



## Introduction

### **Sovereignty and China: Past, Present, and Future**

China's rise, in essence, is the Chinese nation's self-salvation and revival after enormous suffering. China has been victimized by hegemony and power politics since the Opium War. Even today, China is yet to achieve reunification, and its territorial sovereignty is being undermined.<sup>1</sup>

These remarks by Chinese politician and diplomat Dai Bingguo at the Center for Strategic and International Studies in 2016 will sound familiar to anyone who has been following Chinese developments over the past few decades. They synthesize some of the key elements of the official rhetoric supporting China's current rise as a global power and its quest for expanded sovereignty. A quest for sovereignty characterizes China's modern history: charting an uninterrupted course since the nineteenth-century Opium Wars, it reflects the country's tortuous journey within the history of international law. The current territorial disputes in the South and East China Seas, the reunification with Taiwan, and the difficulties with the autonomous regions are all related to the most recent definition of China as a sovereign state, and to the introduction of international law. As well as the demarcation of Qing frontiers within exclusive and rigid new sovereign borders, these two factors forced the replacement of a legitimization rhetoric based on Confucian hierarchies, correlative cosmology, and rituality supporting a plurality of mechanisms that sanctioned the fictional universal

<sup>1</sup> Since 2008, Dai Bingguo has emerged as one of the foremost and highest ranking figures of Chinese foreign policy in the Hu Jintao administration. Dai Bingguo, "Remarks by Dai Bingguo at Center for Strategic and International Studies" (Ministry of Foreign Affairs of the People's Republic of China), [www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1377934.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1377934.shtml).

authority and supremacy of the Chinese emperor with an equally fictional one based on equal sovereigns that are *superiorem non recognoscens*. During the nineteenth century, Qing officials started to use sovereignty not only against the encroachment of Western powers, but also to unite under one single sovereign authority the vast territory that was colonized and inscribed within a ritual geography in the course of the two previous centuries of imperial expansion. In a way, the vast Qing multiethnic and multinormative empire continues to haunt the Chinese modern nation: the Chinese Communist Party's endeavor, as specified in the Constitution and emphasized by Dai, is still the reunification of the motherland.<sup>2</sup> While remaining a hard-won prize after what has been rhetorically called the "century of humiliations," more recently with the official codification of the Five Principles of Peaceful Coexistence in 1954, sovereignty has become the cornerstone of China's foreign policy. The term has been used by Chinese internationalists to claim rights over whatever can become "sovereignable," from the internet, education, and airspace to the economy, extended maritime regions, and food. How did these sovereign claims come about? When did they start, and why? How are these claims different from or similar to those made in the nineteenth and twentieth centuries, and what can the continuities and discontinuities in usage tell us about the current and future trajectory of China in international society? These are some of the questions this book aims to answer.

Today, as new theories of post-sovereignty emerge, China is considered a stronghold of Westphalian sovereignty.<sup>3</sup> The neologism "sovereignty" (*zhuquan* 主权) entered Chinese history, together with "international law," understood as a world order, only in the nineteenth century. This is not to say that China was incapable of either sovereignty or international law before these concepts were systematically translated from Western manuals of international law and introduced in the course of the nineteenth century,

<sup>2</sup> Peter Perdue, "Empire and Nation in Comparative Perspective: Frontier Administration in Eighteenth-Century China," *Journal of Early Modern History* 5, no. 4 (2001): 271–304, 304.

<sup>3</sup> Recent theoretical developments in international law have seriously questioned Westphalian sovereignty, emphasizing the role of single individuals, the promotion of a liberal political order through international organisms different from the sovereign, and the constitution of a global government in which state sovereignty is increasingly meaningless. Samantha Besson, "The Authority of International Law—Lifting the State Veil," *Sydney Law Review* 31 (2009): 343–380; Eyal Benvenisti, "Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders," *American Journal of International Law* 107, no. 2 (2013): 295–333; Ruti Teitel, *Humanity's Law* (Oxford: Oxford University Press, 2011).

or that China was insufficiently modern or civilized. On the contrary, as discussed in the following chapters, Chinese history contains plenty of examples of the imperial court regulating its own relations with other polities on equal terms, or through treaties and laws; its first international treaty, the Treaty of Nerchinsk, established the first sovereign border with Russia and recognized the Amur region as part of the Qing Empire in 1689. Sovereignty as it has evolved to become the principle that grounds modern international law, understood here primarily as a specific worldview or imaginary grounded in the Westphalian myth and expressed in specific diplomatic practices and protocols, is considered the fruit of a particular European history and doctrine that largely developed during the eighteenth century. To say that modern international law and its constitutive concept of sovereignty find their doctrinal origins in Europe does not necessarily support the idea that Europe should be the main subject of histories of international law and that other experiences and histories, including the Chinese, are simple variations of a European grand narrative. China is part of the global history of international law, but in its own terms. One should be cautious in trying to look for equivalents to “international law” and “sovereignty” in Chinese history, even when the intent is to write more inclusive, global histories of international law and overcome the excessive Eurocentrism of existing narratives by provincializing Europe temporally and spatially.<sup>4</sup> Searching within non-Western experiences for categories and dogmas of modern international law as born and developed in Europe risks misleading conclusions about the normative orders that have characterized the relations of non-European interpolities. This approach ultimately legitimizes a cognitive horizon that apparently became universal in the nineteenth century, but that continues to be deeply influenced by what Arnulf Becker Lorca defines as “the center,”<sup>5</sup> identified as the West and some of its evolving categories, such as what are today known as rule of law, democracy, human rights, and capitalism. Even global histories of international law appear at least in part condemned to take on a Eurocentric perspective, especially if – in a global space and time – the meeting between international

<sup>4</sup> See, for instance, the recent Bardo Fassbender and Anne Peters, *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012). The same global perspective also guides the *Journal of the History of International Law*; see Emmanuelle Tourme Jouannet and Anne Peters, “The Journal of the History of International Law: A Forum for New Research,” *Journal of the History of International Law* 16, no. 1 (2014): 1–8.

<sup>5</sup> Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge: Cambridge University Press: 2014).

law and other realities is taken for granted as part of an inevitable process of integrating non-Western experiences within the history of the progress and civilization of the West. In this book, both sovereignty and international law are considered within their own particular histories and genealogies, rather than treated as history's ultimate objective, or forced onto other normative experiences, such as the Chinese one.

Sovereignty has long been an essential idea in the Western legal and political tradition since the Peace of Westphalia, and with the expansion of international law in the course of the nineteenth and twentieth centuries, it has become a concept of global significance. By defining ontologically the subjects of the international legal system, it provides a conceptual framework by which its various actors conceive of themselves in relation to the others. In the West, sovereignty used to be an exclusive attribute of God, referring to his absolute authority, and began to be employed to refer to independent, equal states and their supreme authority over certain territories only after the term's gradual secularization, initiated by Jean Bodin in the sixteenth century; this in turn gave rise to international law, understood as a worldview or imaginary with practical repercussions on the organization of international society and diplomatic practices.<sup>6</sup> Sovereignty and its mythical origin in the Peace of Westphalia of 1648 can thus be understood as powerful narrative tools resulting from the procedure by which "life produces myth and finally imitates it."<sup>7</sup> Its emergence goes hand in hand with early formulations of modern international law, since the key actors and demiurges of the latter are states whose sovereignty is absolute in that they are *superiorem non recognoscens*, and they exercise, according to the principle of equality, their rights as original rights, subjected to no other, higher authority.<sup>8</sup> Although sovereignty and international law have nowhere been the main imaginaries used by societies to organize and regulate themselves historically, both have gradually become "contagious."<sup>9</sup> Through Western imperial expansion in

<sup>6</sup> Jean Bodin, *Six livres de la république* (London: Impensis G. Bishop, 1606), bk. 1; Francesco Gentile, *Filosofia del Diritto* (Padua: CEDAM, 2006); Geminello Preterossi, *Autorità* (Bologna: Il Mulino, 2002).

<sup>7</sup> Jerome S. Bruner, "Myth and Identity," *Daedalus* 88, no. 2 (Spring 1959): 349–358, 354.

<sup>8</sup> Antonio Cassese, *Diritto internazionale* (Bologna: Il Mulino, 2006), 64–65; James Crawford, "Sovereignty as a Legal Value," in *The Cambridge Companion to International Law*, ed. Martti Koskenniemi and James Crawford (Cambridge: Cambridge University Press, 2012), 117–133; James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2007).

<sup>9</sup> David Armitage, "The International Turn in Intellectual History," in *Rethinking Modern European Intellectual History*, ed. Darrin M. McMahon and Samuel Moyn (New York: Oxford University Press, 2013), 11.

the course of the eighteenth and nineteenth centuries, they came to obtain a status of ostensible universality, their myth becoming constitutive of the modern international legal and political order. Justified through the “standard of civilization,” sovereignty was the category employed to bring the world under the legal imperium of Western powers, which despite promoting sovereign equality were quintessentially imperialistic in their aspirations. In name of a civilizing mission, they seized any opportunity to expand their rule and mercantilist interests, disregarding the sovereignty of weaker or non-Western countries.<sup>10</sup> One reason for this gap between language and action is the contested nature of the concept and its diverse material configurations. As Jens Bartelson has noted, “The relationship between the very term sovereignty, the concept of sovereignty and the reality of sovereignty is historically open, contingent and unstable.”<sup>11</sup> Although the term’s use is by now global, based on a believed general understanding, different values are constantly projected onto it; as a result, it functions more as an apologia, or rhetorical instrument, for whatever position one wants to assume. Martti Koskenniemi has shown how sovereignty has been used to justify very divergent positions: to sustain independence, but also to promote the integration of various states; to protect the rights and the privileges of some, but to do the exact opposite for others.<sup>12</sup> The meanings of sovereignty are further complicated by the fact that it is used at the frontiers of theory and practice in both legal and political fields, and “rival theorists and practitioners structure their arguments around different conceptions of the same concepts.”<sup>13</sup>

We may take it mostly for granted today, but this expansion of international law and sovereignty to acquire an almost universal status appears to be unique within the long course of human history. Although international law remains fragmented and its universality is still contested, in a way that has made many scholars ask recently whether

<sup>10</sup> Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, N.J.: Princeton University Press, 2001); Martti Koskenniemi, Walter Rech, and Manuel Jimenez Fonseca, *International Law and Empire: Historical Explorations* (Oxford: Oxford University Press, 2017); Prasenjit Duara, *Sovereignty and Authenticity: Manchukuo and the East Asian Modern* (Plymouth: Rowman Littlefield, 2004). See also Emmanuelle Jouannet, “Universalism and Imperialism: The True–False Paradox of International Law?,” *European Journal of International Law* 18, no. 3 (2007).

<sup>11</sup> Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995), 2.

<sup>12</sup> Martti Koskenniemi, *From Apologia to Utopia: The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2005), chap. 4.

<sup>13</sup> Neil MacCormick, “Sovereignty and After,” in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*, ed. Hent Kalmo and Quentin Skinner (Cambridge: Cambridge University Press, 2010), 152.

international law is truly international, it has become a sort of lingua franca to which almost the entire globe subscribes.<sup>14</sup> Perhaps it is a small parenthesis in the history of humanity made possible by technology allowing for greater mobility of goods and people and a once unimaginable connectivity. It is nevertheless a significant departure from the previous centuries and indeed millennia, in which there was no internationally recognized lingua franca, sovereignty was not the sole rhetoric for power legitimation, and many different sophisticated orders and worldviews coexisted, clashed, or were absorbed into each other.<sup>15</sup> When international law and its ordering concept of sovereignty were introduced in China in the nineteenth century, the latter was a multiethnic and multinormative empire with universal aspirations grounded within a hierarchical cosmology and the ontology of Chinese centrality, which justified its own imperial expansion through its own civilizing mission. After the conclusion of the Opium Wars in 1860, China not only came to terms with international law and the notion of sovereignty through which the Western order was predicated but also began to use the new legal framework for a new representation of the world in which it projected its own power and justified its legitimacy in order to both defend itself from Western encroachment and defend its imperial and colonial possessions in the hinterland. When the term “sovereignty” was translated in Qing China, it reflected various doctrines or discourses that epitomized different ideas of justice and authority, and

<sup>14</sup> See, for instance, Anthea Roberts, *Is International Law International?* (Oxford: Oxford University Press, 2017).

<sup>15</sup> This, for instance, can be seen by looking at citizenship. In his fascinating study, Pietro Costa looks at the notion of citizenship and its historical development in Europe. For Costa, understanding citizenship means understanding the rights and obligations of subjects belonging to a political community toward that particular community. In the past, citizenship was used to refer to the “city” rather than the “state.” The city is characterized by the predominance of a presupposed order based on the belonging of the individual to the community. The city is described by theologians of the time as a corpus, or a synthesis of a variety of correlated parts that can become a unity only because they are unequal and hierarchically ordered. A shift occurred with the French Revolution and later with the declarations of independence, after which citizenship began to be attached to the notion of individuals belonging to an exclusive and rigid sovereign state. Today this notion is challenged, acquiring a more supranational significance. However, despite the fact that new and old views exist about citizenship, there is still a general tendency to see the nation-state as the only possibility for order and for subjects to belong to an order, and to project this vision into the historical past. See Pietro Costa, *Civitas, Storia della Cittadinanza in Europa, 1 Dalla Civiltà comunale al settecento* (Rome: La terza, 1999); see also Jennifer Pitts, *Boundaries of the International: Law and Empire* (Cambridge, Mass.: Harvard University Press, 2018).

discordant visions of law and world order. Engendering a prolific debate among legal and political figures, its introduction contributed to the discourse on Chinese modernity. Within this debate, Chinese scholars, realizing the importance of international law as an instrument to rescue the empire from complete annihilation, struggled to create commensurability between the Chinese traditional imperial and normative system, and the ambiguities implied by the Western sovereign order, formulating new discourses that helped shape China's new international identity.

The introduction of the concept of sovereignty in China in the nineteenth century, together with international law, has been widely studied but often in a way that treats it as a result of European history, considering China as a passive entity that simply absorbed it without reservations. If the hybridity of the concept of sovereignty before, during, and after it was systematically introduced in China in mid-nineteenth century has been extensively discussed already, China's agency in appropriating and modifying the term, interrupting its meanings, and eventually also contributing to shaping international law has not received enough attention. Studies that specifically look at its genealogy in China from its first introduction in the 1830s to its present use are also missing. There are works that deal critically but indirectly with issues of sovereignty and Chinese appropriations of the term. Turan Kayaoğlu, for instance, has examined nineteenth-century Western extraterritorial courts in Japan, China, and the Ottoman Empire and advanced the thesis that Western legal imperialism was asserted through particular notions of sovereignty that sustained the practice of extraterritoriality. His focus, however, is on only one aspect of sovereignty, namely extraterritoriality, and he does not exclusively address China or take into account conceptual history.<sup>16</sup> Chih-yu Shih has elaborated on the paradigm of reflexive orientalism, but does not apply it to the history of international law and its reception by China.<sup>17</sup> Teemu Ruskola's work on legal orientalism deals mostly with the domestic legal aspects, rather than directly with international law or the concept of sovereignty.<sup>18</sup> Allen Carlson looks at how China uses sovereignty in its foreign policy, challenging those who treat Chinese sovereignty as a noncomplying monolith, but he focuses only on the last

<sup>16</sup> Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: Cambridge University Press, 2010).

<sup>17</sup> Chih-yu Shih, *Navigating Sovereignty: World Politics Lost in China* (New York: Palgrave Macmillan, 2003).

<sup>18</sup> Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge, Mass.: Harvard University Press, 2013).

two decades of Chinese history, without much reference to colonial history.<sup>19</sup> Rune Svarverud presents the introduction, translation, and general reception of international law in China at the end of the Qing dynasty, but mainly addresses linguistic aspects, and does not challenge teleological Western narrations of the history of international law, simply assuming the idea of its progress, and he covers only the Republican and contemporary period.<sup>20</sup> Phil C. W. Chan discusses Chinese views and practices of international law and some key issues related to it, such as sovereignty, human rights, and self-determination, with a focus on the interaction between China's exercise of sovereignty and the international legal order, but he does not look at the conceptualization and discourses of sovereignty.<sup>21</sup> Li Chen's recent work deals extensively with sovereignty in China but from the perspective of Western powers.<sup>22</sup> Arnulf Becker Lorca has presented the role of Chinese lawyers in the process through which jurists from the semi-periphery resisted Eurocentric standards of civilization and statehood through legal arguments, but his main theme is not China, and his work tackles a briefer time period than this work. While Kayaoğlu, Carlson, Lorca, Chen, and Ruskola use approaches that are similar to mine, in that they are critical or Eurocentric histories of international law, the time spans or regions they cover are limited compared to the scope of this book, which aims to be the first systematic examination of the discourse and use of sovereignty in China, from the introduction of international law to today's use. Departing from legal orientalism, it contextualizes the introduction of international law by presenting the preexisting normative framework within which China interacted with other countries. Employing the method of conceptual history, this work looks at China as a legitimate shaper and breaker of international norms and concepts in order to narrate a history of the formation and emergence of a new Chinese international identity through discourses of sovereignty.

By tracing a genealogy of the concept of sovereignty in China, this book uncovers the various ways in which it was used in earlier times. This

<sup>19</sup> Allen Carlson, *Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era* (Stanford, Calif.: Stanford University Press, 2005).

<sup>20</sup> Rune Svarverud, *International Law as World Order in Late Imperial China: Translation, Reception and Discourse, 1847–1911* (Leiden: Brill, 2007).

<sup>21</sup> Phil C. W. Chan, *China, State Sovereignty and International Legal Order* (Leiden: Brill-Nijhoff, 2014).

<sup>22</sup> Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* (New York: Columbia University Press, 2015).

allows us to reflect more critically on the diverse understandings of it in the past, but also how it is currently understood in China, giving a sense of the trajectory it might take in the future. Moreover, a genealogy of the concept of sovereignty in China sheds light on aspects of international law, sovereignty being one of its core concepts, and its history, and helps contextualize the globalization of the Western normative order in the nineteenth and twentieth centuries, broadening the often Eurocentric history of international law by incorporating histories that are frequently neglected. Again, this is not an exercise that attempts to find an international law in China's past, nor is it an exercise that, by narrating a different understanding of fundamentally hybrid concepts, denies the normative sophistication of the Chinese Empire before the appropriation of international law as a world order. China has often deviated from the Eurocentric models and ideas of order, and looking at the genealogy of the concept of sovereignty can provide a better understanding of the prerogatives and preoccupations that guided China's use and understanding of the concept in the past, and how this could shape China's approach to international legal norms in the future. By adding the history of the discourse of sovereignty in China to the history of international law, this research seeks to provide an account of non-Western experiences that have helped shape the current global legal order. Departing from a teleological history that sees sovereignty, or more recently post-sovereignty, as a universal value toward which all legal and political experiences should conform, and that treats its objects, in this case China, as "insubstantial imaginings of disembodied beings from inner space" that simply follow the path designed by a linear history,<sup>23</sup> this book aims to look at China as a fully legitimate subject of international history and law by showing the unfolding and articulation of its agency and its pragmatic use of international law and its linguistic and conceptual framework. The history of modern China is the history of an evolving sovereign claim haunted by China's own imperial and colonial past, and complicated by Western colonial history.

### The Method of Conceptual History

Assuming that the concept of sovereignty is contingent on historical developments, and therefore does not contain any absolute and transhistorical significance, this book looks at how Chinese political and

<sup>23</sup> Armitage, "International Turn in Intellectual History," 3.

diplomatic actors challenged and articulated the concept between the mid-nineteenth century and the early twenty-first century. The most suitable method for investigating the developments of these discourses is conceptual history, which allows one to observe the contingent political, cultural, and social forces that have modified and shaped the conceptualization of sovereignty. Specifically, this research is indebted to the mode of inquiry developed by the tradition of *Begriffsgeschichte*, as it emerges in the work *Geschichtliche Grundbegriffe* developed by Reinhart Koselleck in the 1970s, and of intellectual history developed by the Cambridge School, and in particular Quentin Skinner from the late 1960s.<sup>24</sup>

Before delving into methodological issues, the relevance of concepts and their discourses to the study of political and social history should be further clarified. It is not uncommon for those who embrace the Marxist historical-materialist approach to history to reject the usefulness of a conceptual approach to investigating historical trends, in the belief that material institutions are more important factors.<sup>25</sup> In this respect, it might be useful to refer to the method elaborated by Stanley Jeyaraja Tambiah, who overcame the dichotomic opposition between institutions and concepts that dominated the study of historical methods before the linguistic turn of the 1980s.<sup>26</sup> The main feature of his method is the dialectical process through which different realms, specifically the cultural and the political, continually inform and modify each other within a political and cultural totality. This is possible because it assumes a fundamental unity between thought and action, word and deed. The

<sup>24</sup> *Begriffsgeschichte*, or conceptual history, is a method used to investigate the history of concepts, developed from the 1950s in Germany. *Geschichtliche Grundbegriffe: Historisches Lexicon zur politisch-sozialen Sprache in Deutschland* (Basic Concepts: A Dictionary on Historical Principles of Political and Social Language in Germany) is one of the major reference works applying this method. The father of this tradition is Reinhart Koselleck; see Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time* (Cambridge, Mass.: MIT Press, 1985). See also the more recent Melvin Richter, *The History of Political and Social Concepts: A Critical Introduction* (New York: Oxford University Press, 1995); and Quentin Skinner, "Meaning and Understanding in the History of Ideas," *History and Theory* 8 (1969): 3–53.

<sup>25</sup> Paul Blackledge, *Reflections on the Marxist Theory of History* (Manchester: Manchester University Press, 2006), chap. 1.

<sup>26</sup> S. J. Tambiah, *Culture, Thought, and Social Action: An Anthropological Perspective* (Cambridge, Mass.: Harvard University Press, 1985), introduction. Wang Aihe was inspired by Tambiah in her reconstruction of Chinese politics through cosmology; see Wang Aihe, *Cosmology and Political Culture in Early China* (Cambridge: Cambridge University Press, 2000).