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Reinventing Cosmopolitanism: International Legal Order in Classical Chinese Canons

1. *The Poverty of Chinese cosmopolitanism*

- Chinese cosmopolitanism has been increasingly debated and discussed in areas such as history, sociology and anthropology.
- However China's voice has been marginalized if not excluded in international political and legal theories; discussions in these areas are mostly dominated by Western discourses.
- Moreover, China seems to have little intention to assert her voice in the field of international political and legal theories.
- In contemporary times China has been identified with nationalism, statism, patriotism and exceptionalism. At the same time China is becoming a responsible stakeholder of international affairs and her engagement in the international community is increasing. Thus the speaker is interested in making Chinese canons more inclusive and engaging, and in particular explore how these canons may contribute to the discussions of international rule of law and global justice.

2. *The methodological platform – comparative jurisprudence*

- The notion of “comparative jurisprudence” is coined by the speaker; it is used to describe the method applied in justifying the comparability between international law in the pre-Qing era and modern international law.
- This method together with the Chinese origin of international law debate (*Gongfa Zhongyuan* 公法中源) serves as the context of the Chinese origin of cosmopolitan legal order.
- Disciplines such as international law and comparative law are inadequate in this study. This is because these disciplines have been dominated by western scholars. Moreover, they often deny the existence of international law in non-western cultures and legal traditions. Chinese law has been marginalized by international law and is seen as nothing more than a regional strand of law within the Asian legal tradition. The connection between Chinese law and international law is rarely mentioned in comparative law.
- Third World Approaches to International Law (TWAIL) puts colonialism and imperialism at the heart of international law. It argues that colonialism and imperialism are ingrained in international law and that international law's violent origins should not be forgotten. While TWAIL remains a critical voice in the study of international law, it is also limiting in that third world legal orders is approached in a particular framework.

- Peter de Cruz's theory of convergence argues that the common nature of human beings will lead to the creation of similar social structures, laws and legal systems; and this common nature will therefore be observed and expressed by law.
- Comparative jurisprudence borrows such vision and categorized itself as a method capable of critically reexamining legal agendas, heritages of ideas and conceptual tools. Comparative jurisprudence aims to think in more global terms so as to maintain a pluralist and democratized notion of international law.
- The ethical and intellectual necessity in finding a global-inclusive approach to international law can be traced back to Johann Wolfgang von Goethe's concept of world literature. Such attempts to break orders of political and linguistic tradition has a grand utopian vision of global synthesis. It upholds a universalist vision in which the particularities of specific national traditions are embraced and seen together as a transcendental whole.

3. Traces of public international law in pre-Qin period

- The Chinese origin of public law (*Gongfa Zhongyua* 公法中源) is a debate originated in late Qin.
- Scholars participating in the debate used the method of matching concepts (*Geyi* 格義). Matching concepts is a Chinese Buddhist method of interpretation originated in the 3rd century. It aims to make sense of Sanskrit canons and Confucian canons by comparing similar concepts.
- The debate had a bitter beginning: China began to learn of international law in the wake of foreign aggression that marked the century of humiliation. As a practical and psychological response, China yearned for something within her indigenous language and culture that is comparable to international law; moreover China also wanted to make international law locally comprehensible.
- The findings of the debate were twofold:
 1. Intentional law exist in pre-Qin china.
 2. International law in pre-Qin china is applicable to the rest of the world.
- The debate can be divide into 4 phrases
 - I. 1861 – 1895: the Self-Strengthening Movement
 - The most prominent publication is William A. P. Martin's *Traces of International Law in Ancient China* (中國古世公法論略) published in 1883
 - Martin found a Grotian and Kantian echo in *the Book of Rites* (周禮) and *the Spring and Autumn Annals* (春秋)
 - These classical text became central to the search of traces of international law in pre-Qin China
 - II. The Hundred Day's Reform Period
 - This period is dominated by late Qin intellectuals. For instance Liang Qichao argues that while Hugo Grotius wrote international law, Confucius wrote the internal laws for the world.

III. The Republican Era

- Wellington V.K. Koo gave a speech in 1944 titled “the Ancient China’s League of Nations” in which he compared pre-Qin legal order with the League of Nations. He drew from Mozi and Confucius when discussing universal human rights. He also stated that the thought of international brotherhood has been deeply rooted in the minds of the Chinese for more than 2000 years.

IV. PRC period

- Wang Tieya stated in a speech given in 1990 that the principles and rules in the relations among the feudal principalities under the Zhou is similar to that of modern international law.
- The implications of the debate is that different interpretations of the two classical Chinese canons (*the Book of Rites* and *the Spring and Autumn Annals*) result in different understandings of international law and different orientation to international ethics and world view.
- The hermeneutics of the two canons are of fundamental importance to the innovation of Chinese international relations today. The reinterpretation of these canons can be seen as a reactive measure to western modernity.
- Throughout Chinese history, each attempt to reinterpret these canons serves as a political thermometer that indicates China’s position in reshaping her international ethics and world view.
- The significance of reinterpretation today is not just about how the PRC reconstructs her position but how the reconstructed Chinese norms and principles may influence other actors in international relations.
- In the past one and a half century, Chinese scholars had to find ways to adapt to international legal norms and orders in the face of a rapidly changing international order. They look into classical canons for answers. Now the same question remains. The PRC has to position herself in the contestation of Westphalian and post-Westphalian values. There is an urgent need to look into the canons for answers again.
- We should Look beyond legal positivism and investigate whether there has even been a Chinese tradition that is akin to natural law and is capable of making meaningful conversations with today’s global norms and neo-liberal and cosmopolitan values.

4. Methodology - Knowledge Archaeology of Chinese International Relations

- The application of classical Chinese literature, history and philosophy in Chinese international relations can be categorised into 3 approaches:
 1. The Tsinghua Approach
 - The Tsinghua school of thought is the ideational origin and foundation of most debate

- the contemporary debate of Chinese international relations originated in 2005 with the Institute of Modern International Relations in Tsinghua University; it was headed by the dean, Professor Yan Xuetong
 - The Tsinghua School of thought focused on Xunzi's inspiration for the PRC, the necessity of morality, harmony and peace, and often correlate pre-Qin text to notions such as authority, force, instincts, selfishness, system etc. Thus it is in a way no more than an extension of Chinese ethnocentrism; the concentration on one thought for one reform in one unified country is central to Chinese political history.
 - A unique advantage of the Tsinghua school is that the scholars can read the text in its original language.
2. The American Approach
 - The American school, in particular Victoria Tin-bor Hui, is very critical of the Tsinghua school of thought and Professor Yan. She digs into the historiographical problems in Chinese international relations and argues that the Tsinghua approach is very unscientific and unhistorical. Hui opposes Chinese totalitarianism.
 3. The British Approach
 - The British approach is mostly a post-structuralist critique on the Tsinghua school.
- The speaker deployed a revised Knowledge Archaeology of Chinese International Relations approach in his research ("KACIR"):
 - The KACIR approach is critical of fundamentalist interpretations.
 - KACIR aims to deconstruct classical text through interpretation and then construct something out of it.
 - KACIR aims to create an open arena for all possible interpretations with minimal interference from power structures such as the state; moreover it aims to add a voice to the open debate on how to use classical canons Chinese international relations.

5. Fundamentalist hermeneutics

- Fundamentalist hermeneutics refers to the strict adherence to an extremely dogmatic interpretation of the founding text of an ideology. Only one interpretation is accepted as legitimate.
- Fundamentalist hermeneutics is being used and propagandised by the PRC elites to justify the superiority of the unique PRC model, and it is also in control of a static and challengeable definition of the Chinese tradition.
- Such hermeneutics are representations of the autocratic tradition of Chinese politics which originated from the Confucian-legalist orthodoxy established in the western Han dynasty. The hermeneutics of *the Book of Rites* and *the Spring and Autumn Annals* established a political power that controls the hermeneutics of all text.

- The problem of fitting pre-Qin classic text into the framework of unity (正統) is that the resources of a pluralistic and dynamic background of the pre-Qin era is not compatible with cultural absolutism and political totalitarianism; such tension has been endured in china for more than 2 millennia.
- Another problem for modern china is that the collapse of the traditional study of Chinese philosophy (經學) and the social class of traditional Chinese scholars (士大夫) after the termination of the examination system (科舉) in 1905 created an institutional vacuum in the meta-narrative of Chinese foreign relations. *The Book of Rites* and *the Spring and Autumn Annals* lost their constitution-like status. However, such vacuum did not undermine the deep-seated mentality of unity (正統) in the ways of interpreting the text.
- Wang Gungwu argues that almost every aspect of Chineseness underwent considerable change during the past 3000 years. Chineseness is a complex organism of ideas, values and institutions which is living and changeable, it is a product of a shared historical experience whose record has continuously influenced its growth.
- This dynamic view of Chineseness argues that Confucian ideas are not monolithic, and it is dangerous to identify Chineseness solely with Confucianism.
- Moreover, Wang believes that “the Chinese government will find conscious discussion of Chineseness embarrassing unless it can define it to fit its present situation. As long as the future Chineseness is still unclear, the world outside will continue to be ambivalent about china’s traditional self-image.”
- These discussions open up the discussion of Chineseness /China and advance other possible ways of understanding Chineseness /China apart from the Confucian-legalist tradition.
- Hans-Georg Gadamer argues that a text is a fusion of horizon: a harmonious inclusion of all pervious interpretations of the text. When readers engage in interpretation s/he is engaging in a dialogue with the tradition, this dialogue between past and present, alien and familiar, tradition and interpreter in integral to reaching understanding and consensus. This dialectic approach to interpretation encourages the synthesis of different interpretations within the tradition. In critically examining the tradition the interpreter is appropriating and integrating her/his own understanding, and by doing so creating a holistic and innovative picture of the tradition. All perspective are preserved and a better moment of view that goes beyond the original interpretation is created.
- By making use of Gadamer’s idea the speaker came up with a double interpretation of the Chinese tradition. For instance, a conventional reading of the Chinese tradition is that it is solely concerned with Confucian-Legalism; an alternative reading of the Chinese tradition is that it is pluralistic and Confucian-Legalism is only part of the tradition.

6. Reinventing Cosmopolitanism

- Western and Chinese jurisprudence are in many ways quite similar. For instance, natural law resembles the Confucian ideology rite (Li 禮), and positive law resembles the legalist notion of penal law (Fa 法).
- The speaker wants to engage western and Chinese jurisprudence in a meaningful conversation and by doing so reach a universal conscience. Some examples of reinterpreting classical Chinese canons are as follows.

- The following quotations contain elements of natural law:

“[P]ropriety (*li*) is to express accordance with Heaven; it is the way of Heaven.” ~The Fifteenth Year of Duke Wen; *The Chronicle of Zuo*.

禮以順天，天之道也。~左氏春秋·文公十五年

“What I mean by being ruled according to Reason, is showing a loyal love for the people, and a faithful worship of the Spirits ... The state of the people is what the Spirits regard. The sage kings therefore first secured the welfare of the people, and then put forth their strength in serving the Spirits.” ~ The Sixth Year of Duke Huan; *The Chronicle of Zuo*

所謂道，忠於民而信於神也.....夫民，神之主也。是以聖王先成民，而後致力於神。
~左氏春秋·桓公六年

- The following quotations encompass a cosmopolitan world view. “Four seas” can be interpreted as the world while “one family” as the whole of humanity. The “King” can be seen as the United Nations:

“People within four seas are to be treated as those in one family.” ~ Wangzhi, *Xunzi*

四海之內若一家。~荀子·王制

“All lands under the Heaven are the King’s lands; all people within the world boundary are the King’s subjects.” ~ Beishan, Minor Odes of the Kingdom, *The Book of Songs*

溥天之下、莫非王土。率土之濱、莫非王臣。~詩經·小雅·北山

- The following quotation emphasise the importance of unity and the existence of pluralism within unity, which is similar to the motto of the European Union: United in Diversity.

“How could the world be peaceful and safe?” “Adopt unity.” ~ Book IA, *Mencius*

天下惡乎定？定於一。~孟子·梁惠王章句上

Things differ but coexist in harmony may develop. Sameness does not yield perpetuity.” ~ The Annals of Zheng, *The Discourses of the States*

夫和實生物，同則不繼。~國語·鄭語

- “Dao” is similar to global democracy, while “Tianxia” can be seen as the global community. To care for others’ parents and children is to care for humanity as if everyone is our own family member:

“In the era when the great *Dao* is practised, *Tianxia* belongs to all the people ... so people do not only love their own parents and care for their own offspring.” ~ Liyun, *The Book of Rites*

大道之行也，天下為公.....故人不獨親其親，不獨子其子。~禮記·禮運

- The “Empire” can be interpreted as the world, “feudal lords” as states and the “Emperor” as the UN. A liberal institutionalist interpretation of these text is that if there is a strong international institution, world peace can be maintained; a strong global authority can limit conflicts:

“When *the Way* does not prevail in the Empire, the rites and music and punitive expeditions are initiated by the feudal lords.” ~ XVI.2. *The Analects*

天下無道，禮樂征伐自諸侯出。~論語·季氏

“When *the Way* prevails in the Empire, the rites and music and punitive expeditions are initiated by the Emperor ... the Commoners do not express critical views.” ~ XVI.2. *The Analects*

天下有道，禮樂征伐自天子出.....庶民不議。~論語·季氏

“Anciently, the defences of the sons of Heaven were the rude tribes on every side of the kingdom; and when their authority became low, their defences were the various States.” ~ The Twenty-third year of the Duke Zhao; *The Chronicle of Zuo*

古者，天子守在四夷。天子卑，守在諸侯。~左氏春秋·昭公二十三年

- Some text are not suitable for reinventing cosmopolitanism, for instance the following notions perpetuate old geographical concepts and racist beliefs:

The concept of “*jiuzhou*” 九州 (nine continents) and “*sihai*” 四海 (four seas) ~ Yixun; Yugong, *The Book of Documents*

The system of “*wufu*” 五服 (five services) ~ Zhouguan, *The Book of Documents*

The deterministic view of “Chinese people and all barbarians have their unique temperaments which cannot be changed.” ~ Wangzhi, *The Book of Rites*

中國戎夷，五方之民，皆有其性也，不可推移。~禮記·王制

