persistence in Thai Society, Essays in Honor of Lauristan Sharp*. Ithaca, Cornell University Press, 1975.
- Slade, Ruth. *King Leopold's Congo*. London, OUP, 1962.
- Steinberg, David Joel, et al. *In Search of Southeast Asia*. London, Pall Mall Press, 1971.
- Stern, Fritz. *The Varieties of History*, 2nd edn. London, World Publishing Co., 1970.
- Stoddard, Theodore Lothrop. *The Rising Tide of Color Against White World-Supremacy*. Westport, Conn., Negro University Press, 1971; originally c.1920.
- Storry, Richard. *Japan and the Decline of the West in Asia 1894-1943. The Making of the 20th Century*. London, The Macmillan Press, 1979.

- Storry, Richard. *A History of Modern Japan*. Harmondsworth, Penguin Books, 1960; revised edn. 1968.
- Sze, Tsung-yu. *China and the Most Favored-Nation Clause*. USA, Fleming H. Revell Co., 1929; reprint edn. Taipei, Taiwan, Ch'eng Wen Publishing Co., 1971.
- Takahashi, Sakuye. *Cases on International Law During the Chino-Japanese War*. Cambridge, Cambridge University Press, 1899.
- *International Law Applied in the Russo-Japanese War*, Am. edn. New York, The Banks Law Publishing Co., 1908.
- Teng, Ssu-yu and Fairbank, John K. *China's Response to the West: A Documentary Survey 1839-1923*. Cambridge, Mass., Harvard University Press, 1961.
- *Chang Hsi and the Treaty of Nanking 1842*. Chicago, Illinois, University of Chicago Press, 1944.
- Tinker, Hugh. *Race, Conflict and the International Order. The Making of the 20th Century*. London, Macmillan Press, 1977.
- Triska, Jan F. and Slusser, Robert M. *The Theory, Law and Policy of Soviet Treaties*. Stanford, California, Stanford University Press, 1962.
- Thompson, Virginia. *Thailand: The New Siam*, 2nd edn. New York, Paragon Book Reprint Corp., 1967.
- Tucker, Robert W. *The Inequality of Nations*. New York, Basic Books Inc., 1970.
- Tung, William L. *China and the Foreign Powers: The Impact and Reaction to Unequal Treaties*. New York, Oceana Publications, Inc., Dobbs Ferry, 1970.
- Tunkin, G. I. *Theory of International Law*, trans. William E. Butler. London, George Allen and Unwin, 1974.
- Vattel, Emerich De. *The Law of Nations*, ed. Joseph Chitty. London, Stevens and Sons, 1834.
- Vella, Walter F. *The Impact of the West on Government in Thailand*. Berkeley, University of California, 1955.
- *Siam under Rama III, 1824-1861*. New York, J. J. Augustin, Inc., 1957.
- Verzijl, J. H. W. *International Law in Historical Perspective*. The Netherlands, A. W. Sijthoff, 1968.
- Vincent, John Carter. *The Extraterritorial System in China*. Harvard East Asian Monographs, no. 30. Cambridge, Mass., Harvard University Press, 1970.
- Vitoria, Franciscus de. *De Indis et de Ivre Belli: Relectiones*, ed. Ernest Nys. Washington, DC, Carnegie Institute of Washington, Gibson Brothers, 1917.
- Walters, F. P. *A History of the League of Nations*. Oxford, OUP, 1952.
- Walzer, Michael. *Just and Unjust Wars*. Harmondsworth, Penguin Books, 1978.
- Ward, Robert E., ed. *Political Development in Modern Japan*. Princeton, Princeton University Press, 1968.
- and Rustows, Dankwait A., ed. *Political Modernization in Japan and Turkey*. Princeton, Princeton University Press, 1964.

- Westlake, John, *Collected Papers of John Westlake*, ed. L. Oppenheim. Cambridge, Cambridge University Press, 1914.
- Wheaton, Henry. *Elements of International Law*. Philadelphia, Care, Lea and Blanchard, 1836; 2nd edn. Philadelphia, 1836; 3rd edn. Philadelphia, 1848; French edn. Paris, 1846; 2nd French edn. Paris, 1853; Chinese edn. 1864; 6th edn. USA, 1855; 7th edn., ed. by Mr W. B. Lawrence. USA, 1863; 8th edn., ed. by R. H. Dana. USA, 1866; English edn., ed. by A. C. Boyd. GB, 1874; 2nd English edn., ed. by A. C. Boyd. GB, 1880; 3rd English edn., ed. by A. C. Boyd. GB, 1889; 4th English edn., ed. by J. Beresford. GB, 1904; 5th English edn., ed. by Coleman Phillipson. GB, 1916; 6th English edn., ed. by S. A. Berriedale Keith. GB, 1929; 7th English edn., ed. by A. B. Keith. GB, 1940.
- Wight, Martin, *Power Politics*, ed. Hedley Bull and Carsten Holbaad. Leicester, Leicester University Press, 1978.
- *Systems of States*, ed. Hedley Bull. Leicester University Press, 1977.
- Williams, Lea E. *Southeast Asia: A History*. New York, OUP, 1976.
- Williams, Harold S. *Tales of the Foreign Settlements in Japan*. Tokyo, Charles E. Tuttle Co., 1959.
- Willoughby, Westel W. *China at the Conference*. Baltimore, Johns Hopkins Press, 1922.
- *Foreign Rights and Interests in China*. Baltimore, Johns Hopkins Press, 1920.
- *Maritime Customs, Treaties, Conventions between China and Foreign States*, 2nd edn. Shanghai, Inspector General of Customs, 1917.
- *Ministry of Foreign Affairs, Treaties of 1928 and Related Papers*. Shanghai, Kelly and Walsh Ltd., 1929.
- Wright, Mary C. *The Last Stand of Chinese Conservatism: The T'ung-chih Restoration, 1862-1874*. Stanford, California, Stanford University Press, 1967.
- Wright, Quincy. *Mandates under the League of Nations*. Chicago, University of Chicago Press, 1930.
- Wyatt, David K. *The Politics of Reform in Thailand: Education in the Reign of King Chulalongkorn*. New Haven and London, Yale University Press, 1969.

ARTICLES

- Alexandrowicz, C. H. 'The Juridical Expression of the Sacred Trust of Civilization.' *American Journal of International Law*, 65 (1971): 155.
- Anand, R. P. 'Attitude of the Asian-African Countries towards Certain Problems of International Law.' *International Comparative Law Quarterly*, 15 (1966): 55-75.
- Barton, Frank Thomas. 'Siam: Buffer State or Gradual Piecemeal Consumption?' *The Journal of Geography*, LXIII (October 1964).
- Beasley, W. G. 'Tradition and Modernization in Post-War Japan', *Asian Affairs*, XI (Old Series Vol. 67) Part I (February 1980): 5-17.

- Dhaninirat, His Highness Prince. 'Siamese History and Culture of Siam.' *SEATO Lectures*, 1960.
- Dore, Ronald, 'Prestige Factor in International Affairs.' *International Affairs* (April 1975).
- Hurewitz, J. C. 'Ottoman Diplomacy and the European State System,' *The Middle East Journal* (Spring 1961).
- Ishii, Kikujiro. 'The Permanent Bases of Japanese Foreign Policy.' *Foreign Affairs* (April 1975).
- James, Eldon R. 'Jurisdiction over Foreigners in Siam.' *American Journal of International Law*, 16 (1922): 585.
- Kullada Kesboonchoo. 'The Patterns of Thai Diplomacy: A Historical Study.' *The Journal of Social Sciences* 10, No. 4, (October 1973): 42-53.
- Luang Nathubanja. 'Extraterritoriality in Siam.' *Bangkok Daily Mail* (1924).
- Malawer, Stuart S. 'Imposed Treaties and International Law.' *California Western International Law Journal*, 17 (Winter 1977).
- Nussbaum, Arthur. 'Frederic de Martens: Representative Tsarist writer on International Issues.' *Nordisk Tidsskrift for International Ret*, XXII (1952).
- Oblas, Peter B. 'Treaty Revision and the Role of the American Foreign Affairs Adviser 1909-1925.' *Journal of the Siam Society* (January 1972): 171-86.
- '“A Very Small Part of World Affairs,” Siam's Policy on Treaty Revision and the Paris Peace Conference.' *Journal of the Siam Society* (July 1971).
- Robinson, R. E. 'Law Applicable in Native Courts.' *Journal of African Administration*, I, No. 4 (4 Oct. 1949).
- Sarasin Viraphol. 'Law in Traditional Siam and China.' *Law Journal of Marut Bunney International Law Office*, 4, No. 3 (1975).
- Sayre, Francis B. 'The Passing of Extraterritoriality in Siam.' *American Journal of International Law*, XXII (1928): 70-9.
- Schwarzenberger, Georg. 'The Standard of Civilisation in International Law', *Current Legal Problems* (1955).
- Seebis, Joseph, S. 'China's Jesuit Century.' *The Wilson Quarterly* (Winter 1978).
- Sinha, Trakash, S. 'Perspective of the Newly Independent States on the Binding Quality of International Law.' *International Comparative Law Quarterly*, 14 (1965): 121-31.
- Sinee Kamalanavin. 'Thai Nobility in its Contact with European Culture at the Turn of the Century.' *Thai Journal of Development Administration* (January 1969): 110-16.
- Sumet Junsai. 'The first Siamese Embassy to Europe.' *The Voice of the Nation*, Bangkok. (17 February 1974.)
- Tarling, Nicholas. 'The Bowring Mission: Capt. A. Mellersh, Commander of H.M. Steam Sloop, *Rattler*.' *Journal of the Siam Society* (January 1975).
- Turner, Sir Skinner. 'Extraterritoriality in China.' *British Yearbook of International Law*, X (1921): 61.

- Varma, Prem. 'Unequal Treaties in Modern International Law.' *Eastern Journal of International Law*, VII, No. 1 (April 1975): 56-79.
- Williams, Benjamin H. 'The Protection of American Citizens in China: Extraterritoriality.' *American Journal of International Law*, 16 (1922): 43-58.
- Wood, Hugh McKinnon. 'The Treaty of Paris and Turkey's Status in International Law.' *A.J.I.L.* (1943).
- Young, Kenneth T. 'The Special Role of American Advisers in Thailand 1902-1949.' *Asia* (Spring 1969): 1-31.

DOCUMENTS

- Council of International Affairs Information. *Bulletin*. 'Opium Suppression in China', Vol. 1, No. 9. (Nanking Council of International Affairs, 1936.)
- Commission on Extraterritorial Jurisdiction in China. Department of State. Washington. 'Report on the Commission on Extraterritoriality in China.' Peking, September 16, 1926.
- Djonovich, D. J., ed. *U.N. Resolutions* Vol. VIII. New York, Oceana Publishers, 1974.
- General Act of the Conference of Berlin, *Parliamentary Papers*. Congo 1883-1913, Africa No. 3 (1886). London, Harrison and Sons, 1913.
- Hertslet, Godfrey E. P., ed. *Hertslet's China Treaties* 3rd edn. London, Harrison and Sons, 1908.
- International Court of Justice Reports*.
- League of Nations. *Documents Concerning the Adoption of the Statute of the Permanent Court*. 1921.
- *Official Journal*. 1923.
- *Verbatim Record*. 1923.
- Leiber, Francis. 'Instructions for Government of Armies in the Field.' US Army. *General Orders* No. 100, 1863.
- Maritime Customs. *Treaties, Conventions, Etc. between China and Foreign States* 2nd edn. Shanghai, The Inspectorate General of Customs, 1917.
- Ministers of Foreign Affairs. *Treaties of 1928 and Related Papers*. Shanghai, Kelly and Walsh, 1929.
- Parliamentary Debates*, House of Lords.
- Parry, Clive, ed. *The Consolidated Treaty Series*. New York, Oceana Pub. Inc., 1969.
- Permanent Court of International Justice Advisory Committee of Jurists. *Documents Presented to the Committee Relating to Existing Plan for the Establishment of a PCIJ*. London, 1920.
- Permanent Court of International Justice, Statutes and Rules* Leyden, Netherlands, A. W. Sijthoff, 1922.
- Scott, James Brown, ed. *The Hague Conventions and Declarations of 1899 and 1909*. New York, OUP, 1915.
- ed. *Texts of the Peace Conferences at the Hague 1899 and 1907*. Boston, Ginn and Company, 1908.

- Scott, James Brown, ed. *Resolutions of the Institute of International Law Dealing with the Law of Nations*. New York, OUP, 1916.
- Thai Department of Publicity. *How Thailand Lost Her Territories to France*. Bangkok, November 1940.
- The Times*.
- United Nations. *United Nations International Law Commission Year-book*. (1949.)

UNPUBLISHED MANUSCRIPTS

- Anchalaporn Komonsewin. 'Thailand's Foreign Relations in the Reign of King Vajiravudh (B.E. 2453-2468).' Chulalongkorn University Master's Thesis, 1975. Thesis in Thai, abstract only in English.
- Battye, Noel Alfred. 'The Military Government and Society in Siam 1868-1910: Politics and Military Reform During the Reign of King Chulalongkorn.' Cornell, Ph.D. Thesis, 1974.
- Kanjane Somkaitkul. 'Corruption: An Analysis of the Modernization during the Reign of King Rama V (1868-1910).' Chulalongkorn University, Master's Thesis, 1976. Thesis in Thai, abstract only in English.
- Nagazumi, Akira. 'Toward the Abolition of the Unequal Treaties—the cases of Japan and Thailand.' Conference Proceedings, March 19-20, 1976, 'The Emergence of Modern States, Thailand and Japan'.
- Oblas, Peter, 'Siam's Efforts to Revise the Unequal Treaty System in The Sixth Reign (1910-1925).' University of Michigan Ph.D. Dissertation, 1975.

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