

BOOK REVIEWS / RECENSIONS DE LIVRES

**Recentering the World: China and the Transformation of International Law.** By Ryan Martínez Mitchell. Cambridge: Cambridge University Press, 2023. 250 pages.

Edward Said famously defined Orientalism as “a style of thought based upon an ontological and epistemological distinction made between ‘the Orient’ and (most of the time) ‘the Occident.’”<sup>1</sup> Well into the twentieth century, many sinologists continued to interpret China through the Western gaze, comparing Chinese legal institutions with the supposedly superior institutions of the West. Thanks to a wave of new scholarship, recent decades have seen the attempted decolonization of the field of Chinese law.<sup>2</sup> The new scholarship on Chinese law engages with modern Chinese law on its own terms and, in certain cases, excavates the Chinese roots of concepts now often associated with the law of Western states.<sup>3</sup> A recent joint symposium by the *Harvard International Law Journal* and the *Yale Journal of International Law*, for example, resulted in a number of essays that centre Chinese perspectives on the international legal order.<sup>4</sup> As Canadian policy-makers seek to better understand Chinese politics and foreign policy, particularly in the wake of the Canadian government’s launch in late 2022 of a new Indo-Pacific Strategy, they ought to engage fully with this new scholarship on Chinese law.<sup>5</sup> A failure to study Chinese perspectives will impede bilateral communication and ultimately may compromise the very success of the Indo-Pacific Strategy.

Ryan Martínez Mitchell’s recent monograph represents an impressive example of the new scholarship on Chinese law.<sup>6</sup> Mitchell provides a historical account of China’s relationship with international law between 1850, when the Manchu-led Qing Dynasty still ruled China, and 2001, when the People’s Republic of China (PRC) acceded to the World Trade Organization. Mitchell focuses not only on how Western

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<sup>1</sup>Edward W. Said, *Orientalism* (New York: Vintage Books, 1979) at 3.

<sup>2</sup>See e.g. Matthieu Burnay, *Chinese Perspectives on the International Rule of Law: Law and Politics in the One-Party State* (Northampton, MA: Edward Elgar, 2018); Jacques deLisle, “China’s Approach to International Law: A Historical Perspective” (2017) 94 Proceedings of the American Society of International Law Annual Meeting 267; Jiangyu Wang & Huer Cheng, “China’s Approach to International Law: From Traditional Westphalianism to Aggressive Instrumentalism in the Xi Jinping Era” (2022) 10:1 Chinese J Comparative L 140.

<sup>3</sup>See Steven Wang, “Indigenous Constitutionalism and Global Legitimacy: Excavating the Roots of Chinese Constitutionalism” (2021) 46 Yale J Intl L Online 99.

<sup>4</sup>“Symposium: China and the International Legal Order,” online: *Yale Journal of International Law* <[www.yjil.yale.edu/online-essays/china-symposium/](http://www.yjil.yale.edu/online-essays/china-symposium/)>.

<sup>5</sup>“Canada’s Indo-Pacific Strategy,” online: *Government of Canada* <[www.international.gc.ca/transparency-transparence/indo-pacific-indo-pacifique/index.aspx?lang=eng](http://www.international.gc.ca/transparency-transparence/indo-pacific-indo-pacifique/index.aspx?lang=eng)>.

<sup>6</sup>Ryan Martínez Mitchell, *Recentering the World: China and the Transformation of International Law* (Cambridge: Cambridge University Press, 2023) [Mitchell, *Recentering the World*].

states viewed China's place within the international order during this period but also on how Chinese intellectuals and officials engaged with, and in multiple instances shaped, the international order. By analyzing an array of archival sources, Mitchell succeeds in "recentering the world" and in globalizing — or at least Sinicizing — traditional narratives of international law in the nineteenth and twentieth centuries. The book will prove an invaluable source to multiple audiences, from policy-makers keen to historically situate modern Chinese viewpoints on international law to historians working to convey a more global perspective of the nineteenth- and twentieth-century development of international law.

Mitchell's monograph contributes to the extant literature on China's relationship with international law in at least three ways. Mitchell's crowning achievement is the translation of an entire lexicon of Chinese public law terms into English. This translation — or, more accurately, transposition — in turn allows the reader to deploy Chinese legal concepts rather than merely subsume those concepts into inapplicable Western categories. Notably, Mitchell's discussion of the term "*guo ti*" (国体) constitutes the fullest discussion in the English language of a concept that was central to the Qing Empire's "political cosmology" and one that retained rhetorical and normative power even past the fall of the Qing dynasty.<sup>7</sup> Mitchell translates *guo ti* as stateliness; a key aspect of the concept, he continues, was an "overriding sense of 'state dignity.'"<sup>8</sup>

*Guo ti* did not function as a set of "specific formal norms identified identically among those using the term" and could give rise to conflicting applications in a given context.<sup>9</sup> For example, in negotiations during the late nineteenth century with European states, the Xianfeng emperor instructed his delegates that they could concede to Western economic demands but could not allow foreign states to open up diplomatic outposts in Beijing as this would be indecent and would irremediably compromise *guo ti*. In contrast, his envoys believed that ensuring the continued health of the Qing state's finances was the best strategy through which to preserve *guo ti*.<sup>10</sup>

In addition to introducing Western readers to the concept of *guo ti*, Mitchell places the modern Chinese understanding of sovereignty (*zhu quan*, 主权), into historical context. Qing officials began to use the term "*zhu quan*" in the late nineteenth century after the Meiji Empire embraced the term and embarked on a course of regional hegemony. By the early twentieth century, *zhu quan* had come "fully into prominence" in Chinese discourse.<sup>11</sup> Mitchell is far from the only author to advert to the continued pull of sovereignty in modern Chinese legal discourse; historians have long argued that the current Chinese regime's focus on sovereignty flows at least in part from the Qing Empire's failed attempts in the late nineteenth century to attain

<sup>7</sup> *Ibid* at 13. Elsewhere, Mitchell notes that the "concept of *guoti* has received curiously limited attention in modern Sinology, let alone in Western comparative scholarship on political or legal theory": Ryan Martínez Mitchell, "Global Capitalism, International Law, and Chinese Sovereignty" (31 January 2022), online: *Legal Form: A Forum for Marxist Analysis and Critique* <[legalform.blog/2022/01/31/global-capitalism-international-law-chinese-sovereignty-ryan-martinez-mitchell/](https://legalform.blog/2022/01/31/global-capitalism-international-law-chinese-sovereignty-ryan-martinez-mitchell/)>.

<sup>8</sup> Mitchell, *Recentering the World*, *supra* note 6 at 13.

<sup>9</sup> *Ibid* at 13.

<sup>10</sup> *Ibid* at 29–30.

<sup>11</sup> *Ibid* at 97.

full sovereignty over its territory.<sup>12</sup> Yet Mitchell's historically grounded discussion allows the reader to definitively trace the roots and evolution of modern Chinese attitudes.

Second, by focusing on Chinese participation in international law conferences, Mitchell demonstrates how China has gone from an object to a subject of international law. While in early conferences — such as the Second Hague Conference of 1907 — Western delegates were likely to ignore or even laugh at Chinese suggestions of international law reform, Chinese international law scholars increasingly succeeded in shaping international law over the course of the twentieth century.<sup>13</sup> As more and more Chinese students studied international law, the various Chinese governments of the early twentieth century were able to dispatch those scholars to international fora, sometimes to great effect.<sup>14</sup>

Mitchell brings to life various deans of Chinese international law, such as Wang Chonghui, who became a deputy judge of the Permanent Court of International Justice in 1922 and went on to amass decades of diplomatic experience. In 1945, he represented the Republic of China during discussions on the planned International Court of Justice (ICJ) and, as Mitchell details, suggested that the General Assembly should have the right to request advisory opinions from the court.<sup>15</sup> That a Chinese jurist conceived of the advisory opinion — a core feature of the modern ICJ's operations — is a testament to the tremendous impact that China's increasingly professionalized cadre of international lawyers was able to exert over the course of the twentieth century. Mitchell's discussions of Chinese jurists' contributions to international law provide a welcome counterbalance to the narrative of international law as a field constructed by Western states for Western states.<sup>16</sup> Other historians have in the past profiled some of the individual Chinese jurists whom Mitchell discusses;<sup>17</sup> Mitchell's contribution, however, is to introduce readers to a broader directory of nineteenth- and twentieth-century Chinese international law scholars, thereby conveying a sense of the Chinese international law community as a whole.

Finally, Mitchell succeeds in conveying the nuanced nature of historical Chinese approaches to international law. China has never exhibited a monolithic approach towards international law — such a proposition might seem trite but is often more honoured in the breach than in the observance. As a contrary example, Howard French has argued in his widely read book *Everything under the Heavens* that modern Chinese policy-makers continue to evaluate foreign relations with regional states according to the ancient concept of *tian xia* (天下). *Tian xia* refers to the notion that it is “China's manifest destiny to once again reign preponderant over a wide sphere of Asia.”<sup>18</sup> French's central thesis — that *tian xia* continues to shape modern political

<sup>12</sup>See e.g. Rana Mitter & Elsbeth Johnson, “What the West Gets Wrong About China,” *Harvard Business Review* (May–June 2021), online: <[hbr.org/2021/05/what-the-west-gets-wrong-about-china](https://hbr.org/2021/05/what-the-west-gets-wrong-about-china)>.

<sup>13</sup>Mitchell, *Recentring the World*, *supra* note 6 at 109–10.

<sup>14</sup>See *ibid* at 216.

<sup>15</sup>*Ibid* at 186.

<sup>16</sup>See e.g. Brian-Vincent Ikejiaku, “International Law Is Western Made Global Law: The Perception of Third-World Category” (2013) 6 *African JL Studies* 337.

<sup>17</sup>See e.g. Stephen G Craft, V.K. Wellington Koo and the *Emergence of Modern China* (Lexington: University Press of Kentucky, 2004).

<sup>18</sup>Howard French, *Everything under the Heavens: How the Past Helps Shape China's Push for Global Power* (New York: Alfred A Knopf, 2017) at 248.

discourse in China — is insightful. Yet, as Mitchell suggests, Chinese intellectuals have never adopted a single view of regional power. During the 1955 Bandung Conference, for example, the Chinese delegation adopted a position of “absolute prohibitions of military intervention” and espoused unity with other Third World states.<sup>19</sup> Even today, invocations of *tian xia* do not always fit harmoniously with Chinese officials’ stated commitment to the equal sovereignty of nations.

By discussing how different actors within various Chinese regimes have co-opted, used, and misused seemingly straightforward legal concepts, Mitchell’s book sounds as a plea against reductive interpretations of history. Given the political chaos of China in the nineteenth and twentieth centuries, it is unlikely that Chinese officials and international lawyers would have articulated uniform interpretations of international law concepts. In identifying the key debates that occupied China’s international lawyers, Mitchell succeeds in conveying the complexity of concepts such as *guo ti* and *zhu quan*.

There are some international law concepts that Mitchell might have more fully discussed in his book and to which he may well turn in his future scholarship. In particular, Mitchell does not meaningfully discuss Chinese lawyers’ engagement with self-determination. How did Chinese intellectuals view self-determination? In what ways did they distinguish between self-determination for China as a whole and self-determination for minority groups within China’s borders? Did the domestic discussion of self-determination contrast with Chinese delegates’ discussion of the concept at international fora? How did all of these understandings change over the course of the twentieth century?

While China was itself a subject of Western colonialism for the nineteenth century and much of the twentieth century, it is also true that Beijing’s relationship with ethnic minority zones — from Tibet to Inner Mongolia — has at various junctions resembled an internal imperialism. In the context of Xinjiang, Darren Byler has argued that, in recent decades, this territory has “come to resemble a classic peripheral colony.”<sup>20</sup> Historical Chinese attitudes towards self-determination are relevant to contemporary understandings of Chinese domestic politics, especially in light of ongoing human rights violations in Tibet and Xinjiang. In view of China’s own imperial history, a reader might ask: why should self-determination not apply with equal force to Tibetans or Uyghurs as it does to Han Chinese?

At several points, Mitchell refers in passing to Chinese viewpoints on self-determination.<sup>21</sup> He notes, for example, that the 1955 Bandung program served a “dual role in promoting the overthrow of Western colonialism and reinforcing the *imperium* of new sovereign states.”<sup>22</sup> As Mitchell wryly explains, 1955 might have marked the organization of the Bandung program — a paean to the equality of states — but it also marked the official incorporation of Xinjiang into the PRC as an autonomous region.<sup>23</sup> The PRC thus distinguished between internal and external

<sup>19</sup>Mitchell, *Recentering the World*, *supra* note 6 at 203.

<sup>20</sup>Darren Byler, “Why Xinjiang Is an Internal Settler Colony” (1 September 2021), online: *The China Project* <[thechinaproject.com/2021/09/01/why-xinjiang-is-an-internal-settler-colony/](http://thechinaproject.com/2021/09/01/why-xinjiang-is-an-internal-settler-colony/)>. See also James A Millward, “Is China a Colonial Power?” *New York Times* (4 May 2018), online: <[www.nytimes.com/2018/05/04/opinion/sunday/china-colonial-power-jinping.html](http://www.nytimes.com/2018/05/04/opinion/sunday/china-colonial-power-jinping.html)>.

<sup>21</sup>See e.g. Mitchell, *Recentering the World*, *supra* note 6 at 195.

<sup>22</sup>*Ibid* at 204.

<sup>23</sup>*Ibid*.

sovereignty. While Mitchell adverts occasionally to Chinese stances on self-determination, he does not engage deeply with the concept.<sup>24</sup> In the future, Mitchell or another scholar should treat the history of self-determination in Chinese legal discourse with the same care and attention to detail with which Mitchell approaches other legal concepts in his book.

Second, Mitchell could have traced out the evolution of the concept of *guo ti* (stateliness) all the way into the twenty-first century. Mitchell's dissection and illumination of *guo ti* represents a key contribution to the field of Chinese law. While Mitchell contends that sovereignty — or *zhu quan* — gradually replaced *guo ti* as the grundnorm of Chinese public law, *guo ti* continues to exert some influence on modern political discourse.<sup>25</sup> In his conclusion, Mitchell references the desire today of various Chinese officials and intellectuals to “pair continued global integration with an ever-firmer articulation of the rules of ‘stately’ deference on political and territorial matters that Beijing insists be observed by foreign states.”<sup>26</sup> The continued focus on “stately deference” indicates that *guo ti* is by no means a moribund concept. Under what conditions do Chinese intellectuals and officials refer to *guo ti* in the modern context? How has the concept of *guo ti* evolved between the nineteenth and twenty-first centuries? How do the concepts of *guo ti* and *zhu quan* interact in contemporary Chinese politics?

The above questions concerning historical Chinese positions on self-determination and the continued relevance of *guo ti* do not represent an indictment of Mitchell's project but instead speak to its value. In recentring Chinese perspectives of international law and providing an authoritative account of how those perspectives have evolved over the past two centuries, Mitchell has made a landmark contribution to the field. Those Canadian policy-makers who focus on Sino-Canadian relations should turn as soon as possible to Mitchell's book. A firm grasp of Mitchell's historical lessons will improve Canadian diplomats' understandings of the PRC's relationship with the international order and may even permit them to employ Chinese legal terms to Canada's benefit. Ultimately, while Mitchell does not leave every stone unturned, his book serves both as a call and response — as an inspiration to continually mine Chinese perspectives of international law and as a demonstration of how to properly achieve that ideal.

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<sup>24</sup>*Ibid* at 194.

<sup>25</sup>*Ibid* at 97.

<sup>26</sup>*Ibid* at 219.