GLOBAL PERSPECTIVES
ON LEGAL HISTORY 28

FUPENG LI

Translating Weimar

The Cultural Translation of the Weimar Constitution in China (1919–1949)

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Contents

To my parents

Preface

On September 16, 2014, I took my first international flight and arrived at Frankfurt Airport. I once remarked – perhaps with a sense of amusement – on the city's skyline, which seemed to lack the European charm I had imagined. However, I was soon convinced by a metaphorical reasoning: With Frankfurt Airport, one gains access to the entire world.

Three days after my arrival, I met Thomas Duve. When I expressed my gratitude for his acceptance of me as a doctoral researcher, he instead thanked me, emphasizing his words: "You enrich us." It was a simple yet profoundly meaningful statement – one whose full significance I only came to understand years later. His words instilled in me a sense of subjectivity, not only within the Max Planck Institute for Legal History and Legal Theory's community, but also in the very process of knowledge creation. At that time, Thomas was shaping a pioneering academic agenda on global legal history, one that sought to decenter Europe and critically reflect on the vantage point from which his own European tradition observed the world.

Of course, this decentering of scholarship does not signify the dissolution of postcolonial subjectivity. Rather, it signals the emergence of trans-subjectivity. In this context, this book, based on my doctoral dissertation, explores how cultural translation, from a global perspective, serves as a crucial mechanism in the production of legal knowledge – particularly between two newly established republics of the first half of the 20th century: China and Weimar Germany. The concept of translation here resembles a language game, one that encompasses not only vocabulary, grammar, and frameworks, but also emotions, cognition, and meaning – even contingency, ambiguity, and situationality. In encounters where each party perceives the other as an Other, communication unfolds through a mode of reciprocal anthropology, fostering the continuous emergence of focal points of knowledge. Over time, this process gradually gives rise to a referential framework that not only facilitates understanding but also accommodates misinterpretation.

In this sense, translation enables subjectivity, just as Johann Wolfgang von Goethe – after whom the university that conferred my doctorate is

named – once observed, "Wer fremde Sprachen nicht kennt, weiß nichts von seiner eigenen." Going further, translation transforms trans-subjectivity into translatable-subjectivity – a condition in which we all exist at every moment. Although I had naively assumed that I had enriched Thomas, traces of him had already been imprinted within me – whether during seminars and conferences, while strolling along the river, or through casual exchanges in the elevator.

On October 3, 2020, I boarded my flight at Frankfurt Airport, returning to Beijing – a city seven time zones away. Just a week prior, at my farewell gathering, I had delivered my final presentation at the Max Planck Institute, "Time as Norm," in which I examined calendar books to illustrate how global legal history could be perceived as a translation process of normative knowledge across multiple temporalities. As a parting gift, Thomas gave me a book, *Beyond East and West* by John C. H. Wu – perhaps symbolizing our shared intellectual effort to transcend not only time zones but also our respective knowledge traditions. Inside the book, I found a handwritten letter from Thomas, which ended with the words: "May these years also travel with you and accompany you in the future!" Indeed, and I look forward to the continuation of our shared experiences and the years to come.

Over these six years, many people have helped me, though I will limit my acknowledgments here to those directly related to the writing of this dissertation. Michael Stolleis provided crucial guidance on my understanding of German public law. Heinz Mohnhaupt patiently introduced me to the knowledge traditions of the Max Planck Institute. Christiane Birr's insightful questions and warm encouragement as a member of my defense committee were invaluable. Nicole Pasakarnis offered unwavering support, care, and even embraces when needed. Additionally, several scholars, including Leticia Vita, Alexandra Wielandt, Egas Bender de Moniz Bandeira, Joseph Wang, Otto Danwerth, and Christina Pössel, read portions or the entirety of my dissertation at different stages, offering invaluable feedback for revisions. Andreas Wagner assisted me in visualizing data through digital humanities methodologies.

Finally, as this dissertation reached its publication stage during the era of advanced AI, the proofreading process explored the capabilities of large language models (LLMs), specifically Claude 2.1 by Anthropic and GPT-4.0 by OpenAI. These tools were employed exclusively for draft editing purposes,

including grammar correction and style refinement. Full authorship, along with all intellectual ownership of the research, remains solely with the author. The editing process was carried out in a controlled and responsible manner, ensuring adherence to the highest standards of academic integrity.

Introduction: Perspectives, Questions, and Structure

Beginning in the 19th century, three waves of globalization of law and legal thought brought about a complex interaction of normativity at national and transnational levels.[1] Models of codification and constitutions circulated across many countries throughout the world. It all became a massive global phenomenon of normativity in exchange. Notably, the increasing transnationalization of a language of constitutionalism since World War I brought a shared political-legal template to fit the grammar of talking law and order, and a glossary of words to speak the language of normativity, which shape the landscape of the normative world until today. They are essential to enabling cross-cultural understanding, but at the same time produce misunderstandings between countries. In this book, I focus on the changing normative order in China during the first half of the 20th century, particularly regarding the link between China and the world. More specifically, throughout the process of making its own constitution, China mapped out the connection between inside and outside normative orders, and imported concepts, categories, principles, and even the framework for constructing itself as a nation-state from the West. Far from being reducible to a simple pattern of "impact" and "response," the constitutionalization process embodied China's internal struggle over the dilemma of normative change: reconciling the imperative of cultural continuity with the pursuit of institutional modernization.

Perspectives: Cultural translation through a global turn

In this study, I adopt the perspective of "cultural translation." This approach, while established in broader scholarly traditions, has been developed within legal history at the Max Planck Institute for Legal History and Legal Theory

1 Kennedy (2006).

(mpilhlt) in order to provide a theoretical and methodological blend for the study of the transnational circulation of legal information.[2] In the context of studying the Chinese experience with constitutionalism, cultural translation is an insightful approach for the in-depth analysis of the adaptation, reinterpretation, dis-embedding, and recontextualization of Western legal texts in China. Taking a local point of observation into consideration to produce a new understanding regarding the formation of a language of constitutionalism that emerged through the circulation of European models and their translation into different contexts allows us to transcend Eurocentric pre- and misconceptions.[3] The conceptual framework of cultural translation thus enables us to transcend a linear understanding of history and orients analysis toward interactions, interstices, internal dynamics, resistances, and actors' autonomy. The approach views the operation of law not only as a normative system but also as a web of meaning, continuously produced and reproduced by the actors.

In addition, this project contextualizes the translation of the *Weimarer Reichsverfassung* (WRV) by Chinese intellectuals in an entangled history with a global turn.[4] In the connected world of the 20th century, the WRV had transnational resonance between China and Germany. While China's perception of the world was divergent from Germany's, both countries cited each other as crucial references, as is clearly demonstrated by the compilations of constitutions from around the world produced in both countries in preparation for drafting constitutions before and after the two World Wars. At the same time, if we examine the Chinese history of constitutionalism, it becomes evident that the WRV was not the only example followed throughout the drafting of Chinese constitutions in the first half of the 20th century; rather, it served as one of many reference points, along with the constitutions of Soviet Russia and the Soviet Union, Peru, Estonia, Poland, Honduras, Lithuania, Spain, Switzerland, Yugoslavia, Romania, and Mexico, etc. Drafting constitutions in China was a process of building a global reference system

2 On this theoretical approach, see Duve (2014, 2017); Foljanty (2015).

3 On the transnational resonance of the WRV in Asia, Latin America, and the common law world, see the special *Focus* section published in Rechtsgeschichte – Legal History Rg 27 (2019) with articles by Vita (2019); Herrera (2019); Nie (2019); Li (2019); Coffey (2019), and introductory remarks by Duve / Li (2019).

4 Darian-Smith (2017).

for comparative legislation.[5] Hence, the Chinese experience of "translating Weimar" – from a perspective of the global circulation of legal information – is crucial for understanding its "glocalization," understood here as the cross-cultural adoption and adaptation of normative knowledge.[6]

Questions

This project integrates a global perspective on the cultural translation of the WRV with a close analysis of how it informed the making of the Chinese social(ist) constitution of 1923, the draft constitution of 1936, and the constitution of 1947. The case study of China, based on the detailed analysis of archival material, offers insights into how constitutional concepts and categories were interpreted and translated, as well as into how legal knowledge circulated across national borders when recontextualized within another country's cultural framework. It further examines the negotiations between Chinese intellectuals over how to select specific models for particular topics, articles, and provisions from multiple foreign constitutional texts, as well as the criteria that guided their choices. Throughout this process, it traces how new concepts and constitutional grammars were generated through legal translation, and how their meanings were subsequently elaborated in legal practice. Finally, the project investigates how Chinese legal tradition was de- and re-constructed by legal intellectuals in the course of these "translational processes".

Structure

To answer these questions, this project is structured in two parts. The first (chapters 1–2) describes the historical background of knowledge transfer since the legal reforms in the late Qing Dynasty, setting the Chinese adoption of the Weimar Constitution (WRV) into an entangled global context. The second part (chapters 3–5) focuses on how the social-economic elements of the Weimar Constitution were translated and incorporated into social(ist) constitutions of modern China.

5 Legislative Yuan (ed.) (1940) 79–80.
6 On the concept of glocalization in legal history, see Duve (2017).

Chapter One investigates the status of German *Staatsrechtslehre* (public law theory) in the knowledge circulation of European law through Chinese translations in the Late Qing. In this transformation process, the meaning of law shifted from the traditional *Lüli* (律例) system to a new framework that incorporated international law and the Six-Codes (六法全书) system. Contemporary Chinese jurists and reformers regarded this framework as an East Asian adaptation of the civil law tradition. In contrast to the introduction of international law into the Chinese context through English-language texts, German legal knowledge was transmitted via Japanese and integrated into the reform of Chinese national law. German *Staatsrechtslehre* fundamentally changed the way in which Chinese scholars conceived of the state. Its reception also served as the intellectual prelude to the Chinese cultural translation of the WRV and exerted a lasting influence on nation-building in China.

Chapter Two discusses the underlying relationship between the constitutions of China and Germany through imagined "constitutional worlds," a concept inspired by Benedict Anderson's *Imagined Communities*.[7] By compiling collections of constitutional texts from around the world, German and Chinese legal scholars created reference systems that enabled them to navigate current positions and to envision possible future orientations. These compilations created a comprehensible and comparable normative world, while also offering a framework for tracing its intellectual genealogy. In both China and Germany, at the end of their respective imperial and the beginning of their republican eras, publishers, intellectuals, and legislators edited compilations of constitutions at every turning point, thereby redefining the constitutional world in order to locate their country's current position within it. These imagined constitutional words, composed of historical memory, current pressures, and normative notions, kept China and Germany in continuous contact. They reveal overlapping constitutional landscapes and facilitated the circulation of implicit knowledge by drawing on each other's models and experiences.

Chapter Three revisits the formation of the section on social rights in the WRV, entitled *Wirtschaftsleben* ("Economic Life"), by analyzing the relevant debates during the National Assembly in Weimar. Here, as an outsider to

7 See Anderson (2006).

the German and European legal traditions, I interpret the reformulation of fundamental rights as a legislative process of cultural translation. Specifically, social rights were invented by reinterpreting the concept of rights, by rewriting the history of fundamental rights to legitimize their expansion, and by incorporating a new, unified logic for codification, all in order to integrate new elements into old forms. Based on the reports of key figures, such as Friedrich Naumann, Konrad Beyerle, and Hugo Sinzheimer, as well as the corresponding debates in the Constitutional Committee of the National Assembly, I seek to explain the institutional design of rights-based social autonomy, in order to compare it with the policy-oriented model of China in the following chapters.

Chapter Four and Five explore the translation process of the WRV's section on social rights in China. After providing an overview of the Chinese translations of the Weimar Constitution prepared from German, English, and Japanese sources in the early 1920s, Chapter Four focuses on two figures in China, Zhang Junmai (张君劢) and Li Jiannong (李剑农), who produced the first two Chinese translations of the WRV in 1920. Both were also involved in drafting several constitutions from the 1920s to the 1940s. Their dual role as translators and legislators enables this analysis to examine translation not only as a linguistic act of transcoding between languages but also as institutional practice – transforming words into action, legislation, and ultimately, lived practice.

In Chapter Five, materials from the archive of the Chinese Constituent Assembly are analysed to demonstrate how the *rights-based* constitutional model of the WRV ("Weimar model") was translated into a *policy-oriented* model in China. This translation was achieved by reworking the Weimar model within two different interpretive frameworks: through Confucianism in the 1923 constitution, and in the 1936 draft constitution as well as in the 1947 constitution through the Three Principles of the People (三民主义), the leading doctrine of the Nationalist Party of China (中国国民党, Kuomintang, hereafter "KMT"). Using a knowledge graph approach, I show not only how the circulation and integration of global constitutional knowledge into Chinese interpretive frameworks can be visually represented.[8] The graphs also facilitate

8 The knowledge graphs generated for this study are available online at https://dx.doi.org/10.12946/gplh28. The data and the code to build the visualization are freely available online: https://doi.org/10.5281/zenodo.3699153. See Wagner / Li (2020).

a structural analysis that reveals the creation of new frames of reference that made foreign and Chinese legal traditions mutually compatible and comparable. In analyzing each interpretive framework, I follow the progressive process of constitution-making composed of three interrelated strands of references: concerns, resources, and meanings. The first strand consists of the concerns of the members of the respective constituent assembly, which can be deduced from their proposals and debates. The second strand involves the systems of legislative references – including both traditional Chinese resources and foreign legislation – that reflect the Chinese cultural translation of the WRV's social rights-based model into a policy-oriented one in the Republic of China's 1923 and 1947 constitutions. The final strand comprises a uniform logic that functions as an interpretive framework for incorporating foreign elements into both models.

Chapter 1
Reclassifying Legal Knowledge: German *Staatsrechtslehre* as Intellectual Prelude to the Chinese Translation of the WRV

At the turn of the 19th and 20th centuries, China initiated a series of legal reforms designed to incorporate legal theories from a variety of sources. This was particularly evident within the domain of constitutional law, as the late Qing government and legal reformers sought to connect constitutional development to the traditional *Lüli* (律例) system while also incorporating rapidly evolving legal principles and theories from foreign countries.

This opening chapter examines the role and function of German *Staatsrechtslehre* in the circulation of legal knowledge through Chinese translations in the late Qing period. As China transitioned from the traditional *Lüli* system to a new normative system that combined international law and the concept of Six Codes (六法全书), the country experienced a paradigm shift in law and a reinterpretation of legal meaning. Whereas English was the primary language used during the introduction of international law to China, during the national law reforms of the late Qing, the legal knowledge of the German-speaking world was initially introduced chiefly through Japanese-language sources. This led to the development of a distinct domain of legal knowledge, characterized by linguistic divisions. The accumulatively layered knowledge landscape created by accessing specialized legal expertise through multiple linguistic channels facilitated China's gradual integration into the global system.

Taking a broader historical perspective, the ideas of the state expressed in the German *Staatsrechtslehre* fundamentally changed the Chinese understanding of the term "state." This redefined concept laid the groundwork for China's translation of the Weimar Constitution (WRV), which has continued to influence Chinese nation-building efforts to this day. Through an examination of the German *Staatsrechtslehre*, this chapter offers insights into the intricate process of China's legal and institutional transformation. It emphasizes the crucial role of understanding the dynamic interaction between legal knowledge and institutional structures in shaping political and cultural contexts.

1.1 Reclassifying legal knowledge through legal translation in the late Qing

During the late Qing (1840–1911), China faced numerous domestic and foreign crises that threatened its long-established imperial order.[1] One of the government's responses was to invest in the translation of foreign legal knowledge to aid legal reform. Facilitated by both private and official agencies of translation, this proceeded in three major stages: the introduction of international law, the adoption of national laws from various foreign countries, and the incorporation of constitutions.[2] The extensive acquisition of legal knowledge from foreign countries distinguished the legal reform of the late Qing from earlier efforts, as it abandoned the self-renewal of the traditional legal-political system in favor of a "changing of referents" (变法) in a set of normative knowledge. This transformation of the entire reference system inspired Chinese intellectuals to develop a different understanding of state and of law.[3] Unlike the legal changes from the Ming (1368–1644) to the early Qing (1644–1839) periods, which saw the transition from a *Lüling* (律令, statutes and decrees) system to a *Lüli* (律例, statutes and cases) system,[4] the late Qing sought new and better paradigms of laws to direct its legal reform. This led to China adopting an entirely new set of legal categories and divisions from a diverse range of foreign countries and languages. In translating laws and implementing these reforms, Chinese legal pioneers associated certain legal categories with specific languages to emphasize the legitimacy and authority of legal knowledge, thereby reflecting the shifting imperial powers of the 19th century.

This chapter examines the role and impact of the German language and its associated legal knowledge throughout this transformation, which shaped the Chinese conception of constitutions. During the initial phase of reform

1 Research on modern Chinese history is currently undergoing a transformation due to a paradigm shift away from a more Western-centric narrative of impact-response analysis, associated with John K. Fairbank, to a "China-centered history of China." See Teng / Fairbank (1979), Cohen (1984).

2 Tian / Li (2000) 363.

3 The expression of changing referents provides an analytical framework focusing on the learning process between China and West, especially in the Late Qing dynasty; see Jenco (2015) 92 ff.

4 Liu (2012) 178–180.

from 1839 to 1864, China's fundamental understanding of its own position in international law shifted, moving from *the center of all* to *a part of many*. Simultaneously, the Chinese concept of international law transitioned from the traditional "*Lüli* of *foreign* nations" to "the public law of *all* nations." In the first year of this period, the First Opium War (1839–1842) broke out against Britain. In the same year, and while serving as Governor-General of Hunan and Hubei Provinces, Lin Zexu (林则徐)[5] oversaw the partial translation of *The Law of Nations* by Emer de Vattel (滑达尔各国律例). This period culminated in 1864 with the translation of H. Wheaton's *Elements of International Law* (万国公法) by the American medical missionary W. A. P. Martin (丁韪良) and its publication by the Beijing School of Combined Learning (京师同文馆). This was a milestone in the late Qing government's incremental deconstruction of the myth surrounding the empire's perception of itself as the central and universal authority for normativity. This enabled China to enter the international legal system by aspiring to become a sovereign state.

In the second stage, from 1880 to 1907, the national laws of Japan and Germany served as key models for the nation-building project of the late Qing. This period was marked by two key publications. The first was the translation of the Napoleonic Codes, under the Chinese title *French Lüli* (法国律例), by A. A. Billequin (毕利干), a French chemistry professor at the Beijing School of Combined Learning in 1880; the second the 1907 publication of *The New Translation of Japanese Laws and Regulations* (新译日本法规大全) by the Commercial Press (商务印书馆). This established the Six-Codes System as a model for a comprehensive system of domestic national laws that Chinese reformers sought to implement. The publication of further collections of translations, i. e. *French Six Codes* and *German Six Codes,* ultimately introduced this codification system to China and provided the framework for a new Western-derived normative system (see 1.2 below).

Notably, the late Qing's choice of particular languages and their respective legal knowledge for translation reflected both its anxiety and its sense of crisis. These choices also had a pragmatic orientation. For instance, English became the symbolic language of international law, given that initially, the most pronounced pressure on the Qing dynasty came from the British. China translated international law works primarily from English, supple-

5 On the role of Lin in modern Chinese history, see Chang (1964).

mented by some French publications. However, despite the fact that the UK was the dominant power in the international order at that time, the Chinese translation of Anglophone knowledge of international law was mainly sourced from the USA.

Domestically, the Qing needed knowledge to quell subversive rebellions and to reinforce the weakening control of the monarchy. Such internal unrest led China to seek models to strengthen national laws and constitution, with both Japanese language and legal scholarship serving as the intermediary channel. Since the most influential Western element of Japan's Meiji legal reforms came from Germany, the Chinese translation of Japanese law effectively incorporated the (re)translation of German legal knowledge into the Chinese system of legal reference.

This intellectual constellation of legal knowledge sourced from different countries and their respective national languages can also be observed in the increasing number of legal journals and publications during this period. For instance, *Compilation of Translated Books* (译书汇编), the first Chinese journal of law and political science (published in Tokyo from 1900 to 1903), presented a vivid tableau of intellectual exchange across different dimensions of legal translation, including the types of legal knowledge transmitted, the intermediary languages employed, and the different role of nations in providing such knowledge. The association of different spheres of legal knowledge with different languages was also clearly apparent in the selection and translation of texts: English was perceived as the language best representing the knowledge of international law; French epitomized political philosophy; Japanese served as the medium for introducing various legal disciplines; and German encapsulated *Staatsrechtslehre* and *Staatswissenschaften* ("sciences of the state").[6] Language was not merely a medium for conveying meanings for communication and translation; it also acquired a symbolic significance in legitimizing learning and borrowing knowledge from a specific country.

In this way, legal translation in the late Qing went beyond the language itself and created a channel for the circulation of information and ideas, linking China's anxieties about external and internal crises with the adoption of foreign legal knowledge as a remedy. Amid these crises and anxieties, and

6 Two bibliographies published in 1901 were prepared and translated by Chinese students in Japan to introduce reference works in politics, law, and economy from Europe, the USA, and Japan to Chinese readers: Bibliography (1901a) and Bibliography (1901b).

through the cross-linguistic translation of legal knowledge, Chinese officials and intellectuals recalibrated their worldview and self-perception within the rapidly changing global context of the late 19th and early 20th centuries. Furthermore, legal knowledge from Germany and Japan gained prominence in China's legal education and lawmaking processes, particularly through the study of *Staatsrechtslehre* and *Staatswissenschaften*. This knowledge laid the intellectual groundwork for China's reception of the WRV, which came to play a foundational role in the making of China's modern constitutions.

1.1.1 English and American International Law: An emerging global idea in the era of maritime powers

The narratives surrounding the origins of international law are always shaped by the perspectives and contexts of the narrators. Two influential publications in the mid-19th century marked a paradigm shift in China's legal knowledge from the domestic *Lüli* of China to the *Lüli* of foreign nations and the public law of all nations. This shift was driven by the translation of international law into Chinese between the two Opium Wars from the 1840s to the 1860s.

In 1839, just before the first Opium War, Lin Zexu enlisted the help of Yuan Dehui (袁德辉) and the American missionary and doctor Peter Parker (伯驾) to translate several sections of the English version of *The Law of Nations* by Emer de Vattel into Chinese. These partial translations were later incorporated under the heading *Lüli of Foreign Nations* (各国律例) in two Chinese encyclopedias of geography, and they constituted the first Chinese rendering of a Western work on international law. However, the translation was still limited to the traditional Chinese legal category of *Lüli*, as shown in the Chinese title. After the second Opium War, the American missionary W. A. P. Martin translated the *Elements of International Law* by H. Wheaton into Chinese under the title *The Public Law of All Nations* (万国公法) in 1864.[7] This was the first systematic translation of international law funded by the late Qing government. It profoundly impacted China's self-conception and represented its transition from the world's central state to one of equal status within a universal public order shared by all countries.

7 Martin et al. (1864).

In this section, I will examine the reasons behind the adoption of English as the medium for importing international law knowledge into China, as well as the critical role played by American missionaries in translating these texts. Additionally, I will explain how the conceptualization of international law shifted from the traditional Chinese understanding of "*Lüli* of foreign nations" to the new concept of a "public law of all nations." This conceptual and epistemological shift implies the emergence of a global conception of international order during the era of maritime powers. In the following sections, I will discuss how this new knowledge was presented in its Chinese forms: first, as collected pieces of international law in the encyclopedias of geography (1.1.2), and second, by including world and European maps in the opening pages of law books (1.1.3).

1.1.2 The *Lüli* of foreign nations: International Law collected in Chinese encyclopedias of geography

On the eve of the First Opium War, as the diplomatic and military conflicts between the Qing and the British Empire escalated, English played an important role in the Chinese understanding of international law.[8] To begin with, the translation of laws from English to Chinese constituted a crucial step in the handling of the opium trade between Qing China and Britain during the months from June to September 1839. It was during this period that Lin Zexu commissioned Yuan Dehui and Peter Parker to prepare Chinese translations of various sections of Emer de Vattel's work on international law. Yuan and Parker did not work form the original French version but instead based their respective translations on Joseph Chitty's English translation of 1758.[9] Despite differing historical perspectives on why this book was chosen for translation, the selection of sections to be translated clearly demonstrates that the motivation was to provide the Qing government with a normative guide to handling the opium trade with the British by focusing on three themes: international trade, businessmen, and the laws of war. These themes aligned precisely with Lin's strategy of destroying the confiscated opium at Humen, and the relevant translated sections had a

8 For a cross-cultural study of the translingual practice of Chinese nation building, see Liu (1995) 183 ff.

9 Wang (1985) 63.

significant impact on his language and reasoning when he wrote a letter to Queen Victoria for the purpose of legal-diplomatic negotiations.[10]

Lin Zexu played a critical role in selecting Yuan Dehui and Peter Parker as translators for international law texts. Before his initial visit to Canton, Lin had already formed an English translation team for Western books and periodicals. Yuan Dehui was a trusted member of this team: He had been sent on missions to Canton in the summer of 1830 and again in the spring of 1838 to collect foreign works. He also accompanied Lin on his trip to Canton in early March of 1839.[11] Other members of the team, such as Liaon Ashee (林阿适), gained their expertise through experience with foreign missionaries or traders in the thirteen *hongs* of Canton. However, because of these close connections to foreign countries, some high-level Chinese officials regarded them with suspicion. Against this background, the trust Lin placed in Yuan Dehui was especially significant in Lin's decision to appoint him as one of the translators of international law.

In a broader sense, Parker, along with other Americans involved in trade and mission in Canton, was considered a trustworthy and qualified knowledge mediator for translating international law originally written in English, since the United Kingdom was the main rival of the late Qing at that time. Lin may have selected Parker because the latter had expressed a good rapport with China. This was articulated in a personal letter addressed to Lin, where Parker described himself as a friend to all of humanity, particularly China's allies, and expressed his willingness to assist the Chinese people. However, Parker only fully realized the purposes to which his translation work was being put after completing it.[12] However, Lin also relied on other Americans throughout the translation work;[13] given the particularity of foreign affairs

10 On the Chinese translation of international law, especially regarding legal discourses and grammar, see Svarverud (2007) 69 ff.; Kroll (2012) 63–72; on the role of translating international law in the making of modern China, see Liu (2004) 108–139. On Lin's letter to Queen Victoria, see Han (2008) 132–133.

11 For more details on Yuan Dehui, see Hunter (1885) 141–260.

12 Wang (1985) 59.

13 Such as the missionaries Elijah Coleman Bridgman (裨治文), Samuel Wells Williams (卫三畏), and Samuel Robbins Brown (勃朗), and the businessman William C. Hunter (亨德). Indeed, Lin Zexu also consulted two British men – the businessman R. Thom (罗伯聃) and a doctor named Hill (喜尔) – for their opinions about the translation, but only in the final stages. See Lin (1958) 126.

and the intricate relationship between the translators and foreign missionaries, Lin did not put unconditional trust in either the Americans or his own team.[14]

The knowledge of international law, written in English and mainly translated into collaboration with Americans, was cautiously recontextualized with reference to traditional Chinese legal concepts. Lin analogized international law to the *Lüli of the Great Qing* (大清律例), interpreting it as the *Lüli* of Foreign Nations (各国律例), that is, the domestic laws of Western countries.[15]

After unsuccessful negotiations with the British consuls, Lin wrote the *Letter to Queen Victoria* (拟颁发檄谕英国国王稿).[16] This letter serves as a crucial text for exploring the limitations of Lin's understanding of international law across various contexts. Lin adopted the idea of equal status between sovereign states, as presented in the translation of Vattel's work. At the same time, to ensure acceptance in China, Lin framed his arguments in the familiar form of an imperial denunciation (檄文), a typical Chinese literary genre well-known to the emperor and imperial court.

By alternating between two rhetorical registers, Lin constructed a parallel order between concepts such as internal/external, domestic/foreign, and tribute/treaty. He did not seek to universalize international law or to elevate the treaty system above national orders, but merely regarded international law as synonymous with foreign laws.[17] The following quotation from Lin's *Letter to Queen Victoria* provides important insights into the specific intellectual context surrounding international law immediately prior to the Opium War in 1840:[18]

> Only our Great Emperor can bring peace and serenity to all people from China to foreign countries and ensure equal treatment between them. There being any benefit, we share it with the *Tianxia* (天下, 'All-Under-Heaven'); there being anything harmful, it will be removed from the *Tianxia* […]. We have always used China's own resources to benefit the foreign barbarians (外夷); the abundant profits

14 Hu/Jia (2010) 87.

15 On the tension between international law and Chinese jurisdiction, especially during the First Opium War, see Chen (2015) 206–211.

16 Lin (2002a) 221–224.

17 For studies on the Chinese translation of international law from the perspective of cultural studies and legal grammar, see Svarverud (2000, 2007, 2011).

18 For an analysis on this letter, see Han (2008) 132–133; Carrai (2019) 49–50.

> of barbarian people (夷人) have all been all extracted from the Chinese people. How dare you repay this by harming the Chinese people with drugs? Even if you barbarian people (夷人) may not intend to cause harm, your excessive greed for profit disregards the suffering of others. Where is the justice? I have heard that opium is strictly forbidden in your country, which clearly shows that you know very well the harm it causes. Since you prevent the harm of opium in your country, you should never shift the harm to any other country, let alone China as the Middle Kingdom (中国) […]. The Celestial Empire (天朝) permits the transport of tea, silk, and other goods for sale without any restriction, solely for the purpose of sharing benefits with the *Tianxia* […]. I have also heard that you have issued rules (条约) instructing every British ship that sails for Canton not to bring any prohibited goods into China […]. I am writing this letter today to make clear to you the strict prohibition [of opium] in the Celestial Empire (天朝), so that you will never dare to violate it again […]. Any barbarian people (夷人) bringing opium into China will be executed immediately. This measure is intended to remove harm from the *Tianxia*.[19]

In this quote, Lin Zexu drew upon the intellectual paradigm of Emer de Vattel's international law, which emphasized the mutuality and reciprocity of benefits from international ties. The rhetorical style Lin employed reflects the cultural context of the Qing dynasty. The *Letter to Queen Victoria* began with a *Tianxia* (天下) world view,[20] referring to the realm of All-Under-Heaven[21] *(Tianxia)* divinely bestowed on the Chinese Emperor by universal and well-defined principles of order. However, by the time the *Letter* was written, *Tianxia* had lost its religious connotation, and instead signified a world of benefits based on the reciprocal sharing of profits between peoples and nations.[22] The *Letter* mentions *Tianxia* four times in total, consistently adopting a secularized view of sharing benefits and removing harm from the world.

19 All English translations are by the author unless otherwise stated. In Chinese: 洪惟我大皇帝抚绥中外，一视同仁。利则与天下公之，害则为天下去之。[…] 以中国之利利外夷，是夷人所获之厚利，皆从华民分去。岂有反以毒物害华民之理。即夷人未必有心为害，而贪利之极，不顾害人，试问天良安在?闻该国禁食鸦片甚严，是固明知鸦片之为害也。既不使为害于该国，则他国尚不可移害，况中国乎? […] 天朝于茶丝诸货，悉任其贩运流通，绝不靳惜。无他，利与天下公之也。[…] 闻来粤之船，皆经颁给条约，有不许携带禁物之语。[…] 今行文照会，明知天朝禁令之严，定必使之不敢再犯。[…] 新例于带鸦片来内地之夷人，定以斩绞之罪，所谓为天下去害者此也。Lin (2002a) 221–224.

20 For an overview of the *Tianxia* world view, see Zhao (2006).

21 For ease of reading and comprehension, after its initial introduction, the English translation of a Chinese concept is indicated by capitalized initials.

22 On the secularization of the sacred empire of China in terms of international law, see Carrai (2019) 47 ff.

This thinking regarding benefits is similar to Peter Parker's translations of Vattel's work on international trade.[23]

Secondly, the *Letter* still distinguished between Chinese and barbarians, but this binary rhetoric was applied at the level of private actors rather than to sovereign states. For instance, "barbarians," "barbarian businessman," "barbarian people," "barbarian robbers" were used to describe individuals; the expression "barbarian ships" denoted privately operated vessels associated with foreigners. On a state level, the UK, as the counterpart to China, was referred to as "this country" or "foreign country." This equal relationship between nations can also be seen in Yuan Dehui's translation.[24]

Finally, although using the rhetoric of Sino-centrism, Lin sought to promote a relationship of reciprocal trust between China and Britain, grounded in China's *Lüli* (律例) and in the foreign *Lüli*, respectively. Therefore, China could force British businessmen to comply with its new trade rules through the authority derived from the foreign *Lüli*. This strategy is reflected in the articles of the *Eight Prohibitions of the British Queen to Merchant Ships* (英吉利国王发给该国商船禁约八条), as translated and edited by Lin's team.[25]

In summary, Lin Zexu continued to apply the traditional Chinese conception of the universal order of All-Under-Heaven to understand international law, rather than starting from the universality of international law. However, he did espouse the notion of mutually beneficial and reciprocal relationships between nations. He translated the title of Emer de Vattel's *The Law of Nations* as *Lüli of Foreign Nations*, in analogy to China's *Lüli* system. Both the *Eight Prohibitions* and Vattel's work were external to the existing Chinese order system, but they were also seen as tools and bases for cross-border negotiations. Nonetheless, Lin's understanding of foreign laws remained at an instrumental level, and he never went further to see this kind of foreign laws as universal regulations that all countries should follow.

Lin perceived the crisis of the *Tianxia* order and the need to understand the rules of another order. He attempted to reconcile the two orders in his *Letter to Queen Victoria* by breaking down the *Tianxia* into the world of ben-

23 See Wei (2005) 1979.
24 See Wei (2005) 1981.
25 See Lin (2002b) 5156.

efits, distinguishing between Chinese people and barbarian people, on the one hand, and China and foreign states, on the other, and encouraging both sides to abide by each other's laws. Thus, Lin sought to achieve the broadest possible consensus between Chinese *Lüli* and foreign *Lüli* in diplomatic-legal practices.

In the *Letter*, concepts, categories, and references appear blurred, but they also converged when the *Tianxia* framework, centered on China, was blended with a more balanced and symmetric relationship between China and foreign countries. In Yuan Dehui's translation of Vattel's *The Law of Nations*, "sovereignty is the right to command in *the whole country*," which was equated with the space All-Under-Heaven. According to the Chinese translator's understanding of Vattel, as the idea of *Tianxia* came to resemble that of a nation's territory, the Qing appeared as a sovereign state.[26] This evolving conception can be seen in the editing process of two encyclopedias of geography at that time: the *Geography of the Four Continents* (四洲志) compiled by Lin Zexu and published in 1841, and Wei Yuan's (魏源) *Illustrated Treatise on the Maritime Kingdoms* (海国图志), the first edition of which was published in 1843.[27] Both works included excerpts from the translation of Vattel prepared separately by Yuan and Parker. While presiding over the translations of international law, Lin also completed the compilation of the *Geography*. In both works, the cartographical presentation of the "world" encompassing four different continents proliferated, but it still centered on China, demonstrating the contact, collision, and fusion of various orders.[28] The second encyclopedia, the *Illustrated Treatise*, focused more on the sea and went one step further by integraing the narrative of "China" into a new conceptualization of "world order" dominated by the maritime powers. By contrast, Lin's understanding of international law remained limited to the existing paradigm of Lüli based on the self-conception of a territorial power. Through a rhetorical framework of confrontation, Lin managed to maintain the dignity of China while beginning to observe, understand, and apply another set of rules in a changing world.

26 For a more detail analysis on this translation, see Svarverud (2000).

27 More details on the excerpts of international law included in the *Illustrated Treatise on the Maritime Kingdoms* can be found in Masini (1993) 22–30.

28 On the transformation of nations in the 19th century, see Osterhammel (2009) 901–906.

1.1.3 The Public Law of all nations: Global maps in International Law

After the Second Opium War in the 1860s,[29] China was forced to sign more unequal treaties with Western powers. This led to a surge in demand for Chinese translations of international law. To meet it, two translation-oriented institutes were established: the Beijing School of Combined Learning (京师同文馆) in 1862 and the Shanghai School for the Diffusion of Languages (上海广方言馆) in 1863.[30] These institutes produced official translations of international law documents for the Qing government, as both China and the Western powers needed to interpret and enforce these treaties. Consequently, these institutes became the official translation agencies of the Qing.

Between the 1860s and the 1890s, the translation of international law in China continued to be primarily overseen by American missionaries. At the Beijing School, W. A. P. Martin and his Chinese colleagues translated six works on international law and one on the *Napoleonic Codes* (1880). Their most notable translations include *Elements of International Law* (万国公法, 1864), *Guide Diplomatique* (星轺指掌, 1876), *Introduction to the Study of International Law* (公法便览, 1877), *Le Droit International Codifié* (公法会通, 1880), *Les lois de la guerre sur terre* (陆地战例新选, 1881), and *Traces of International Law in Ancient China* (中国古世公法论略, 1884).[31] At the Shanghai School, John Fryer (傅兰雅), a British missionary, translated four legal works, three of which were on international law. These included *International Law* (公法总论, 1884), *Commentaries upon International Law, Volumes 1–3* (各国交涉公法论, 1898) and *Commentaries upon International Law, Volume 4: Private International Law or Comity* (各国交涉便法论).[32] Led by the American missionaries, the Beijing-based translators started earlier and produced more than their counterparts in Shanghai.

The example of W. A. P. Martin's pioneering translation of Wheaton's *Elements of International Law*[33] suggests that Americans could be considered

29 On the great influence of the Second Opium War on China, see Platt (2012).

30 On the foundation of Beijing School and translation process of international law, see Kroll (2012) 80–83, 89–98.

31 Fu (2013) 208–231.

32 For details on the translations of the Beijing and Shanghai Schools, see Wei (ed.) (1905) 16; Kroll (2012) 86–89.

33 A comparative study on the international circulation of Henry Wheaton's *Elements of International Law* is offered by Liu (1999).

the most reliable allies of the late Qing government in diplomatic affairs. Additionally, the transition process of the Chinese understanding of international law also reflected the changing conception of the international public normative order for all nations, as indicated by important politicians' statements on this matter. W. A. P. Martin's notes on the use of these translated books further exemplify this transition. It is also evident in a memorial submitted by Prince Gong (恭亲王奕䜣) to the throne, which stated:

> At that time, the US ambassador Anson Burlingame (蒲安臣) said that the Powers had translated the *Lüli* of Great Qing (大清律例) into foreign languages, also saying that the missionary W. A. P. Martin translated the *Lüli of Foreign Nations* (外国通行律例) into Chinese, making it available for consultation. Last September, W. A. P. Martin came and presented four volumes of the Lüli *of All Nations* (万国律例), suggesting all countries joining to the Treaties (有约之国) should read this book […]. According to the report of W. A. P. Martin, the *Lüli* of Great Qing (大清律例) had already been translated by foreign countries. Since China did not force foreign countries to follow it, how could they in turn compel China to abide by foreign books? […] We have read this foreign book and compared its content with the Chinese system. It is not entirely compatible with the Chinese system, but there are still some provisions that can serve as a reference.[34]

The special role of Americans, particularly Anson Burlingame, in the late Qing dynasty in terms of diplomatic practices and the introduction of international law, is well-documented by Prince Gong. Burlingame, who served as the US minister to China from 1862 to 1867, was subsequently appointed China's envoy to the Western powers, including the United States, in recognition of his cooperative policy that contrasted with the approaches taken by the representatives of other powers, such as France and Russia.[35] Burlingame once suggested that Wenxiang (文祥), a Manchu member of the Junji Grand Council (军机处), the highest policy-making body of Qing China, use Henry Wheaton's book to negotiate with the British and French. When Burlingame learned that W. A. P. Martin was translating the entire book, he encouraged him and arranged for him to meet with Chinese officials of the Zongli

34 In Chinese: 适美国公使蒲安臣来言，各国有将大清律例翻出洋字一书，并言外国通行律例，近日经文士丁韪良译出汉文，可以观览。旋于上年九月间，带同来见，呈出《万国律例》四本，声称此书凡属有约之国，皆宜寓目。[…] 据丁韪良告称，大清律例，现经外国翻译。中国并未强外国以必行，岂有外国之书，转强中国以必行之礼。[…] 臣等查该外国律例一书，衡以中国制度，原不尽合，但其中亦间有可采之处。See Baoyun et al. (eds.) (1979) 2702–2703.

35 On Burlingame's cooperative policy, see Anderson (1977); on the Burlingame Mission and the Burlingame Treaty, see Schrecker (2010).

Yamen (总理衙门), the office responsible for foreign policy, in order to reach an agreement to assist Martin in both translation and publication.[36]

Prince Gong's memorial reveals that Chinese officials had a limited grasp of international law and remained firmly rooted in the paradigm of *Lüli*, which upheld a binary divide between the Qing and foreign nations. The Qing government was undoubtedly still reluctant to submit to international law at this time. Thus, in this ambiguous context, "All Nations" referred specifically to foreign nations only, excluding China itself. However, the treaties between China and foreign countries after the two Opium Wars situated the Qing within a broader world order defined by a network of treaties. This represented a significant shift in the mindset of Chinese officials, clearing the path for a transition from *Lüli* to public law that encompassed All Nations, now including China. W. A. P. Martin's prefatory notes to his Chinese translations – brief front-matter guidelines explaining the purpose and use of the translated books – were intended to facilitate this transition.

> Note 2 of *Elements of International Law:* The regulations contained in this book, called *The Public Law of All Nations*, apply to all countries and are not for the benefit of any particular country. Since this public law is similar to the *Lüli* of nations, it is also called *The Lüli of All Nations.*[37]
>
> Note 1 of *Introduction to the Study of International Law:* Public law is the basis of communication among countries. Because of its nature of law, each country shall abide by it; since it is public, the law is not for the benefit of any specific country.[38]

W. A. P. Martin played a crucial role in differentiating between the concepts of *Lüli* and "public law." While *Lüli* resonated with Chinese readers and served to highlight the normative force of international law, the designation "of all nations" framed international law as shared across polities rather than as a state's domestic law. The public-private divide echoes the fact that international law maintains a certain universal normativity that can be applied beyond the borders of nation-states. Martin's prefatory notes in *Introduction*

36 On the historical details, see Farquhar (1954) 125 ff.; on the biography of W. A. P. Martin see Covell (1978).

37 In Chinese: 万国公法凡例第二：是书所录条例，名为万国公法，盖系诸国通行者，非一国所得私也。又以其与各国律例相似，故亦名为万国律例云。See Martin et al. (1864).

38 In Chinese: 公法便览凡例第一：公法者，邦国所恃以交际者也。谓之法者，各国在所必遵。谓之公者，非一国所得而私焉。See Martin et al. (1877).

to the Study of International Law elevated the concept of "public" to "all countries shall abide by," promoting the universal application of international law.

The subtle cultural differences between the public-private divide also reshaped Chinese perspectives on international law, moving from a reciprocal, diplomatic reference to foreign *Lüli* to universal rules applied internationally.[39] The cooperation between Martin and the official assistants of the Zongli Yamen, who represented a pro-Western policy in the Qing government, suggests an underlying tacit agreement between them regarding the Chinese understanding of international law.

Moreover, the Chinese version of *Elements of International Law* attempted to reflect the global trend of conceiving international law as a form of public law. To visualize this universal perspective, it included two maps showing the Eastern and Western hemispheres.[40] Martin's preface shows how his understanding of public law based on his Christian transcendental worldview, while the one written by the diplomat Zhang Sigui (张斯桂) emphasized the significance of the new knowledge from a Chinese perspective.

> W. A. P. Martin's preface: Although countless nations exist in the whole world, the nature of people is the same. There is only one transcendent Lord creating, blessing, and judging.[41]
>
> Zhang Sigui's preface: Looking at the global map, there are dozens of nations, large or small. Those that have survived all depend on the order created by their ancestors. This order was written in the documents of the alliance [concluded among states], which should be followed without changes. Divine powers will punish anyone who violates the covenant. Now, this is the book of the *Lüli of All Nations*.[42]

39 On the conceptual transformation in the process of translating international law into Chinese, especially on the idea of sovereignty, see Carrai (2019) 66–73; a broader investigation of Chinese use of international law in other media, for instance, in newspapers, encyclopedias, etc., see Kroll (2012) 106–117.

40 On the making of universal order in China through the translation of the *Elements of International Law*, see Liu (2004) 108–139; on the translations of the *Elements of International Law* into other languages, see Liu (1999).

41 In Chinese: 天下邦国，虽以万计，而人民实本于一派，惟一大主宰，造其端，佑其生，理其事焉。See Martin et al. (1864), Preface.

42 In Chinese: 统观地球版图，大小不下数十国，其犹有存焉着，则恃其先王之命，载在盟府，世世守之，长享勿替，有渝此盟，神明殛之，即此《万国律例》一书耳。See Martin et al. (1864), Zhang Sigui's Preface.

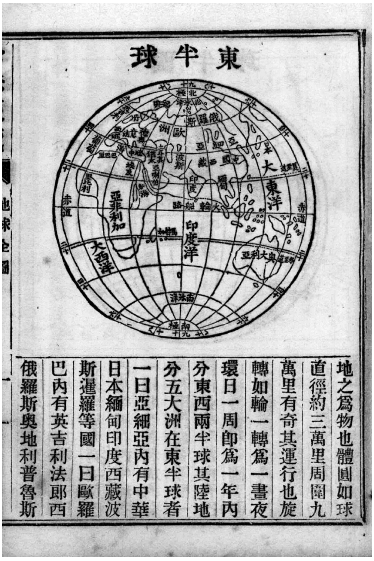

Figure 1

Figure 2

Figure 3

Figure 1: Eastern Hemisphere Map
Source: Martin et al. (1877)
front matter 1 right

Figure 2: Western Hemisphere Map
Source: Martin et al. (1877)
front matter 2 left

Figure 3: Map of Europe
Source: Martin et al. (1877)
front matter 2 right

In his preface, Martin aligned China with other nations and emphasized the equality of all people, created, blessed, and governed by the same God. By including world maps in a volume of international law, Martin also introduced the Christian universalism that underpinned international law. Zhang Sigui, a good friend of W. A. P. Martin, further positioned and justified this narrative in a universal world order, international law, and public law by invoking China's historical memory of the Spring and Autumn period (ca. 771–476 BCE). While Zhang Sigui did not share Martin's vision of a single deity, instead emphasizing the role of ancestral and divine powers, the gradual replacement of the Chinese concept of All-Under-Heaven with that of global international relations was unfolding. It transcended the traditional way of theorizing such power relations. Rather than viewing itself as the center of the world and receiving homage and tribute from other nations due to its absolute supremacy and superiority, China began to see itself as of equal standing with all other nations. The translation and introduction of international law thus aligned China with the rest of the world.

1.2 Japanese and German *Staatsrechtslehre:* China's nation-state building within the Civil Law System

The internal crises of China, particularly the war with Japan in 1895 and the invasion and occupation of Beijing by the Eight-Nation Alliance in 1900, also drove the translation of foreign knowledge of national laws as an attempt to address governance issues and restore the Qing's authority in the late 19th century. With its military and political power weakening, the Qing was losing authority both domestically and internationally. For example, the Japanese version of the Japan-Qing Treaty of Peace in 1895 refused to use the title of the Middle Kingdom, instead replacing it with Great Qing or Qing Kingdom, thereby changing its position from that of the center of a global order All-Under-Heaven to that of a national entity with an equal title and a clearly delimited territory.[43] After the signing of the Boxer Protocol in 1901, Empress Dowager Cixi (慈禧) released the Imperial Order of Reforming (明定国是诏), which aimed to overcome the binary oppositions between Chinese and Western ideas, marking a strategic shift regarding "what to learn from the West" from scientific-technological knowledge to political-legal knowledge.

43 Elliott (2014) 37.

The translation of foreign knowledge of national law, from France, Japan, and Germany to China, marked an epistemological change in legal concept from the Chinese *Lüli* system to the Six-Codes System, representing an East Asian re-interpretation and modification of the European civil law tradition. The translation of foreign national laws into Chinese also continued within the framework of *Lüli*, the core conceptual structure of traditional Chinese legal thinking. For instance, in 1880, A.A. Billequin (毕利干) titled the translation of Napoleonic Codes that he oversaw *French Lüli* (法国律例).

In the years between 1895 and the revolution that brought down the Qing dynasty in 1911, the Qing government undertook major institutional reforms, particularly from 1901 onwards. Among them were the establishment of the Office for the Revision of Laws (修订法律馆) in 1902 and the Office for the Compilation of Constitutions (宪政编查馆) in 1905. Their affiliated translation agencies began to translate foreign national laws on a large scale to serve as references for legal reform. In 1902, the Commercial Press (商务印书馆) in Shanghai set up a compilation and translation department to systematically introduce foreign national laws to a Chinese readership. During this period, the Japanese language became dominant in the field of law. The *New Translation of Japanese Laws and Regulations* (新译日本法规大全), published by the Commercial Press in 1907, replaced the knowledge paradigm of *Lüli* in the field of national laws with the new framework of the Six-Codes System based on constitutionalism. Furthermore, via Japanese law and the civil law tradition, the German concepts of *Staatsrechtslehre* and *Staatswissenschaft* were introduced to China, guiding the country towards legal reforms aimed at creating a modern nation-state.

1.2.1 French *Lüli:* A prelude to the Six-Codes System

In 1880, A.A. Billequin led the students of the Beijing School of Combined Learning in translating and publishing *French Lüli* (法国律例), which comprised 46 volumes in six parts: the French Penal Code (1810), Code of Criminal Procedure (1808), Commercial Code (1807), Forest Code (1827), Civil Code (1804), and Code of Civil Procedure (1806).[44] The structure and sequence of the volumes differed from those of the collections *French Law*

44 Chen (2013) Preface, 2–3.

Books (仏蘭西法律書) by the Japanese jurist Mitsukuri Rinsho in 1873 and the *French Six Codes* that would be compiled and published by the Commercial Press in 1913. In contrast to Billequin's *French Lüli*, the last two books included the French Constitution itself, the foundational text which, by situating itself at the very core of the nation's legal framework, served as the cornerstone of France as a modern country.[45]

Billequin borrowed the concept of *Lüli* but applied it to commercial and civil law, extending the general understanding and application of *Lüli* beyond the punitive orientation of traditional Chinese law. Instead of the French constitution, he inserted the Forest Code to complete the six components. This may suggest that the constitution, despite its importance in the Western legal system, was still a controversial topic in China at that time. Unfortunately, Billequin's translation did not receive adequate attention from Chinese readers, nor did it garner the political and legal importance it deserved. The following excerpts from the two prefaces to *French Lüli* – one written by Chinese official Wang Wenshao (王文韶) and the other by Billequin – clearly demonstrate the divergence in perspectives on the French codes:

> Wang Wenshao's preface: This book is well-organized and beautifully written. Since Chinese and foreign customs differ greatly, there are naturally areas where uniformity is neither possible nor necessary. The translation of this book is so extensive and detailed that it is helpful for those who are interested in the knowledge of *Lüli*.[46]
>
> A. A Billequin's preface: As a matter of fact, the translation of *French Lüli* is to draw a unified boundary for all behaviors of all people, providing them with laws to follow and preventing them from committing a crime or being hurt by crimes. All *Lüli* being established are all under the considerations of justice, fairness and appropriateness, which cannot be compromised or altered, in accordance with natural justice and human nature, as equity cannot be changed.[47]

The two men's divergent interpretations of the Napoleonic codes – as interesting but ultimately non-essential knowledge of foreign national *Lüli*, or as

45 Mitsukuri (1873) Preface.

46 In Chinese: 王文韶序：缕析条分，秩然灿然。夫中外风俗各殊，自有不必从同之处，而以备博采周咨，则是本书之翻译，未始非留心律例者所宜流览也。Billequin et al. (1882), Wang's Preface, 2.

47 In Chinese: 凡例序：谨译《法国律例》之设，实为本国四民一切行止动作，划一界限，使之有所率循，不致或罹于罪也。盖其创设之律例，皆出于至正、至公、至当，无可迁就，无可更易，合乎天理，准乎人情，而为一确乎不移之权衡也。Billequin et al. (1882), Billequin's Preface, 3.

a new form of law for nation-state building, respectively – led to noticeable differences in their prefaces. As an official of the late Qing government, Wang noted that the codes were translated elegantly, providing legal professionals with a well-written reference book, without recognizing its significance in transforming the knowledge paradigm. In contrast, Billequin expanded the concept of *Lüli* by applying it to behaviors shared by all people, whether in the public or private sphere, while also attempting to establish general values and principles for *Lüli* in the context of codification as a project guided by human rationality.

It was not until 1896 that Liang Qichao (梁启超) realized the conceptual breakthrough in Billequin's translation and his use of *Lüli* that linked it to France's nation-building. In his *Bibliography of Western Knowledge*, Liang wrote: "Although *French Lüli* was recognized under the Chinese name of *Lüli*, it was actually the framework of the French nation under Napoleon's governance and should not be viewed only as criminal law."[48]

1.2.2 The Japanese Six-Codes System: Translating the Civil Law System as new Rites of Zhou

In the final years of the Qing dynasty, there was a growing consensus that the translation of foreign legal knowledge was essential for the reform of China's political-legal system. In April 1902, an Imperial Order stated: "Shen Jiaben (沈家本) and Wu Tingfang (伍廷芳) will take the laws from various countries into account, carefully compile and translate all the existing codes in accordance with the current circumstances of negotiations, making them properly proposed and accepted in China and foreign countries as a reference for governance."[49] The Office for the Revision of Laws (修订法律馆) was established in 1902, because, as Shen himself put it, "translation is the most important thing to do when referring to and learning the laws of foreign countries, while legal translation is the most difficult."[50]

Given the limited time and resources, Shen Jiaben relied on Japanese translations to introduce Western legal knowledge to China. Apart from

48 Liang (1897) 9.
49 Shen (1904) 1.
50 Shen (1906) 838; on the foundation of the Office for the Revision of Laws, see Chen (2009).

the reason that "China and Japan share similar politics, religions, characters and customs, and both learn from the West," the change of mentality was of greater importance. According to Shen, the Meiji Restoration had led to "changes of people's customs [and to] increasing prosperity," and made Japan "a prosperous country in East Asia."[51] Japan thus became the obvious gateway for China's understanding of Western laws.

As a result, the civil law system became the primary source of knowledge for China's translation and appropriation of national laws from other countries. Within five years of the Office for the Revision of Laws' inception, 56 legal codes from 15 countries were translated. Among the top five countries of origin were Japan (17), Germany (14), France (5), the United States of America (4), and Austria (4). The Bureau also translated the court organization laws of three countries: Japan, Germany, and Austria. In the preface of *Record of Judicial Interviews* (裁判访问录), Shen Jiaben stated that "in the Western judicial system, Britain and the United States are from one tradition, as opposed to Germany and France from another. They are roughly the same but have many differences. Japan mostly learned from Germany and France, but they also contrast with each other."[52]

Shen Jiaben played an instrumental role in clarifying the differences between the common law system and the civil law system, and in shaping China's preference for the latter, particularly the German and Japanese models. This inclination towards civil law models was shared by many other legal reformers of the time. The linguistic similarities between Chinese and Japanese facilitated the process of learning and translating Western legal knowledge and terminology via Japan. This knowledge was then applied in leveraging the continental civil law systems to construct the new nation-state in China.

It is important to note that the overall translation of foreign legal codes by the Office for the Revision of Laws was a significant factor in the fundamental transformation of China's understanding of national law, leading to the adoption of the Six-Codes System and a departure from the previously dominant *Lüli* system. This shift also marked the move away from traditional Chinese legal methodology, and reflected a significant step towards a new political-legal system.

51 Shen (1904) 5.
52 Shen (2015) 206.

Table 1: Foreign Laws Translated by the Office for the Revision of Laws[53]

Country	Criminal Law	Criminal Procedure Law	Court Organization Law	Civil Law	Civil Procedural Law	Commercial Law	Nationality Law	Others	Total
Japan	6	4	1	1	2	2	1		17
Germany	1		4	1	4	3	1		14
France	1	1		1			1	1	5
USA	1	1				1	1		4
Austria			1	1	1		1		4
Belgium	1	1							2
Italy	1						1		2
Switzerland	1			1					1
Russia	1								1
Netherlands	1								1
Finland	1								1
UK							1		1
Portugal							1		1
Spain							1		1
Romania							1		1

In addition to the official translations by the Office for the Revision of Laws, the Commercial Press also made significant contributions to the translation of foreign laws. *The New Translation of Japanese Laws and Regulations* (新译日本法规大全), published in 1907, is one of the most notable examples. Edited by Uchikawa Yoshiaki (内川义章), this compilation included nearly 3,000 laws, regulations, edicts, and rules from the Meiji Restoration in Japan, divided into 25 categories in 81 volumes.[54] This comprehensive encyclopedia of Japanese law prompted the establishment of a new interpretation by positioning the Six-Codes System within a Confucian framework. This becomes apparent in the prefaces by Shen Jiaben, Sheng Xuanhuai

53 The statistical data comes from four memorials to the throne by Shen Jiaben: Shen (1904, 1906, 1909a, 1909b).

54 Translation Department of Nanyang College et al. (2007), General Preface, 1.

(盛宣怀), and Dai Hongci (戴鸿慈), who all equated *The New Translation of Japanese Laws and Regulations* with the Six Offices (六官) in the *Rites of Zhou* (周礼). The Six Offices refer to six functional offices of governance in early Zhou political thought, while the *Rites of Zhou* represents the model of the ideal governance in the Confucian knowledge system.

> Shen Jiaben's Preface: There is no ancient legal book that is much more detailed than the *Rites of Zhou* (周礼). After that, *Tongdian* (通典) in the Tang dynasty, *Zhizheng Tiaoge* (至正条格) in the Yuan Dynasty and the *Huidian* (会典) in the Ming Dynasty were all written for a particular dynasty. Our *Qing Huidian* (大清会典) was compiled within a quite large structure. The new legal system in Japan has all been included in *The New Translation of Japanese Laws and Regulations*, which is placed in the same lineage as the *Rites of Zhou*, the *Tongdian* and the *Huidian*.[55]
>
> Sheng Xuanhuai's Preface: Looking back to the ancient times, *[The New Translation of Japanese Laws and Regulations]* can be regarded as one of the branches deriving from the 360 volumes of the *Rites of Zhou*. Compared to the current corpus of Chinese law, it serves as a work of reference for our imperial edicts, the *Huidian,* and the *Zeli* (则例).[56]
>
> Dai Hongci's Preface: The constitution is essential for the political-legal system. Although the customs are different among countries, they are all bound by the law. In any case, the only root is the constitution […]. This book has included almost all Japanese laws, among which the constitution takes the first place. Thus, it must be acknowledged as a specialized work in the field of politics and law.[57]

These prefaces served to show how Japan built a modern nation-state since the Meiji Restoration with a new legal structure that went beyond the *Lüli* system. For Chinese intellectuals, this rediscovery of another genealogy of normative knowledge was framed through reference to the *Rites of Zhou*, which they presented as the traditional foundation of order. At the same time, this classical genealogy was reinterpreted as a new reference point, one that heralded a deeper transformation in the understanding of state legitimacy. As Minister

55 In Chinese: 古来法制之书, 莫详于周官。其后唐之《通典》, 元之《至正条格》, 明之《会典》, 皆备载一朝之制作。我《大清会典》一编, 尤为巨构。日本全国新制, 萃于《法规大全》一书, 即《周官》、《通典》、《会典》诸书之流亚也。Translation Department of Nanyang College et al. (2007), Preface, 8.

56 In Chinese: 求之于古, 则《周官》三百六十, 属之支流。征之于今, 则吾国圣训、会典、则例诸宏编之参考书也。Translation Department of Nanyang College et al. (2007), Preface, 20.

57 In Chinese: 政法不止一宪法, 而宪法为要。盖各国俗尚虽殊, 而约之于法则一法, 虽万变而根于宪则一。[…] 是书于日本各法, 几无不备, 而首列宪法, 不可谓非政法专门之书。Translation Department of Nanyang College et al. (2007), Preface, 5.

of the Revision of Laws (修订法律大臣), Shen Jiaben oversaw the translation of foreign codes; his understanding of the laws of modern countries thus went beyond the *Lüli* system. Shen analogized *The New Translation of Japanese Laws and Regulations* with the *Rites of Zhou* and *Huidian*, placing the criminal laws from *Lüli of the Great Qing* (大清律例) and the administrative regulations in *Zeli of the Six Ministries* (六部则例) on a par with the *Rites of Zhou* as the fundamental political system of the state. By integrating existing and newly introduced knowledge, he paved the way for constitutional reform.

The practice of comparing existing Chinese normative knowledge with knowledge introduced from abroad was not unique to Shen Jiaben; it frequently appeared in the writings of others late Qing reformers as well. Sheng Xuanhuai's use of the phrase "comparing with the current corpus of Chinese law" is another example of this reality-oriented comparison of legal knowledge. Through this approach, traditional Chinese laws, such as the imperial edicts, *Huidian*, and *Zeli* were reconceptualized and remolded with a normative overtone in the name of "law" understood in the Western juridical sense. Similarly, Dai Hongci directed readers' attention to the Japanese Meiji Constitution of 1889 by emphasizing its role as the legal foundation of Japan's reforms, with the aim of gaining public support for a Chinese constitution that had yet to be established.

In addition, the Japanese concept of the Six-Codes System was taken up by Chinese legal and political elites through their engagement with *The New Translation of Japanese Laws and Regulations*, which employed the number six to underscore the comprehensiveness of the civil law system. The preface by Japanese jurist Yorozu Oda (织田万) explicitly stated that *The New Translation of Japanese Laws and Regulations* corresponded to the Six-Codes System as the East Asian counterpart of the continental European civil law system:

> Yorozu Oda's Preface: The Shanghai Commercial Press translated the *Japanese Laws and Regulations* in Chinese with profound patriotic intent. It makes me recall the beginning of the Meiji Restoration in my country when the *French Six Codes* was first translated. At that time, the translation was much cherished and followed by scholars; nowadays, it seems too inferior for us to read. However, the seeds of legal reform were actually sown then.[58]

58 In Chinese: 上海商务印书馆以汉文译《日本法规大全》, 其用意之深, 良为爱国。因忆我邦明治之初, 首译《法国六法》, 彼时士人珍袭弗措, 今乃觉其丑劣不堪卒读。然革新法制之种子, 实播于此。Translation Department of Nanyang College et al. (2007), Preface, 18.

The translation of national laws from France and Germany introduced the concept of the Six-Codes structure of national legislation, which was first proposed by Japanese scholars with reference to Confucian taxonomy. As noted above, Yorozu Oda's mention of the *French Six Codes* refers to Mitsukuri Rinsho's 1873 translation, in which Mitsukuri stated that a constitution was the foundation of a country and the Six Codes should be carefully compiled and analyzed to ensure completeness.[59] This was the first time the term "Six Codes" was used in Japan, which subsequently was widely adopted. In 1885, Gen Yamawaki (山脇玄) and Kensuke Imamura (今村研介) translated the *German Six Codes* (Japanese: *Doitsu liufa* 独逸六法), which also contributed to the development of the concept of Six Codes.[60]

The use of the number six was not merely a numerical count, but held symbolic meanings in East Asian culture. Huang Qintang argues that the invention and use of the Six-Code System conforms to the ordering tradition of a number of canonical compilations in East Asian culture, such as the six pieces of *The Book of Law* (法经), the Six Officials of the *Rites of Zhou*, and the earliest existing collected law code, the *Six Codes of Tang* (唐六典). Traditionally, six signified completeness, as it sums up the two sets of basic elements that constitute space and time, respectively: heaven, earth, plus the four directions; and heaven, earth, plus the four seasons. Analogously, the number six also symbolized the completeness of a compilation in traditional Chinese books. Therefore, the symbolic image and the numerical value implied by the number six supported viewing Six Codes as a complete set of law books.[61]

The new concept of Six Codes combined the Japanese quest for a concise expression of European codification (notably France and Germany) with East Asian tradition, especially the Confucian Classics, exemplified by the *Rites of Zhou,* and the *Huidian* system, including the *Six Codes of Tang.* In so doing, the Six Codes category was legitimized by analogy with these classical and administrative precedents and further elaborated. Intellectuals and officials, such as Shen Jiaben, applied and cited the *Rites of Zhou* and *Huidian* while introducing *The New Translation of Japanese Laws and Regulations* to China.

59 Mitsukuri (1873) Preface.
60 Gen / Kensuke (1885).
61 Huang (2013) 10–12.

Thus, in China and Japan, the term "Six Codes" did not denote a simple classification of codes, but provided an institutional blueprint for building a modern nation-state. Even after the collapse of the Qing dynasty, the translation project of the Six Codes continued, following the examples of the late Qing pioneers. Several collections translating different countries' Six Codes were produced in the early Republican era, including the *Japanese Six Codes* (1911), the *German Six Codes* (1913), and the *French Six Codes* (1913). Throughout the Chinese legal reforms of the early 20th century, China sourced, consolidated, restructured, and incorporated these codification models from different continental European countries to reinvent its own normative knowledge. Between the common law and civil law traditions in Europe, China opted for the latter, paying particular attention to the German model via Japan.

1.2.3 German *Staatsrechtslehre:* Knowledge tools to transform the *Staatsbild* (state concept)

The relationship between the legal system and the conception of the state has been a consistent theme throughout history. Over time, various myths were articulated and models were formulated by intellectuals and politicians to guide nations in their transformation.[62] In China, the concept of Six Codes served as a knowledge tool for national transformation, particularly through the introduction of German *Staatsrechtslehre* via Japanese translations. This is demonstrated clearly in the purpose of legal education, as outlined in a lecture delivered by the Minister of Education of the late Qing dynasty:

> The academic purpose shall correspond with politics. China's laws and regulations are mainly learned from Japan, while the legal system of Japan is actually appropriated from Germany. However, the system of German jurisprudence is not compatible with that of Britain and France. Japan first adopted French law, but later abandoned it and switched to German law. Thus, in a country of constitutional monarchy, every law being chosen and enforced must suit the state system without conflicts. That is what legal and political scholars must agree with.[63]

62 Stolleis (2017) 121 ff.

63 In Chinese: 学术之所宗, 必求与政治相应, 我国各项法规多取则于日本, 而日本实导源于德国, 德国法学之统系与英法诸国统系绝不相容。日本先采法国派, 后乃悉弃之, 而改用德国派。盖君主立宪政体之国, 一切法制必择其与国体相宜者, 然后实施, 无扞格之弊, 此则讲法政学者所必应共喻者也。Taga (1972) 656.

During the late Qing period, German jurisprudence, particularly *Staatsrechtslehre*, became the guide for legal education in China, alongside Japan's legal knowledge. It served as a model for imagining a new state by transforming the way in which its order was conceptualized. Two institutions, Hosei University (which offered a special intensive course in law and political science for training state administrators, 法政大学速成科) and Beijing Imperial Law School (京师法律学堂), played a crucial role in training new legal professionals. The former primarily attracted Chinese students seeking a quick and concise legal education, while the latter was initially affiliated with the Office for the Revision of Laws to facilitate mutual assistance between legal translation, legal reform, and talent training. Although the content on *Staatsrechtslehre* was limited to its narrowest sense, as equivalent to the constitution, both institutions' curricula included courses on *Staatsrechtslehre* and on constitutional law. This juxtaposition of *Staatsrechtslehre* and constitutional law highlighted the need to conceptualize the state in a differentiated and multifaceted way beyond the constitutional text, particularly during a time of rapid change.

In the lecture notes from the aforementioned institutes, a tension is discernible between the knowledge taught by the teachers of *Staatsrechtslehre* and that imparted in courses of constitutional law.[64] They perceived the constitution as an analytical object rather than a mere model to be imitated with reverence. The different approaches are exemplified in the teaching on state sovereignty. Whereas the lectures on constitutional law by Toru Shimizu and Asatarou Okada strictly adhered to the doctrine of monarchical sovereignty in line with Articles 1 and 4 of the 1889 Meiji Constitution,[65] the lectures

64 In Hosei University's intensive course on law and political science, public law was taught by Toru Shimizu (清水澄), Katsuhiko Kakehi (筧克彦), and Tatsukichi Minobe (美浓部达吉). *The Lectures on Constitutional Law* by Toru Shimizu was translated by Yu Lianggong (俞亮公); *The Lectures on Staatsrechtslehre* by Katsuhiko Kakehi was disseminated widely, in at least five translations (by Zhou Hongye [周宏业], Chen Wu [陈武], Xiong Fanyu [熊范舆], Li Jiaxiang [李家祥], and Chen Shixia [陈时夏], respectively). *The Lectures on Staatsrechtslehre* by Tatsukichi Minobe was translated by Jin Minlan (金泯澜). The chairs of public law at Beijing Imperial Law School were held by Asatarou Okada (冈田朝太郎) and Sonbun Iwai (岩井尊闻). The former taught the general theory of jurisprudence (constitutional and administrative law), the latter *Staatsrechtslehre.* Their complete lectures were edited by Xiong Yuanhan (熊元翰).

65 Okada / Xiong (2013) 24–25.

on *Staatsrechtslehre* by Katsuhiko Kakehi (筧克彦), Tatsukichi Minobe (美浓部达吉), or Sonbun Iwai (岩井尊闻) show how these jurists used the theory of national sovereignty to domesticate the emperor's status. However, subtle differences between these three Japanese scholars of *Staatsrechtslehre* also existed, which are partly attributable to their different mentors and corresponding links to contemporary German legal scholarship. Katsuhiko Kakehi, for example, criticized Bluntschli's concept of the organic state using the theory of organs developed by Otto von Gierke, under whom he had studied. Gierke emphasized that the state's legal personality was similar to that of a group.[66] By contrast, Tatsukichi Minobe, a disciple of Georg Jellinek, published his Japanese textbook of *Staatsrechtslehre* (vol. 1) in 1907, where he advanced the emperor-as-organ theory based on Jellinek's theory of state authority.[67] In summary, while the lectures on constitutional law were confined to the articles of the Meiji Constitution and strictly followed the doctrine of legal positivism as formulated by Paul Laband, those on *Staatsrechtslehre* included various layers in constructing a nation-state, such as political, social, and even psychological elements, providing many more components for imagining a new state.

Through the medium of the Japanese language, China also incorporated German *Staatsrechtslehre* concepts concerning the state during the late Qing period, along with debates on antithetical ideas such as monarchical sovereignty versus national sovereignty, state organism versus state authority theory, among others. These debates built up an intellectual foundation for later controversies over the concept of the state. For instance, debates on revolution between the constitutionalists and the revolutionaries were mainly based on Bluntschli's theory.[68] Meanwhile, debates on constitutional theory saw followers of Tatsukichi Minobe's conception of the emperor as organ of the state clash with supporters of Katsuhiko Kakehi's *kokutai*-centered theory of imperial sovereignty, which located sovereignty in the person of the emperor.[69]

66 Kakehi / Chen (1907) 15, 20. Similar content also appears in other Chinese versions of Kakehi's *Staatsrechtslehre:* see Kakehi / Chen (1905); Kakehi / Zhou (1905); Kakehi / Xiong (1907); Kakehi / Li (1907).

67 Minobe (1907) 20 ff.; also see Minobe / Jin (1910).

68 A typical example of how German knowledge of *Staatsrechtslehre* was employed in Chinese political debates can be found in the reception of Bluntschli's *Allgemeine Staatslehre.* See Bastid-Bruguière (1997); Lei (2009).

69 Sun (2004) 82.

The spread of German *Staatsrechtslehre* knowledge as transmitted by Japanese scholars prompted historical and theoretical reflections on Qing governance. Just before the Revolution of 1911 that established the Republic of China, Xiong Yuanhan (熊元翰) presented the ideas of monarchical sovereignty and national sovereignty in his preface to Sonbun Iwai's textbook on *Staatsrechtslehre*. He noted that "there are reasons for both theories, and the readers should judge by their own will and choose the better one to follow."[70] This scholarship encouraged Chinese readers to seek alternative ways of organizing a state, apart from the imperial rule of the Qing monarchy. While German jurisprudence was unable to provide China with a definitive blueprint during this tumultuous period, mediated through Japanese interpretations it nonetheless provided a systematic framework for conceptualizing nation-building.

The reasons for adopting German jurisprudence – particularly *Staatsrechtslehre* – in China and Japan were multifaceted, and no single causal argument can fully explain the motivations behind this choice. However, I argue that the process of knowledge translation shows that two perceived characteristics of German jurisprudence were decisive for its glocalization in East Asia: systematization and instrumentality.

Firstly, German *Rechtswissenschaft* viewed itself as science, a concept that Japanese scholars described as "complete and precise systematic knowledge."[71] Accordingly, they positioned *Staatsrechtslehre* within an extensive genealogy of scientific knowledge to demonstrate its accuracy, systematic nature, and the legitimacy of its knowledge. For example, in his definition of *Staatsrechtslehre*, Katsuhiko Kakehi categorized knowledge into natural sciences and human sciences *(Geisteswissenschaften)*. Within the human sciences, he outlined the position of jurisprudence by showing how it overlapped with other categories, like social interactions, individual subjects, and norms. Accordingly, *Staatsrechtslehre* was placed at the core of a codification-centered legal order (the Six-Codes framework).[72] In this respect, Katsuhiko Kakehi resembled W.A.P. Martin, who sought to conceptualize law as a science and to situate it within a global intellectual map. Both scholars organized knowledge of normativity systematically and presented it as universally valid across different cultural contexts.

70 Iwai / Xiong (2013) Preface.
71 On the Japanese and Chinese definitions of *Staatsrecht*, see Kakehi / Zhou (1905) 29–34.
72 Kakehi / Zhou (1905) 34; Iwai / Xiong (2013) 8.

Secondly, treating *Staatsrechtslehre* as a scientific discipline, Japanese and Chinese intellectuals and politicians often used diagrams to analyze state forms. For example, in Katsuhiko Kakehi's *Staatsrechtslehre*, the state appears as a large circle (figure 6). Inside it, smaller circles denote various autonomous organizations that constitute the state; outside it, smaller circles represent organizations independent of the state. At the center, a further circle marks the state's central governing authority. In the republican model (upper diagram), this authority is composed of several bodies, whereas in the monarchical model (lower diagram) it is the monarch alone. These diagrams express a structuralist understanding of the state as an organism.[73] A second example is

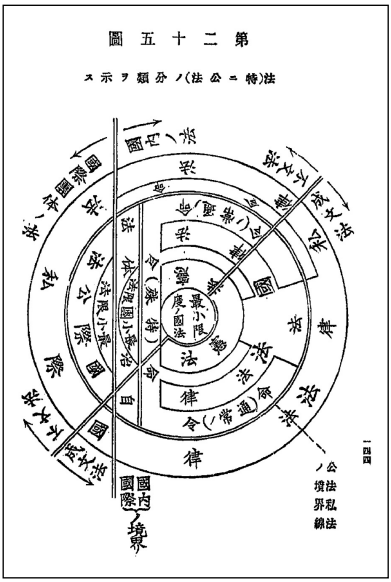

Figure 4: Diagram of Jurisprudence. Source: Kakehi (1906) 144

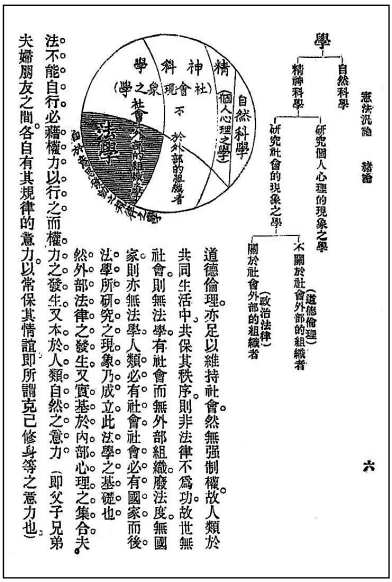

Figure 5: Jurisprudence within the General Knowledge Diagram. Source: Kakehi / Li (1907) 6

73 Kakehi's approach of visualizing his analysis of the state is fully demonstrated in his textbooks for Japanese universities; see Kakehi (1906, 1910).

provided by Dai Jitao (戴季陶), a leading theorist of the KMT who had studied with Kakehi in Japan and embraced the latter's theory of state formation. In his *Outline of the Constitution* (宪法纲要), Dai not only extended his teacher's theory but also retained the diagrammatic mode of exposition (figure 7). A subtle difference is that, in Dai's monarchical scheme, two concentric inner circles appear within the large circle, likely signaling a more monarch-centered hierarchical bureaucracy in China (right diagram). However, Dai's diagram inverted the positions of monarchy and republic, as indicated by the explanatory text beneath the figure. This inversion seems to suggest a distortion arising in the process of knowledge translation.[74]

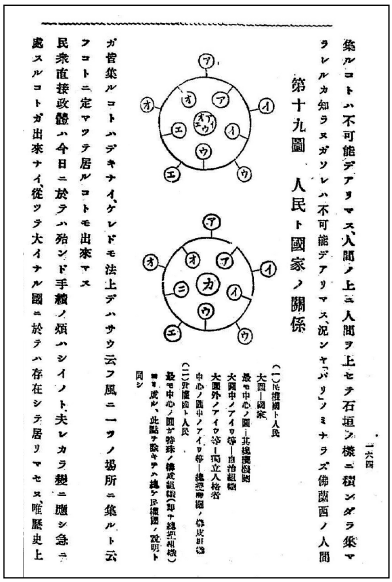

Figure 6: Comparative Diagram of Monarchies and Democratic States. Source: Kakehi (1910) 164

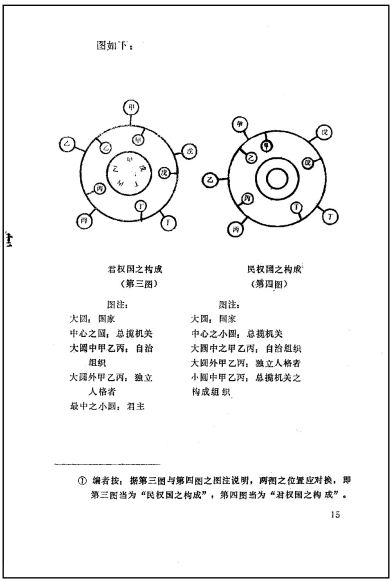

Figure 7: Comparative Diagram of Monarchies and Democratic States. Source: Dai J. (1909) 15

74 Dai J. (1909) 12.

Taken together, these Japanese and Chinese examples show that the East Asian appropriation of German jurisprudence, particularly *Staatsrechtslehre*, not only altered how the state was perceived, but also helped reconfigure the knowledge paradigm of law. Whereas the global maps in the geographical encyclopedias that embedded some of the earliest translations of Western international law encouraged the Qing government to situate itself within a maritime world, the knowledge landscape of *Staatsrechtslehre* rendered the state and the world legible as scientific normative knowledge, desacralizing political authority and making it amenable to analysis and change. Through such visualizations, the concept of state could be systematically articulated and debated, energizing revolutionary possibilities in China and fostering the belief that a legal-political revolution could resolve a wide range of social problems and break the impasse of reform.

1.3 Conclusion

The late Qing Dynasty was beset by increasing crises of order that triggered dual anxieties concerning legal institutions and knowledge. As the empire unraveled from the outside in, the anxious late Qing government sought solutions through translating foreign legal knowledge, linking their concerns to specific fields of law – from international law to national law and constitutional law.

This chapter has investigated the unique status of German *Staatsrechtslehre* in the circulation of European legal knowledge in late Qing China, framing it within the conceptual transformation from the traditional *Lüli* system to international law and the East Asian civil law hybrid of the Six Codes. In contrast to the Anglo-American vector of international law transmission, German jurisprudence entered China through Japanese intermediaries and impacted Chinese reform of national law. Moreover, the *Staatsrechtslehre* conception of the state fundamentally altered Chinese thinking and laid the intellectual groundwork for the China's later appropriation of the WRV, whose legacy continues to shape nation-building in China.

Chapter 2
Mapping Each Other: The Embedded Worlds in Compilations of Constitutions

This chapter examines the interplay between the constitutions of China and Germany in the first half of the 20th century. Using the concept of "imagined constitutional worlds," an approach inspired by Benedict Anderson's *Imagined Communities*,[1] it analyzes how constitutional compilations brought together and arranged texts from various countries around the world to create different layers of constitutional meaning and to stage interactions between these imagined constitutional worlds. In particular, this chapter scrutinizes the international circulation of constitutions, in which a constitution traveled beyond the boundary of its sovereign authority and was adapted into other contexts. The constitution one of one country could serve as reference and provide examples during the constitution-making process in another. As a result, scholars developed a comparative reference system for navigating their countries' current position and possible future direction by constructing an understandable and comparable normative order – an "imagined constitutional world."

In both China and Germany, during the transition from empire to republic, the actors involved in "constitution-making" – including publishers, intellectuals, and legislators – sourced, edited, and compiled constitutions from around the world at key political turning points, thereby refashioning the pattern of their own imaged constitutional worlds in order to locate their position within them. Through the mapping of a global constitutional knowledge landscape, China and Germany became an example of what I call "mapping each other," a process in which the two countries maintained an ongoing dialogue to seek, explain, learn from, and model the normative knowledge of one another through imagined constitutional worlds. In this way, "mapping each other" also outlines the dimension of a globalized constitutional world that was simultaneously "going local."

1 Anderson (2006).

2.1 Constitutional compilations: From constitutions of the world to constitutional worlds

From Europe to Asia, the production of compilations of constitutions reveals how countries saw themselves while examining others. This was a reflexive process, contemplating the presentation of "my country" while charting its position in a wider global context. This was also a balancing process, involving negotiation and compromise between one's own constitution and others' constitutions. As will be discussed below, in this way compilations of constitutions became an epistemological medium through which a knowledge of normativity intersected with the perception of "our" and "other" states.

In 1648, the modern European system of international law was born in Westphalia, the junction of European geopolitics. This was also the place where the world's first compilation of constitutions, collected by Friedrich Saalfeld, was published in 1809, marking the inception of constitutional comparison among European nation-states.[2] This early history demonstrates some general characteristics of constitutional compilations: They were born in boundary areas at times of significant political change. They also forged international ties, linking scholars and political actors across the world.

Throughout the publishing history of constitutional compilations around the world, public debates and scholarly interest have consistently focused on constitutions during periods of rapid change. In politically fragmented 19th-century Germany, scholars were particularly eager to compile the constitutions of different states.[3] A comparable situation arose in early 20th-century China. After five ministers returned from study tours abroad (1905–1906) during which they had investigated Japanese, European, and American politics, they compiled the first Chinese collection of constitu-

2 The first volume of Saalfeld's work was devoted to French constitutional documents, from the 1789 *Declaration of the Rights of Man and of the Citizen* to the 1808 *Statutes on Nobility*, see Saalfeld (ed.) (1809–1810). On the historiography of compilations of world constitutions, see Dippel (2003).

3 A representative case of a compilation in times of significant change is the four-volume *Die europäischen Verfassungen seit dem Jahre 1789 bis auf die neueste Zeit* by Karl Heinrich Ludwig Pölitz and Friedrich Bülau. As demonstrated by its title, the work marks the influence of the 1789 French Revolution; the last volume, edited by Bülau in 1847, seems to herald the approaching of the Revolution of 1848. See Pölitz (ed.) (1832–1833); Bülau (ed.) (1847).

tions. This appeared in 1907 as part of the publication *Essence of Politics of the Nations* (列国政要). In this volume, the officials interpreted modern European constitutions through the lens of China's own historical world of the Spring and Autumn Period (771–403 BCE), as will be discussed in detail below (see 2.2.1). Almost at the same time, the German scholar Paul Posener published *Die Staatsverfassungen des Erdballs* in 1909, reflecting the imperial ambition of German intellectuals in a global colonial world (see 2.2.2).

In China, in order to draft the 1923 and the 1947 constitutions, compilations of constitutions of different countries were prepared in 1922 and 1933, respectively. The two constitutions demonstrate the commitment of Chinese intellectuals and officials to an evolutionary vision of national progress that required keeping pace with the latest global trend of constitution-making (see 2.3.1). By contrast, during the drafting processes of the constitutions for the Weimar and Bonn Republics, German compilations of constitutions published around 1919 and 1949, respectively, presented a constitutional world framed in terms of an opposition between East and West (see 2.3.2). While in terms of content, both the German and the Chinese compilers drew heavily on the Western liberal tradition, the logic underlying their compilations of constitutions does indeed represent two approaches, shaped by their different use of time and space.

Both China and Germany embarked on projects of constitutional compilation, curating constitutions from nations across the globe. However, their orientations and intentions diverged. The Chinese jurists pursued the temporal significance of constitutions, delineating the developmental progression of each nation's constitutional framework over time. Their aim was to elucidate the most advanced constitutions in terms of modernity and evolution. German compilators, conversely, employed a spatial logic, categorizing constitutions by country, geographical region, and Western or non-Western provenance, thus charting a constitution's position within the global constitutional landscape. Through contrasting approaches, China and Germany sought to contextualize and advance their own constitutional endeavors within a global frame of reference.

All the constitutions were articulated through a kind of intellectual agora – a place in which compilers assembled constitutional texts, combined their formal structures with their practical functions, and thereby generated various constitutional worlds. These compilations reveal the perspectives and mentalities of compilers, which affected their adoption of constitutional

knowledge.[4] The compilations of constitutions manage the formation and differentiation, categories and structures, sources and trends of constitutional worlds by selecting, arranging, and compiling constitutional documents from the past and present. Thus, the act of compiling was not merely a matter of collecting information; it was also a process of structuring constitutional worlds through a self-reflective assembly of representative elements.[5]

If the compilation of constitutions from around the world can be seen as producing comparative knowledge in preparation of drafting a new constitution, then the constitutional worlds thus constructed could guide later readers, scholars, and legislators in understanding both their own positions and those of others. In this sense, the constitutional worlds created by the compilations functioned as a reference system for navigating normative knowledge: an understandable and comparable normative world.

In short, in both China and Germany, the practice of compiling constitutions not only preserved constitutional knowledge, but also embedded within it an implicit layer of meaning that informed legislative practice.[6] By using such compilations, actors could situate themselves within a broader comparative framework, thereby indirectly mapping each other's normative knowledge.

2.2 Constitutional worlds in late empires

2.2.1 A historical world: *The Essence of Politics of the Nations* (1907)

In 1905 and again in 1906, the Qing Government sent groups of ministers to investigate the political systems of 15 countries, including Japan, the United States, and various European countries.[7] In the first group, Ministers Duan Fang (端方) and Dai Hongci (戴鴻慈) officially presented the letter of credence awarded by the Qing Emperor to the governments of the United States, Germany, Austria, Russia, and Italy.[8] Among these five main destina-

4 Vismann (2008) xii.
5 Latour / Weibel (eds.) (2005) 26, 31.
6 On implicit knowledge in legal history, see Duve (2016).
7 Dai H. (1982) 27–38. For another study mission focusing on constitutionalism in 1907, see Moniz Bandeira (2022) 248–249.
8 Pan (2014) 140–204.

tions of investigation, the delegation spent longest in Germany, where they stayed for a total of 48 days.[9] The second group, led by Zai Ze (载泽), Shang Qiheng (尚其亨), and Li Shengduo (李盛铎), mainly investigated Japan, Britain, and France in the summer and autumn of 1906.

Upon their return, the two groups assisted in preparing a constitutional project, drawing primarily on the German and Japanese models of constitutional monarchy. The five ministers submitted investigation reports and memorials to the emperor. Some members of the group also published diaries and notes, which are a valuable source for understanding how they subjectively navigated the changing normative diversity throughout the world. For example, Dai Hongci published the *Diary of the Mission to Nine Countries* (出使九国日记) and Zai Ze published the *Diary of the Investigation on Politics* (考察政治日记). In addition, Duan Fang and Dai Hongci led a project of selecting and translating some political-legal materials sourced from these countries, which appeared in 1907 as the 32-volume *The Essence of Politics of the Nations* (列国政要). This work was later expanded with a sequel, the 94-volume *Continuation of the Essence of Politics of the Nations* (列国政要续编), published in 1911. This substantial work includes the first Chinese compilation of constitutions, and thus provides insights into how Chinese officials observed other, mainly European and American countries. Accordingly, this chapter focuses, first, on how the late Qing Dynasty constructed its image of a constitutional world through the compilations of foreign constitutions, and second, how the invocation of a Chinese historical world of 2500 years ago by the authors of *The Essence* exerted a profound influence on the adoption of constitutional knowledge modeled on Germany.

As shown in the preface of *The Essence*, Chinese literati – in this case a group of scholar-officials – made sense of the world in a historical perspective. They compared their compilation to Confucius' *Spring and Autumn Annals* (春秋) (ca. 770–476/403 BCE) in order to legitimize their construction of a constitutional world. For example, Duan Fang compared the investigations abroad to the actions of Guan Zhong (管仲, ca. 720–645 BCE), who sought to analyze the political situation and social conditions before taking actions to restore order. Duan commented that, "In the Spring and Autumn Period, feudal dukes were not obedient to the emperor. Guan Zhong managed to

9 Chai (2011).

assist Duke Huan of Qi (齐桓公) in acquiring political hegemony and said that if one did not know the world, one could not rectify it."[10]

Duan Fang also likened the investigators' work of translating and compiling constitutions from around the world to Confucius' compiling of historical materials, since both sought to preserve traditional spirit in order to overcome troubled times.[11] In this way, the *Spring and Autumn Annals*, invoked by the compilers as an authoritative precedent from the Chinese past, both granted legitimacy to and provided a justification for the ongoing project of compiling constitutions in China. The compilers regarded the *Annals* as more than a historical work: It also set up the fundamental political-legal principles of Confucianism, which had been the foundation of Chinese political orders for over two thousand years.

Moreover, this historical association produced by the literati-officials reveals their mindset as a mixture of crisis and mission, self-abasement and esteem. This outlook served as the cognitive and epistemological prerequisite for their conception of the role of the late Qing dynasty on a global stage that was increasingly shaped by the constitutional order of modern states. The influence of this perspective is clearly reflected in the outline of the constitutional compilation in *The Essence*, as presented in the table 2.[12]

Table 2: Constitutions in *The Essence* and *The Continuation of the Essence*

	Italy	Germany	Prussia	United States	Austria	Constitutional Comparisons Between Italy and Nine Other Countries	Russia
The Essence of Politics of the Nations	Vols. 1–3		Vol. 4	Vol. 5	Vol. 6	Vol. 7	Vols. 8–10
The Continuation of the Essence of Politics of the Nations		Vol. 1	Vols. 2, 3		Vols. 4, 5		
Total	3	4		1	3	1	3

10 Duan / Dai (eds.) (1907) Preface, 1.
11 Duan / Dai (eds.) (1907) Preface, 2.
12 Duan / Dai (eds.) (1907) 1–9; Dai H. (ed.) (1909) 1–4.

It is evident in the structure of the compilations that Italian- and German-speaking countries constituted the two pillars of the compilers' constitutional world. First, there is a clear distinction between Russia and Euro-American countries, with Russia's constitution placed at the very end of *The Essence*, in vols. 8–10. Second, *The Essence* included the Italian constitution at its core, devoting three volumes to it and, in vol. 7, comparing it to nine other constitutions. Third, *The Continuation of the Essence* covered only the constitutions of the German-speaking regions (Germany, Prussia, and Austria), making this section the longest part of the entire compilation. This is another example demonstrating the importance of German-language constitutions to the Chinese audience.

According to the structure of *The Continuation of the Essence*, the primary pillar of the compilers' imagined constitutional world was the German-speaking regions, especially Germany, which was the rising European power at that time. In his diary, Dai Hongci noted numerous times that "Japan copies everything from Germany, such as politics, laws, and even its customs."[13] The other pillar was Italy. It seems counterintuitive to regard the Italian constitution as a cornerstone of the Western constitutional world, since Italy was neither the origin of European constitutionalism, like France, nor a powerful European country, like Germany. In fact, Italy was not even on the main itinerary of the visit, but rather the last stop of the trip. In Dai Hongci's diary, most of the content about Italy described his sightseeing. Nevertheless, his notes – almost inadvertently – reveal the literati-officials' perception of the special relevance of Italy's constitutional reform to the late Qing, particularly when compared with the introduction to the Italian constitution in *The Essence*.

> Dai Hongci's Diary: Italy, where ancient Rome was located, was the greatest country at that time. However, it was weakened and divided into several states in the mediaeval period, leading to invasions by other powers. In pursuit of independence from the control of these powers, Italians with lofty ideals integrated these divided states and drew up constitutions in order to realize the aim of strengthening themselves in 1861 […]. Rome has the largest number of historical sites. However, its streets are not clean enough, and its people's dress was less splendid compared with other countries, while religious practices mixed with superstition were most prevalent in Italy.[14]

13 Dai H. (1982) 131–132, 137.
14 Dai H. (1982) 258.

> *The Essence*: Italy was regarded as the birthplace of European civilization. However, just in the year of 1850, the northeast region was invaded by France and Spain, which led to a desperate situation in Italy. Before 1870, Rome was the place where several powers stationed their troops. Therefore, it was tough to handle diplomatic affairs. However, Italy united itself by constitutionalism. Within 20 years, the standing army of Italy numbered more than 270,000 men and possessed 57 warships with a total tonnage of 240,000. The budget for the military increased to 161 million [lire]. It is inspiring that Italy's strength could now match that of the other powers.[15]

Comparing these two descriptions of Italy, we find that the compliers believed that the late Qing was experiencing something similar to Italy: It once sat at the core of civilization, but subsequently, other powers rose and encroached on its glory. However, over the course of its history, Italy gradually got back its prosperity, and above all regained strength after having its own constitution. The compilers thus saw Italy's situation in Europe as analogous to China's in Asia. Furthermore, the current Italian situation seemed to herald a turning point for the late Qing dynasty. In *The Essence*, Italy served as the equivalent of the late Qing dynasty in the indirect comparison with nine other European countries. The late Qing government paid close attention to comparisons across core issues such as monarchy, central authority, federalism, and succession to the throne in preparing its own constitution.

In sum, facing the different cultures of Europe and America, the literati-officials of the late Qing outlined a fiercely competitive world of constitutions through a historical association with the Spring and Autumn period. Italy's situation was seen as mirroring that of the late Qing and served as an example for undertaking a redefinition of China's place when entering this constitutional world. Constitutions of German-speaking countries, meanwhile, provided orientation for Chinese constitutionalism, with the Meiji Constitution of Japan functioning as a positive example of learning from Germany.

2.2.2 A global colonial world: Posener's *Die Staatsverfassungen des Erdballs* (1909)

In 1909, on the other side of Eurasia and applying a European perspective, the German scholar Paul Posener also edited a great compilation of constitutions, *Die Staatsverfassungen des Erdballs*, which covered almost all constitutions throughout the world. In contrast to *The Essence*, which reflected a temporal

15 Duan / Dai (eds.) (1907) 4–5.

conception of constitutions, *Die Staatsverfassungen des Erdballs* showed the global rivalry through colonization. Where *The Essence* constructed a historical world of constitutions by invoking the Spring and Autumn Period in Chinese history, Posener linked the constitutions across countries with a global colonial order. Drawing on the concepts of international law, Posener's work highlighted a constitutional world divided between colonizing and colonized states, as shown in the different ways he introduced European and Asian countries.

> There are 25 sovereign states in Europe. Two of them (the German *Reich* and Switzerland) are federal states *(Bundesstaaten),* which each contain 25 individual states *(Einzelstaaten)*; the personal union *(Personalunion)* of Austria and Hungary has a *Reichsland* [i.e. a core territory directly ruled by the emperor], as does Germany; Iceland is a more autonomously organized *(selbständiger gestaltetes) Nebenland* of Denmark, as Finland is of Russia as well as Crete and Thasos of Turkey. Britain occupies two colonies *(Kolonien)* in Europe, which are Gibraltar and Malta.[16]

> There are 12 independent territories *(unabhängige Staatsgebiete)* in Asia, including Afghanistan, Arabia, China, Japan, Korea, Nepal, Oman, Persia, Asian Russia, Siam, Asian Turkey, and Samos. However, most previously independent states *(selbstständige Staaten)* are dependent on *(in Abhängigkeit von)* colonial powers *(Kolonialmächte)*. Besides, parts of Asia are possessions *(Besitzungen)*, colonies *(Kolonien)*, protectorates *(Schutzgebiete),* or leased territories *(Pachtgebiete)*.[17]

These two paragraphs defined opposing legal landscapes across different countries in Europe and Asia, applying precise concepts of international law with nuanced differences. Despite the different types of state in Europe, including the unitary state, the federal state, the personal union, empire, and even the *Nebenländer* and colonies, the author categorized them all as sovereign states. However, he did not apply a similar judgment to Asian countries. In classifying Asia, Posener defined the independent countries vaguely as "independent territories" without full sovereignty. He thus deliberately avoided recognizing the sovereignty of Asian countries, implying that these independent territories were already regarded as subject to colonial powers. This was not just a matter of conceptual subsumption. Against the historical background of the rising colonial powers in Europe, recognizing sovereignty in Asia was not easy for Posener as a European scholar. Recognizing Asian sovereignties would have impeded European colonization, and thus the Asian territories under the rule or influence of colonial powers had to be re-

16 Posener (ed.) (1909) 1.
17 Posener (ed.) (1909) 907.

defined as possessions, colonies, protectorates, leased territories, and so forth. In short, through his conceptualization of the global colonial system, Posener refigured a constitutional world structured by asymmetric dependencies.

Both the writing style and the structure of Posener's compilation referred to international law by invoking a Eurocentric system of global colonization. First, it included five chapters: one for each continent, starting with Europe. The four subsequent chapters covered the other continents in the sequence of Asia, Africa, America, and finally Australia, presenting a Eurocentric world order with Europe at its head, overseeing all other continents. Second, in each chapter, Posener catalogued both independent states and the various types of colonies of European powers on this continent, and treated these equally. In this way, the European powers' worldwide influence was clearly demonstrated. In the chapter on Asia, Posener listed European colonial powers (Germany, France, Britain, the Netherlands, Portugal, and Russia) as well as the United States, as each corresponding to a slice of China's territory: Jiaozhou was a German colonial concession, Guangzhou Bay a French one. Britain held sovereignty over Hong Kong, as Portugal did over Macao. Manchuria Posener regarded as a *Vasallenstaat* (vassal state) of Russia.

In *Die Staatsverfassungen des Erdballs*, we find a more interconnected constitutional world than in *The Essence*, as Posener juxtaposed Germany with its overseas territories *(Gebiete)* (see table 3) and China with its leased and ceded territories, as listed in table 4.[18] As Posener's structured his compilation according to continents, the territories of the German Empire were spread across four sections.

Table 3. Representation of the German *Reich* in *Die Staatsverfassungen des Erdballs*

Section	Items relating to the German Empire
Europe	No. 6: *Reichsverfassung* (Constitution of 1871) Nos. 7–32: *Einzelstaaten*
Asia	No. 95: Kiautschou (Jiaozhou), including the lease treaty for Kiautschou Bay
Africa	No. 146: *Deutsche Gebiete* (Togo, Cameroon, German South Africa, German East Africa)
Australien	No. 248: *Deutsche Gebiete* (Kaiser-Wilhelms-Land, Bismarck Archipelago, Caroline Islands, Mariana Islands, Marshall Islands, German Solomon Islands, Gilbert Islands, Nauru, German Samoa)

18 Posener (ed.) (1909) 43–559, 908–920.

By contrast, as table 4 illustrates, Posener's representation of China in the Asian section expressed his European viewpoint by including the Chinese territories under the control of European powers in the lists of those powers' territories in Asia (even if they were only leased from China) instead of placing them together with the territories of the Chinese state.

Table 4. Representation of China in the section on Asia in *Die Staatsverfassungen des Erdballs;* Note: Under item no. 140 (Russian Territories), Posener did not include Outer Manchuria.

Entry in the Table of Contents	Items relating to China
No. 90 China (including Nos. 91–94 *Nebenländer*)	No. 90: Introduction of the Outline of Constitution by Imperial Order No. 91: Manchuria; no.92: Tibet; no. 93: Sinkiang, no. 94: Mongolia
No. 95 German Territories *(Gebiete)*	Kiautschou (Jiaozhou), including the lease treaty for Kiautschou Bay
Nos. 96–103 French Territories	No. 98: Guangzhou Bay
Nos. 104–132 British Territories	No. 130: Hongkong
No. 139 Portuguese Territories	including Macao

Tables 3 and 4 show that, in Posener's constitutional compilation, international treaties were the key to understanding his constitutional world. European colonial powers, such as Germany, colonized across different continents in a global sphere, while noncolonial powers, such as China, were presented as fragmented and lacking territorial integrity. Unequal treaties joined the two spheres together, such as the 1898 Kiautschou Lease Treaty. Its full text was included by Posener as no. 95. In Germany, the imperial domestic and international territory was managed as a "dual territorial space." In 1886, the *Reichstag* passed the Law for the Protectorates (*Schutzgebietsgesetz*, 1886), whose Article 1 stipulated that the German emperor could exercise protective power *(Schutzgewalt)* over the protectorates of Germany, which was quasi-equivalent to sovereignty. The German emperor thus oversaw a dual territorial space, where the jurisdictions of the federal territories *(Bundesgebiet)* and territories of the empire *(Reichsgebiet)* were formally distinguished but administered together. In Posener's view, such dual territorial space also existed in China, but it was complicated by two different layers of territorial duality. On the

one level, duality of territory was present on the Qing's territorial frontier, mainly managed and dictated by ethnic groups. Examples were Manchuria, Tibet, Sinkiang, and Inner Mongolia, which Posener described as China's *Nebenländer*. On another level, the international settlements and concessions redrew the boundary between China and other countries on Chinese land with international treaties that extended the jurisdiction of a piece of legislation from a foreign country to its Chinese concession. For instance, the Kiautschou Lease Treaty recognized China's sovereignty *(Souveränität)* over the region of Kiautschou, but also regarded the latter as a German colonial concession *(Pachtgebiet)* under German jurisdiction for the duration of the lease. Germany built a complete normative chain of global colonization composed of its constitution, the *Schutzgebietsgesetz*, and corresponding treaties. If colonies were conceptualized as extensions of the German empire's territories, then treaties became the normative extensions of its constitution.

By integrating legal concepts of global colonization into the constitutional system of sovereign states, Posener's compilation highlights the competitive world of constitutions in a geographical or spatial perspective. Other leading colonial powers in Europe, together with some non-European powers, such as Russia, the United States, and Japan, were rivals to Germany in claiming positions of constitutional influence on this world map of constitutions. In the *Staatsverfassungen des Erdballs*, well-established colonial powers such as Britain were considered of greater importance.[19] Having ended centuries of isolation, Japan was recognized for its rapid rise as a modern nation-state after decades of reform modeled on the Western countries.[20] By contrast, some currently independent territories in the world could be the target of German colonization, and therefore the recipients of the German constitution in this global race for the leading normativity model. In this sense, Posener's compilation, incorporating constitutions into the complex system of international law, served as a reference for Germany to participate in the global colonial race, aiming to maintain a dual constitutional world between colonists and colonies. Not all states were equal participants in this race: The colonial powers competed for territories over which to extend their norms, while other countries, such as China, were positioned as potential objects of this competition. In this way, Posener's compilation illustrated

19 Posener (ed.) (1909) 611–618.
20 Posener (ed.) (1909) 920.

how all countries were drawn into this constitutional world and interconnected through asymmetric relationships.

2.3 Constitutional worlds in the Republican era

2.3.1 An evolving world and a new China

After the Revolution of 1911, the Republic of China (ROC) became the first republic in Asia, aspiring to be one of the best republics in the world.[21] However, it oscillated between monarchy and republicanism, party-state and democracy, revolutions that aimed at drafting new constitutions and revolutions that destroyed existing ones. Various forces within China alternately controlled the regime in order to re-establish legally constituted authority (法统) by drawing up new constitutions; outside of China, the two World Wars dramatically changed the geopolitical landscape, and in their aftermath, the vanquished and newly emerging countries tended to reorganize and re-establish order through the making of new constitutions.

In the context of this international situation, the drafting of constitutions in China absorbed the new constitutional experiences of various nations in the world. Correspondingly, the two officially promulgated constitutions of the ROC, the 1923 constitution and the 1947 constitution, were each drawn up after a World War, reflecting a changing world order and the changing constitutional experience globally. Moreover, the publication of compilations of constitutions culminated in 1922 and 1933, serving as important reference materials for the subsequent drafting of these two constitutions. Although the political contexts were quite different, the compilers shared a common orientation towards following global constitutional trend, outlining an evolving constitutional world for a new China.

2.3.2 The Beijing Government: *New Constitutions of Postwar Europe* (1922–1926)

In the fallout of World War I, the year 1922 marks a watershed of the Chinese understanding of the constitutional world. Before 1922, there existed three compilations of constitutions in the Republic of China: *Text of the Constitution*

21 Sun (1984) 323.

of France and the United States (法美宪法正文, 1911) dedicated to tracing the origin of the modern written constitutions; *Current Constitutions of the World* (世界现行宪法, 1913), and *Continuation of Current Constitutions of the World* (世界现行宪法续编, 1913), which included the most current constitutions of 63 countries in the world chronologically ordered by date of promulgation.

In August of 1922, the Second Resumption of the National Congress revived the process of constitution-making, which had previously been interrupted. In the same month, the Commercial Press published another representative compilation of constitutions, the *New Constitutions of the World* (世界新宪法, 1922), with the explicit aim of assisting the process of legislation, as pointed out in its introduction: "The book collects seven new constitutions promulgated after the war for scholars and politicians' reference."[22] Two striking differences distinguished this new collection from its predecessors: First, the translators were Chinese students who had studied in Japan, Chen Xifu (陈锡符) and Sa Mengwu (萨孟武), rather than staff members of the Commercial Press's translation department; second, the compiling of constitutions did not use the chronological order, but instead reflected the newly emerging global landscape.

These two features were shared by a further two constitutional compilations published the same year or from 1922 onwards: *Latest Constitutions of the World* (世界最新宪法, 1922) by Wang Yitang (王揖唐) and *New Constitutions of Postwar Europe* (欧战后各国新宪法, 1922–1926) by Deng Yuyi (邓毓怡). These compilations were based on the Japanese scholar Tatsukichi Minobe's *New Constitutions of European States After the War* (欧洲诸国战后新宪法) published at the beginning of 1922. However, all three Chinese compilations represented a distinctly Chinese interpretation of the constitutional world after World War I, which in certain respects diverged from the Japanese perspective, as shown in table 5.

All three Chinese compilations depended on Tatsukichi Minobe's observations of the overall change of the European constitutions after World War I: Central Europe sat at the core of the new constitutional world because of the profound changes in Germany and Austro-Hungary as a result of World War I. The 1919 Weimar constitution played a crucial role in mapping Minobe's constitutional world, in which the other four constitutions were arranged around Germany.[23]

22 Chen / Sa (1922) Introductory Remarks.
23 See Minobe (1922).

Table 5: Constitutional Compilations in Japan and China after World War I

Publishing Date	January 1922	May 1922	August 1922	November 1922	December 1923	April 1926
Title	*New Constitutions of European States After the War* (欧洲诸国战后新宪法)	*The Latest Constitutions in the World* (世界最新之宪法)	*New Constitutions of the World* (世界新宪法)	*New Constitutions of Postwar Europe*, vol. 1 (欧战后各国新宪法)	*New Constitutions of Postwar Europe*, vol. 2	*New Constitutions of Postwar Europe*, vol. 3
Compilers/ Translators	Tatsukichi Minobe	Wang Yitang	Chen Xifu, Sa Mengwu	Deng Yuyi	Deng Yuyi	Deng Yuyi
Publisher	Yuhikaku Publishing	Self-published	Commercial Press	Constitution Society (宪法学会)	Constitution Society	Self-published
Compiling Order of Constitutions	Germany Prussia Czechoslovakia Poland Austria	Germany Prussia Austria Poland Czechoslovakia	Germany Prussia Austria Poland Czechoslovakia Soviet Russia	Germany 1919 Czechoslovakia 1920 Austria 1920 Prussia 1920 Poland 1921 Far Eastern Republic 1920 Soviet Russia 1918	Republic of China 1923 Soviet Union 1922 Romania 1923 Ireland 1922 Yugoslavia 1921 Turkey 1920 Hungary 1919 Lithuania 1922 Latvia 1922	Finland 1919 Estonia 1920 Free City of Danzig 1920 France 1919 Belgium 1921 Netherlands 1922

Chinese compilations painted a more panoramic landscape of new European constitutions. The compilations were divided into eastern, central, and western parts, as the geographic mirroring of an evolving world of constitutions. First, the constitutions from German-speaking areas were given emphasis in both Wang Yitang and Chen Xifu / Sa Mengwu's compilations, particularly Austria's constitution. In the preface, Wang Yitang mentioned that "[the pro-

vincial constitutions concerning] the governor of Hunan Province is similar to that of Germany, and the governor of Zhejiang Province is similar to that of Prussia."[24] Although he contrasted the constitutional ideas of two provinces, Wang Yitang argued that "the Constitutions of Germany, Prussia, and Austria had referential significance especially to those who advocated the Allied-provinces Automatic Movement (联省自治运动) in the 1920s."[25] Second, the compilations by Chen Xifu/Sa Mengwu appended the 1918 Soviet Russian Constitution at the end, suggesting a changing view of the constitutional world in terms of geography and sources, which transcended the horizon of Tatsukichi Minobe. Thereafter, Deng Yuyi's three volumes of *New Constitutions of Postwar Europe* reflected the expanding geographical scope of constitutional change to Eastern Europe, as they incorporated newly promulgated constitutions including those of the Far East Republic (1920), Soviet Russia (1918), the Soviet Union (1922), Lithuania (1922), Latvia (1922), and Estonia (1920). Third, by including the constitutional amendments of France, Belgium, and the Netherlands in his third volume, Deng Yuyi implied that the relatively stability of Western Europe after World War I was linked in part to the practice of amending existing constitutions rather than replacing them with entirely new ones.

In such a panorama of Central, Eastern, and Western Europe after World War I, Chinese compilers saw the WRV and the constitutions of Soviet Russia as the two models leading the two main political trends in Europe at the time, namely republicanism and socialism. From a political standpoint, empires collapsed one after another during World War I with the political systems changing from monarchy to republic. Therefore, the young Republic of China should conform to this world trend, rather than hovering between republic and monarchy, or between revolution and the restoration of a deposed monarch. In the first volume of *New Constitutions of Postwar Europe*, Wang Yuyi stated that "the seven countries included in this book were either monarchies or subordinates of a monarchy before the war, but all these countries rebuilt or restored themselves to a republic after the war. This was not a coincidence but a world trend. No one running counter to the trend will survive."[26] At the same time, he argued, "the world was improving

24 Wang (ed.) (1922) Preface, 2.
25 Wang (ed.) (1922) Preface, 4.
26 Deng (ed.) (1922) Preface, 1.

after the European war, and new constitutions of countries emerged at the right time."[27] In this context, improvement was mainly about social revolution. Accordingly, the compilers, such as Deng Yuyi, were convinced that the spirit of modern human beings was mostly written in new constitutions after the World War I, which include two main components: democracy and socialism.[28] Zhang Junmai (张君劢) further broke down the history of constitutions into three stages with three leading models of constitutions in three respective countries: 1. the Constitution of the United States of 1787, when the individualism of the Anglo-Saxon nation prevailed in the 18th century; 2. the French Constitution of 1875, as people were in pursuit of civil liberty in the 19th century; 3. the German WRV of 1919, which represented the 20th-century trend of social revolution.[29]

In short, despite the remarkable differences between the German Weimar Republic and Soviet Russia, Chinese intellectuals collectively saw the two models as the fundamental reference points for China to decide how its own constitution should look now and in the future.[30] Perceived as two leading trends of world constitutions, the constitutions of the Weimar Republic and Soviet Russia laid the foundation and offered direction within an ever-changing world of constitutions, toward which the making of Chinese constitution was expected to orient itself.

2.3.3 The Nanjing Government: The Legislative Yuan's *Compilation of Constitutions* (1933)

In 1931, the Mukden Incident initiated Japan's occupation of Manchuria. Against the background of the escalating Japanese invasion, the Fifth Plenary Session of the Fourth Central Committee of the KMT passed a resolution entitled "Concentrating National Power to Save the Nation" in December 1932. A vital issue included in this proposal was the consolidation of a national consensus through the creation of a new constitution for the ROC. As an immediate resort, the translation office of the Legislative Yuan, the unicameral legislature of the ROC, published a new *Compilation of Consti-*

27 Deng (ed.) (1922) Preface, 4.
28 Deng (ed.) (1922) Preface, 2.
29 Zhang (1922) 66.
30 See Zhang / Zhang (1920); Canghai (1920).

tutions in 1933, as reference guide for the drafting of the constitution by offering a world-wide comparison. The second part of this compilation amassed 40 constitutions, continuing the idea of an evolving constitutional world. However, one significant change in this compilation was that this constructed comparative atlas of the constitutional world was analytically divided into three categories by political regime (rather than by geographical location, as in 1922), as shown in table 6.

Table 6: Constitutional Categories in the Legislative Yuan's Compilation (1933)

Categories of Constitutions	Republic of the Principate (元首制共和)	Republic of the Committee (委员会制共和)	Constitutional Monarchy (君主立宪)
Before WW I	The United States (1787), Argentina (1860), France (1875), Brazil (1891), Mexico (1917)	Switzerland (1874)	Britain (1215), Norway (1814), Belgium (1831, Amendment in 1893), Italy (1848), Netherlands (1887, Amendment in 1922), Japan (1889), Denmark (1915, Amendment in 1920)
After WW I	Finland (1919), Germany (1919), Peru (1920), Czech Republic (1920), Estonia (1920), Austria (1920), Prussia (1920), Poland (1921), Latvia (1922), Turkey (1924), Dominica (1924), Honduras (1924), Chile (1925), Greece (1927), Lithuania (1928), Spain (1931)	Soviet Russia (1918), Soviet Union (1924)	Yugoslavia (1921), Romania (1923), Iraq (1925), Egypt (1930), Siam (1932)

The compilation of the Legislative Yuan did not classify the constitutions in the previously commonly used categories of constitutional monarchy or democratic republic, parliamentary system or presidential system. Instead, in addition to the constitutional monarchy, it used two new categories: "republic of the principate" and "republic of the committee." This categorization highlighted the leading role of the Weimar Republic and of Soviet Russia and the Soviet Union. The structure of this compilation and the underlying strategy shows that the compilation itself was an attempt to make sense of the shifting global powers as well as the Chinese choice of preferred constitutional models.

In the first place, although the countries with a constitutional monarchy, mostly in Western Europe, occupied a large proportion, they were no longer the primary focus of the Chinese compilers or legislators. They were included in the compilation only because "those countries usually adopt the cabinet system, which can be used for reference, although their regime is different from that of our country."[31]

Secondly, only three republics were classified by the compilers as having a "committee system": Switzerland before World War I, Soviet Russia, and the Soviet Union after World War I. Chinese compilers had always regarded Switzerland as a model of federalism and direct democracy. The constitutions of Soviet Russia and the Soviet Union then became crucial for breaking down this long-established classification and led to the creation of the new category of a "committee system." This category, in turn, functioned as a tool for the Chinese compilers to conceptualize constitutional development as an evolutionary process.

Thirdly, for the category of "republics of the principate," the WRV was of great significance for compilers and legislators. For example, in, during an early stage of consultation of the 1936 draft constitution, inclusion of a preamble was explicitly linked to the WRV, among others: "Many people advocated adding a preamble, as in modern constitutions such as those of Germany and the Soviet Union. Therefore, the Legislative Yuan decided to add a preamble to the draft constitution."[32]

In sum, the compilers working under the Nanjing Government in the 1930s still adhered to an evolutionary theory of constitutional develop-

31 Legislative Yuan (ed.) (1933) Introductory Remarks, 2.
32 Legislative Yuan (ed.) (1940) 1.

ment[33] as the basis for mapping the world of constitutions, a perspective already articulated by those working during the Beijing Government in the 1920s. Along this evolutionary timeline of constitutional development, the constitutions of the Weimar Republic and of Soviet Russia / the Soviet Union represented the social revolution of constitutions in the 20th century.

To conclude, spanning the two World Wars, compilations of constitutions of the world mushroomed in China in 1922 and 1933 in preparation for drafting the 1923 Constitution and the 1947 Constitution of the ROC, respectively. Although the political contexts of the 1920s and 1930s were slightly different, Chinese compilers and legislators shared the same opinion about the prevailing trend in the evolution of the world's constitutions, namely a shift from individualism to socialism. In 1922, the Chinese compilers' constitutional mapping differed from that of the Japanese. Despite a continued inflow of Western European legal knowledge via Japan, Chinese compilers extended their view to Russia and Eastern Europe, which allowed them to interpret the constitutions of the Weimar Republic and Soviet Russia / the Soviet Union as two models of socialist constitutionalism. The compilers in 1933 further reinforced such an evolutionary mapping of constitutions by transforming the tripartite system of a geographic Europe into a normative structure comprised of three categories of regimes. From the perspective of the Chinese compilers, the two pillars of the modern constitutional world, Germany and the Soviet Union, jointly drove China to embrace a new future within an increasingly diverse constellation of constitutions.

2.4 A contradictory world: Returning to the Western tradition

While drawing up the Weimar Constitution of 1919 and the German Basic Law of 1949, German scholars prepared several compilations of constitutions, including *Moderne Staatsverfassungen: ihr Wortlaut und ihr Wesen* (1919), the four-volume of *Die Verfassungen der modernen Staaten* (1947–1949), and *Staatsverfassungen: Eine Sammlung wichtiger Verfassungen der Vergangenheit und Gegenwart* (1950), which was edited while the Basic Law was being drafted, but published slightly later.

33 Legislative Yuan (ed.) (1933), Sun Ke's Preface, 1–2.

The organization of chapters in these compilations reveal the historical self-reflections of German scholars between the two World Wars, either by emphasizing "modern" constitutions or by juxtaposing past and present texts for comparison. In the compilations published around 1949 and 1950, this structure also demonstrate how Germany used the compiling constitutions as an instrument to make sense of Germany itself, its path of development, and its destiny in the modern world, positioning the country alongside other competing powers in a context shaped by divided territories under of Allied occupation.

2.4.1 The Weimar Republic: Zuchardt's *Moderne Staatsverfassungen* (1919)

While the WRV was being drafted, Karl Zuchardt published his compilation *Moderne Staatsverfassungen* in March 1919. The volume is structured in two parts that follow different organizing principles. The first part primarily constructed a chronology of constitutional texts (see table 7). It presented the constitutions of six countries in temporal order and concluded with the two draft constitutions submitted by the German government to the National Assembly in Weimar. The second part, by contrast, moved beyond chronology to construct a historical narrative and genealogy of modern constitutionalism (see table 8). Here, Zuchardt organized his commentary geographically, dividing the discussion into European and non-European countries, and included cases that had not appeared in the first part, such as Britain and the category of "other European states" (largely Belgium and Italy). Most importantly, all discussion of Germany was deliberately shifted to the end of this section. By postponing Germany in this way, the comments section established a comparative framework within which the WRV could be situated not merely as the latest constitutional text, but as the outcome of a distinct historical trajectory of German constitutional development.

Table 7: Structure of *Moderne Staatsverfassungen*, Part 1

Part 1: Constitution Texts						
USA	Germany	Switzerland	France	Japan	Soviet Russia	Germany
1776, 1787	1848, 1849, 1871	1874	1875	1889	1918	Drafts of January and February 1919

Table 8: Structure of *Moderne Staatsverfassungen*, Part 2

Part 2: Comments							
Britain	USA	France	Switzerland	Russia	Other European Countries	Japan	Germany

In the first part, Karl Zuchardt combined the current constitutions of foreign countries with historical German constitutional documents, such as the 1848 *Zentralgewaltgesetz*, the 1849 Frankfurt constitution as well as Bismarck's 1871 constitution, and finally the two draft constitutions of 1919, produced during the drafting process for the WRV. Thus, by positioning the constitutional history of Germany within the Western tradition, Zuchardt constructed an intersecting framework on the constitutional map, while emphasizing France as the continental model and presenting Germany as a latecomer whose early constitutions were reluctantly granted by rulers rather than produced by popular assemblies. He further suggested that a "new order" *(Neuordnung)* could emerge from this juxtaposition of past and present constitutions in Germany, enabling readers to follow the current developments with greater understanding.[34]

In the second part, Zuchardt contrasted the constitutions of European and non-European countries. First, he noted that constitutional heterogeneity existed across Europe, while countries outside Europe, such as the United States, could also serve as constitutional models. Within Europe, countries like Spain and Italy, were included as "other countries," whose constitutions were just mentioned briefly. Second, Zuchardt classified Russia under "other European countries" despite its transcontinental position, whereas he explicitly excluded Japan from Europe**,** even though it sought to adopt a European-style political system. Russia, straddling both Europe and Asia, was rarely regarded as a European country by contemporary observers, yet Zuchardt argued that it had consciously turned away from democratic principles and equality.[35] He further notes that the 1889 Japanese constitution was close to the Russian constitution of 1906, with both having their model *(Vorbild)* in the Prussian constitution of 1850. Accordingly, he linked Japan's weak par-

34 Zuchardt (ed.) (1919) Preface.
35 Zuchardt (ed.) (1919) 139.

liamentarism and constitutional monarchy to the similarly limited constitutional experience of late-Tsarist Russia, and – by extension – to the Prussian 1850 template. In his view, this meant that Japan did not embody what he considered the "democratic spirit" of the European constitutional tradition.[36]

In preparing for the Weimar constitution, Karl Zuchardt – and, by extension, German scholars – thus charted Germany's position in a contradictory constitutional world by mapping constitutions centering on the USA and France. In this new map of constitutions, Europe was presented as divided, with Spain and Italy at the margins, and with Soviet Russia and Japan marked as contrasts to the Western core. Such mapping showed that Zuchardt leaned toward the US Constitution as a model of democracy, in contrast to that of France, whose 1790s constitutions he did not include – even though they, too, had been drafted by democratic assemblies rather than imposed from above. Since 1787, the United States had maintained a remarkably stable constitution, whereas constitutions associated with the idea of a philosopher-king often led to instability, a danger discussed by theorists of democracy such as Locke, Rousseau, Spinoza, and Kant.[37]

At the opposite pole, the 1918 constitution of Soviet Russia claimed to represent the most progressive constitution in the world, explicitly aiming at the "dictatorship of the proletariat" rather than democratic principles.[38] Between these opposing models, Zuchardt argued, his compilation could help German voters cultivate a critical faculty *(Kritikfähigkeit)* to determine where the Weimar Republic ought to situate itself – alongside countries committed to implementing democratic principles, or with those seeking to "move beyond" democracy toward a supposedly more socially just regime, as in Soviet Russia.[39]

Zuchardt's compilation left Germany with a simplified picture of the constitutional situation *(Verfassungsverhältnisse / Verfassungszustände)* within a dichotomous constitutional world. This continued, in a different register, Posener's spatial conception in *Die Staatsverfassungen des Erdballs*, which divided the world into opposing categories – colonists and colonies, Europe and non-European regions, or democracy and anti-democracy. Zuchardt

36 Zuchardt (ed.) (1919) 140–141.
37 Zuchardt (ed.) (1919) 129.
38 Zuchardt (ed.) (1919) 138–139.
39 Zuchardt (ed.) (1919) 130.

hoped his compilation would strengthen the readers' critical capacity in a time of upheaval, but the dichotomous mapping of constitutions ultimately limited this analytical potential. After World War I, Germany – already a late and comparatively limited colonial power – lost its remaining colonies under the Versailles settlement and any claim to a leading role in global empire-building. As Zuchardt wrote in the preface to his compilation, "misery and misfortune are a hard school for a people, but a better one than the arrogance of the victor."[40] In 1919, Germans as a people underwent a profound shift in outlook: from the mentality of a victor to that of the defeated. Yet even in the constitutional compilations produced after World War II, this binary opposition between democratic and non-democratic constitutional models persisted.

2.4.2 The Bonn Republic: Dennewitz' *Die Verfassungen der modernen Staaten* (1947–1949) and Franz' *Staatsverfassungen* (1950)

In 1945, after the World War II, Germany was divided into zones occupied by the UK, the USA, France and the Soviet Union. Three years later, the United States, Britain, and France decided to establish the Federal Republic of Germany, while the Soviet Union withdrew from the Allied Control Council to set up the German Democratic Republic, resulting in the division and confrontation between West and East Germany for more than 40 years. The two constitutional compilations discussed in this part, Bodo Dennewitz' *Die Verfassungen der modernen Staaten* (1947–1949), and Günther Franz' *Staatsverfassungen: Eine Sammlung wichtiger Verfassungen der Vergangenheit und Gegenwart* (1950), were compiled during the making of the (West) German Basic Law (1949) and published in Hamburg (in the British zone of occupation) and Munich (in the American zone), respectively. Therefore, both compilations represented the understanding of a constitutional world of West Germany during its transition to the Bonn Republic.

40 In German: "So richtet uns jetzt vornehmlich nur die Hoffnung auf, daß Not und Unglück zwar eine harte Schule für ein Volk sind, aber meist auch eine bessere als Siegerübermut." Zuchardt (ed.) (1919) Preface.

Günther Franz' *Staatsverfassungen* was published in 1950 with its editorial work accomplished by the summer of 1949. The Basic Law of the Federal Republic of Germany had already been approved in May, while the constitution of the German Democratic Republic would not be promulgated until October 1949. Günther Franz therefore did not include the constitution of East Germany.[41] His compilation was more focused on historical documents, revealing the desire to restore Germany to the Western constitutional tradition. *Staatsverfassungen* was organized in alphabetical order by country name and in chronological order within a particular country, as listed in table 9.

Table 9: Constitutions in Franz' *Staatsverfassungen* (1950)

USA	Belgium	China	Germany	Britain	France	Russia	Switzerland
				1215			
				1627			
				1679			
				1689			
				1701			
1776							
1787							
					1791		
					1793		
			1815				
			1820				
	1831						
			1849				
			1871				
							1874
					1875		
				1911			
			1919				
		1924					
		1931		1931			
						1936	
					1946		
		1947					
			1949				

Günther Franz incorporated German constitutional history into the mainstream narrative of the Western constitutional traditions, whose beginnings

41 Franz (ed.) (1950) Preface.

he thought could be found in England's unwritten constitution, starting with Magna Carta in 1215, continuing in the American Declaration of Independence (1776), the Constitution of the United States (1787), and the 1791 Constitution of France. Moreover, Franz argued, the 1791 French constitution had laid the foundation for the liberal tradition of the rule of law in Europe and established the principle of constitutional monarchy. The Constitution of Belgium of 1831 included the principle of people's sovereignty in a constitutional monarchy, which in Franz' view had considerably influenced the 1850 Constitution of Prussia[42] as well as the WRV. The latter merely replaced the organization of state of the monarchy with the republic. In addition, the Constitution of Switzerland of 1874 functioned as a comparative template in German debates on governmental form.[43] In short, the various features of German constitutions were derived from Western constitutional traditions, drawing on a collection of principles, such as liberalism, the rule of law, and popular sovereignty, created by different European and American states in the entangled past – principles from which Germany could not dissociate itself when making the choice about its constitutional future.

However, China and the Soviet Union were two exceptions external to this Western tradition of constitutionalism. Franz explicitly included China's 1924 *Guidelines for State Organization* (建国大纲) and the 1931 *Provisional Constitution* (训政时期约法) in his compilation, in order to map the development of constitutional ideas in China. In his view, the Three Principles of the People (三民主义) and the Five-Power Constitution (五权宪法) embodied specifically Chinese characteristics – while still building on the Western framework of constitutionalism – by extending Montesquieu's three powers to five through the addition of the powers of examination and supervision.[44] By contrast, Franz described 1936 Constitution of Soviet Russia as marking the transition from the dictatorship of the proletariat to a socialist democracy, thereby locating Russia on a trajectory distinct from Western liberal democracy, but not necessarily framing it as its direct opposite.[45]

In *Die Verfassungen der modernen Staaten*, Bodo Dennewitz highlighted the growing divide between the Western and the Eastern Blocs by construct-

42 Franz (ed.) (1950) 51.
43 Franz (ed.) (1950) 432.
44 Franz (ed.) (1950) 86.
45 Franz (ed.) (1950) 412.

ing a collection that reflected Germany's postwar occupation and division. He dedicated four volumes to a constitutional world marked by separation and confrontation within Germany after World War II: Volume I included the historical constitutional documents and current constitutions of Britain, the United States, France, and Russia – the Allies who occupied Germany after the War. Volume II covered the constitutions of the German *Länder* in the American, French, and Soviet zones of occupation. Volume III included historical constitutional documents from Germany, the draft constitutions formulated by the states in the British-occupied zone, as well as excerpts from the historical constitutions of Austria (1934), Estonia (1937), and Portugal (1933), which Dennewitz included to illustrate one of his constitutional types. Volume IV finally presented the Basic Law of the Federal Republic of Germany of 1949 and the 1948 Amendment to the Constitution of the Swiss Federal Constitution of 1874, while excluding the constitution of the Democratic Republic of Germany of 1949. Table 10 illustrates the genealogy and main typology of constitutions constructed by Dennewitz over the course of the four volumes, arranged geographically by Allied power and zone of occupation.

Table 10: The Genealogy of German Constitutions in Dennewitz's *Die Verfassungen der modernen Staaten* (1947–1949)

Historical German Documents	**Allied Powers and Their Zones of Occupation**			
	Verfassungsstaat			**Verwaltungsstaat**
Germany (1816; 1819; 1849; 1850; 1871; 1919)	Britain (1215; 1627; 1647; 1689; 1701; 1707; 1911)	The United States (1776; 1787)	France (1789; 1946)	Russia (1906; 1918; 1923; 1936; 1947)
	Groß-Berlin (1946); Hamburg (1947); Niedersachsen (1947)	Groß-Berlin (1946); Bayern (1946); Württemberg-Baden (1946); Hessen (1946); Bremen (1947)	Groß-Berlin (1946); Württemberg-Hohenzollern (1947); Baden (1947); Rheinland-Pfalz (1947)	Groß-Berlin (1946); Brandenburg (1947); Mecklenburg-Vorpommern (1947); Sachsen (1947); Sachsen-Anhalt (1947); Thüringen (1946)
The Basic Law of the Federal Republic of Germany (1949)				

Bodo Dennewitz situated German constitutionalism in a polarized world, where Germany was caught between the two opposing camps after the Yalta Conference. His compilation also omitted the Constitution of the German Democratic Republic of 1949, signaling his inclination toward the West. As West German scholars, both Dennewitz and Franz grappled with the contemporary constitutional identity crisis by putting Germany into a broader constitutional and historical framework in the name of Western world. Furthermore, Dennewitz identified basic doctrines of constitutional typology *(Verfassungstypologie)* based on his analysis of constitutional history[46] and constructed a dichotomous pair of concepts: constitutional state *(Verfassungsstaat)* and administrative state *(Verwaltungsstaat)*.[47] He categorized the countries in the Western hemisphere, such as the United States, and the countries of Central and Western Europe as typical constitutional states characterized by democracy, the rule of law, and the separation of powers. By contrast, he subsumed the countries subject to the dictatorship of the proletariat within the Soviet Union under the category of administrative state.[48] In addition, Dennewitz stated that the text of a state's constitution was merely its formal constitution *(formelle Verfassung)*, which might not be consistent with its substantive constitution *(materielle Verfassung)*. In his view, the constitutional state fulfilled the combination of formal and substantive constitutions, whereas the administrative state led to the increasing divergence of the two.[49] Therefore, West Germany had to re-embrace the "general type" of the *Verfassungsstaat* if the country was to return to the Western constitutional tradition.[50] Dennewitz considered the *Verfassungsstaat* the ideal type *(Idealbild)* of the modern state based on the basic political-legal principles of liberalism, the separation of powers, and the rule of law.[51]

As preparatory works for the constitutions of the Weimar Republic and the Bonn Republic, respectively, these three compilations either emphasized the idea of "modern" constitutions or juxtaposed past and the present di-

46 Dennewitz (ed.) (1948b) 7–24.
47 Dennewitz (ed.) (1948a) 8–14.
48 Dennewitz (ed.) (1948a) 8, 12.
49 Dennewitz (ed.) (1948a) 14.
50 Dennewitz (ed.) (1947) 13, 24.
51 Dennewitz (ed.) (1947) 26–27.

mensions. They revealed the historical reflections of German scholars between the two World Wars and, after 1945, how they sought to make sense of a divided nation. Through these compilations, they also constructed a constitutional world in which to position Germany when drafting a new constitution. In 1919, the constitutional world was structured by contrasting European and non-European countries; in 1949, the structuring dichotomies around which to organize the different texts were democratic or anti-democratic states, substantive or formal constitutions, and *Verfassungsstaat* or *Verwaltungsstaat*. Within this framework of constitutional contrasts, German scholars were increasingly inclined to return to the Western constitutional tradition.[52]

2.5 Conclusion

At the end of empires and the beginning of republics, publishers, intellectuals, and legislators compiled collections of constitutions that outlined the pattern of their constitutional worlds in which they anchored the position of their own country's constitution. This mode of constructing constitutional worlds did not end in the first half of the 20th century but continues into the present. For instance, in 2000, the German scholar Horst Dippel undertook a large project, *Constitutions of the World*, which demonstrates how German scholars have remained committed to portraying European constitutional traditions and tracing their global influence.[53] In China, in 2012, on the 30th anniversary of the promulgation and implementation of the Constitution of 1982, two major compilations of constitutions of the world were published.[54] One of them, edited by Sun Qian (孙谦) and Han Dayuan (韩大元), focused on contemporary constitutions while also tracing historical trajectories of constitution-making. It is particularly noteworthy that the editors included several historical constitutional documents: the WRV of 1919, the Russian constitution of 1918 and the constitutions of the Soviet Union of 1924, 1936, and 1977.[55] Hence, as ongoing sources of inspiration for social progress and revolutionary transformation, the WRV and the Soviet consti-

52 Dennewitz (ed.) (1947) 30.
53 Dippel (2003) 440.
54 See Sun / Han (2012); Zhu / Wang (eds.) (2012).
55 Sun / Han (2012) 199–210, 229–266.

tutions still shape China's constitutional imagination for the future. As stated in its preface: "At a new starting point of history, it is of great significance for us to consider the development of the Constitution of China."[56] In this context, the "new starting point" referred not only to the commemoration of the 1982 Constitution, but through that act of remembrance also a renewed point of departure for envisioning China's constitutional future. In short, the compilations of constitutions by Chinese and German scholars today continue to reflect insights rooted in the legacy of the two Worlds Wars.

In comparative studies in the humanities or social sciences, a completely neutral perspective is neither achievable nor desirable. The compilations of constitutions discussed above represented different ideas of constitutional worlds. They were constructed from the compilers' subjective perspectives and cognitive states – not claims to "truth," but frameworks that appeared plausible and could influence the appropriation of constitutional knowledge. On the one hand, both the emergence and the transformation of these constitutional worlds were shaped by the constitutional thinkers' different understandings of the two basic dimensions of time and space – for instance, whether to return traditions or pursue new trends in the midst of complicated geopolitics. Meanwhile, through constitutional typology, intellectuals and officials who produced compilations attempted to extract the normative resources from possible political programs and to use them in the drafting of new constitutions.[57] On the other hand, due to historical memories, current pressures, or normative notions, China and Germany remained in continuous dialogue through imagined constitutional worlds. These created multiple overlapping landscapes that served as implicit knowledge derived from "mapping each other." Within this layered exchange, the WRV emerged as a point of lasting significance for China.

56 Sun/Han (2012) Preface, 3.
57 See Grimm (2012) 115–128; Jansen (2006) 6.

Chapter 3
The Rights-based Model of Weimar

Over the last two decades, several German historians have used the archives of the German National Assembly in Weimar to analyze the creation process of social rights in the WRV in detail.[1] These studies indicate that, in the German context, debates on social rights were rooted in specific political and social challenges in the aftermath of World War I. However, when the WRV is read from the perspective of an outsider to the German or European legal tradition, the reformulation of fundamental rights can also be understood as a process of cultural translation of legal knowledge in response to socialism.[2] As will be discussed in this chapter, the founding fathers of the WRV reinvented social rights by reinterpreting the concept of rights (3.1), revisiting the narrative of the history of rights (3.2), and incorporating a new unified logic for codification in order to integrate new elements into old forms (3.3). At the core of the debates in the National Assembly were thus translation processes through which normative knowledge from socialist theory, social reform movements, and earlier constitutional experiences was adapted into the German constitutional vocabulary and ultimately transformed into social rights in the WRV. Analyzing these translation processes will provide insights into questions such as why the category of rights was adopted in dealing with social-economic issues; how the historical narratives of rights reopened the classic paradigm of rights, allowing it to incorporate new empirical materials that eventually crystallized into social rights; and how substantive resources

1 On the Weimar National Assembly and the origin of the WRV, see Ziegler (1932); Völtzer (1992); Gusy (1994); Bendix (2002); Bollmeyer (2007). On the second part of the fundamental rights, see in particular Gusy (1993); Pauly (2004); and the papers of Horst Dreier and Michael Stolleis included in Dreier/Waldhoff (eds.) (2018). For panoramic studies on the WRV, see Gusy (1997, 2018).

2 On the influence of socialism on the making of fundamental rights, especially in the WRV's chapter on Economic Life see Nipperdey (1930) 150 ff.; Schmitt (1932); Anschütz (1933) 697 ff.

and institutional forms were harmonized with legal vocabularies, grammars, and a uniform logic in terms of fundamental rights.

In addition, Hugo Preuß played a significant role in drafting the WRV and thus attracted much attention from Chinese translators. His four draft constitutions increasingly emphasized "social progress" *(gesellschaftlicher Fortschritt)*, which was ultimately also included in the constitution's preamble as one of its goals alongside freedom and equality. However, Preuß persisted in interpreting the idea of social progress as something that could only be safeguarded through political organization, rather than created directly, based on his deeply rooted liberalism.[3] Consequently, he disapproved of including social rights in the WRV. In fact, the WRV's chapter "Wirtschaftsleben" ("Economic Life")[4] – as indeed most of the constitution's second half, "Grundrechte und Grundpflichten der Deutschen" ("Fundamental Rights and Duties of the Germans"), of which it formed part – was formulated mainly by three other members of the National Assembly's Constitutional Committee, namely Friedrich Naumann, Konrad Beyerle, and Hugo Sinzheimer.[5] Using their reports and the corresponding debates in the Weimar Assembly, this chapter aims to answer the three questions posed above in order to demonstrate the WRV's framework of rights-based social autonomy, in preparation for comparing it with the policy-oriented model of China in the following chapters.

3.1 The way of redefining rights: Between individuals and state

In this part, I aim to explain why the paradigm of rights was chosen as a historically path-dependent option, shaped by earlier constitutional traditions, for dealing with socioeconomic issues by investigating how the above-mentioned representatives discussed fundamental rights. As we shall see, on the

3 In German: "Auch den sozialen Fortschritt kann die Verfassung unmittelbar so wenig schaffen wie den sonstigen Inhalt des Volkslebens; aber ihm durch die politische Organisation den Weg offen halten, das kann sie, und ich hoffe, daß dies der Entwurf tut." Verhandlungen der verfassunggebenden Deutschen Nationalversammlung [hereinafter Verhandlungen d. v. N. V.], Bd. 326, 285.

4 In the following, the titles of frequently cited sections or chapters of constitutions are indicated by capital initials and without quotation marks for the sake of legibility.

5 Stolleis (2018) 208–217.

one hand, almost all discussion on rights was confined to the way of defining them within the frame of state and individuals (3.1.1). On the other hand, the representatives sought to recalibrate the two poles – the state and the individual – in order to renew their relationship (3.1.2).

3.1.1 The way of defining rights

The minutes of the debates in the National Assembly show that the expansion of rights into the socioeconomic field was related to the representatives' respect for the unimplemented 1849 *Paulskirchenverfassung* (Constitution of St Paul's Church), as well as their sharp criticism of the 1871 Bismarck Constitution for lacking a catalogue of citizens' rights. However, the invention of social rights owed even more to the way in which fundamental rights were defined, namely by outlining the *Menschenbild* – that is, a conception of the individual and of human nature – within the relationship between individuals and the state. Moreover, this definition of fundamental rights made clear that they were the outcome of a long-term struggle and compromise between individuals and authorities. Therefore, the representatives reiterated and strictly followed the grammar of rights as a structurally adversarial relationship, as expressed by the use of "against" in the following:

> Abg. Gröber: When discussing the fundamental rights contained in the proposal, the accusation was made that some of them had been superseded by today's legal concepts. I consider this to be a mistake […]. Fundamental rights are at least a far-reaching 'moral' protection against a violent statesman or government […]. In addition, fundamental rights also provide important protection against legislative haste by laying down guidelines and having a moderating effect.[6]

As a legal concept, in accordance with the principle of the *Rechtsstaat*, speakers in the National Assembly's debates generally understood the fundamental rights of individuals as protections against "Willkür des Staates" ("state

6 In German: "Bei Besprechung der in der Vorlage enthaltenen Grundrechte wurde der Vorwurf erhoben, daß ein Teil derselben veraltet und durch die heutigen Rechtsbegriffe überholt sei. Ich halte das für einen Irrtum […]. […] Die Grundrechte sind zum mindesten ein weitgehender 'moralischer' Schutz gegen einen gewalttätigen Staatsmann oder eine gewalttätige Regierung […]. […] Daneben bieten die Grundrechte auch einen wichtigen Schutz gegen eine Überstürzung in der Gesetzgebung, indem sie Richtlinien festlegen und moderierend wirken." Verhandlungen d. v. D. N., Bd. 336, 183.

despotism"). This way of defining fundamental rights served as the intellectual basis among the representatives. Specifically, Hugo Preuß stressed the "original idea" of anchoring the subjective idealistic rights of the individual against the omnipotence of state power in fundamental rights, although he was aware of the impossibility of establishing principles of law with eternal validity. While Preuß focused on protecting the individual against state power, Hugo Sinzheimer extended this adversarial logic further by also applying it to social life and non-state actors. In his view, rights should give protection to individuals not only against the state but also against other social powers, which are sometimes far more powerful than the state, such as employers and economic organizations.

However, in the opinion of several representatives in the National Assembly, the adversarial relationship between individuals and the state that had traditionally structured the definition of fundamental rights was not appropriate for adding a social dimension to the catalogue of fundamental rights. As the state would be expected to take positive action to meet the socioeconomic needs of individuals, social rights could not be expressed merely in negative terms against the state. Therefore, the way of defining rights needed to change, requiring its transformation from a negative to a positive conception.

> Abg. Katzenstein: The earlier constitutions […] contained only negative provisions concerning the protection of the individual. However, this was only a transition; with the development of the peoples, new compelling organizations were formed alongside the state, and new positive demands were made on the state, which must also be expressed in the constitution. […] In my opinion, in the present day fundamental rights can only have a mixed character, a sort of intermediate stage between bourgeois and socialist views.[7]

During their heated debates, the Assembly members had already realized that there must be a transition of fundamental rights, although they were

7 In German: "[Die] früheren Verfassungen […] enthalten […] nur negative Vorschriften, die lediglich den Schutz des Einzelindividuums betrafen. Dies war aber nur ein Übergang; mit der Entwicklung der Völker bildeten sich neben dem Staat neue zwingende Organisationen, es werden jetzt neue positive Forderungen an den Staat gestellt, die ebenfalls in der Verfassung ihren Ausdruck finden müssen. […] Nach meiner Meinung können die Grundrechte jetzt nur einen Mischcharakter haben, gewissermaßen ein Mittelstadium zwischen bürgerlichen und sozialistischen Anschauungen." Verhandlungen d. v. D. N., Bd. 336, 186.

unclear about the direction of social movements and what they could draw from them. However, this transition in the WRV was still articulated through the traditional adversarial definition of rights, in which individuals were positioned against the state, though now with a shift from negative protections to positive demands. In addition, the expanded definition of rights – whether understood as representing a "mixed character" or an "intermediate stage" – relied on rather vague conceptions of the individual, the state, and their relationship. More precisely, the expansion of the catalogue of fundamental rights largely depended on a new conception of the two central actors, individuals and the state, who made up the classic dual structure of constitutions, represented by the legal vocabulary of rights and sovereignty. As the following section will demonstrate, fundamental rights served as the path-dependent option for integrating not only socioeconomic resources but also new individuals, such as the working classes, in the formation of the German society as a new nation.

3.1.2 *Volksstaat* and *Verbandsmensch*

As a liberal politician and Protestant parish pastor, Friedrich Naumann was acutely aware of the changing times by emphasizing that "revolutionary times require guiding ideas of worldview *(Weltanschauungsgedanken)*."[8] Moreover, as the rapporteur on the section of fundamental rights, Naumann was instrumental in expanding the groups of rights into the socioeconomic field by defining the relationship between the state and the individuals in a way fundamentally different from the 1848 constitution. In his report, Naumann argued that the German *Reich* was reincarnating as a republican body and even a "people's state" *(Volksstaat)*. At the same time, the individual was no longer viewed as a distinct entity but as an "associated being" *(Verbandsmensch)*.

For the changing concept of the state, Naumann raised some doubts over the continued use of the name "Deutsches Reich," and attempted to uncover a new spirit within this old expression. He did not propose abandoning the term, but rather sought to reinterpret it. First, compared with other

8 In German: "Revolutionszeiten brauchen Weltanschauungsgedanken." Verhandlungen d. v. D. N., Bd. 336, 176.

alternatives (such as "German Republic" or "German Bund"), "German *Reich*" signaled historical continuity and national unity in a more obvious manner. The new state was the "legal successor" of the former, but with a changed constitution. It also represented a higher degree of fusion, replacing a confederation of states *(Staatenbund)* with a federal state *(Bundesstaat)*. However, both these forms of state organization still belonged to the traditional concept of *Rechtsstaat* inherited from 1848. Second, and more importantly, Naumann shifted the concept of *Rechtsstaat* to the people's state *(Volksstaat)* in order to open up to new groups of fundamental rights:

> Abg. D. Naumann: If we include the old contents *(Stoff)* of fundamental rights, we need to check how these relate to the new state, and there can be no doubt that since 1848, the concept of state has also shifted, and that, despite all party differences, basically with all of us. Political thinking has moved away from the abstract concept of rule of law of 1848 and has incorporated new elements of both a national and social nature. The concept of the state has now become the people's state, the nation-state.[9]

Naumann stressed that the established material of fundamental rights had to be examined in relationship to the present state. The new conception of the people's state implied substantial changes towards a more comprehensive national integration: It required a reconfiguration of rights so that their integrative functions – ranging from private to civil and socioeconomic rights – could correspond to the new social reality.[10] In Naumann's view, the people's state would no longer be monopolized by the upper and ruling classes within the framework of *Rechtsstaat*, but would now be transformed into a "living organization" of society as a whole. As the idea of the people became embedded in the state, the new *Menschenbild* of the *Reich* also had to be reshaped to include the broader masses who had previously been excluded.

9 In German: "Wenn wir darum alten Stoff von Grundrechten aufnehmen, so muß der alte Stoff nachgeprüft werden nach seinem Verhältnis zum heutigen Staat, und es unterliegt wohl keinem Zweifel, daß seit 1848 sich auch der Staatsbegriff verschoben hat, und zwar trotz aller Parteiunterschiede im Grunde bei uns allen. Das politische Denken ist von dem abstrakten Rechtsstaatsbegriff jenes Jahres 1848 abgerückt und hat neue Elemente sowohl nationaler wie sozialer Natur in sich aufgenommen. Die Staatsauffassung ist jetzt der Volksstaat, der Nationalstaat geworden." Verhandlungen d. v. D. N., Bd. 336, 179.

10 See Thornhill (2016).

> Abg. D. Naumann: [T]he socialist masses by their very nature can never feel so individualistically as the bourgeois third estate, which was in the foreground at the time. The associated human being is the normal human being of the present, the socialized, grouped human being searches for a constitutional expression, searches, if there is commitment to the state at all, whether the state has an opinion about it or whether it has none.[11]

The hypothesis of an individual transformed by the socialist movement profoundly shaped Naumann's understanding of the concept and the content of fundamental rights. If the individual was no longer constructed as an absolute and isolated being, the concept or right of absolute property was not unquestionable. As human beings became associated with each other, socially embedded and highly organized, personal interests overlapped and public welfare needed to be taken into account. This new conception of "associated individuals" resulted in the inclusion, in Art. 165 WRV, of new, self-governing social organizations in the form of *Räte*, such as workers' councils *(Arbeiterräte)* in individual businesses, and economic councils *(Wirtschaftsräte)* at district and *Reich* levels.

In short, almost all discussion on rights by representatives in Weimar were confined to the way of defining rights within the frame of state and individuals. From a conceptual standpoint, it is hard to explain why the paradigm of rights was chosen as a path-dependent option. The idea of rights might be deeply rooted in Western culture, distinguishing it from other cultures. In light of such Western beliefs, the emphasis on equality "underpins the secular state and idea of fundamental or 'natural' rights." Thus, from the perspective of the liberal tradition, individual freedom is the only birthright.[12] At the same time, while the representatives in Weimar still strictly followed this way of thinking, they attempted to open up the established category of fundamental rights in order to bring in a socioeconomic dimension. Specifically, they turned towards modulating both parties in the politico-legal relationship, namely the state and the individuals, with the aim of redefining it from a

11 In German: "[D]ie sozialistische Masse [kann] ihrer Natur nach nie so individualistisch empfinden […], als jene bürgerliche dritte Schicht, die damals im Vordergrunde stand. Der Verbandsmensch ist der Normalmensch der Gegenwart, der sozialisierte, gruppierte Mensch sucht sich verfassungsmäßig einen Ausdruck, sucht, wenn es überhaupt ein Staatsbekenntnis gibt, ob der Staat darüber eine Ansicht hat oder ob er keine hat." Verhandlungen d. v. D. N., Bd. 336, 180.

12 See Siedentop (2014), 349 ff.

structural antagonism to a new form of integration between the *Volksstaat* and the *Verbandsmensch*. The combination of the traditional liberal way of defining rights with changing connotations provided an epistemological basis not only for the expansion of the fundamental rights but also for reinterpreting the historical narratives of fundamental rights in their debates.

3.2 Using historical narratives of rights: Tradition and techniques

To a considerable extent, achieving a breakthrough in the categories of fundamental rights required a shift in the way the history of rights was written. In fact, the rigid paradigm of rights could only be reshaped if it was treated as part of the revisable record of the past, not as an unchanging, timeless norm. As a result, the representatives extracted new normative resources from historical debates and traditions and used them to remold the narrative of the history of rights. In this part, I will demonstrate how the representatives in Weimar tried to merge contemporary and forward-looking perspectives with the established history of rights (3.2.1), in order to show how they transformed the fundamental rights from "museum pieces" *(Museumsstücke)* into "moments of worldview" *(Weltanschauungsmomente)*. Moreover, I will show how the representatives, especially Konrad Beyerle, developed their techniques for the codification of fundamental rights by drawing on a historical narrative (3.2.2). In the final section, we will see the reorientation of the constitutional tradition of Germany at a revolutionary moment.

3.2.1 The moments of worldview *(Weltanschauungsmomente)*: Between Western tradition and German future

During the debates in Weimar, the diverging opinions of the representatives regarding whether – and if so, then in what way – to remold the system of fundamental rights can be summarized as a focus on two different kinds of questions: some concerned worldview *(Weltanschauungsfragen)*, while other concerned world-historical perspectives *(weltgeschichtliche Fragen)*.[13] Representatives who framed the issues in terms of worldview argued for preserving the original liberal idea of fundamental rights as above all *Schutzrechte*

13 Verhandlungen d. v. D. N., Bd. 336, 186.

against the state. They also expressed doubts about whether the legislators could produce a uniform concept that could extend to include new social rights. By contrast, those who advocated the extension of rights to the social and economic fields were more inclined to treat fundamental rights as historically evolving normative constructs, continually reshaped by changing social realities. Based on Georg Jellinek's theory of subjective rights, Naumann described fundamental rights as "worldview moments," transforming the rigid paradigm of rights into a series of temporal moments that captured the historical context. Through these, he sought to connect the past with Germany's present political situation and its possible future.

> Abg. D. Naumann: We come to the same conclusion if we look at this matter not from the composition of the constituent assembly, but from the historical situation of Germany at this moment. The political question for us today is: Either we are drawn into the Russian view of Soviet councils or we are brought into the Western European-American form. In the commitment that we express in the fundamental rights lies at the same time our political decision towards the Western countries.[14]

By revisiting some significant historical moments in German nation-building, such as the German revolutions of 1848/49 and the unification process from 1866/67 to 1871, Naumann argued that "revolutionary times need guiding ideas of worldview," expressed in constitutions. He reminded all representatives, as well as perhaps the whole German people, that, having undergone the historical transformation from *Staatenbund* to *Bundesstaat* under the name of *Deutsches Reich*, they were faced with a new historical situation: the choice between the Soviet model, on the one hand, and the European-American form within the Western tradition, on the other.

Naumann suggested that granting access to socioeconomic resources in the form of rights should be considered as the continuation of the Western tradition, though adjusted in light of Germany's present challenges – such as the rise of the working classes and democratic participation, and the acute

14 In German: "Zu demselben Ergebnis kommen wir, wenn wir diese Sache nicht von der Zusammensetzung der verfassunggebenden Versammlung aus betrachten, sondern von der historischen Lage Deutschlands in diesem Augenblick. Die politische Frage heißt für uns heute: Entweder wir werden hineingezogen in die russische Sowjeträte-Auffassung oder wir werden herangegliedert an die westeuropäisch-amerikanische Form. In dem Bekenntnis, das wir in den Grundrechten aussprechen, liegt zugleich unsere politische Entscheidung gegenüber den westlichen Ländern." Verhandlungen d. v. D. N., Bd. 336, 180.

social problems of poverty and unemployment after the war. In Naumann's view, this meant that the decision about refiguring fundamental rights was not about keeping the previous catalogue of rights unchanged – as he put it, as "an archaic collection" *(eine archaistische Sammlung)* or a "work for a museum" *(eine Museumsarbeit)* in idyllic Weimar – but about creating a *Staatsbekenntnis:* a declaration of constitutional commitment, expressing the basic ideas *(Grundgedanken)* of the new kind of state, the *Volksstaat* and the *Nationalstaat*. This political choice, he emphasized, had to be made in the face of the present domestic tensions and the uncertainty of Germany's future.[15] To complement Naumann's emphasis on fundamental rights as a political declaration, Hugo Sinzheimer underlined the material preconditions of constitutional life. He reminded the assembly that rights alone could not secure Germany's future without economic foundations.

> Abg. Sinzheimer: The promotion of economic life depends not only on statutes, law, and norms but also on the development of economic elements, in particular, material resources and economic forces. Let us hope that the future will also bring this development, so that our economic life can flourish and prosper again. Today, the fate of the German people depends first and foremost on this development.[16]

In his report during the draft constitution's Second Reading, Sinzheimer directly established the link between the law and future life – more precisely, between the chapter on Economic Life in the WRV and the future development of the economy itself. By contrast, some representatives, like Bruno Ablaß, argued that future prospects *(Zukunftsperspektiven)* did not belong in the constitution, considering them too speculative.[17] The question of whether to accept the addition of social rights to the catalogue of fundamental rights or even to formulate a special social constitution alongside the political constitution was of great organizational importance, since it asked "in what forms our constitutional life will take place in the future," as Hugo Preuß emphasized.[18] In fact,

15 Verhandlungen d. v. D. N., Bd. 336, 179, 181.

16 In German: "Die Förderung des Wirtschaftslebens hängt nicht nur von Gesetzen, von Recht und Normen ab, sondern von der Entwicklung der Wirtschaftselemente, insbesondere der Wirtschaftsstoffe und Wirtschaftskräfte. Wir wollen hoffen, daß die künftige Zeit auch diese Entwicklung bringen wird, damit unser Wirtschaftsleben wieder blühen und gedeihen kann. Von dieser Entwicklung hängt heute in erster Reihe das Schicksal des deutschen Volkes ab." Verhandlungen d. v. D. N., Bd. 328, 1752.

17 Verhandlungen d. v. D. N., Bd. 336, 185.

18 Verhandlungen d. v. D. N., Bd. 336, 394.

he argued that the future was an essential, if not the most essential, dimension to legislation. This future-oriented character concerned not only the judicial application of constitutional norms in the future, but also the reshaping of the future itself, even though always in the guise of continuity with tradition. In the compromise eventually reached in Weimar, various "worldview moments" – invocations of the past as tradition, interpretations of the present historical situation, and projections of the future as political goals – produced a seemingly coherent narrative framework of fundamental rights in order to forge new rights to become the tradition of the future.

3.2.2 An evolving historical model: Legislative techniques for the codification of rights

The historical narratives of fundamental rights not only deconstructed the worldview into several moments that served as resources for refiguring the categories of fundamental rights; they also provided specific legislative techniques for codification that legislators could draw on in different periods. Konrad Beyerle described these methods as an evolving historical model that continually absorbed new ideas of fundamental rights in appropriate forms, thereby offering an important point of reference for the WRV. Moreover, Beyerle consciously introduced into this model an element previously absent from German constitutional thought: a genealogy of fundamental rights constructed through reference to developments in England, America, and France, in order to demonstrate Germany's spiritual link with the Euro-American tradition of fundamental rights. The first stage of this genealogy was England's textualization of various freedoms – freedoms that, according to Beyerle narrative, had their roots in the German free towns of the 12th and 13th centuries.

> Abg. Dr. Beyerle: At the threshold of the chapter of fundamental rights are the sentences given by Duke Conrad of Zähringen to the city of Freiburg im Breisgau in 1120 and those given 50 years later by Henry the Lion to the cities Schleswig, Brunswick, and Munich. […] [C]enturies then went by […]. Only in England had the development of parliament made faster progress. It is there that those famous monuments of freedom were written down for the first time, from which individual sentences lead down to the fundamental rights of modern times in direct connection.[19]

19 In German: "An der Schwelle des Kapitels der Grundrechte stehen die Sätze, die der Herzog Konrad von Zähringen 1120 der Stadt Freiburg im Breisgau und diejenigen, die 50 Jahre

To Beyerle, the Magna Carta of 1215 represented the first landmark in the development of the codification of fundamental rights, since it for the first time recorded and brought together earlier, scattered phrases of liberty granted to cities from Freiburg im Breisgau to Schleswig, Brunswick, Munich, and then on to Flanders and Cologne. Beyerle listed these cities in a genealogical sequence, not claiming that England collected its law from these places but implicitly suggesting a shared past spanning these regions.

The second stage of this narrative of the history of rights was the French Revolution of 1789.

> Abg. Dr. Beyerle: Already in the Middle Ages in Germany, near Berlin, Eike von Repkow, the author of the *Sachsenspiegel*, considered legal philosophical issues and wrote: 'It is not right that there are unfree people, by nature all humans are equal.' Rationalism in England and France has inherited this philosophical doctrine, […] Lafayette […] not only drew on the American monuments, but also incorporated the principles of the right to life, to liberty, to property demanded by the philosophy of natural law, and thus, in the Declaration of Human Rights, drew up the first catalogue of fundamental rights, from which one must always proceed again.[20]

Alongside the influence of the 1787 Constitution of the United States, the French 1789 *Declaration of the Rights of Man and of the Citizen* produced the first catalogue of fundamental rights. The *Declaration* not only expanded the

später Heinrich der Löwe den Städten Schleswig, Braunschweig, München gegeben hat. Sie sind bis nach England gedrungen. […] Jahrhunderte gingen dann dahin. […] Nur in England hatte die Entwicklung des Parlaments raschere Fortschritte gemacht. Dort sind jene berühmten Denkmäler der Freiheit zum ersten Male niedergeschrieben, von denen einzelne Sätze in unmittelbarem Zusammenhange bis in die Grundrechte der Neuzeit herabführen." Verhandlungen d. v. D. N., Bd. 336, 366.

20 In German: "Schon im Mittelalter hat auch in Deutschland, in der Nähe von Berlin, Eike von Repkau, der Verfasser des Sachsenspiegels, aus rechtsphilosophischen Erwägungen heraus den Satz niedergeschrieben: 'Es ist eigentlich nicht recht, daß es Unfreie gibt, von Natur sind alle Menschen gleich.' Das Erbe dieser philosophischen Lehre hat der Rationalismus in England und Frankreich angetreten […]. […] Lafayette […] hat hierbei nicht nur aus den amerikanischen Denkmälern geschöpft, sondern auch die von der naturrechtlichen Rechtsphilosophie geforderten Grundsätze des Rechts auf Leben, auf Freiheit, auf Eigentum eingeflochten, und so in der Deklaration der Menschenrechte den ersten Katalog der Grundrechte aufgestellt, von dem man immer wieder ausgehen muß." Verhandlungen d. v. D. N., Bd. 336, 366–367.

contents of rights, it also provided a uniform system of rights rooted in the new epistemological approach of the Enlightenment. Beyerle stressed that this French model had to be taken as a reference, especially when legislators faced new problems, such as in the National Assemblies of Frankfurt am Main or Weimar, since this first catalogue of fundamental rights formed a systematic unity of content, form, and ideas. This implied that even a slight alteration of one article might affect the entire system of fundamental rights. At the same time, Beyerle traced this 18th-century rationalist concept back to the medieval German *Sachsenspiegel*, once again highlighting Germany's role in European legal history. Although fundamental rights had frequently been absent from German constitutions, including the 1850 Prussian Constitution and the 1871 Bismarck Constitution, in Beyerle's narrative Germany had nevertheless made significant contributions to the shared spiritual and epistemological foundation of constitutionalism, together with England, France, and the United States. His fellow representatives in Weimar, however, sought to move beyond this heritage to create their own categories of fundamental rights.

3.3 The codification process: New questions, a uniform logic, and double constitutions

In the codification process of the section on fundamental rights in Weimar, there were three crucial steps in constructing socioeconomic rights. Firstly, the rapporteur for fundamental rights, Friedrich Naumann, expanded the groups of rights into the socioeconomic field by addressing new social and political challenges of the time (3.3.1). Secondly, throughout the drafting process Konrad Beyerle integrated proposals from different parties and refigured the system of fundamental rights and duties within a uniform logic (3.3.2). Hugo Sinzheimer, thirdly, introduced a dualistic terminology, distinguishing between the political constitution and the economic constitution, in order to justify the inclusion of the chapter on Economic Life (3.3.3). Based on the above-mentioned representatives' reports to the National Assembly, I will demonstrate how the form of fundamental rights was opened and expanded to include social life, how the rights in different fields were systematized with legal grammar and vocabulary, and what the mechanism of rights-based social autonomy in the broader process of national integration looked like.

3.3.1 New questions: Friedrich Naumann

Perhaps because of his lack of formal legal training, Friedrich Naumann was especially sensitive to the changing demands of his age. From as early as 1894, he had published the weekly magazine *Die Hilfe*, in which he addressed the social question from a non-Marxist, middle-class perspective.[21] Naumann's main contribution to the debates on fundamental rights, therefore, was not to draft concrete legal norms, but rather to pose historically specific questions that challenged the prevailing legal stereotype of fundamental rights.

The first set of questions that Naumann posed concerned the relationship between the forms, groups, content, and material of fundamental rights. As discussed above, Naumann understood Jellinek's theory of subjective rights as a historical phenomenon,[22] and thus did not see the form of fundamental rights as invariable. In his view, groups of fundamental rights were reformed and expanded through the absorption of different content over time:

> Now, in which form was this content absorbed? The government's second draft [submitted to the National Assembly by Hugo Preuß] changed it very little. I will again go back in the history of fundamental rights and mark the forms, the groups, of what has been or what can be offered as fundamental rights.[23]

Due to his dissatisfaction with Preuß' draft and Jellinek's category of fundamental rights, Naumann divided rights into four groups. The first was human rights, which consisted mainly of negative liberties, protecting individuals against state power. The second group was positive civil rights, including the rights and corresponding duties of citizens. Out of these two groups, Naumann argued, two new ones developed. The first was of a more idealistic nature: the group of *Gedankenfreiheit* (freedom of thought), including freedom of speech, freedom of assembly, freedom of religion,

21 On the biography of Friedrich Naumann see Lindt (1973); Theiner (1983); vom Bruch (ed.) (2000).

22 Verhandlungen d. v. D. N., Bd. 336, 178.

23 In German: "In welcher Form wurde nun dieser Stoff aufgenommen? Der zweite Entwurf der Regierung hat sie nur sehr wenig verändert. Ich gehe nochmals in die Geschichte der Grundrechte zurück und markiere die Formen, die Gruppen dessen, was als Grundrechte überhaupt geboten worden ist oder geboten werden kann." Verhandlungen d. v. D. N., Bd. 336, 176–177.

and academic freedom. The second, of a "more material nature," was the group of economic rights, such as rights related to work and livelihood. By combining these historical groups with contemporary developments, Naumann consistently sought to trace the connections between new categories of rights and potential material of fundamental rights *(Grundrechtsmaterie)*. As he put it:

> This brings us to the question that seems to me to be the core question of all fundamental rights as we are setting them up today: 1. To what extent and with what intention is it necessary to include old content from the material of fundamental rights *(Grundrechtsmaterie)* now? 2. To what extent is it possible and necessary to formulate new topics as new fundamental rights?[24]

What Naumann gained from such questions was an approach that always returned to the material foundations. Whether reaffirming older, more spiritual elements or introducing new, more material ones such as economic rights, both were, for him, part of the creative reconstruction of the theoretical links between categories of rights and their material foundations – that is, between possibility and necessity – within the form of fundamental rights. Naumann's questions thus rested on the conceptual evolution of fundamental rights, above all the changing relationship between individuals and the state. Therefore, he went on to pose a second set of questions regarding the possibility of and necessity for breaking up the existing framework of fundamental rights. As he explained:

> [T]he old fundamental rights [began] with the individualistic rights […]: What can and what can't the state do to the individual, and what do we do as individuals, because the state consists of us, the individuals? This old question of the former fundamental rights is no longer valid today, insofar as the socialist masses by their nature can never feel so individualistically […].[25]

24 In German: "Damit sind wir an der Frage angelangt, die mir die Kernfrage der ganzen Grundrechte, wie wir sie heute aufstellen, zu sein scheint: 1. Inwieweit und mit welcher Absicht ist es nötig, alte Stoffe aus der Grundrechtsmaterie jetzt aufzunehmen? 2. Wieweit ist es möglich und nötig, neuen Stoff als neues Grundrecht zu formulieren?" Verhandlungen d. v. D. N., Bd. 336, 178.

25 In German: "[Die] alten Grundrechte [begannen] mit jenen individuellen Rechten: Was kann der Staat oder darf der Staat den einzelnen nicht tun, und was tun wir als einzelne, weil der Staat aus uns, den einzelnen, besteht? Diese alte Fragestellung der einstigen Grundrechte ist heute insofern nicht mehr richtig, als die sozialistische Masse ihrer Natur nach nie so individualistisch empfinden kann […]." Verhandlungen d. v. D. N., Bd. 336, 180.

> What, then, is the measure of change, the measure of what must or can be expressed as the present social ideal of the state?[26]

To Naumann, the inapplicability of the old individualistic question that fundamental rights had once aimed to answer highlighted the extent to which the contemporary situation had changed. He assessed the possibility and necessity of articulating a social ideal of the state on the basis of two dimensions: the position of individuals and the concept of nation-state. As discussed above, in Naumann's view the mutually embedded relationship between the *Verbandsmensch* and the *Volksstaat*[27] should serve as the new standard for transforming substantive foundations of rights into the constitutional form of fundamental rights.

Throughout his report, Naumann repeatedly stressed that drafting the section on fundamental rights should not consist of applying the old frame of rights to the new circumstances. Rather, it should involve restructuring the rights-based relationship between individuals and the state in accordance with the new idea of popular sovereignty, in order to respond to the specific challenges of postwar Germany, such as including political instability, social conflict, and economic crisis. Naumann attempted to balance liberty and equality by broadening the scope of rights under popular sovereignty. The Committee for the Preparation of the Draft Constitution, however, voted to reject Naumann's proposal because of its lack of legal clarity. Nevertheless, Konrad Beyerle drew heavily on Naumann's report and proposal during the drafting process. In the closing sentence of his report, Beyerle thanked Naumann, who was seriously ill at the time, for his "supportive leadership" of the fundamental rights committee in Weimar.[28]

3.3.2 A uniform logic: Konrad Beyerle

As the principal drafter of the WRV's part on fundamental rights and duties, Konrad Beyerle sought both to acknowledge Naumann's political initiative in raising the issues of his time and to translate these impulses into a coherent

26 In German: "Was ist nun das Maß der Veränderung, das Maß dessen, was als jetziges soziales Staatsideal ausgesprochen werden muß oder kann?" Verhandlungen d. v. D. N., Bd. 336, 180.

27 Verhandlungen d. v. D. N., Bd. 336, 179.

28 Verhandlungen d. v. D. N., Bd. 336, 369.

legal framework, while also responding to the widespread skepticism about the possibility of systematizing fundamental rights. The most representative objection came from Preuß, who fully agreed on the integration of fundamental rights into the constitution, but at the same time persistently denied the idea of "a completely uniform world, state, and economic order" and the capacity of legislators to grasp this order within a unified logical system: "We will all agree on certain points of view, but we also have a great ladder of nuances *(Stufenleiter von Schattierungen)* of all kinds" of fundamental rights.[29] Therefore, Beyerle's task as drafter was to construct a logical ladder of rights-groups, with each step building on the previous one, in order not only to re-establish the internal consistency of the rights system but also to integrate individuals into the state.[30]

As discussed above, Beyerle sought to understand the bidirectional process of the construction and deconstruction of fundamental rights as well as the relationship between legislative techniques and the spirit of the times *(Zeitgeist)* through a careful investigation of the history of how fundamental right had been codified (3.2.2), and applied these insights to systematize and codify the fundamental rights in the WRV.[31] According to these ideas, Beyerle transformed the logic of fundamental rights in Preuß' draft in three aspects: first, by changing categories from "fundamental rights" to "fundamental rights and duties"; second, by building a system *(Systematik)* of fundamental rights and duties within a unified logic; and third, by restructuring the parts and chapters of the constitution as a result of the corresponding substantial increase in content, from 15 to 60 articles. I will focus on the second aspect below. When presenting the draft to the National Assembly, Beyerle explained the reasoning behind its structure in the following terms:

> [We tried to follow an idea:] to let the individual ascend through the community to the state and thus to put the fundamental rights and duties of the person in the first place, and then to place the foundations of community life after them. These basic principles of community life are then followed by the third and fourth sections, the fundamental rights and duties concerning religion and religious communities on the one hand, and education and schooling, on the other. Finally, in a combination of a few sentences of the old law with the demands of the new era, a [fifth] section

29 Verhandlungen d. v. D. N., Bd. 336, 184.
30 On the biography of Konrad Beyerle, see Laufs (1977); Hense (2002).
31 Verhandlungen d. v. D. N., Bd. 336, 366–367.

summarizes the commitment of the present to the problems of economic life in material as well as personal terms.[32]

Beyerle transformed the orientation of fundamental rights from a focus on freedoms to be defended against the state to the step-by-step "ladder of rights" leading toward the state, outlining a unified logical system of individual rights and collective integration in five chapters: "The Individual Person," "Community Life," "Religion and Religious Communities," "Education and Schools," and "Economic Life." In particular the fifth and last chapter was designed as a closed sequence: Beginning with freedom as the basis of economic life, it proceeded through the recognition of property (though with legal restrictions), continued on to a uniform labor law, and concluded with the council system *(Rätesystem)*, which Beyerle located at the threshold *(Schwelle)* of *Staatsrecht*.[33] This suggests that Beyerle actively conceived his "ladder" from rights to councils in the fields of labor and economy as a logical prerequisite for the other state organs set out in the constitution.

Accordingly, the order of the two main parts of the WRV – "Composition of the *Reich* and its Responsibility" and "Fundamental Rights and Duties of the Germans" – became a central topic of the debate. Beyerle had initially placed fundamental rights before the organization of the *Reich,* in line with his idea of progression from the individual through the community to the state. Preuß, however, insisted that the order primarily concerned the relationship between the rights and the state, and argued that the state, as the basis of fundamental rights, should be placed first. Beyerle eventually agreed to reverse the order in his draft, since the movement from the individual to the state was, in his view, only a "secondary moment" *(ein sekundäres Mo-*

32 In German: "[Wir waren bemüht, einem Gedanken zu folgen:] den einzelnen durch die Gemeinschaft hindurch zum Staate hinaufsteigen zu lassen und so zunächst die Grundrechte und Grundpflichten der Person in erste Linie zu stellen und diesen dann die Grundlagen des Gemeinschaftslebens anzureihen. Diesen Grundlagen des Gemeinschaftslebens folgen dann als dritter und vierter Abschnitt die Grundrechte und Grundpflichten in bezug auf Religion und Religionsgemeinschaften einerseits, auf Bildung und Schule andererseits. Endlich ist in einer Verbindung weniger Sätze des alten Rechtes mit den Forderungen der neuen Zeit in einem [fünften] Abschnitt das Bekenntnis der Gegenwart zu den Problemen des Wirtschaftslebens nach dinglicher und nach persönlicher Seite zusammengefaßt worden." Verhandlungen d. v. D. N., Bd. 336, 368.

33 Verhandlungen d. v. D. N., Bd. 336, 368. On the development of social law in the Weimar Republic, see Stolleis (2014) 95–129. On social policy see Preller (1949); Zacher (2013).

ment) of the constitution.[34] In contrast, Sinzheimer took a different position, emphasizing that this ordering would generate a subtle interplay, in future constitutional practice, between the economic councils and the *Reichstag*, between socialism and liberal democracy, and between Sinzheimer's design of a political constitution and an economic constitution.

3.3.3 Double constitutions: Hugo Sinzheimer

In the Committee for the Preparation of the Draft Constitution, Hugo Sinzheimer was responsible for shaping the role of the councils *(Räte)*.[35] He introduced the Workers' Councils *(Arbeiterräte)* and Economic Councils *(Wirtschaftsräte)* in Article 165, thereby establishing the council system *(Rätesystem)* as part of the constitutional order of social self-determination. It is this provision that closes the logical loop of the chapter on Economic Life as well as the entire part on Fundamental Rights and Duties. During the Third Reading of the draft constitution in the National Assembly, Sinzheimer gave a report on the section on Economic Life to explain the implementation mechanism for socioeconomic rights.

At the beginning of his report, Sinzheimer underlined that, after the massive upheaval in Germany, people placed their hope in the councils as a way of overcoming their harsh social and material conditions. However, he argued that this was not legally feasible, since turning the council movement into binding law would amount to following the Soviet model of proletarian dictatorship rather than establishing a democracy of equal citizens.[36] For Sinzheimer, the realistic way forward was an "organic reorganization" *(organischer Umbau)* of social order, achieved step by step, through which socioeconomic rights could gradually be realized. In analogy to the expansion of fundamental rights, he proposed that this emerging social or economic constitution *(Sozial- oder Wirtschaftsverfassung)* should stand alongside the existing political constitution *(Staatsverfassung)*, thereby creating a dualistic constitutional framework.

34 Verhandlungen d. v. D. N., Bd. 336, 370.

35 On the biography of Hugo Sinzheimer, see Kempen (2017). On Hugo Sinzheimer's contribution to the Weimar National Assembly, see Albrecht (1970); Kahn-Freund (ed.) (1981).

36 Verhandlungen d. v. D. N., Bd. 336, 393.

> Today, the view of a separate social constitution *(Gesellschaftsverfassung)* alongside the state constitution *(Staatsverfassung)* is of great organizational importance. It is a question of what forms our constitutional life *(Verfassungsleben)* will take in the future, and that is why we are faced here with one of the most critical problems of the new constitution.[37]

Sinzheimer employed the rhetoric of duality throughout his report, using alternative conceptual pairs to construct a dualistic system between economic life and state life, e.g. "social constitution" and "state constitution"; "economic constitution" and "political constitution." He also proposed two alternative dual institutional solutions: a "professional parliamentary chamber" *(berufständische Kammer)* paired with a "people's parliament" *(Volksparlament);* or an "economic council of the *Reich*" *(Reichswirtschaftsrat)* paired with *Reichstag* and *Reichsrat*.[38] This dualistic paradigm was, on the one hand, deeply rooted in the academic tradition of Germany, particularly in the distinction between state and society. At the same time, by applying the duality of society and state, and of economy and politics, Sinzheimer forged a conceptual system that linked fundamental rights, the council system, constitutions, and the various spheres of life within a unified logic. That may also explain why this chapter was titled "Economic Life": It drew on the historical model of fundamental rights while introducing a council system distinct from the Soviet model, thereby aiming to realize the socioeconomic program for the future in a gradual way.

> The promotion of economic life depends not only on legislation, law, and norms, but also on the development of economic elements, in particular of economic material resources *(Wirtschaftsstoffe)* and economic forces *(Wirtschaftskräfte)*. Let us hope that the future will also bring this development, so that our economic life can flourish and prosper again. Today, the fate of the German people depends first and foremost on this development.[39]

37 In German: "Dieser Gesichtspunkt einer besonderen Gesellschaftsverfassung neben der Staatsverfassung ist heute von großer organisatorischer Bedeutung. Es handelt sich darum, in welchen Formen sich unser Verfassungsleben in Zukunft vollziehen wird, und darum stehen wir hier vor einem der wichtigsten Probleme der neuen Verfassung." Verhandlungen d. v. D. N., Bd. 336, 394.

38 Verhandlungen d. v. D. N., Bd. 336, 396.

39 In German: "Die Förderung des Wirtschaftslebens hängt nicht nur von Gesetzen, von Recht und Normen ab, sondern von der Entwicklung der Wirtschaftselemente, insbesondere der Wirtschaftsstoffe und Wirtschaftskräfte. Wir wollen hoffen, daß die künftige Zeit auch diese Entwicklung bringen wird, damit unser Wirtschaftsleben wieder blühen und gedeihen kann. Von dieser Entwicklung hängt heute in erster Reihe das Schicksal des deutschen Volkes ab." Verhandlungen d. v. D. N., Bd. 328, 1752.

As Naumann grappled with the form, the groups, and the content of fundamental rights *(Grundrechtsmaterie)*, Sinzheimer similarly moved between fundamental rights and economic development, and between the constitution and real life. Moreover, drawing on Beyerle's "ladder of rights," Sinzheimer supplied a dual structure of councils – workers' councils *(Arbeiterräte)* and the national *Reichswirtschaftsrat* – as the mechanism for implementing social rights. His design did not so much construct a simple opposition as a dual form of integration.[40]

Specifically, although Sinzheimer did not envision the *Reichswirtschaftsrat* as an independent legislative body, it was to have the rights of consultation and of initiative in the *Reichstag.* It would therefore to some extent perform a legislative function. This aimed to bridge the gaps between parliamentary democracy, on the one hand, and the people's movement *(Volksbewegung)* and social development, on the other. In fact, the constitutional mechanism for participation in legislation was a form of expressing the principle of social self-determination in the economic sphere.

In Sinzheimer's view, the self-determination of society was by no means equivalent to, nor could it be achieved through, political determination by law or administration. On the contrary, economic life was organized by various professions and occupations in the form of self-governing bodies *(Selbstverwaltungskörper)*.[41] This explains the character of the social program within the category of fundamental rights: It provided not only substantive rights but also procedural norms for participation in legislation, with the aim of securing social autonomy.[42]

Besides the above-mentioned rapporteurs, two figures outside the National Assembly are also worth mentioning, whose works and thought informed debates and thus manifested the profound scholarship of fundamental rights in Germany that provided the background for the drafts. Georg Jellinek's (1851–1911) theory of subjective rights was quoted by Naumann and Beyerle for expanding the groups of the fundamental rights.[43] Otto von Gierke (1841–1921) contributed detailed and valuable comments on Beyerle's draft of

40 Verhandlungen d. v. D. N., Bd. 328, 1751.
41 Verhandlungen d. v. D. N., Bd. 336, 393–395.
42 Verhandlungen d. v. D. N., Bd. 328, 1749.
43 Verhandlungen d. v. D. N., Bd. 336, 177, 367.

fundamental rights.[44] Moreover, his commentary served as a significant point of reference in understanding the German tradition of social autonomy.

3.4 Conclusion

This chapter has revisited the formation process of the section on social rights in the WRV through the debates of the National Assembly. As an outsider to the German and European legal traditions, I have treated the phenomenon of reforming the categories of fundamental rights as a legal process of cultural translation in response to socialism during a time of change. More precisely, the social rights were invented by German legislators – jurists and non-jurists – through reinterpreting the concept of rights, constructing a historical metanarrative of rights, and adopting a new unified logic for codification in order to integrate new elements into old forms. On the basis of the reports of key figures such as Friedrich Naumann, Konrad Beyerle, and Hugo Sinzheimer, as well as the resulting debates in the National Assembly's Constitutional Committee, I have sought to demonstrate not only the continuity of German thinking on fundamental rights and its capacity for self-renewal, but also the mechanism of rights-based social autonomy in the WRV, in preparation for comparing it with the policy-oriented model of China in the following chapters.

44 Verhandlungen d. v. D. N., Bd. 336, 368. For Otto von Gierke's opinion on the draft by Konrad Beyerle, see Pauly (2004) 107–113.

Chapter 4
From Translators to Legislators

Translated and incorporated into Chinese legal debates, the WRV had a profound impact on Chinese constitutions in the 1920s and 1930s. The social revolution of constitutionalism it promoted inspired translators and legislators in China to reflexively draw links between law and culture, translation and legislation. After providing an overview of the Chinese translations of the WRV from German, English, and Japanese versions in the early 1920s, this chapter will focus on two figures, Zhang Junmai (张君劢) and Li Jiannong (李剑农), who provided the first two Chinese versions of the WRV in 1920 and also served as legislators for drafting several constitutions from the 1920s to 1940s. Their double role of translator and legislator reveals the multiple dimensions of translation, from the literal act of translating one language into another to the practical dimension of translating their knowledge and experiences into new legislation. Hence, this chapter will discuss Zhang and Li's mindset as legislators – that is, the relatively stable cognitive frameworks through which they understood constitutional issues – together with their legislative practices in the early 1920s.

4.1 From translators to legislators: An overview of Chinese translations of the WRV

In the early 1920s, the WRV was translated into Chinese by multiple translators. They translated not only the German original but also English and Japanese versions. Subsequent constitutional compilations in China routinely included the WRV, in many cases reusing, revising, or adapting earlier translations. This complicated intellectual landscape of Chinese translations of the WRV could be regarded as a consequence of translating Western legal information since the late Qing. However, the knowledge infrastructure allowed for the transition from imperial translation agencies to Chinese students who had studied abroad, either government-supported or self-funded. They facilitated the direct appropriation of legal knowledge

and material from Europe and the United States, rather than an over-reliance on the Japanese understanding of the West. The detailed publication information is listed in table 11.[1]

Table 11: Chinese Translations of the WRV Published in the 1920s and 1930s

Intermediary Language	Translator	Date	Publication Information	Remarks
German	Zhang Junmai (张君劢)	April 15, 1920	First published in the *Journal of Liberation and Transformation* (解放与改造), 1920, 2/8, and later collected into his monograph *The Politics of New German Social Democracy* (新德国社会民主政象记), Shanghai: Commercial Press, 1922	Based on the German version of the WRV
	Wu Kunwu (吴昆吾)	From 1921 to 1922	First published in the *Journal of the Law Society* (法学会杂志), 1921, 2 and 1922, 9, later reprinted in *Foreign Bulletin* (外交公报) 1922, 17 and collected as *The German New Constitution* (德国新宪法), 1922	Ditto
	Zhu Hezhong (朱和中)	July 1923	*German Constitution* (德国宪法), Minzhi Press (民智书局), 1923	Ditto
English	Li Jiannong (李剑农)	March 5, 1920; August 5, 1920	First published in *The Pacific Ocean* (太平洋) 1920, 2/4, 6 under the pen name Canghai (沧海); later reprinted in the *Sichuan Weekly for Preparing the Provincial Constitution* (四川筹备省宪周刊), 1922, no.13, under his own name	Based on two English translations of the WRV published in *The International Review* and *Current History*, respectively. The latter was republished in the *New York Times* (September 14, 1919), under the title *Full Text of the German Republic's Constitution*

1 Beijing Library (ed.) (1990) 58, 82–83, 104; Deng (2008).

Intermediary Language	Translator	Date	Publication Information	Remarks
Japanese	Wang Yitang (王揖唐)	June 1922	Collected in *The Newest Constitutions of the World* (世界最新之宪法), self-financed publication, 1922	Based on Tatsukichi Minobe, *New Constitutions in European Countries after World War I* (欧洲諸国戦後の新憲法), Tokyo: Yūhikaku Press, 1922
	Chen Xifu (陈锡符), Sa Mengwu (萨孟武)	August 1922	Collected in *New Constitutions of the World* (世界新宪法), Shanghai: Commercial Press, 1922	Ditto
	Deng Yuyi (邓毓怡)	October 10, 1922	Collected in *New Constitutions of European Countries after World War I* (欧战后各国新宪法), 1922, which was republished as the first volume of his *Constitutional Review* (宪法论丛), Beijing Constitutional Society, 1924	Ditto
	Chen Shouzhong (陈受中)	1923	Collected in his *Review on Staatsrechtslehre*, vol. 2, self-financed publication, 1923	Ditto
Chinese (Adaptations of existing translations)	Taidong Press (泰东图书局) ed.	1921	Collected in *The Essential Book for Constitution-Making* (制宪必携), Taidong Press, 1921	Adapted the translation of Zhang Junmai
	Taidong Press (泰东图书局) ed.	November 1922	Collected in *The Constitutions of the Federal Republics of the World* (世界联邦共和国宪法), Taidong Press, 1922	Ditto
	Song Rumei (宋汝梅), He Hongji (何基鸿) eds.	October 1922	Collected in *Constitutional Pandect* (宪法要览), Beijing: Commercial Press, 1922	Ditto
	Shen Junru (沈钧儒), He Hongji (何基鸿) eds.	October 1922	Collected in *Constitutional Pandect* (宪法要览), Beijing: Commercial Press, 1922	Ditto
	Translation Department of Legislative Yuan (立法院编译处) ed.	August 1933	Collected in *Compilation of the Constitutions of all Countries* (各国宪法汇编), Translation Department of the Legislative Yuan, 1933	Compared the translations of Zhang Junmai and Wu Kunwu

The academic background of the above-mentioned translators reveals an obvious trend shifting away from retranslating Japanese information to direct contact with European and American legal knowledge. Most translators went to Japan and received legal and political training there, including Deng Yuyi (1903–1904, Waseda University), Wang Yitang (1904–1907, Tokyo Shinbu Gakkō), Chen Shouzhong (1906–1909, Waseda University), Zhang Junmai (1906–1910, Waseda University), Li Jiannong (1910–1911, Waseda University), Sa Mengwu (1921–1923, Kyoto University) and Chen Xifu (?–1924, Tokyo University). After graduation, however, Zhang and Li decided to continue their studies in Europe. From 1913 to 1914, Li studied at the London School of Economics and sat in on some classes on British empiricism. Zhang first went to Humboldt University in Berlin for his doctoral research on *Staatswissenschaft* from 1913 to 1915, and in 1919 switched to philosophy, which he studied with Rudolf Eucken in Jena. In 1920, whilst still studying in Germany, he translated the WRV into Chinese for the first time.

Zhang's translation served as a foundational source throughout the constitution-drafting processes of the 1920s and 1930s and was widely cited by constitutional commissions. Its popularity was due in part to the fact that Zhang had translated directly from the German and stayed very close to the original, with little warping of meaning and few misinterpretations, even after cross-cultural translation. While Li's translation appeared at almost the exact same time, it was based on the English translation. All translations based on Japanese texts were only published in 1922, because they drew – to varying degrees – on Minobe Tatsukichi's Japanese translation of that year.[2] Some of these Chinese versions followed Minobe's wording almost entirely, whereas others used his text only selectively and combined it with the German or English versions.

Zhang's political engagement across China further reinforced the popularity of his translation. In 1923, he was invited to draft a constitution for the National Affairs Conference (国是会议, NAC) in Shanghai, which had been convened by eight professional groups following the dissolution of the National Assembly. This draft was cited extensively in the NAC's debates on what would become the 1923 Constitution. After World War II, during the

2 Minobe (1922).

Political Consultative Conference (政治协商会议), Zhang prepared another draft constitution. It served as the basis for the 1947 Constitution, which had a far-reaching impact and is still in effect today in the Taiwan region of China. For these reasons, Zhang is revered as the founding father of the constitution of the ROC. A similarly important role is attributed to Li, since he was nominated as the Chairman of the Constitutional Committee of Hunan Province during the United-Province Autonomy Movement (联省自治运动) seeking local self-government in the 1920s.

Zhang's and Li's dual roles, assuming responsibilities both through translation and their involvement in political movements, show that the translation of the WRV was deeply embedded in – and, in turn, contextualized by – the political climate of 1920s and 1930s China. This intertwined practice of translation and political engagement reveals the multiple dimensions of translation, from the literal to the practical.[3]

4.2 The legislators' mindset: An implicit knowledge

The interpretations of Zhang and Li reveal how these Chinese legislators made sense of the WRV when they translated it into the Chinese context, their interpretive frame and set of working assumptions, which later also informed their own drafts of Chinese constitutions. Throughout their writings on the WRV, both drew analogies between the WRV and a "ferry," and between legislators and "ferrymen." In this part, I will explain these two analogies in order to show how they made sense in the case of the WRV and its drafters. Furthermore, by presenting the ways in which Zhang – intentionally or unintentionally – misinterpreted three quotations from Hugo Preuß' works, I will discuss how he injected his own understanding as a legislator to decode Preuß' constitutional theory. All of this provides insights into the mindset underlying the practice of constitution-making carried out by Chinese legislators. It also provides us with examples of how implicitly transferred and inherited knowledge from China's prior normative orders resurfaced both in Zhang's and Li's Chinese translations of the WRV as well as in their subsequent constitutional drafting projects.

3 Such mediators also played an important role in the case of Argentina; see Vita (2019).

4.2.1 A ferry and its ferrymen: Two analogies of Weimar

Zhang and Li offered different perspectives on how to understand the status of the WRV. The first involved a comparison with the "old constitutions," and the second observed the current social revolution from the inside.[4] More specifically, both Zhang and Li saw the 1918 Constitution of the Russian Soviet Federative Socialist Republic (RSFSR) and the 1919 WRV as representing two distinct paths taken within the socialist era. At the same time, there was an inherent difference between radical revolution and progressive reform, that is, between the Russian Revolution and the German Revolution, in their concrete ways of realizing socialism. With respect to the latter, Li and Zhang presented the WRV as part of an ongoing evolution of revolutions, as their own formulations show.

> Li: The revolutions of the 19th century were aimed at political democracy. The modern revolution is aimed at economic and social democracy.[5]
>
> Zhang: From dozens of national constitutions, I think there are three of them that can represent their respective era. That is the United States Constitution of 1789, the French Constitution of 1791 after the revolution, and the new constitution of Germany. The Constitution of the United States represents the Anglo-Saxon individualism of the 18th century, and the French Constitution represented the spirit of freedom and civil rights of the 19th century. The present German constitution represents the 20th century's trend of social revolution.[6]

Both Li's dichotomy of a political and a social revolution and Zhang's three-stage historical narrative underline their remarkable understanding of the WRV as representing a social revolution. Moreover, Zhang posited that the economic and social realities of the social revolution were not just complementary elements to enrich the *content* of the constitution, but also worked as a driving force to *restructure* the constitution itself. The WRV was created

4 Canghai (1920) 1; Li (1922) 46. Li Jiannong wrote for the journal *Pacific Ocean* under the pseudonym Canghai from 1920 to 1922.

5 In Chinese: 十九世纪的革命，是以政治的民治的主义为目标。现代的革命，是以社会的经济的民治主义为目标。Canghai (1920) 14; Li (1922) 61.

6 In Chinese: 吾尝于世界数十国之宪法中，求其可以代表一时代者有三。曰一七八七年之美国宪法，曰法国第一革命之宪法，曰德之新宪法。美国宪法所代表者，十八世纪盎格鲁萨克逊民族之个人主义也。法国宪法所代表者，十九世纪民权自由之精神也。今之德宪法所代表者，则二十世纪社会革命之潮流也。Zhang (1920a) 5; Zhang (1922) 66.

out of an intrinsic "revolutionary motivation" that differed from the motivations underpinning previous constitutional eras.[7] Zhang also quoted the novelist and historian H. G. Wells on the criterion for separating the new era from the old ones: "[The new era] is not merely a political, economic, or social creation, but rather represents the ways in which people make sense of humankind after the Great War."[8]

If viewed from within the social revolution, there was a major difference between the Russian and German revolutions, and between the 1918 Russian Constitution and the 1919 WRV. Confronted with the choice of "Germany or Russia" as the model for future China, both Zhang and Li leaned toward the German approach of progressive reform, that is, a reformist social revolution. Zhang considered the German Revolution to represent a "common path" for everyone to practice,[9] while Li viewed the WRV as a "ferry" between the past and the future:

> Li: Such a constitution is like a ferry, and its role is to attempt to slowly transport Germany from the present to the future. Contemporary Germany contains relics of feudalism and religion going back hundreds of years, as well as remnants of bureaucracy, military capital, etc. from the 19th century. Their roots go deep and are difficult to wipe out. In the future, Germany will not only achieve equality in politics, but also realize the equal status of all economically, socially, and intellectually. Such a constitution is a medium from the present to the future. Its form is inseparable from the present, but its spirit is always focused on the future.[10]
>
> Zhang: The legislators are worth admiring for their outstanding mastery of techniques. As if the ferrymen skirted dangerous reefs, and the entire crew would die if the ferry hit the reef. Left or right? It is important to consider clearly before action can be taken. German political parties are not compatible with each other, and the German people also get to the bottom of things, always arguing over single words. Therefore, unless there are insights into the delicate aspects of politics, as well as the excellent legislative techniques, it is not possible to complete the constitution

7 Zhang (1922) 382–383.

8 Zhang (1922) 395.

9 Zhang / Zhang (1920) 2–5.

10 In Chinese: 这种宪法, 好比一只渡船, 他的作用就是想把现在的德意志漫漫地载到将来的德意志去。现在的德意志, 含有几百年转来的封建遗物, 宗教遗物, 及十九世纪产生的官僚、军国资本等种种残物。他们的根芽, 入地很深, 一时很难斩除。将来的德意志, 不惟政治上人人平等, 就是经济上、社会上、智识上, 都要得一个可能的人人平等地位。这种宪法就是由现在到达将来的媒介物。他的形式上处处离不开现在, 他的精神上处处注意将来。Canghai (1920) 14; Li (1922) 61.

as such. In this sense, the spirit of compromise among German people is precious, but the wisdom of legislators has still played a key role.[11]

The first analogy drawn between the WRV and a "ferry" is a good illustration of Li's view of constitutional "instrumentality." First, the "ferry" carries ideas from one shore to the other and functions as a transitional vehicle for transmission – capable of advancing a steadily progressive social transformation. Second, this "ferry" moves in a clear, though abstract, direction – from the present to the future, from reality toward the ideal. Whereas Li adopted a relatively optimistic evolutionary framework, however, Zhang questioned any assumption that evolution culminates in perfection. He doubted that any political regime – or even humanity reconfigured according to a socialist ideology – could deliver perfection. The analogy of the ferry also highlights the instrumentality of constitutions and the political difficulty of keeping constitutional reform on course. Accordingly, Zhang stressed the importance of the legislators or "ferrymen," according to the second analogy, who must steer the ferry with judgment, skill, and experience.

As for the WRV, the "ferry" of the era, Li was cautiously optimistic: "As long as the ferryman at the helm does not get the direction and the route wrong, I believe that the ferry can reach the destination."[12] However, Zhang, who had lived in Germany at the time of the Weimar National Assembly and had met several German politicians from various parties, witnessed the struggles and compromises in the process of drafting the WRV. According to his observations, the German legislators had merged a large number of seemingly contradictory elements to reconcile the demands of the parliamentary and presidential system, parliamentary legislation and popular referenda, the separation of powers and centralization, capitalism and labor, the Soviet and the non-Soviet, private enterprise and socialization, respect for religion and exclusion of religion, and so on. Therefore,

11 In Chinese: 立法家之技能至此, 我唯有叹为观止矣。譬之操舟者, 出入峡滩, 所触及死。故左右轻重, 量而后动。夫而后在此险阻之中, 乃能求生还之路。以德国党派平日本处于不相容之地, 而国民性质又好为分析研究, 虽一字之微, 在所必争。故以立法家处此, 过者裁之, 不及者进之, 非能洞见政治隐微, 熟于操纵法律文字者, 殆不易言此也。自此义以言, 国民交让精神固可贵, 立法家之智识, 所系亦非浅鲜。Zhang (1920b) 14; Zhang (1922) 119.

12 Canghai (1920) 14.

on the one hand, the analogy of the "ferrymen" reflected Zhang's view of the excellent skill of the Weimar legislators. On the other hand, he pointed out that "the richness of the German constitution's elasticity" facilitated its combination with different partisan interests and with the shifting political currents of the time, creating a great deal of uncertainty. "That is why I believe that the German social revolution cannot be resolved only by way of this new constitution."[13]

By examining the drafting process of the WRV, Zhang realized the importance of legislators and politicians as the guardians of the constitution once it had been promulgated. As the WRV left various key issues to be settled by subsequent legislation, Germany's future trajectory would hinge on constitutional politics in practice, above all on the legislators' and politicians' skills and prudence.

With regard to the WRV and the German Revolution, the analogies of the ferry and ferrymen vividly illustrate how the two Chinese translators made sense of this constitution. They were committed to the 20th-century trend of social revolution but chose a gradual, reformist approach; to this end, they chose the WRV as a reference for drafting China's constitutions. However, Zhang and Li viewed the WRV as a flexible instrument rather than a fixed blueprint. Its proper implementation was dependent on the legislators-ferrymen, who were to use their skills to steer this "ferry" – and thus the course of the social revolution – in the desired direction. It is therefore not surprising that Zhang attached such importance to Hugo Preuß' work and introduced his theory of the state into his reinterpretation of the role of Chinese legislators within the Confucian tradition – albeit with subtle but deliberate misinterpretations.

4.2.2 The legislators' mindset: Zhang's creative interpretation of Hugo Preuß

In two of his works, Zhang focused on Hugo Preuß, one of the leading drafters of the WRV. This focus partly reflected a series of difficult choices they shared as legislators: the West or the East? Democracy or Bolshevism?[14] As a

13 Zhang (1920a) 12; Zhang (1920b) 14; Zhang (1922) 105, 118–119.
14 Preuss (1918) 75.

result, Zhang sought to understand the choices of the WRV by interpreting Preuß' political theory and, in the process, recast Preuß according to his own interpretive lens. Zhang's interpretation reveals both the role he envisioned for himself as well as a broader shared orientation among Chinese legislators that, from a praxeological perspective, operated as tacit, practice-oriented knowledge informing the drafting of Chinese constitutions.

Zhang met or corresponded with several prominent German social democratic politicians, such as Karl Kautsky, Rudolf Hilferding, Rudolf Breitscheid, Eduard Bernstein, and Philipp Scheidemann, etc. These personal contacts were helpful for accessing the details of the social revolution beyond the surface of the grand revolutionary narrative. However, in his *Comments on the WRV* of 1922, Zhang expressed particular gratitude to Hugo Preuß for answering his two questions concerning the WRV, and he inserted the German's reply and a photo with Preuß' dedication before the title page (see

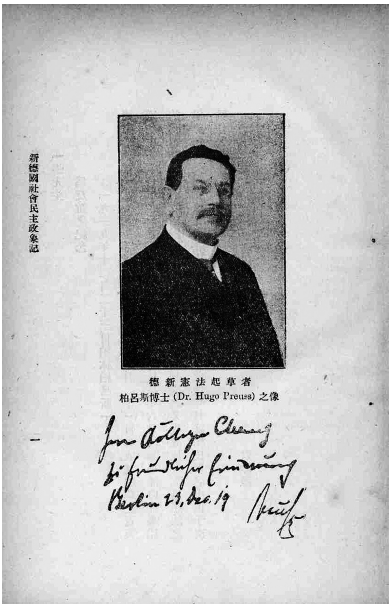

Figure 8. Hugo Preuß' Signed Photograph Gifted to Zhang Junmai.
Source: Zhang (1922), front matter, 1

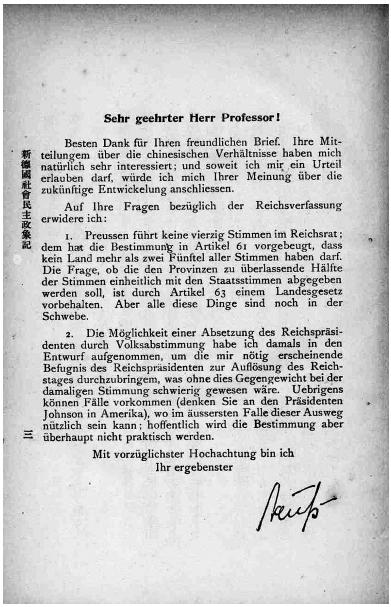

Figure 9. A Letter of Reply from Hugo Preuß to Zhang Junmai.
Source: Zhang (1922), front matter, 3

figures 8 and 9).[15] Throughout his writings, Zhang extolled Preuß as the "father of the WRV," likening him to his counterparts in the USA and Japan.

Moreover, in another work, Zhang noted that translators should bring two mindsets together, uniting the perspectives of liberal politicians and of Confucian scholar-officials (士大夫). He arrived at this conclusion after having examined sources from both China and Germany. Zhang stressed that all political concepts are created in specific diplomatic and national circumstances. Without such context, a political concept collapses into an empty abstraction and becomes merely a term, stripped of concrete referents and practical stakes. Political theory, Zhang argued, should thus not be divorced from a given context and particular circumstances. Accordingly, by widely citing canonical figures in the history of German *Staatsrechtslehre*, Zhang sought to situate Preuß within his German intellectual milieu and thereby to make sense of his theoretical and pragmatic choices. In doing so, Zhang emphasized the political comments Preuß made in his 1918 newspaper article "Volksstaat oder verkehrter Obrigkeitsstaat," which strongly influenced the path of German constitutional history.[16] In it, Preuß argued that, confronted with the dilemma of choosing between the East and the West, between democracy and Bolshevism, social and political struggles should be carried out peacefully within the framework of a democratic constitution.[17] Zhang, for his part, read this as an argument for a capacious and adaptable constitutional design, broad enough to admit competing interpretations – including his own.

The following analysis of the similarities and differences between three quotations from Hugo Preuß' works and Zhang's translation of them shows how a concept was reproduced through cultural translation, from a democracy grounded in liberal empiricism and skepticism to a "neutral" state (中立), and finally to the Middle Way (中道) and the Confucian scholar-officials who pursued it. According to Zhang, legislators were not just representatives from different parties debating only with their own power and goals in mind. Rather, they would gain a bird's eye view across time and space, transcending people's general immediate interests to attend to

15 Zhang (1922), front matter.
16 Preuss (1918).
17 Zhang (1930) 72.

the future of the country as a whole. This creative process of translation will be discussed in detail below.

First, Zhang asserted that Preuß argued that the state should be "neutral." However, Preuß never regarded the *Staatsform* as neutral; instead, he used the term "neutral" in the context of neutral relations between different sovereign states in the sense of international law. In Zhang's reading, the concept of neutrality represented a "skeptical" understanding of government in which the state ought not to interfere in the "free competition" amongst individuals or parties, which contrasted with his understanding that a legitimate system of government should be founded on Confucian values. He quoted Preuß' commentary on the WRV (published posthumously, edited by Gerhard Anschütz, in 1928) to this effect:

> Compared to the general theories, Preuß' point is very special. Therefore, I cannot but directly quote his original text, as follows: 'The democratic principle of political equality is not the equality of individuals, but the inability of the legal order *(Rechtsordnung)* to measure their inequality.' From this we can recognize that apart from the all-powerful state, there is still one unknowable state, the so-called skeptical view of nation. Preuß further continues with the principle of free competition: 'Only on this basis can the real difference in the political value of individuals be brought to bear in the free competition of political life.'[18]

The quotations are taken from Preuß' polemic against the Bolsheviks, in which he elucidated the "formal" principles of democracy and harshly repudiated the Bolsheviks' misinterpretation of them.[19] Preuß' argument was based on the difference between three concepts, namely equality *(Gleichheit)*, equivalency *(Gleichwertigkeit)*, and equality of rights *(Gleichberechtigung)*.

Preuß believed that a *de jure* equality underpinning a constitutional framework was grounded in the *de facto* inequality among individuals, and thus, that the principle of democracy manifested itself in terms of a so-called formal principle.[20] However, Zhang shifted the focus from the *Staatsform* to a neutral position of the state. He noted that such "neutrality" – marked by skepticism

18 Zhang (1930) 75. Preuß' original German: "Nicht also die Gleichheit der Individuen, wohl aber die Unfähigkeit der Rechtsordnung, ihre Ungleichheit zu messen, ist das demokratische Prinzip der politischen Gleichberechtigung. Nur auf ihrer Grundlage kann sich die wirkliche Verschiedenheit des politischen Wertes der Individuen im freien Wettkampf des politischen Lebens zur Geltung bringen." See Preuss (1928) 327–328.

19 On this topic, see also Preuss (1925).

20 Preuss (1928) 326, 328.

towards proactive state intervention and social shaping, deference to "free" political competition, and aloofness rather than engagement – was detrimental to the future development of a country's political core. Zhang's interpretation was also interlaced with his own experience and encounters with the political setting of the time. For example, before his third visit to Germany, Zhang was secretly arrested by the KMT, the ruling political party of China. This event shook his confidence in the KMT. Such experiences shaped his outlook and are visible throughout his interpretations of constitutional theory.[21]

Second, Zhang needed to answer the question as to what should serve as the pillar of the constitution if party politics were not trustworthy. In this regard, Zhang moved even further away from Preuß' ideas, but also from his own concept of a neutral constitutional framework, to propose neutrality as an intellectual sense of fairness beyond party politics.

> In the light of Preuß' theory, on this point, although he does not explicitly state it, it should be inferred from his opinions that apart from the power of political parties, there should be a neutral force. He would certainly agree with this. The meaning of neutrality in this section is different from that in the previous section. In the above, neutrality refers to the skepticism of the bystanders. This attitude is difficult to apply in current countries, where economic and social politics are turbulent. Instead, the neutrality defined here refers to those who advocate to face the facts and can solve problems fairly. They are not biased in favor of any party or individual. If a country does not have such a sense of neutrality, then the rule of law cannot be maintained for long.[22]

Here, Zhang did not directly quote Preuß, but rather inferred a point based on Preuß' political theory. Indeed, Zhang explicitly acknowledged that his definition of neutrality was entirely different from Preuß': He transformed a seemingly passive, non-interventionist understanding into a positive commitment. The meaning of neutrality thus completely changed, from "non-participation" to "impartial judgement." Furthermore, the shift in definition also reveals the shift of Zhang's focus, that is, from the constitution as the operating framework of the state to certain persons who could represent intellectual fairness.

This signals the third transition undertaken by Zhang in his reception of Preuß, from the state/constitution to the lawmakers. Zhang attempted to uncover the similarity between Chinese literati and German intellectuals: a cer-

21 Jeans (1997).
22 Zhang (1930) 76.

tain independent spirit. Zhang's third quotation was taken from Preuß' article commemorating the centenary of the birth of Rudolf von Gneist:

> In today's Germany, there are often doubts about whether there are still independent political intellectuals who reach out beyond narrow party interests […]. However, Preuß' evaluation of Rudolf von Gneist is as follows: 'A spirit, however, which keeps its searching gaze firmly focused on the deep internal process of gradual historical development, which dares apply the yardstick thus derived also to the political questions of the day, must put up with being celebrated today by the loud and quick-witted guardians of public opinion as the paragon of wisdom, to be fought tomorrow as an apostate because of the same view, whose internal consistence they do not understand.' Although it is much more difficult for today's political thinkers to keep their independence than before, Preuß' words mentioned above still ring true in the current world. Moreover, we could see Preuß' independent spirit in his words […]. In this way, the fate of the German intellectual community and the fate of the Weimar Constitution are closely linked and never separated.[23]

In the passage quoted, Preuß stressed the volatility of public opinion, particularly in political matters. Zhang observed that the public learned very slowly, but forgot all the more quickly, losing interest in the meaning of the fundamental issue when faced with attractive slogans. Zhang's emphasis, however, moves away from criticizing the public towards appreciating both Gneist's and Preuß' intellectual independence. Moreover, Zhang ties the fate of the WRV to the independence of the German intellectual community. This implies that Zhang, while repudiating the politics of the political parties that serve only to advance their own benefit, also rejected excluding the broad masses – however easily these might be swayed by such party politics – lest the manipulability of mass opinion shake the legitimacy of popular sovereignty. The people should not only be represented, but also guided within a constitutional order. Therefore, Zhang translated "paragon of wisdom" *(Ausbund der Weisheit)* with "person of foresight" (先知先觉者), in contrast to "person of hindsight" (后知后觉者) or "without sight" (不知不觉者), a category also used by Sun Yat-sen (孙中山) in his party doctrine. I will discuss this in chapter five in more detail.

23 Zhang (1930) 76. In German: "Ein Geist aber, der den forschenden Blick fest auf den tief innern Prozeß der allmählichen historischen Entwicklung gerichtet hält, der den so gewonnenen Maßstab auch an die politischen Tagesfragen anzulegen wagt, muß es sich gefallen lassen, von den lauten und schnellfertigen Vormündern der öffentlichen Meinung heute als Ausbund der Weisheit gefeiert, morgen wegen der gleichen Anschauung, deren innere Folgerichtigkeit sie nicht verstehen, als Abtrünniger bekämpft zu werden." See Preuss (1895) 461.

To sum up, through Zhang's creative interpretations, the image of the liberal politician Hugo Preuß as the main drafter of the WRV gradually became not only the Chinese understanding of legislators, but also mirrored Zhang's expectation of his own role. This process of conceptual translation included three steps. The first was the shift from a liberal radical empiricism and skepticism to a value neutrality of competing parties or classes. The second step led from neutrality to the Middle Way, derived primarily from the idea of *Zhongyong* (中庸), a central tenet and classical text in the Confucian tradition commonly known as the "Doctrine of the Mean." When it came to the future of China – should it follow the German model or the Russian model? – Zhang applied the idea of *Zhongyong* to explain the reason for choosing the WRV: In his view, according to the sages' words, the instructors should guide the people along the Middle Way between extremes.[24] Consequently, there was a third transformation, from the Middle Way to that of guardianship, not to mention from the traditional Chinese scholar-officials to the Person of Foresight – precisely the role as legislator that Zhang envisioned for himself. This legislator was to remain neutral with respect to the different parties and to transcend various parties' partial interests, thus representing all the people and guiding them along the Middle Way.

Zhang's interpretation of Preuß also demonstrates the general mindset of Chinese legislators. To begin with, we must understand that the KMT, the Communist Party, and various democratic parties mainly composed of intellectuals all regarded themselves as representing the fundamental interests of the overwhelming majority of the people, not just of a segment or part of them. At the same time, one needs to keep in mind that Zhang's concept of the Person of Foresight, Sun Yat-sen's category of People's Consciousness (知觉), and Mao Zedong's Mass Line (群众路线), are all based on Wang Yangming's Theory of Mind (阳明心学), a prominent school of Neo-Confucianism during the Ming dynasty. Zhang's self-conceptualization as a Person of Foresight thus not only referred to himself, but also stood proxy for Chinese legislators as a whole. This image of the Chinese legislator implied an ambitious intention to rebuild the relationship between the state and the people in ways that went beyond class contradictions, rather than a strong determination to reconfigure the constitution through the social(ist) revolution. Therefore, the Chinese legislators opted to appropriate the framework consisting of social

24 Zhang / Zhang (1920) 6.

rights and duties created in the WRV rather than the Soviet model. In short, this typical Chinese legislators' mindset represented a certain kind of implicit knowledge from the perspective of praxeology, affecting the adoption, interpretation, and recontextualization of foreign knowledge, directly or indirectly, in the process of constitution-making in modern China.

4.3 The initiative practices of the early 1920s

In 1919, two republics, Weimar and China, encountered each other amid the anxious atmosphere surrounding Versailles after World War I. The Versailles settlement not only transformed the pattern of international relationships but also catalyzed republican constitutionalism across multiple countries following the dismantling of empires. The Weimar Republic was born in blood and fire. On August 11, 1919, one month after the German National Assembly in Weimar accepted the Treaty of Versailles, Friedrich Ebert, the provisional president of the German *Reichstag*, signed the new constitution, the WRV, into law. The Weimar constitution was the first to create constitutional socioeconomic rights and duties. In China, one consequence of the Versailles Treaty was rising skepticism regarding the legitimacy of the central government, which had agreed to Japan's taking over all the formerly German interests in Shandong Province. These developments brought together the appropriation of knowledge from the WRV and the constitution-drafting practices associated with China's local autonomy movement of 1920s. For example, the first two translators of the WRV, Li and Zhang, were involved in provincial constitutional projects: Li served as chairman of the drafting committee for the 1922 Hunan Provincial Constitution (湖南省宪, HPC), and Zhang was asked to draft the constitution of the National Affairs Conference (国是会议, NAC) in 1923. Both are early examples of the Chinese glocalization of the WRV, especially regarding the regulation of the state's role in the economy, in the early 1920s.

In this section, I focus on how Li and Zhang put their understanding of the WRV's section on Economic Life into practice by drawing up corresponding socioeconomic normative provisions in Chinese constitutions. More specifically, I discuss how the emphasis on administrative regulation of the economy, most likely influenced by the English version of the WRV on which Li relied, was translated into the section on "Industry" (实业) in the HPC; and why the concept of "Livelihood" (生计), in the Confucian sense of emphasizing public welfare rather than private profit, was adopted by Zhang

in his translation and later applied in his draft constitution for the NAC. In short, these two constitution-making initiatives reveal Li's and Zhang's interpretations of the WRV and demonstrate the process of recontextualization undertaken by them, as translators as well as legislators.

4.3.1 Li Jiannong and economic regulation: An administrative approach

4.3.1.1 The regulation of economic life (经济的组织)

Basing himself on the English version of the WRV published in *The New York Times* (see table 11),[25] Li translated "Economic Life" as "*Zuzhi* of the Economy" (经济的组织). The concept of *Zuzhi* (组织) stresses the constitutional function of regulating economic life, suggesting that all aspects of economic life should be systematized. Moreover, the conceptual correspondence between *Zuzhi* and regulation is evident in the translations of Art. 151 and 156 of the WRV (see table 12).

Table 12. Cross-Linguistic Translations of Selected WRV Provisions by Li Jiannong

WRV	German	English	Chinese
Chapter Title	Das Wirtschaftsleben	The Economic Life	经济的组织 (*Zuzhi* of the economy)
Art. 151	*Die Ordnung des Wirtschaftslebens* muß den Grundsätzen der Gerechtigkeit mit dem Ziele der Gewährleistung eines menschenwürdigen Daseins für alle entsprechen.	*The regulation of economic life* must correspond to the principles of justice, with the object of the assuring a life worth living for all.	经济组织 (*Zuzhi* of the economy)
Art.156	Die Erwerbs- und Wirtschaftsgenossenschaften und deren Vereinigungen sind auf ihr Verlangen unter Berücksichtigung ihrer Verfassung und Eigenart in *die Gemeinwirtschaft* einzugliedern.	The co-operatives of production and distribution and their associations are to be embodied into *the common system of economics*, upon their request and with consideration for their composition and peculiarities.	公共经济组织 (the common *Zuzhi* of economics)

25 Full Text of the German Republic's Constitution. New Basic Law Adopted by the National Assembly at Weimar on July 31, 1919 and Effective Since Aug. 13 (1919).

Comparing the terms "Ordnung," "regulation," and their Chinese equivalent *Zuzhi*, we see that the emphasis of meaning changes with the context, through the process of translation: from the order of the state to governmental regulation, and from regulation as an authoritative rule to the act of regulating. For the first shift, according to Gerhard Anschütz's commentary on the WRV, the first paragraph of Art. 151 posits negotiations as the intellectual basis on which the whole chapter on Economic Life was built. The basic idea was that individual freedom is limited within a state order that realizes and guarantees justice in economic life.[26] However, the English translation brings about a shift from "die staatliche Ordnung" to "regulation," which can be defined as management according to a set of rules authorized by the government. This shift might have been caused by mistaken assumptions regarding the strength of the state from the perspective of Anglo-American liberalism. These assumptions were echoed by public opinion, according to an article of *The New York Times,* published on August 23, 1919.[27]

The second shift of meaning, from "regulation" as denoting the norm to its denoting the act of regulating, is clearly shown in Li's interpretation of the WRV. Li focused on how to restructure economic life through state regulation rather than on economic life itself. In this context, he stressed that Art. 151 stipulated the fundamental principle concerning the regulation of the economy.[28] This was probably why he added the term *Zuzhi* (组织), which emphasized the trust in state regulation – and in active governmental intervention in the economy – reflected in the English version, to the chapter title in his own translation. At the same time, the idea of regulating the economy facilitated his support for state intervention in economic life, especially by legislation, as in the WRV's Art. 153. If laws not only determine the content and the limitation of property, but also allow for expropriation for the purpose of public welfare, the sphere of private property can be gradually reduced, and all crucial means of production will eventually belong to the public so as to build up the common economic system as described in Art. 156.[29]

26 Anschütz (1933) 669.
27 Ebert is Cheered as He is Sworn In (1919).
28 Canghai (1920) 10.
29 Canghai (1920) 13.

In short, the intertextual concepts of "regulation," "system," and "order" affected each other's meaning in Li's understanding of the WRV: If economic life could be regulated (Art. 151), the state could redefine the idea of private property by legislation (Art. 153) so as to systematically realize the social economy and reshape the order of economic life (Art. 156). Li regarded a people-oriented regulation of the economy through future legislation as the fundamental spirit of the WRV.[30] Moreover, his support for state intervention in economic life might potentially have had an influence on the trend of the administrative regulation in the section concerning industry in the HPC.

4.3.1.2 The Hunan Provincial Constitution: Administrative policy as paradigm

Between 1920 and 1922, the WRV provided an essential reference for the making of the Hunan Provincial Constitution (HPC) in both its drafting phases. Firstly, in 1920, Liang Qichao (梁启超) drew up the "Fundamental Autonomy Law," which acted as the provisional provincial constitution. Its accompanying interpretive notes quoted the WRV eight times, in particular referring to Art. 165. In a second phase, in 1922 Li Jiannong was appointed chairman of the thirteen-member constitutional committee tasked with drafting what would become the HPC. This prompted him to appropriate and recontextualize the normative resources of the WRV in the local practices of constitution-making initiated by Hunan province.

Instead of the WRV's rights-based model, it was administrative policy that became the institutional paradigm of the HPC. In Chapter 7, entitled "Administration," the section on "Industry" (实业) contained only five articles. Nevertheless, it did in fact represent the first local expression of the WRV's section on Economic Life in a Chinese constitution. In the HPC, the executive power dominated the economic order, such as the socialization of private economic enterprises (Art. 84), which drew on Art. 156 of the WRV but did not mention the participation of employers and employees in the administration of enterprises. This meant that the provincial government could limit and confiscate private property in the name of public welfare without ensuring the cooperation of all economically productive sections of society.

30 Canghai (1920) 2–13.

Another example is that labor was protected by administrative supervision in the HPC (Art. 85), and not by uniform labor legislation or the enumeration of rights, as in the WRV (Art. 157 and Art. 158–164, respectively). Therefore, four of the five articles of the HPC's section on Industry belonged to or referred to administrative policies: the provincial undertakings (Art. 83), the socialization of private enterprises (Art. 84), the administrative supervision of labor protection (Art. 85), and the administrative penalty for unfair competition (Art. 86). Such selective adoptions and policy-oriented transformations ran against the direction of the WRV, and revealed an entirely different conception of realizing social autonomy, especially in the context of the United-Province Autonomy Movement in 1920s China. This orientation was articulated with particular clarity in the explanatory memorandum to the 1921 HPC draft, as follows:

> The fundamental spirit of Governance by the People (民治) lies in the common action (共同行动), which relies on the common *Zuzhi* (organization/regulation, 共同组织) and the corresponding common habits (共同习惯). The people are like loose sand when without common *Zuzhi*; the common actions cannot form a habit if the *Zuzhi* only lasts for a short while. This is one of the most serious causes for the failure of our republican politics.[31]

The drafters of the HPC sought to realize local autonomy by stipulating the idea of Governance by the People (民治). However, there was a paradox, as shown in the quotation above, in that the people who govern the local polity need to be guided or regulated by the common *Zuzhi*. This concept of *Zuzhi* has two entangled meanings in Chinese: One refers to an organization as an association, and the other is the act or process of organizing or of being organized, or of regulating or being regulated. The latter usage appears in Li's translation of the WRV. In short, although it is difficult to demonstrate the direct influence of Li on the HPC's section on Industry, his support for state intervention in economic life aligns with the administrative policies in that section, especially when considering the relevance of the interplay between the *Zuzhi* of economic life and the common *Zuzhi*. In this way, the HPC's Industry section really marked the beginning of "translating Weimar" for

31 In Chinese: 盖民治之根本精神在于共同行动，共同行动必先有共同之组织及习惯而后可。若无共同组织，则势同散沙；组织矣，而仅限于一时，则共同行动之习惯，亦无从养成。吾国共和政治，不能圆满进行，此为最大原因之一。Yu An (ed.) (1921) 8.

building Chinese social(ist) constitutions, and thus represented an early, policy-oriented model for addressing socioeconomic issues.

4.3.2 Zhang Junmai and livelihood: A traditional idea for the public

4.3.2.1 Livelihood (生计)

Nearly simultaneously, Zhang Junmai chose the traditional concept of Livelihood (生计), rather than "economy," in both his 1920 translation of the WRV and the draft constitution he prepared for the NAC in 1923. This choice did not stem from a lack of comprehension of the economy, but aimed at building a bridge between the Confucian tradition and the social(ist) revolution of the 20th century. To begin with, Zhang's experiences of studying abroad, both in Japan and Germany, guaranteed that he was acutely aware of the concept of economy. According to his memoirs, the use of English textbooks was usually recommended when he studied at Waseda University, including, among others, the *Principle of Economics* by Seligman.[32] After arriving at Humboldt University in Berlin, Zhang participated in seminars on economics. These included the *Staatswissenschaftlich-Statistisches Seminar* directed by Adolph Wagner and Gustav von Schmoller,[33] even though he lacked interest in the German Younger Historical School of National Economy (*Jüngere Historische Schule der Nationalökonomie)* and its deductive method.[34] In addition, his choice of terminology was inspired by his mentor, Liang Qichao, who translated the concept of "economy" with the Chinese "Livelihood" in order to place a stress on the purpose of economic activities, in contrast to their measurability.[35] After returning from the Paris Peace Conference at Versailles and amid lively debates on socialism in China, Liang had written an academic history of the Qing Dynasty in which he redefined the concept of Livelihood:

> Regarding the Chinese school of pragmatism (经世致用), [this school's] basic idea is derived from Confucius and Mencius and found increasing support during successive dynasties […], and it was commonly rendered in the phrase 'National Economy and People's Livelihood' (国计民生). Therefore, this discourse focuses on the issues of

32 Zhang (1935) 1–2.
33 Universitätsarchiv Humboldt-Universität zu Berlin, SoSe 1913, 45.
34 Zhang (1935) 3.
35 On the Chinese translation of the concept of economy, see Karl (2017).

> Livelihood. Our opinions on Livelihood stem from pre-Qin Confucianism, and the ideals of these early philosophers are similar to what is called socialism in the present.[36]

In Liang's view, therefore, the concept of Livelihood formed a bridge between the Confucian tradition and the socialist ideological trend of the early 20th century. The concept as developed by Liang aimed at the improvement of all people's lives, building on the underlying assumption that socialism would overcome the conflicts of interest driven by individualism.

Zhang adopted the concept of Livelihood and its assumptions from his mentor Liang. Moreover, he employed it not only in translating "economic life" as "Life of Livelihood" (生计生活), but also in understanding the spirit of socialism represented by the WRV:

> What is the spirit of socialism? In a word, it promotes public social welfare and restricts individual private benefit. Only in this way is it possible to enhance social justice and to restrain personal freedom. Therefore, I support *Sozialisierung* in order to abolish private property rights.[37]

Therefore, the difference between "economy" in the WRV and "Livelihood" in Zhang's translation reveals divergent value priorities, manifesting in the dualism of the private and the public. Zhang prioritized the latter and implemented it in his draft constitution of the National Affairs Conference (国是会议, NAC) in 1923.

4.3.2.2 The draft constitution of the NAC: A traditional idea for the public

As the National Assembly was repeatedly dissolved amid warlord conflicts, eight professional groups convened an informal political consultative forum, the National Affairs Conference, on March 15, 1922, in Shanghai. In May, Zhang Junmai was asked to draw up a draft constitution for the NAC. This draft later significantly influenced the first constitution of the ROC, promulgated in 1923.[38] Zhang organized the subjects of "National Education and

36 In Chinese: 所谓经世致用之一学派，其根本观念，传自孔孟，历代多倡道之 […] 其通行语所谓国计民生者是也。故其论点，不期而趋集于生计问题。而我国对于生计问题之见地，自先秦诸大哲，其理想皆近于今世所谓社会主义。Liang (2011) 161.

37 In Chinese: 社会主义之精神安在乎？吾以一言蔽之，则尊社会之公益，而抑个人之私利是矣。惟其然也，故重社会之公道，而限制个人之自由。故废私有财产，而代以社会所有（Sozialisierung). Zhang (1922) 94–95.

38 Zhang (1934) 3.

Livelihood" in a single chapter, distinguishing these topics from the preceding chapter on "Citizens' Rights and Duties."

Zhang mainly based his section on Livelihood on the WRV's section on Economic Life. However, all of his normative appropriations were embedded in a traditional Chinese idea of the public, in accordance with Zhang's binary understanding of the WRV.[39] More specifically, only one article in his draft protected what could be understood as the private sphere, that on freedom of trade and contract (Art. 94); all the other articles concerned the public sphere, such as the principle of social justice (Art. 93), the protection of labor (Art. 95), the right to form unions in order to improve working conditions (Art. 96), land expropriation for the public good (Art. 97), inheritance tax (Art. 98), and progressive income tax (Art. 99). In short, although Zhang was in favor of a gradual approach to social reform and concerned with striking a balance between social justice and individual freedom, it seems there was a disproportionately high number of provisions protecting the public welfare in his draft constitution for the NAC. A traditional Chinese conception of the common good guided Zhang's choices in envisioning a new Chinese state after World War I:

> Now, the world woke up from the dream […], the new trend of the world is to integrate all human beings externally, and to improve social justice and Livelihood internally. However, [socialism] is not a new theory. It was introduced by Confucius before the Socialist party, such as in the description of the Great Harmony (大同) in the *Book of Rites*: 'When the Great Way is practiced, the world is for the public […]. Money is thrown on the ground and thus despised; it is not necessary to store money on one's body. Labor is despised if it does not come from oneself, and it does not have to be on behalf of oneself […]. This is called the Great Harmony.'[40]

Here, Zhang attempted to rebuild a traditional order rooted in the idea of the public, in contrast to profit-seeking in international, national, or personal dimensions. The old dream he referred to as having ended after World War I consisted of the trinity of the external expansion of militarism, the development of capitalist industry and commerce, and private property. According to the *Book of Rites*, the whole world beyond nation-states was "for the public," that is, for all.

At the same time, the relationship between individuals could transcend the private sphere in order to achieve great interpersonal harmony. In his draft constitution for the NAC, therefore, Zhang embedded the socialist normativity of the WRV into the traditional Chinese framework of China. In a binary

39 Zhang (1922b) 116.
40 Zhang (1922b) 107.

frame of public and private, he prioritized public benefit and public justice, on the one hand, while advocating restrictions on private interest, individual freedom, and private property through socialization, on the other. In his comment on the German "Report of the Socialization Commission on the Socialization of Coal Mining of July 31, 1920," Zhang underlined that socialization, achieved through dialogue and consultation, moved "socialism from a utopian phase into a new era of practical policies."[41] However, Zhang failed to incorporate the article on socialization in his draft constitution.

In short, practical policy was the key to realizing the socioeconomic aims underlying the constitutional provisions, whether in Weimar or China. The approach of employing the traditional concept of Livelihood to assimilate the new idea of socialism, from Liang's translation of the term "economy" to the Economic Life of the WRV in Zhang's sense, would later be further elaborated by Lin Changmin (林长民) as the unifying logic in his drafting of the chapter "Livelihood" in the first constitution of the ROC in 1923, as will be discussed in the next chapter.

4.4 Conclusion

Besides giving an overview of Chinese translations of the WRV from German, English, and Japanese in the early 1920s, this chapter focused on two figures, Zhang Junmai and Li Jiannong, who provided the earliest Chinese translations of the WRV in 1920, and subsequently served as legislators involved in drafting several constitutions from the 1920s to the 1940s. Discussion of their mindsets as legislators as well as their legislative practice in the early 1920s illuminated their double role as translators and legislators, revealing the multiple dimensions of cultural translation, from the literal to the practical. Moreover, in 1922, whether in administrative policies focusing on industrial development in the HPC or by equating socialism with the Confucian idea of Great Harmony in the draft constitution of the NAC, both men's approaches emphasized the achievement of the public interest as the final objective. This was further unfolded in depth and in detail in the constitutions of 1923 and 1947.

41 For Zhang Junmai's study on the "Bericht der Sozialisierungskommission über die Frage der Sozialisierung des Kohlenbergbaues vom 31. Juli 1920," see Zhang (1922a) 313 ff.

Chapter 5
The Policy-Oriented Model of China: Two Translation Frameworks

The history of the Republic of China before 1949 could be divided into two periods: the Beijing government (1911–1927) and the Nanjing government (1928–1948). Both periods saw the formal enactment and promulgation of a constitution in 1923 and 1947, respectively. Although the chapters on "Livelihood" or "Economic Life," essential parts of both constitutions, drew on the WRV as the most valuable source of reference in both cases, the two constitutions employed two different interpretive frameworks for "translating Weimar" in building Chinese social(ist) constitutions: Confucianism in 1923, and the KMT's doctrine of the Three Principles of the People (三民主义) in 1947. For each interpretive framework, I will illustrate how the information provided by the WRV was adapted, reinterpreted, and recontextualized through a dynamic process structured around three interrelated strands: concerns, sources/references, and interpretive systems. The first strand is made up of the concerns of members of the Constituent Assembly as expressed in their proposals and debates; the second is the system of legislative references, such as traditional resources and foreign constitutions, shown in the report to the draft chapter; and the last is an interpretive framework for incorporating all elements within a uniform logic.

5.1 Thinking through Confucianism: The 1923 Constitution

The first formal Constitution of the ROC was promulgated on October 10, 1923, in the middle of the United-Province Autonomy Movement (1920–1926). The chapter on Livelihood was highlighted in the debates of the Constituent Assembly. As Wu Zongci (吴宗慈) noted, "the key to the whole constitution is the local system, but its spirit lies in the [draft] chapters on Livelihood and education."[1] Due to the political turmoil at the time,

1 Wu (1988) 450.

however, these two chapters were not submitted at the third reading and thus ultimately failed to be included in the 1923 Constitution.[2] Nevertheless, the draft of the chapter on Livelihood is still worthy of being taken seriously, since it formulated a paradigmatic model of how to assimilate the social(ist) normativity of the WRV within a Confucian framework, derived from Liang Qichao and Zhang Junmai and developed further by Lin Changmin, the rapporteur of the draft chapter.

5.1.1 The web of concerns: The key foci of the proposals and debates

In crafting the revision of the draft constitution of 1923, House and Senate lawmakers submitted 13 proposals for additional provisions concerning socioeconomic issues, which sparked off a considerable debate on their necessity in the Constituent Assembly. To a large extent, these proposals and debates reflect the legislators' deep anxiety over the current situation in China, in particular the acute problem of securing people's livelihoods in a poverty-stricken country.

Indeed, the growing trend of socialism in post-World War I constitutions, led by the Weimar Republic and Soviet Russia, reminded a number of legislators of the importance of including socioeconomic issues in the draft constitution. However, these lawmakers were criticized by opponents in the Assembly on the grounds of too often referring to the WRV or the 1918 Soviet Russia constitution in debates. Nevertheless, drawing on their own experiences in administration rather than on observations focused on fundamental rights or a proletarian dictatorship, their proposals reveal a web of personal concerns, as shown in table 13.

Table 13: Summary of Proposals on Socioeconomic Issues for the 1923 Draft[3]

Proposer	Summary of Proposal	Reasons Given
Senator Wang Xinrun (王鑫润)	Motion to establish a bureau for mutual aid between laborers	To encourage and motivate citizens/ nationals in poverty-stricken China
Senator Jiang Ximing (蒋義明)	Motion to add rights and duties for laborers	Ditto

2 On the drafting process of the 1923 constitution of the ROC, see Jing (1985) 325–332.
3 Constituent Assembly (1923) vols. 52–58.

Proposer	Summary of Proposal	Reasons Given
Congressman Huang Gongsu (黄攻素)	Motion to add limits to property rights	To eliminate the gap between rich and poor by limiting privileges
	Motion to add a new chapter on the property regime (资产制度), with a draft proposal	Ditto
Congressman Luo Jihan (骆继汉)	Motion to add a new chapter concerning the national economy (国民经济), with a draft proposal	To rebuild a state of people and laborers from the top down, with reforms informed by the WRV's chapter on Economic Life
Congressman Wang Pengnian (汪彭年)	Motion to add a new chapter on Livelihood, with a draft proposal	To resolve the problem of the people's livelihood in order to achieve the long-term stability of our country, with reference to the WRV's chapter on Economic Life
Congressman Zhang Shanyu (张善与)	Motion to revive the traditional land allotment system (授田) with egalitarianism of property (均产) and labor (均劳)	To abolish private ownership, but with a traditional Chinese approach in contrast to those of Soviet Russia or Germany
Senator Xiang Naiqi (向乃祺)	Motion to add a new chapter on the economy (财计制度), with a draft proposal	To establish a tax system and economic policies
Senator Jiang Hao (江浩)	Motion to draft labor law	To protect laborers, to strengthen the country, and to achieve social stability
Congressman Sha Yankai (沙彦楷)	Motion to add regulations on common social livelihood, with a draft proposal	To protect laborers and to limit privileges
Congressman Jiang Fengwu (蒋凤梧)	Motion to add a new chapter on Education and Livelihood, with a draft proposal	To restrict private property rights
Senator Lei Yin (雷殷)	Motion to add a new chapter on livelihood and education	To liberate the labor force in order to protect their sustainable livelihood
Congressman Wu Rifa (吴日法)	Motion to approve the proposal by Wang Pengnian	To resolve the problem of people's livelihood

This table shows that the 13 proposals largely focused on the issue of improving the life of laborers, although the proposers framed this issue differently, introducing new terms such as "national economy," "common livelihood," "property system," "rights and duties of laborers," etc. mainly taken from the constitutions of the Weimar Republic and Soviet Russia. These new terms,

which represented a variety of different approaches, substantially contributed to expressing the lawmakers' concerns over the reality of life in China. However, during the debates in the Constituent Assembly, the representatives gradually emancipated themselves from the shackles of strict categories, and their diagnoses of the current situation increasingly converged into a primary concern for humanitarianism.

First of all, Wang Pengnian (汪彭年) succeeded in drawing the attention of the representatives to the "issue of livelihood" (i.e. basic subsistence and welfare) in order to bridge the differences between the various proposals.

> Congressman Wang Pengnian: In short, there should be a solution to the issue of livelihood. If the issue of livelihood is not resolved, no constitution can be implemented. The problem of livelihood is critical. […] [I]t may not be so easy to solve the problem by relying on several constitutional provisions. However, there must be some relevant provisions in the constitution. I mean that all proposals may be merged, regardless of whether they are called 'the economy,' 'labor,' 'People's Livelihood,' and so on. There is indeed a need for a particular chapter.[4]

In fact, in his proposal Wang had already indicated that what he called the "disorder of real life" was incompatible with the constitutional order by describing the miserable situation of ordinary people: The people were poor, the economy was stagnant, depleted, and without vitality. When popular demands multiplied while material resources were scarce, trying to incorporate people with different interests into a purely political constitutional track could not succeed. He warned that if one relied on a constitution with merely a political dimension and the people's most significant concern – their livelihood – was not adequately resolved, the long-term stability of the Republic of China would prove illusory.[5] Therefore, the emphasis on improving life gradually became the focus of the representatives' concerns, and this concern was reflected in newly introduced terms used in their proposals.

A second aspect of the lawmakers' proposals was the decontextualization of the concept of labor from the perspective of class conflict. Instead, they reinterpreted labor to stand for the whole of the poor population:

4 In Chinese: 提案甚多, 而总之对于生活问题应有一种解决方法。生活问题不能解决, 无论何等宪法皆不能行。要知生活问题非常重大, 世界学者极力研究, 尚不能解决, 仅靠疏疏几条宪法即能解决, 恐未必如此容易。然宪法上亦不能不有一种规定。本席意思, 可将所有提案一期合并, 对于生计、劳工、民生等问题, 均认为有规定专章之必要。Constituent Assembly (1923) vol. 57, 9.

5 Constituent Assembly (1923) vol. 54, 5–6.

> Senator Lou Yuxiong (娄裕熊): I am opposed to the inclusion of the labor issue in the constitution. As the laborers are only a part of the people of the Republic of China, the term of labor should not be enshrined in the constitution. Besides, the gentry *(Shi)*, the peasants *(Nong)*, the craftsmen *(Gong)*, and the merchants *(Shang)* have been called the Four Occupations since ancient times. The *Gong* are one of the Four Occupations. If specific provisions are formulated for the *Gong* in the constitution, then one would have to formulate some for the other three, too.[6]

> Senator Jiang Hao (江浩): These proposals on the economy, livelihood, and property, although with different names, all contain the issue of labor. However, it is not a specific reference to labor, but a general reference to the poor, the elderly, and the disabled, as well as those who do not have the means to live. Moreover, like their counterparts, capitalists also have many labels. Therefore, I do not have any preconceptions about how the labor issue should be stipulated in the constitution. […] [H]owever, first of all, there are five reasons why we should be talking about humanitarianism.[7]

Against this economic backdrop, it was possible for Jiang Hao to give an inclusive interpretation of the two sides of class conflict: "Labor" was extended to include all poor people, and "capital" encompassed those with economic advantages. On the one hand, the representatives were concerned with the predicaments of everyday life in China rather than occupational identities. On the other, this conceptual transformation depended on a traditional conceptualization of the social structure as consisting of the Four Occupations or categories of the people (四民社会), namely, in descending order, the *Shi* (士, scholar-officials), the *Nong* (农, peasant farmers), the *Gong* (工, artisans and craftsmen), and the *Shang* (商, merchants and traders).[8] These four categories were not socioeconomic classes but socio-cultural ranks, underpinned by the civil service examination system in Imperial China to select candidates for the state bureaucracy. In the ideal case,

6 In Chinese: 本席反对劳工问题加入宪法, 因劳工本系中华民国人民之一部分, 故劳工二字, 不可规定于宪法。况士农工商自古称为四民, 工亦四民之一, 何以专提出规定。如果工要规定, 则士农商均要规定, 则恐不胜其规定。Constituent Assembly (1923) vol. 57, 10–11.

7 In Chinese: 汪君彭年、骆君继汉、黄君攻素等关于经济民生资产等章, 均有提案。虽名目不同, 而各案中莫不有劳工问题在内。不过, 非专指劳工一项, 而言凡贫苦老废, 以及无生活能力者均在其内。即彼方面之资本家亦已兼筹并顾, 所以宪法上对于劳工问题应如何规定, 本席亦无成见。惟先将提案理由说明之, [...] 其理由有五, 就正谊上说自宜讲人道。Constituent Assembly (1923) vol. 57, 4.

8 See Fairbank / Goldman (1992) 108.

exalted socio-political status was separated from economic privileges by the policy of barring children of the *Shang* from taking the civil service examination.

The *Shi*, who usually served as officials with high socio-political status, at the same time assumed a heavy moral responsibility towards ordinary people. In the words of Mencius, "Only a *Shi* can keep a steady mind without a Steady Livelihood (恒产). If the common people lack a Steady Livelihood, they cannot be secure." Consequently, these scholar-officials saw their first duty as ensuring a steady, sustainable livelihood for ordinary people. Most of the representatives in the Constituent Assembly were brought up in this cultural context and thus shared the self-conception of the *Shi*.

In short, the focus in the web of the representatives' concerns increasingly converged on the issue of the people's livelihood through the intercultural negotiations between two categories: Various terms, mainly taken from the constitutions of the Weimar Republic and Soviet Russia, were synthesized with the traditional Chinese idea of Steady Livelihood. Concurrently, the class distinctions between laborers and capitalists were recast into the traditional hierarchical structure of the four categories of people. As will become apparent, category mapping was an effective method of solving the conceptual asymmetry between the categories of Chinese cultures and those of the West in order to reveal the semantic and intentional relevance between them. Moreover, the deep-seated anxieties and widely shared concerns over the current economic situation were used to indicate the direction of the mapping of normative information and were presented as a system of legislative references in the draft constitution.

5.1.2 The system of legislative references: Comparative legislation

The Constituent Assembly approved the motion to add a new chapter on Livelihood into the constitution by an overwhelming majority and appointed Lin Changmin as the principal drafter. Most articles in Lin's draft concerned the protection of people's livelihood, except for Art. 7, which proposed to establish a National Council of Livelihood in order to boost the economy.

In his explanatory report presented to the Constituent Assembly, Lin explained his draft chapter article by article based on a system of legislative references that consisted of the constitutions of seven foreign

countries,[9] international treaties, and classic Chinese texts, including the Confucian Classics and historical works. Although, as will be discussed below, this reference system of normative information may appear simplistic compared to that of the 1947 constitution, it nevertheless demonstrates the cognitive and conceptual processes involved in translating foreign normative knowledge. First, it represents a comparative model comprised of a positive example – the WRV – and a negative example – the constitution of Soviet Russia – further supplemented by references to the constitutions of Poland, Portugal, Czechoslovakia, and other nations. This stands in contrast to the one-source borrowing commonly observed at moments of decolonization, when drafters relied almost exclusively on the metropole's constitutional model. Second, the 1923 draft's legislative references illustrate how normative information was creatively synthesized by blending Eastern and Western ideas, as illustrated in the knowledge graph no. 1[10] and summarized in table 14.

Table 14: Summary of Legislative References for the 1923 Draft Chapter on National Economy

Draft Articles	Chinese Classics as References	Comparative Legislative References		
	The Positive		The Complementary	The Negative
Art. 1 Principle		Germany 1919, Art. 151		
Art. 2 (1) Land	1. Ancient land systems supported by doctrines of Confucius, Mozi, Xunzi, and Mencius (孔墨荀孟诸儒) 2. Book of Mencius (孟子·梁惠王上)	Germany 1919, Art. 155 (1,2,3), 153	1. Poland 1919, Art. 99 2. Portugal 1911, Art. 25 3. Czechoslovakia 1920, Art. 108, 109	1. Soviet Russia 1918 2. Far Eastern Republic/ Chita 1920
Art. 2 (2) Natural Resources		Germany 1919, Art. 155 (4), 156	Poland 1919, Art. 99 (2)	Soviet Russia 1918

9 The adoption of these seven countries might refer to the constitutional compilation by Deng Yuyi, see Deng (ed.) (1922).

10 URL: https://dx.doi.org/10.12946/gplh28.

Draft Articles	Chinese Classics as References	Comparative Legislative References		
	The Positive		The Complementary	The Negative
Art. 2 (3) Inheritance Tax		Germany 1919, Art. 154 (2)		
Art. 2 (4) Interest and Rent		Germany 1919, Art. 152		Soviet Russia 1918
Art. 3 (1) Labor as Duty	1. Ancient Poetry (击壤歌) 2. Book of Han (汉书·食货志) 3. Book of Changes (or I Ching, Yi Jing 周易) 4. Book of Mencius (孟子·滕文公上)	1. Soviet Russia 1918, Art. 10, 18, 64 2. Germany 1919, Art. 163		
Art. 3 (2, 3) Social Security	1. Book of Mencius (孟子·离娄下) 2. Book of Rites (礼记·礼运)			
Art. 4 Labor Protection		1. Covenant of the League of Nations, Art. 23 2. Treaty of Versailles 3. Germany 1919, Art. 161, 162		Soviet Russia 1918
Art. 5 Intellectual Labor Protection		Germany 1919, Art. 158 (1)		Soviet Russia 1918
Art. 6 Freedom of Assembly and Association		Germany 1919, Art. 159		
Art. 7 National Council of Livelihood		Germany 1919, Art, 165	1. Austria 1920, Art. 11 (2) 2. Poland 1919, Art. 68	Soviet Russia 1918

As indicated in table 14, two articles are the most suitable for explaining this system of legislative references. One is Art. 2 (1), which exhibits the sharpest

tensions among the foreign constitutions used by Lin for comparison. The other is Art. 3 (1), with the broadest possible consensus among the reference constitutions. I will analyze each in turn.

> Art. 2 (1) The State shall ensure the Steady Livelihood (恒产) of peasants and prevent the misuse and annexation (兼并) of land. Private ownership of land shall be restricted by law. If the value of a piece of land has increased, not through the exertion of labor or the employment of capital, the State shall levy thereon an increment tax. [11]

Concerning Art. 2 (1), Lin made legislative references to no fewer than six foreign constitutions, the largest number in any of the clauses.[12] He then deliberately arranged the references to create a tension-rich comparative structure, classifying them into three distinct categories: the positive, the complementary, and the negative. Regarding land allocation, Lin discussed the Constitution of Soviet Russia of 1918 and the Far Eastern Republic/Chita Constitution of 1920 first, which served him as negative reference points due to their revolutionary approach in abolishing all private ownership. Lin then invoked the WRV as standing for a progressive reform approach that protected private ownership of land, but with legal restrictions to serve public welfare. Finally, Lin referred to the constitutions of Poland (1919), Portugal (1911), and Czechoslovakia (1920) as complementary precedents for restrictions on property, such as the principle of proportionality (Poland, Art. 99) and the principle of legal reservation (Portugal, Art. 25; Czechoslovakia, Art. 108, 109).

Lin's trichotomy of categories of normative information thus functioned as a comparative framework within which he gradually developed the relative advantages of the relevant provisions of the WRV and, on that basis, incorporated them into China's 1923 draft constitution. Specifically, within this legislative reference system, the three subclauses of Article 2 (1) correspond to Article 155 (1) and (2), Article 153, and Article 155 (3) of the WRV, respectively.[13]

However, this appropriation of the WRV had to be allied to Chinese tradition, which provided a parallel positive reference point. This enabled Lin not only to find a way around the underlying problem of a lack of legal vo-

11 In Chinese: 第2条第1款：国家为保护农民恒产及防止土地之滥用或兼并，对于土地之享有权得设限制置，其不因自力经营而增高价格之土地得以累进法定其税率。Lin (1923b) 50.

12 See knowledge graph no. 2 at URL: https://dx.doi.org/10.12946/gplh28.

13 Lin (1923b) 52–53.

cabulary and legal thinking, it also meant he could preserve specific cultural concepts by embedding them within a normative structure composed of elements mainly from abroad. Referencing the Chinese Classics and traditions rendered foreign normative information translatable while embedding it within China's unique cultural context, as reflected in terms like Steady Livelihood and "annexation" (兼并):

> Lin Changmin: The term Steady Livelihood is particularly flexible. It is derived from Mencius, that is, 'the intelligent ruler will regulate the livelihood of his people.' As a result of the changing social and economic situation, its definition changes accordingly. Concerning the protection standards of legislators, Art. 155 (1, 2) of the German Constitution is more general and broader, but the more profound meaning comes from the concepts of 'Steady Livelihood' and 'annexation', etc. They are the inventions of our country thousands of years ago. They can be used in the constitution with most applicability, and the Europeans have nothing to do with it.[14]

This explanation demonstrates how, according to Lin, the Chinese Classics and the WRV mirrored each other. At the level of semantic scope, the two could be brought into correspondence, owing to the flexibility and variability of Chinese concepts and the relatively general and broad expressions of the WRV. However, Lin particularly emphasized that the profound connotations specific to Chinese concepts were not translatable for Europeans and their languages, such as the concept of Steady Livelihood. Such concepts involved so much traditional information that it was impossible to find a European counterpart.

However, this untranslatable cultural part always served as the principle underlying the concrete legal institutions and consequently defined the mechanism for the operations of law. For example, regarding Steady Livelihood, the quote taken from Mencius by Lin reveals that it is based on several premises, such as a meritocratic system of advancement and the paternal obligation of benevolent care that the "intelligent ruler" owed to his people. This yields an implementation mechanism akin to administrative regulations. Concerning the use of the Chinese Classics, the example of Art. 3 (1) seems more representative:

14 In Chinese: "恒产"一语，尤富弹性，其语源出自孟子，即指"明君制民之产"而言。他日者，因社会经济状况之变迁，恒产限界自然随之而异，随时可畀。立法者以保护之标准是则视德宪百五十五条一二两项为较概括，而涵义更为深厚，盖"恒产"、"兼并"等字，为吾国数千年前之发明品，可以一语包括深长之释义于宪法中，最适用之，欧洲人所无也。Lin (1923b) 52.

> Art. 3 (1) The people shall have the duty of labor, intellectual or physical, that is not detrimental to good social customs.[15]

As discussed above, in his comments on Art. 3 (1) Lin referred extensively to the Chinese Classics, including the Confucian Classics and historical works. Lin's discussion of Art. 3 (1), by contrast, was the only time he used the Constitution of Soviet Russia as a positive reference. Lin's legislative reference points for Art. 3 (1) reflected the broadest possible consensus. It can therefore be considered the most appropriate example for examining how Lin blended normative information through a creative synthesis of Eastern and Western ideas.

> Lin Changmin: The whole world was appalled by the excessive fierceness of the Soviet system, which led to the suffering of some people in society. In fact, its ultimate aim is that every single person in society be a laborer. This is the same as is written in the work of Ban Gu (班固) *Treatise on Food and Commerce* (*Shi Huo Zhi*, 食货志): 'The four categories of the people all have their own occupations'; '[T]he intelligent ruler confers positions according to people's ability, and the four categories of the people take responsibility through their efforts.' This can be fully proven by Art. 10 […], Art. 18 […], and Art. 64 […] of the constitution of Soviet Russia. The Art. 163 of the German constitution […] is skillfully worded. This draft roughly follows the German meaning and our old teaching that 'the people did [what was required of them] without being wearied' (使民不倦) in the *Book of Changes*.[16] The aim is to divide all people into two categories, namely those who labor with their minds (劳心), and those who labor with their strength (劳力). Therefore, it is not necessary to strenuously construct a difference in order to avoid [the ideas of] Soviet Russia.[17]

Concerning labor, there is a misalignment in the mapping of categories between the Chinese Classics and the Soviet and Weimar constitutions. Notably, the first shift in category mapping is constructed between the conflicting classes of Soviet Russia and the Four Occupations of the Chinese. In fact, for Lin, the Marxist concept of labor served not only as the starting point for revealing the internal exploitation mechanisms of capitalist society based on private property. It also provided a fundamental idea for the political system envisaged in the 1918 constitution of Soviet Russia, which begins with the dec-

15 In Chinese: 第3条第1款: 国民有不背善良风俗为精神上或体力上劳动之义务。Lin (1923b) 57.

16 Legge (1963) 383.

17 In Chinese: 苏俄制度进行过激, 致全社会中有一部分人为一时代之牺牲, 而先蒙其痛苦, 遂为世所惊骇。实则其最终目的在使全社会之人无一不为劳动者。与班固食货志所谓"士农工商, 四民有业"及"圣王量能授事, 四民陈力受职"者, 丝毫无异。其宪法第十条 […] 第十八条 […] 第六十四条之规定, 可以明矣。德宪百六十条可谓善于说辞 […]。本草案略采其辞义, 即遵吾古昔"使民不倦"之训, 目的亦在尽人皆出于劳心劳力之途。不必故避苏俄而强为立异也。Lin (1923b) 58.

laration of rights of the laboring and exploited people. Lin cited Articles 10, 18, and 64 of the Soviet Russian Constitution and offered a sympathetic interpretation of its unified category of labor that encompassed both intellectual and manual workers, even though in practice the Soviet system enforced this ideal through coercive measures. In this reading, by drawing parallels between the ideas of social structure in the Soviet and German constitutions and in Chinese thought, Lin attempted to use the concept of labor as a common denominator uniting the Four Occupations to bring about the transformation of the traditional society of Four Occupations into a nation-state.

By contrast, Lin's second shift in category mapping between the Chinese Classics and the WRV highlights the internal differentiation of the unified category of labor. Lin frankly admits using Art. 163 of the WRV as a reference for drafting his Art. 3 (1). However, Art. 163's binary classification of all citizens having the moral obligation to expend both their intellectual and physical strength for the common good differed from the Chinese categorization of those governing, who labor with their minds, and the governed, who labor with their bodies. Moreover, the quote from the *Book of Changes* (*Yi Jing* 易经), one of the six Confucian Classics, posits a relational ethic between the intelligent ruler and his people – namely, that a benevolent ruler with a strong sense of duty should organize and enable the people to work "without being wearied." Lin reshaped the concept of the community of Four Occupations into a dual structure, with the *Shi* (scholar-officials) on the one side, and the other three occupations, namely the *Nong* (peasant farmers), the *Gong* (artisans and craftsmen) and the *Shang* (merchants and traders), on the other. This newly constructed duality reveals an underlying logic that dominated the legislative process, since the representatives in the Constituent Assembly shared a similar self-conception with the *Shi*.

In short, Lin's whole system of legislative references created a superposition of two structures. Firstly, in the comparison of different foreign constitutions, the WRV became increasingly prominent and furnished the main positive reference for drafting the chapter on Livelihood in the ROC's 1923 constitution. At the same time, these positive references had to be reinterpreted analogically with the other key positive reference point, the Chinese Classics, in order to overcome the underlying problem of a lack of legal vocabulary and constitutional thought. The analogical category mapping with Chinese sources thus rendered foreign normative information comprehensible, acceptable, and adaptable.

5.1.3 An interpretive framework: Confucianism

In his report on the chapter on Livelihood, Lin established a comprehensive theoretical framework grounded in Confucianism – not only for integrating external legislative resources, especially the WRV, but also for transforming traditional Chinese ideas on the state and its relationship with the people into the form of a modern constitution. More specifically, he attempted to appropriate socialist elements in the WRV's chapter on Economic Life through a Confucian lens. This interpretive framework, however, fundamentally transformed the WRV's rights-based model by translating it into a policy-oriented mechanism under a meritocratic and benevolent model of government.

> The articles in the chapter 'Livelihood' are mostly adapted from the relevant content of the 'Economic Life' chapter in the new constitution of Germany. In other words, the German constitution can be seen as the source of this chapter. However, issues if national livelihood have long been emphasized by our classical political theory. Confucius said: 'The rulers of states and chiefs of families are not troubled lest their people should be few, but are troubled lest they should not keep their several places; and they are not troubled with fears of poverty, but are troubled with fears of a want of contented repose among the people in their several places. For when the people keep their several places, there will be no poverty; when harmony prevails, there will be no scarcity of people; and when there is such a contented repose, there will be no rebellious upheaval.'[18]
>
> This is truly the fundamental idea of socialism in modern times. Moreover, Mencius focuses on the Benevolent Government, and the point is to ensure that the ordinary people possess a Steady Livelihood, '[The intelligent ruler will regulate the livelihood of his people] so that they have enough to support their parents and their own children […].'[19] Above all, Mencius provides detailed rules for regulating the livelihood. We formulate the articles in the chapter 'Livelihood' according to this classical theory; they should therefore not be viewed as a copy of something new from abroad.[20]

18 Legge (1960) 308.

19 Legge (1970) 148.

20 In Chinese: 本章条文多采取德意志新宪法中关于经济生活之规定，即谓德宪为本法案之渊源故无不可，然国民生计本为吾国古来政治学说之所置重。孔氏所谓"有国者，不患寡而患不均，不患贫而患不安，盖均无贫和无寡安无倾"，直为近代社会主义之根本意义。《孟子》一书以"发政施仁"为职志，发政施仁之真际则在使民皆有"恒产"。必使仰足以事父母，俯足以畜妻子。乐岁终身饱，凶年免于死亡是也。至若五亩之宅，百亩之田，墙下之树桑，鸡豚狗彘之无失其时，皆其制产之细则。根据此种学说以制定本章诸条，决非袭取外物，惊为新奇者。Lin (1923a) 42–43.

In his explanatory report to the Constituent Assembly, Lin explicitly acknowledged using the WRV as a direct source for drawing up the chapter on Livelihood. However, he regarded the WRV merely as a repository of provisions to be adapted and embedded, once again, into Confucian ideas, such as Confucius' Principle of Equal Distribution (均) or Mencius' detailed regulations concerning Benevolent Government (仁政). Moreover, the socialist provisions he selected from the WRV were stripped of the idea of class conflict between capital and labor and re-contextualized within the legal relationship between the intelligent ruler and ordinary people. In fact, the German and Chinese legislators' approaches towards building state or social order differed significantly. In simple terms, German ideas of state and social order were based on the premise of divergent interests among individuals and organized groups (such as classes, associations, or parties). Various individuals or classes asserted their claims by invoking fundamental rights guarantees, thereby channeling conflict into a shared legal framework. In this sense, the WRV's socioeconomic rights promoted deeper integration of the nation.

By contrast, Chinese state and social order could be conceived of as a community based on differences in intellectual merit and corresponding differences in responsibilities. Ideally, the cultural elites, selected through the civil service examinations, held the authority to govern without personal benefit in order to serve the whole population. Theoretically, therefore, no conflicts of interest existed among the Four Occupations, but there was a hierarchical distinction between those who govern and those who are governed in the name of the Benevolent Government. In the last part of his report, Lin went on to establish a logically consistent system of Livelihood, with the understanding of socialism as forming part of Confucianism.

> [The chapter on Livelihood] is not a chapter of a socialist constitution, but includes the content of the socialist constitution in order to conform to the trends of the world. It aims to abolish social inequality, to provide benefits to humankind, and to avoid endless turmoil, rather than stopping at the temporary fulfilment of ordinary politics. [As stated i]n the *Book of Changes*, 'The great attribute of heaven and earth is to giving and sustain life. What is most precious for the sage is to get the [highest] place. What will guard this position for him? Men. How shall he collect a large population around him? By the power of his wealth.'[21]

21 Legge (1963) 381.

> The constitution of the republic is the highest position of all the people of the nation. Within this constitutional conception, popular support is to be secured through a more equitable distribution of wealth so as to safeguard the constitution itself. Therefore, 'wealth is the basis [for emperors] to collect people for maintaining the position, to assure the livelihood of people, to comply with the great attribute of heaven.' In short, the spirit of this draft chapter does not plagiarize the new constitutions of Europe, but takes root in our deep indigenous foundations.[22]

In contrast to the Weimar model that constructed a unified system of fundamental rights from the bottom up – from individuals to the state – Lin unfolded a Chinese logic of state integration imposed from the top down, as described in the *Book of Changes*. First, Lin took the principle that "the great attribute of heaven and earth is to give and sustain life" as the starting point for constructing a Confucian order in the secular world. Second, in the Republic, the constitution replaces the monarch as the highest authority and bears the responsibility of securing the people's livelihood. Third, in China, the constitution and the ordinary people were guided and governed by traditional sages or their contemporary counterparts, such as legislators and politicians, who integrated all people within the constitutional order. Finally, according to Lin, a more equitable distribution of wealth was the real key to unifying the people as a state. Therefore, in his conceptualization, the mechanism for integrating all people into a state occurred from the top down – from the constitution to the governing elites and, through them, to ordinary people. In short, whereas the WRV attempted to bridge the opposing classes through a rights-based social autonomy, Chinese legislators like Lin affirmed the difference between the so-called intelligent ruler and his people, and consequently formulated a Chinese hypothesis of policy-oriented regulation.

22 In Chinese: 本案非社会会主义之宪法案, 乃容受社会主义之宪法案, 所以应世界之大势, 平社会之不平, 谋人类之福祉, 弭无穷之祸乱者, 岂徒寻常政制利害及于一时而已。《易》称"天地之大德曰生, 圣人之大宝曰位。何以守位, 曰仁。何以聚人, 曰财。"民国之宪典, 国民之大宝也。仁人也, 守位曰仁, 得人者能守其位。惟协乎人道之宪典, 为可久也。聚人曰财, 制产以聚人, 人之聚, 产之均也。故曰"财者, 可以聚人, 守位, 养成群主, 奉顺天德。"然则本草案之精神绝非袭取欧洲新宪者, 在吾本国各有极精深之根据矣。Lin (1923b) 73.

5.2 Reframing the national economy within the party's doctrine: The 1947 Constitution

In 1924, the reorganization of the Nationalist Party of China (KMT) marked a turning point in modern Chinese history, as well as in the history of Chinese constitutional law. As Li Jiannong put it, "[E]veryone argued for a legally constituted authority (法统) before the reorganization, but afterwards turned to the party authority (党统)."[23] For constitutional law, this transition meant grounding state legitimacy not in proportional representation but in the KMT's claim of being the progressive vanguard leading the Great National Revolution (国民大革命). Thus, the chapter on "National Economy" in the 1936 draft constitution, later incorporated into the 1947 Constitution, was explicitly linked to the KMT's revolutionary project. The term "national" was not included in the title merely as a modifier; instead, it signaled that the legitimacy of the KMT's claim to the leading political role – rooted in the National Revolution – continued and expanded to encompass the broader project of nation-building and constitution-making. Therefore, the critical issue facing the KMT was how to integrate the resources of constitutions from around the world, especially the WRV and the 1936 constitution of the Soviet Union, into its framework of the Three Principles of the People: Nationalism, Democracy, and People's Livelihood.

5.2.1 National economy: The 1936 draft constitution

During the War of Resistance Against Japan (1931–1945), the efforts to draft a new constitution were restarted by Sun Ke (孙科), the son of Sun Yat-sen, to lift public morale and to forge a broad national consensus. The KMT dominated the whole process resulting in the 1936 draft constitution. The first draft was based chiefly on a private project by Wu Jingxiong (吴经熊),[24] but also referred to other draft constitutions submitted by Zhang Zhiben (张知本), Chen Changheng (陈长蘅), or Chen Zhaoying (陈肇英). These drafts' structure accorded to the Three Principles of the People, and clauses relating to

23 Li (1932) 531.
24 On Wu's draft constitution, see Note (2019).

socioeconomic issues constituted the constitutionalization of the Principle of the People's Livelihood (民生主义).[25] Subsequently, the first draft of the constitution underwent a complete overhaul by taking into account 281 legislative opinions solicited nationwide by the Legislative Yuan.[26] After public discussion, the revised draft was approved by the Legislative Yuan and the KMT Central Standing Committee as a draft, but promulgation remained pending. Four years later, amid wartime conditions, the Legislative Yuan published an explanatory report on the 1936 draft constitution. Drawing on this report and on the 281 legislative opinions submitted to the Legislative Yuan, this section employs the same analytical framework as applied to the 1923 Constitution in the preceding sections, in order to examine the web of concerns voiced by lawmakers and commentators, the legislative reference system they used, and the interpretive framework of the 1936 draft constitution. This approach aims to reveal how the translation and interpretation of the WRV in 1936 differed from its reception and use by the authors of the 1923 Constitution.

5.2.1.1 The web of concerns: The focus on national economic development

Of the 281 legislative opinions received during public consultation, 58 addressed proposals concerning the chapter on National Economy. These proposals constituted a new web of concerns about socioeconomic issues and marked an obvious shift among the contributors – primarily lawmakers, legal scholars, and senior bureaucrats – away from issues regarding the people's livelihood towards questions of national economic development. As table 15 shows, 31 of the 58 opinions commenting on the chapter on National Economy dealt with the improvement of the national economy, discussing the planned economy (Nos. 11–22), the restriction of private capital (23–25), the tax system (26–28), industrial incentives (31–38), and the public economy (39–40). By contrast, only ten opinions dealt with labor protection (41–50), including for peasants and intellectuals.

25 Wu / Huang (1937) 90.
26 Legislative Yuan (ed.) (1934) 3.

Table 15: Summary of Legislative Opinions on the 1936 Draft Chapter on National Economy[27]

No.	Original No.	Legislative Opinions	Reasons	Remarks
1	No. 108 (6)	Delete the chapter on National Economy	The content is vague and impracticable.	Deletion
2	No. 114 (2)	Delete the chapter on National Economy	It is impracticable.	
3	No. 151 (6)	Delete the chapter on National Economy	These provisions can only be regarded as programmatic guidelines rather than constitutional norms.	
4	No. 31 (2)	Delete the paragraph on people's beneficial rights	Their implementation is impracticable and unachievable.	
5	No. 205 (3)	Delete the policy provisions	They should not be included in the constitution.	
6	No. 78 (6)	Align the chapter on National Economy with the 1931 General Outline of the Constitution for the Political Tutelage Period (训政时期约法)	The content of the 1931 General Outline is more precise.	Land
7	No. 63 (2)	Add measures to the policy of equalization of land ownership	According to the Fundamentals of National Reconstruction (建国大纲)	
8	No. 73 (1)	1. Add measures to the policy of equalization of land ownership 2. Add measures to develop national capital	According to Sun Yat-sen's teachings (总理遗教)	
9	No. 203 (3)	Add measures to the policy of equalization of land ownership	According to the Principle of People's Livelihood (民生主义)	
10	No. 99 (9)	Add industrialization as the goal of economic development	The draft primarily focuses on agriculture.	Economic Development
11	No. 5 (5)	Establish economic councils	In order to improve economic legislation	
12	No. 66 (6)	1. Add economic development as a goal	In order to implement the planned economy	

27 Legislative Yuan (ed.) (1934) 101–126. The opinions have been grouped by theme and numbered accordingly (first column). The second column provides the original numbering as in the Legislative Yuan's report.

No.	Original No.	Legislative Opinions	Reasons	Remarks
		2. Establish economic councils 3. Introduce a planned economy 4. Introduce professional representation		Economic Development
13	No. 75 (2)	Introduce a planned economy	According to the WRV's compromise-based arrangements	
14	No. 99 (8)	Establish institutions and principles for a planned economy	According to Sun Yat-sen's teachings (总理遗教) and foreign precedents	
15	No. 115 (3)	Introduce a planned economy	In order to improve the economy	
16	No. 119 (5)	Establish institutions for a planned economy	According to foreign precedents in order to improve the development of national capital	
17	No. 131 (1)	Establish economic councils	In order to realize the state's economic objectives	
18	No. 132 (3)	Establish institutions for a planned economy	In order to implement the planned economy	
19	No. 177 (1)	Establish principles for a planned economy	According to the Principle of People's Livelihood, in order to implement a planned economy	
20	No. 194 (29)	Establish economic councils	In order to realize the Principle of People's Livelihood and to prevent economic crises	
21	No. 211 (8)	1. Establish a comprehensive set of economic policies and economic councils 2. Establish economic councils 3. Use the WRV as a model	According to the WRV, in order to prevent economic crises	
22	No. 214 (2)	1. Establish institutions for a planned economy 2. Add provisions on productive capital (funds for production) 3. Add measures to the policy of equalization of land ownership 4. Add a system of labor protection	According to foreign precedents, in order to prevent economic crises	Economic Development

No.	Original No.	Legislative Opinions	Reasons	Remarks
23	No. 115 (2)	Introduce the policy to restrict private capital	According to the Principle of People's Livelihood (民生主义)	Capitalism
24	No. 2 (1–4)	1. Add measures to the policy of equalization of land ownership 2. Add measures to the policy of restricting private capital 3. Establish national monopolies for rice, salt, tobacco, and alcohol	According to the Principle of People's Livelihood (民生主义)	
25	No. 152 (1)	1. Add measures to the policy of equalization of land ownership 2. Add measures to the policy of restricting private capital 3. Establish national monopolies for rice, salt, tobacco, and alcohol	According to the Principle of People's Livelihood (民生主义)	
26	No. 69 (2)	Add uniform tax standards	In order to reduce the tax burden	Tax
27	No. 140 (1)	Add uniform tax standards	In order to reduce the tax burden	
28	No. 194 (30)	Add uniform tax standards	In order to improve financial management	
29	No. 9 (1)	Introduce tariff protection	In order to protect the national industry and business	
30	No. 140 (2)	Introduce tariff protection	In order to protect the national industry and business	
31	No. 83 (1)	Introduce industrial incentives and subsidies	In order to develop national industry and business	Industry
32	No. 91 (3)	Introduce industrial incentives and subsidies	In order to develop national industry and business	
33	No. 198 (2)	Introduce industrial incentives and subsidies	In order to promote economic development	
34	No. 203 (4)	Introduce industrial incentives and subsidies	In order to promote economic development	
35	No. 141 (2)	Adopt policy to develop industry, transport, mining, and trade	In order to promote economic development	

No.	Original No.	Legislative Opinions	Reasons	Remarks
36	No. 80 (2)	1. Develop policy plans for trade and finance 2. Introduce industrial incentives 3. Establish monetary policy	In order to coordinate economic development between agriculture and the industry	Industry
37	No. 147 (1)	1. Develop policy plans for trade and finance 2. Introduce industrial incentives 3. Establish monetary policy	In order to coordinate economic development between agriculture and the industry	
38	No. 216 (3)	Promote overseas Chinese economic activities	The overseas Chinese economy is related to the domestic economy.	
39	No. 194 (28)	Define the scope of the state-owned economy	In order to distinguish the scope of state-owned economy from the private economy	State-owned economy
40	No. 181 (6)	Define the scope of the state-owned economy	According to the program of the KMT	
41	No. 5 (4)	Add a labor policy	In order to provide the welfare of workers	Labor
42	No. 48 (6)	Add provisions on developing national capital and on coordinating labor-capital relations	In order to develop national capital	
43	No. 66 (5)	Add measures to protect labor and to coordinate labor-capital relations	In order to protect the workers	
44	No. 200 (8)	Add measures to protect labor and coordinate labor-capital relations	In order to protect the workers	
45	No. 211 (9)	Add provisions protecting laborers	Modeled on the WRV, in order to protect workers and improve their livelihood	
46	No. 83 (3)	Introduce measures to ensure employment	In order to reduce unemployment	
47	No. 194 (26)	Add concrete provisions to improve the people's livelihood	According to the WRV	
48	No. 13 (1)	Add policies to protect the peasantry	In order to improve peasants' livelihoods	
49	No. 200 (9)	Add provisions protecting intellectual labor	It affects the national economy	

No.	Original No.	Legislative Opinions	Reasons	Remarks
50	No. 66 (7)	Add provisions protecting intellectual labor	Intellectual work is as important as the manual work.	Labor
51	No. 212 (2)	Add provisions on land expropriation, including compensation	According to foreign precedents and the Three Principles of the People	Property
52	No. 194 (27)	Impose restrictions on private property and the freedom of contract		
53	No. 11 (14)	Move provisions on labor protection and disability pension to the chapter on fundamental rights and duties	They do not belong in this chapter.	Chapter Structure
54	No. 207	Identifies a conflict between ideal principles and practical policies	These two kinds of provisions cannot coexist.	
55	No. 182 (6)	Identifies a conflict between the Principle of People's Livelihood and foreign economic policies	The Principle of People's Livelihood needs to be fully implemented.	
56	No. 26 (2)	Notes that the chapter does not include all aspects of the national economy	The draft focuses on the wealth distribution rather than the production.	
57	No. 57 (4)	Notes that the chapter does not include all aspects of the national economy	Too much emphasis on agriculture	
58	No. 97 (3)	Notes that the chapter does not include all aspects of the national economy	Too much emphasis on agriculture	

The above summary of the legislative opinions received by the Legislative Yuan demonstrates a considerable shift in jurists' and other experts' concerns, away from individual livelihood to the national economy as a whole. This shift in focus, in turn, implied a corresponding change of the legal paradigm, from rights to policies. Provisions on fundamental rights and duties were not considered suitable for macroeconomic regulation and control. Therefore, the author of opinion No. 53 proposed moving the provisions on protecting laborers to the chapter on fundamental rights and duties. Meanwhile, the concept of policy was frequently invoked, especially as the idea of a planned economy gradually came to be accepted as a shared concern, as shown in twelve opinions (Nos. 11 to 22). In short, support for state plan-

ning and state control of the national economy underpinned the adoption of a policy paradigm that enabled governmental macro-control, in stark contrast to the paradigm of rights.

However, at least two aspects regarding the formulation of the socio-economic policies within the constitutional framework became a focus of controversy: (1) how to maintain overall consistency between the various policies; and (2) how to appropriate the foreign legislative information by translating it into the framework of Sun Yat-sen's teaching.

> No. 54 (Orig. No. 207): The draft constitution attempts to reconcile ideal principles with practical policies, yet cannot be implemented and thus generates a conflict between them.[28]

> No. 55 (Orig. No. 182 (6)): Because the Principle of the People's Livelihood is definitely stipulated in Art. 24, the whole chapter on National Economy should be based on this principle. However, the economic policies listed in this chapter are mostly from foreign countries rather than a comprehensive legislation [based] on [Sun Yat-sen's] policies, such as the equalization of land ownership and restriction of capitalism.[29]

With regard to the first aspect, although almost all proposals regarded Sun Yat-sen's Principle of the People's Livelihood as the ideal principle for the chapter, they diverged substantially in the concrete policies proposed on that basis. These covered a wide variety of issues, from increasing tariffs to protecting overseas Chinese economic activities, and encompassed many specific measures aimed at the development of the national economy. Regarding the second aspect, the various policies and measures proposed were largely based on foreign precedents rather than Chinese practice. The WRV was the only foreign constitution to be explicitly mentioned (four times). The tension between Sun Yat-sen's teachings and foreign legislation was heightened by their different internal logics. Specifically, the WRV's rights-based model could not provide an internally consistent framework for modern, progressive socioeconomic policies for China. Accordingly, in light of the web of concerns expressed in the legislative opinions, the drafting committee undertook further revisions of the 1936 draft until these controversies were addressed.

28 In Chinese: 宪草冀图将理想之原则与现实之原则冶铸调和，致未能树立实施之规模，反有割裂矛盾之弊。Legislative Yuan (ed.) (1934) 124.

29 In Chinese: 第二四条既揭载民生主义，则国民经济章之所规定，皆应本此原则。今所列举多为各国惯性之经济政策，所谓平均地权，所谓节制资本，竟无彻底之规定。Legislative Yuan (ed.) (1934) 125.

5.2.1.2 The knowledge system of legislative references

In 1940, with the National Assembly approaching, Sun Ke, as president of the Legislative Yuan, took the leading role in setting up the Publicity Committee for the 1936 draft constitution. Its primary mission was to write an official report containing an article-by-article commentary on the draft constitution in order to "reveal its sources and aims" through public lectures and outreach.[30] Accordingly, the report sought to engage the public directly by constructing a new knowledge system of legislative referents. In the commentary on the chapter on National Economy, this reference system consisted primarily of the KMT's doctrines in the form of Sun Yat-sen's teachings, the constitutions of twelve foreign countries, and a single quotation taken from the Confucian Classics, as shown in knowledge graph no. 3 [31] and table 16.

Table 16: Summary of Legislative References for the 1936 Draft Chapter on National Economy[32]

Articles	Sun Yat-sen's Teaching	Confucianism	Comparative Legislative References	
	Text			Footnote
Introduction	1. Fundamentals of National Reconstruction (建国大纲) 2. Founding Father's Lecture (民报发刊词) 3. Principle of People's Livelihood (民生主义演讲)		1. New constitutions of the various countries (各国新宪法) 2. Germany 1919, Economic Life 3. Soviet Union 1936, chapter one	
Art. 116 Principle of People's Livelihood	1. The Founding Father's Saying: "Europe and the USA have their societies; we have our society." (国父云:欧美有欧美的社会, 我们有我们的社会) 2. The Manifesto of the *Tongmenghui* (同盟会宣言)			

30 Legislative Yuan (ed.) (1940) Sun Ke's Preface.
31 URL: https://dx.doi.org/10.12946/gplh28.
32 The commentary on Art. 129 (Local Legislation) and Art. 130 (Free Movement of Goods) contained no legislative references of any kind. Legislative Yuan (ed.) (1940) 71–86.

Articles	Sun Yat-sen's Teaching	Confucianism	Comparative Legislative References	
	Text			Footnote
Art. 117 Land Policies	1. The Founding Father's Lecture: Schools and Methods of Socialism (社会主义之派别与方法) 2. The Founding Father's Lecture on the Commentaries about the Peasant Movement (农民运动讲义所演讲) 3. The Manifesto of the First National Congress of the KMT (国民党一大宣言) 4. The Founding Father's Lecture on the People's Welfare and Social Revolution (民生主义与社会革命演讲)		1. Germany 1919	1. Germany 1919, Art. 153
			2. Soviet Union 1936	2. Soviet Union 1936, Art. 7, 9
Art. 118 Mineral Resources	The Fundamentals of National Reconstruction (建国方略)		1. New Constitutions of Modern Countries (近代各国新宪法)	1. Mexico 1917, Art. 27 (4) 3. 2. 2. Romania 1923, Art. 19 3. Portugal 1911, Art. 49 4. Ecuador 1929, Art. 151 (14)
			2. New Constitutions of various countries (各国新宪法)	1. Germany 1919, Art 155 (4) 2. Yugoslavia 1921, Art. 117 (4)
Art. 119 Land Appreciation Tax	1. Principle of People's Livelihood, Lecture 2 **(民生主义第二讲)** 2. The Outline of National Reconstruction (建国大纲)			
Art. 120 Land Distribution	1. Principle of People's Livelihood, Lecture 3 (民生主义第三讲) 2. The Manifesto of the First National Congress of the KMT (国民党一大宣言) 3. The Founding Father's Lecture (耕者要有其田演讲)			

Articles	Sun Yat-sen's Teaching	Confucianism	Comparative Legislative References	
	Text			Footnote
Art. 121 Restrictions on Private Property	Principle of People's Livelihood, Lecture 2 (民生主义第二讲)			
Art. 122 Production and Trade	The International Development of China (实业计划)			
Art. 123 State-owned Enterprise and Expropriation	Principle of People's Livelihood, Lecture 2 (民生主义第二讲)			
Art. 124 Labor Policies	The Manifesto of the First National Congress of the KMT (国民党一大宣言)		Constitutions of Modern Countries (现代各国宪法)	1. Soviet Union 1936, Art. 118, 119, 125, 126 2. Germany 1919, Art. 157–165 3. Peru 1933, Art. 42–46 4. Estonia 1920, Art. 18 (3) 5. Poland 1921, Art. 102, 103 6. Honduras 1924, Art. 175–177 7. Lithuania 1928, Art. 98 8. Spain 1931, Art. 46 9. Switzerland 1874, Art. 34 10. Yugoslavia 1921, Art. 22–24, 31, 33 11. Romania 1923, Art. 21 12. Mexico 1917, Art. 123 (1–30)
Art. 125 Labor Relationships	1. Principle of People's Livelihood, Lecture 1 (民生主义第一讲) 2. Principle of People's Livelihood, Lecture 2 (民生主义第二讲)			

Articles	Sun Yat-sen's Teaching	Confucianism	Comparative Legislative References	
	Text			Footnote
Art. 126 Agriculture	1. Principle of People's Livelihood, Lecture 3 (民生主义第三讲)			
Art. 127 Disability Benefit		Mencius (杀身成仁)		
Art. 128 Social Relief	The Manifesto of the First National Congress of the KMT (国民党一大宣言)	*Book of Rites* (礼记礼运大同篇)	Constitutions of Modern Countries (现代各国宪法)	1. Soviet Union 1936, Art. 120, 122 (2) 2. Mexico 1917, Art. 123 (29) 3. Estonia 1920, Art. 25 4. Lithuania 1928, Art. 98 (2), 99 (2) 5. Spain 1931, Art. 46 (2) 6. Switzerland 1874, Art. 34 (2) 7. Netherlands 1922, Art. 196

If we set this textual analysis in its broad historical context, it becomes clear that the report constructed an asymmetrical relationship of interdependency between Sun Yat-sen's teachings and the foreign constitutional models. First, the commentaries were comprised of two components, namely the main text and footnotes. Sun Yat-sen's teachings functioned as the most crucial arguments and were written into the main text, while most references to foreign law appeared in the footnotes and served primarily as sources. However, a small number of foreign constitutional models – most notably the WRV and the Soviet Union's constitution – were also invoked in the main text at key argumentative moments. Second, the arguments from Confucianism that underpinned the 1923 draft constitution were completely replaced by the KMT's doctrine in the 1936 draft constitution. In fact, in the entire commentary on the chapter on National Economy, only the section on Art. 128 includes a citation of a Confucian Classic. Third, among the twelve foreign constitutions referred to, only the WRV and the Soviet

Union's 1936 constitution were mentioned in the main text, in order to exemplify the 20th-century global turn towards constitutionalized socialism and social rights. This framing was strengthened by additional references in the footnotes to other "new" constitutions of "modern countries." In summary, the interplay between national ideology and transnational sources established a hierarchical system of legislative references in which each element mutually reinforced the other's legitimacy.

In the 1940 commentary, the draft chapter on National Economy is organized into three parts: policies on land rights and land ownership (Art. 117–120), on capital (Art. 121–123), and on labor and social security (Art. 124–128). The first two parts concern two significant policies of the Principle of the People's Livelihood – equalization of land ownership and restriction of capitalism – anticipating their later codification in Art. 142 of the 1947 constitution of the ROC.[33] In the third part on labor and social protection, only the commentary on Art. 128 draws simultaneously on multiple sources – from KMT doctrine to Confucianism and foreign legislation[34] – making it an instructive case study of how the drafters constructed a commentary entry:

> Art. 128 To the aged and the infirm who are unable to earn a living, the State shall give appropriate assistance and relief.
>
> Explanation: This article is the principle of social relief, which has been stipulated in several constitutions of modern countries. [Footnote 1: Soviet Union 1936, Art. 120 and 122] The implementation of this policy can improve social welfare, ensure social security, and is closely linked with the rise and fall of the nation. Therefore, it attracts much attention from both modern legislation and administration. […] In light of the Principle of the People's Livelihood, society is to be ordered so that 'provision is secured for the aged till death, employment for the able-bodied, and the means of growing up for the young. Helpless widows and widowers, orphans and the lonely, as well as the sick and the disabled, are well cared for.' [Footnote 2: Mexico, 1917, Art. 123] The *Manifesto of the First National Congress* of the KMT put forward that 'we should strive to strengthen the systems for pensions, child-rearing, social relief, popular education, and associated measures, which all belong to the Principle of the People's Livelihood.' Therefore,

33 Article 142: National economy shall be based on the Principle of People's Livelihood and shall seek to effect equalization of land ownership and restriction of private capital in order to attain a well-balanced sufficiency in national wealth and people's livelihood.

34 See knowledge graph no. 4 at URL: https://dx.doi.org/10.12946/gplh28.

this article is formulated on the basis of this manifesto and in reference to the foreign constitutions of several modern nations.[35]

In the commentary on this article, three kinds of references – foreign sources, national traditions and KMT doctrines – were cross-referenced to establish a policy paradigm. First, all references converged on a policy-oriented reading of social security. For instance, the principle of social relief, stipulated in several modern countries' constitutions, was treated as a matter of policy to be implemented through both legislation and administration. Similarly, the commentary treated the KMT Manifesto as the ruling party's socioeconomic program. Second, the knowledge system in this commentary was created through cross-translation and interaction among different references. More specifically, the commentators designated modern foreign constitutions as sources or precedents for formulating this article, even as they simultaneously claimed derivation from the KMT's doctrine. Similarly, the commentators linked traditional Confucian elements to the Principle of People's Livelihood to illustrate an ideal prospect for society. Therefore, by weaving a subtle web of various elements, the authors of the 1940 report highlighted the KMT's doctrine and sought to establish its legitimacy by integrating it with Confucianism and with prominent global trends. This commentary thereby reveals – across time and context – the mechanism by which the knowledge system of legislative references was constructed in 1930s and 1940s China.

5.2.1.3 An interpretive framework: The party's doctrine

Besides the commentaries on each provision, the report contained a general introduction to the chapter on National Economy, which provided an interpretive framework not only for the dialogue between the KMT's doctrine and foreign sources, but also for the negotiation with domestic critics regarding doubts as to whether socioeconomic policies should form part of the con-

35 In Chinese: 第128条 老弱病残，无力生活者，国家应予以适当之救济。说明：本条规定公共救济之原则。公共救济，现代各国宪法多有规定。（注一）此种政策之施行，可增进社会福利，保障社会安全，与国家之治乱兴衰，息息相关。故近世之立法与行政，莫不注意于此。[…] 民生主义之社会，应使"老有所终，壮有所用，幼有所长，矜寡孤独废疾者，皆有所养"。（注二）中国国民党第一次全国代表大会宣言云"如养老之制，育儿之制，周恤废疾者之制，普及教育制，有相关而行之性质者，皆当努力以求其实现，凡此皆民生主义所有事也"。故本条即本此言，并参酌近代各国宪法之先例，而为规定。Legislative Yuan (ed.) (1940) 83.

stitution. Moreover, this comprehensive interpretive framework refashioned the KMT's narrative on Chinese revolutionary history and the Chinese political theory of human nature within the global trend of socialism.

> Since World War I, new constitutions have paid more attention to social regulation. Issues such as economic life and public welfare became essential to constitutional design and thought […], for instance, the German Weimar constitution and the new constitution of the Soviet Union. There is a chapter on National Economy in this draft constitution, which is born out of the Principle of People's Livelihood. According to the *Fundamentals of National Reconstruction* (建国大纲), the primary task of society lies in securing the people's livelihood. In his *Preface to the Inaugural Issue of Min Bao* (民报发刊词), Dr Sun Yat-sen (孙中山), as the founder of our nation, said that 'the 20th century will be dominated by the Principle of People's Livelihood.' In the first year of the ROC, the founding father gave lectures on and attached importance to the Principle of People's Livelihood. However, someone was short-sighted and only aimed at overthrowing the Qing Dynasty as well as the establishment of a parliament and responsible cabinet. The founding father highly criticized this opinion and said that 'I would not have stood for revolution if we had not pursued the Principle of People's Livelihood,' which expressed Sun Yat-sen's determination to achieve the goal in light of this principle. The constitution we need at present is the constitution of the Three Principles of the People, and thus the chapter on National Economy, of course, belongs to this constitution. It is indeed a misunderstanding that the regulation of the national economy does not belong to the essential functions of the constitution and thus should not be written into the constitution.[36]

On the one hand, by describing the chapter on National Economy as part of the global turn towards socialism since World War I, the opening lines of this introduction set China alongside Germany and the Soviet Union as parallel cases, in order to allay China's acute anxiety of lagging behind other countries in the context of nation-building. According to this interpretation, while the Weimar Republic and the Soviet Union represented two models – of social reform and revolution, respectively – for other countries to emulate, similar ideas were developed almost simultaneously in China by Sun Yat-sen in two of

36 In Chinese: 自第一次欧战以后，各国新宪法，多注意社会组织，举凡人民之经济生活，公共福利，皆成为宪法上之重要规定。[…] 如德国魏玛宪法，列有经济生活一章，苏联新宪法第一章即明定社会经济之基础。本草案亦设国民经济一章，根据民生主义而为具体之规定。《建国大纲》明定"社会之首要在民生"。国父曾在民报发刊词中云"二十世纪不得不为民生主义之擅场时代也。"民国元年，国父在各处演讲，注重民生主义。当时浅见之士，谓推到满清，建立议会与责任内阁，于斯已足，不必讲民生主义。国父乃力斥其非，谓"如果不讲民生主义，我就不革命了。"可见，国父实现民生主义之决心。[…] 今我国所需之宪法，为三民主义之宪法，则国民经济之宪法，实为当然。有谓国民经济非宪法之重要效用，宪法不必备载，诚属误解。Legislative Yuan (ed.) (1940) 71.

his works: the *Preface to the Inaugural Issue of Min Bao* (民报发刊词), published in 1905, and a series of lectures held in 1911, the founding year of the ROC, in which he emphasized the Principle of People's Livelihood. Therefore, the commentator argued, the chapter on National Economy was not copying foreign models but arose out of independent Chinese developments grounded in the founding father's program of national reconstruction.

By referring to Sun Yat-sen's ideas, the latter half of the quotation not only explicitly reframed the KMT's narrative on Chinese revolutionary history; it also implicitly refashioned conceptions of human nature in Chinese political thought. The chronology is presented as a coherent sequence of revolution, nation-building, and constitution-making. In this regard, Sun's 1905 *Preface* marked the establishment of the revolutionary political party, which fought for a revolution against the Qing Dynasty until the latter's collapse in 1911. Another significant work of Sun Yat-sen mentioned in the quotation was the *Fundamentals of National Reconstruction* (建国大纲), published in 1924. This stood not only for the reorganization of the KMT, but also for the three-stage theory of Chinese revolutionary history from "military rule" (军政) to "political tutelage" (训政) to "constitutional government" (宪政).

The KMT leadership hoped that the 1936 draft constitution would lay the foundation for the transition from the stage of political tutelage to constitutional government. The 1936 draft constitution, as well as the 1947 constitution established on its basis, were formulated in the period of political tutelage (1928–1948), and thus faced the paradox – to use Sun Yat-sen's metaphor – of how pupils still under instruction could become masters of the polity:

> There is no way to avoid facing the lack of knowledge of the Chinese people […]. Moreover, today, China is a republic, but also like a young child who needs to go to school. If it is necessary for young children to have a good teacher at school, the Chinese people, just entering into the Republic of China today, should also be taught by a revolutionary government that has a sense of foresight.[37]

In addition, Sun Yat-sen's above-mentioned theory of the three stages of nation-building was based on a Chinese political theory of human nature,

37 In Chinese: 夫中国人民知识程度之不足，固无可隐讳者 […] 故中国今日之当共和，犹幼童之当入塾读书也。然入私必要有良师益友以教之，而中国人民今日初进共和之治，亦当有先知先觉之革命政府以教之。Sun (1985) 210.

namely the tripartite category of "consciousness": There were people with foresight (先知先觉), those with hindsight (后知后觉), and those without sight (不知不觉). The select few capable of foresight become revolutionary leaders like Sun Yat-sen; those with hindsight could be officials that serve the people by exercising governmental power. The ordinary people, those "without sight," collectively hold ultimate sovereignty but have to be instructed – during the period of tutelage – before they can exercise it fully. Accordingly, in the KMT's discourse, these three strata – Sun Yat-sen (foresight), the KMT/governing officials (hindsight), and the ordinary people (without sight) – corresponded to the three forms of "consciousness." Moreover, the framework implied that a top-down, policy-based approach administered by the state was better suited than a rights-based system of individual autonomy to secure a more equitable distribution of national wealth and thereby guarantee the people's livelihood, as stated in Sun Ke's preface:

> The draft constitution specifically establishes a chapter on the National Economy, which concretizes the two most essential principles of the People's Livelihood: the equalization of land ownership (平均地权) and the restriction of private capital (节制资本) into specific provisions. Therefore, this draft constitution aims to show the spirit of nation-building in the Three Principles of the People, in line with the theory and the thought of the National Revolution. Some people think that the contents formulated in this chapter are administrative guidelines [rather than laws], and that it is therefore not appropriate to include them in the constitution. This kind of opinion ignores the question of People's Livelihood and does not understand the true meaning of the constitution of the Three Principles of the People.[38]

In summary, the three categories of types of "consciousness," the three stages of nation-building, and the KMT's overarching narrative of Chinese revolutionary history intertwined to form a coherent interpretive framework. This framework not only facilitated the seamless integration of foreign legislative sources on socioeconomic issues (primarily from the Weimar Republic and the Soviet Union) but also served as the foundation for developing a new legal paradigm aimed at transforming the rights-based Weimar model into a policy-oriented Chinese approach.

38 In Chinese: 宪法草案关于国民经济特设一章，将民生主义之平均地权、节制资本等重要原则，分别为具体之规定。盖必如此而后始能表现三民主义建国之精神，符合国民革命之理论与思想。有以为此章所定事项，系属行政方针，不宜列入宪法者，此盖忽视民生主义，而未明三民主义宪法之真谛也。Legislative Yuan (ed.) (1940) Sun Ke's Preface, 3.

5.2.2 National fundamental policies: The 1947 Constitution

While the socioeconomic policies were dispersed across several articles in the chapter on National Economy in the 1936 draft constitution, the policy-based model took definite shape as a constitutional category in the 1947 constitution. After World War II, the Political Consultative Conference (政协会议, PCC) convened on January 10, 1946. After negotiations moderated by Zhang Junmai, all parties, especially the Nationalist (KMT) and Communist parties (CPC), reached an agreement of twelve principles for amending the 1936 draft constitution. According to Art. 11 of this agreement, "Fundamental National Policies (基本国策) should be written into the constitution, including national defense, foreign policy, national economy, education and culture, and so on."[39] In line with this agreement, Zhang drafted a distinct chapter entitled "Fundamental National Policies" in a draft prepared in his personal capacity, which later served as the basis for the version prepared by the Political Consultative Conference that, in turn, fed into the 1947 Constitution. During the National Constituent Assembly in November 1946, Sun Ke, chair of the Legislative Yuan, explained the meaning of the newly established category of the Fundamental National Policies in his report to the National Constituent Assembly:

> Chapter 13: Fundamental National Policies. The full text of this chapter is formed by merging the 'National Economy' and 'National Education' chapters of the 1936 draft constitution […]. The motion to establish this chapter took the view that national economy and education fall within the fundamental policies of the state, and national defense and foreign policy are likewise significant issues of such policy. Therefore, in the draft constitution, these four fields are combined into the chapter 'Fundamental National Policies.' […] In this chapter, several articles are of particular importance – for example, Article 134 provides that the nation's army, navy, and air force shall sever ties with political parties so as to safeguard the national interest; Article 135 provides that no political party may use the armed forces as an instrument of partisan struggle […]; [and] Article 136 provides that active-duty military personnel may not concurrently hold civilian office.[40]

39 Chen (1947) 255.

40 In Chinese: 第十三章基本国策，本章全文系由五五宪草中国民经济与教育两章合并而来 […] 制定本章的动议，觉得国民经济与教育属于国家的基本政策，而国防与外交亦为基本政策的重要项目，所以在宪草中将关于国民经济、教育、国防、外交加入基本国策一章。[…] 这一章的条文中，也有几点特别重要，如第134条全国海陆空军脱离党派关系，才能顾到国家的利益。第135条规定任何政党不得利用军队为政争之工具 […] 第136条规定现役军人不得兼任文官。National Assembly Secretariat (1946) 399.

At first glance, the newly established category of Fundamental National Policies appears to be derived from the political nature of the economic and educational provisions. However, the term "policy" was explicitly introduced as a constitutional category, and was further extended to encompass military and diplomatic domains. After World War II, the most severe challenge confronting all parties was the issue of the military. To illustrate the significance of this chapter, therefore, Sun foregrounded national defense rather than the national economy or education. In short, constitutionalizing "policy" as a general category – and placing military, diplomacy, and frontier affairs within it – served to bring pressing practical matters under a unified constitutional framework and to align institutional forms with state capacities required for implementation.

By the time of the PCC's 1946 draft, the constitutional paradigm of Fundamental National Policies had taken shape, resulting in a new, tripartite constitutional architecture: sovereignty, rights, and policies. This architecture reached beyond the earlier focus on economy and education at the state level. Functionally, the "policies" rubric operated as a bridge from the status quo of existing guarantees ("being") to the programmatic pursuit of future goals ("becoming"). In that sense, it signaled continuing social change within an ongoing process of state–society reconstruction.

Although the paradigm of policy was introduced as a distinct constitutional category in the 1946 draft constitution of the PCC, the corresponding chapter on Fundamental National Policies was condensed into 13 provisions setting out the principles. These were organized into four areas: national defense (4 articles), foreign policy (1), national economy (5), and education and culture (3), with the aim of confining policy discretion within the textual and structural stability of the constitution as a whole. However, this highly generalized drafting style, remaining at the abstract level of principles, met with widespread opposition in the National Constituent Assembly held in November and December of 1946. Already before the first reading, 20 proposals on the topic of National Economy were submitted, urging either additional provisions or the creation of a separate chapter devoted solely to National Economy. In addition, Ma Chaojun (马超俊) put forward a widely supported proposal to add a new chapter on "Social Security," to be included within the Fundamental National Policies.[41] Table 17 provides an overview of the relevant proposals.

41 National Assembly Secretariat (1946) 721–723.

Table 17: Summary of Legislative Proposals for the PCC Draft Chapter on Social Security

Issue	Proposal No.	Proposer	Number of Joint Signatures	Abstract
National Economy	6	Tang Qiyu (唐启宇)	103	Add one provision
	21	Wu Chunwu (伍纯武)	23	Add one provision
	63	Liu Zhendong (刘振东)	147	Create a separate chapter on National Economy
	65	Wang Shiying (王世颖)	386	Add one provision
	90	Liang Hancao (梁寒操)	172	Add one provision
	100	Xiao Zheng (萧铮)	125	Create a separate chapter on National Economy
	132	Chen Guojun (陈国钧)	176	Create a separate chapter on National Economy
	138	Zou Shuwen (邹树文)	35	Add seven provisions or create a separate chapter on National Economy
	140	Cheng Xiaogang (程孝刚)	102	Add one provision
	145	Liang Dong (梁栋)	46	Create a separate chapter on National Economy
	170	Wang Xiaolai (王晓籁)	58	Create a separate chapter on National Economy
	179	Wang Xianzhang (王宪章)	21	Create a separate chapter on National Economy
	180	Xue Peiyuan (薛培元)	23	Add one provision
	254	Wang Jie'an (王介庵)	21	Add one provision
	306	Yang Zhonghua (杨仲华)	23	Add six provisions
	316	Gu Chi (顾炽)	25	Add two provisions
	340	Zhao Xuan (赵煊)	24	Add one provision
	363	Qu Zhisheng (曲直生)	20	Create a separate chapter on National Economy
	367	Zhao Qianxing (赵乾兴)	19	Add one provision
	372	Wang Dianping (王甸平)	23	Add three provisions
Social Security	99	Ma Chaojun (马超俊)	542	Add a chapter on Social Security

Therefore, in response to the proposals listed above, the Constitutional Committee not only added further provisions on national economy, drawing on

the draft constitution of 1936, but also subdivided the chapter on Fundamental National Policies into five sections: national defense, foreign affairs, national economy, social security, and education and culture.[42] Regarding socioeconomic issues, the material previously contained in the chapter on National Economy in the 1936 draft constitution was reallocated across two sections of the 1947 Constitution's "Fundamental National Policies" chapter: "National Economy" and "Social Security." This restructuring reflected a new understanding of the relations between state and society and, in turn, shaped the drafters' use of the WRV. Ma Chaojun's proposal makes this clear:

> Constitutions of modern countries generally include basic provisions on social security, especially in the new constitutions promulgated after World War I, in which such clauses are notably detailed. For example, the 1936 Soviet Constitution – whose Chapter I ('The Social System') contains twelve articles – protects the rights of all workers and peasants; their freedoms are further guaranteed in Articles 125 and 126. Germany's Weimar Constitution protects labor interests in Articles 157–165, while Articles 119–122 treat marriage and the family, as well as motherhood and childhood, as priority subjects of social protection. The Peruvian Constitution devotes 22 articles to social security in Chapter IV; the Mexican Constitution contains 30 articles on labor welfare in Chapter VI; similar provisions appear in the constitutions of Lithuania, Spain, and Honduras. Since World War II, social security has been increasingly valued worldwide. The Atlantic Charter's Article 5, for instance, expresses the hope of promoting full economic cooperation among nations so as to advance higher labor standards, economic progress, and social security'. The Declaration of Philadelphia, adopted by the 26th International Labour Conference, likewise sought to extend social security to the whole population. In addition, President Franklin D. Roosevelt's message to Congress on social security set out nine major rights of the people and was consequently praised as a 'new charter of human rights.' From this we can see that national attention to social security has been converging.[43]

42 National Assembly Secretariat (1946) 401, 424, 449, 460.

43 In Chinese: 考近代各国宪法，对于社会安全，莫不有其基本规定。尤以第一次世界大战以后所颁之新宪法，厘定特详。如苏联宪法，开宗明义第一章为社会组织，凡十二条，所有工人农民之权益，均予以保障。另又以第125条，第126条确保其自由。德国韦马宪法自第157条起至165条特别保护劳动利益。其第119条至122条，并将婚姻家族及母性与儿童，认为社会安全之重要对象。秘鲁宪法第四章社会安全所列条文竟达二十二条。墨西哥宪法第六篇劳工福利全文共三十条。此外如立陶宛宪法第十三章，西班牙宪法第三编第二章，洪都拉斯宪法第二十章，均有明确之规定。而自第二次世界大战以来，社会安全，益为世人所重视。大西洋宪章第五条规定"希望促成世界各国经济上之全面合作，以提高劳动标准、经济进步与社会安全。"第二十六届国际劳工会议通过之费城宪章，其基本精神，即欲扩展社会安全，及于全民。美国故罗斯福总统咨送国会关于社会安全建议书，申述人民九大权利，致被誉称为新人权约章。由此可知各国之注意社会安全，已趋一致。National Assembly Secretariat (1946) 925–926.

Ma Chaojun's proposal reflects a deliberately progressive reading of global constitutional developments, explicitly taking into account the new political and legal material emerging after World War II. More significantly, the parallel structure of the sections on National Economy and on Social Security prompted a reinterpretation of both the WRV and the Soviet constitution. Specifically, Ma reallocated cognate provisions from the WRV's "Economic Life" and "Community Life" chapters into the broader rubric of "Social Security," thereby loosening the WRV's original category scheme.

In contrast to the rights-based framework of the WRV, the 1947 Constitution established a policy-oriented model that directly addressed socioeconomic life in China. In particular, the parallel design of the chapters indicated that capital and labor were to be treated and regulated separately. As a result of this categorization, the emphasis shifted not to class conflicts but, first, to the economic development advanced by private capital, and subsequently to social relief for workers, aimed at mitigating the impact of class contradictions on social stability and distributive justice. At the same time, both groups (capital and labor) were directly linked to the state. The chapter on Fundamental National Policies provided the state with policy instruments to govern not only the specific relationship between capital and labor but also the broader, underlying one between society and the state.

5.3 Conclusion

This historical study of translating Weimar in building Chinese social(ist) constitutions has revealed two interdependent and interrelated modes of legal transfers as processes of cultural translation. The first kind of legal translation refers to the spatial transnationalization of normative knowledge. Chinese legislators employed the instrument of "policy" in order to remold the WRV's model. In this approach, a legal paradigm was reframed through comparative legal resources and then embedded within a unified framework of thought, such as Confucianism or the KMT's doctrine of the Three Principles of the People. Chinese conceptions of law and governance had a more profound effect on the construction of legal instruments than the transnational references.

A second, temporal mode of legal translation emerged to forge coherence between long-standing legal traditions and urgent current demands. This temporal perspective, adopted by legislators to align inherited categories

with present exigencies, contributed to both the historicization and canonization of existing categories. By treating policy as a legal tool to regulate socioeconomic life and adjacent domains such as education, welfare, and public administration, the modern transformation of Chinese meritocracy (贤人政治) began to take shape. In essence, the traditional framework for conceptualizing the relationship between the subject/citizen and the state not only guided the complex process of adapting foreign legal knowledge, it also strengthened national legal traditions, thereby presenting them in a modernized form.

Conclusion: Translating Weimar through Space, Time, and Tradition

Differences across cultures inevitably require transcultural legal translation, yet such translation need not entail convergence. Understood as an ongoing dialogue between diverse legal traditions that represent a "larger body of normative information,"[1] the process of legal translation could be envisioned as a reorganization of such traditions – or, in H. Patrick Glenn's phrase, as the massaging of tradition that restructures the connections formed within a particular frame of reference, across space and time.[2]

First and foremost, China's encounter with Weimar unfolded a newly imagined global spatial order that made possible the comparison, adoption, and appropriation of normative information. Specifically, the expansion and collapse of empires in the course of the World Wars and their immediate aftermath intensified China's crises of both external and internal order, prompting it to rethink its place in the world. More broadly, China's long-running engagement with the West (from the 16th century onward) increasingly intensified in the 19th century, yet remained structurally distinct from the metropole–colony dyad that shaped encounters in Latin America (such as between Brazil and Portugal, or Argentina and Spain) or in British South Africa and French West Africa. On the one hand, through multiple channels of cross-linguistic and cultural translation, China connected to different spheres of legal knowledge: English and international law, French and political philosophy, Japanese and legal dogmatics, German and *Staatsrechtslehre*. These pathways prefigured and prepared China's encounter with Weimar. On the other hand, regarding constitutional law, China's choice of the WRV as one of its principal references rested on a comparative view of global constitutions. That view was developed in two ways: first, through the construction of a "constitutional world" in compilations of constitutions;

1 On the concept of legal tradition, see Glenn (2005) 468; Glenn (2014); Duve (2018, 2019).
2 Glenn (2006) 428.

second, through official reports on Chinese constitutional drafts in the 1920s and 1930s that juxtaposed provisions from a variety of different countries' constitutions.[3] As a key reference model, the WRV carried particular weight among Chinese scholars and lawmakers, especially on socioeconomic questions. However, in debates on the constitution as a whole or on specific issues, the WRV was situated within a comparative frame of reference that consisted of a range of diverse foreign constitutions. This frame was the necessary precondition for subsequent comparison, adoption, and appropriation of constitutional knowledge.

Secondly, China interpreted the WRV through a temporal lens. Associations between Chinese historical concepts and contemporary aspirations, on the one hand, and foreign constitutional models, on the other, formed conduits for comprehending and harnessing external templates. Specifically, when encountering unfamiliar, heterogeneous concepts, categories, and systems, translators habitually sought counterparts in China's own historical repositories. Such linkages generated intelligibility and social acceptability, with the understanding that translation necessarily involved transformation rather than perfect equivalence. For instance, the society of Great Harmony as articulated in classic Confucian texts could be read in parallel with 20th-century socialism; likewise, Confucius' and Mencius' normative order of the relation between rich and poor under the Benevolent Government of an "intelligent ruler" resonated with the WRV's social program. Moreover, integrating foreign elements through historical associations not only expanded China's conceptual horizons; it also oriented this amalgam of national history and imported ideas toward the future by deploying evolutionary language, shifting from talking of "historical trends" to "global trajectories." For example, legislators like Zhang Junmai treated the WRV's social reforms as part of a "third wave" of global constitutions, one including China and its nascent constitutions. In essence, recontextualizing foreign knowledge through Chinese historical experience – and, conversely, reading Chinese categories through foreign debates – enabled comprehension and translation across traditions. This, in turn, recast external models as stages in China's own projected constitutional evolution, rendering the adoption

3 Knowledge graph no. 5 comparing the legislative references in the Chinese draft constitutions of 1923 and 1936 is available at: https://dx.doi.org/10.12946/gplh28.

and integration of foreign elements more tenable and justifiable. Therefore, the transcultural dialogue between Self and Other often became a soliloquy with another Self – one situated in the past or imagined the future.

Thirdly, the preceding analysis detailed how the Chinese cultural translation of the WRV went far beyond mere circulation of normative knowledge; rather, it entailed the creative transformation of normative sources. On the one hand, conceptualizing China as a civilization-state rather than a nation-state meant external normative knowledge could be understood and integrated only if decoded through and embedded within China's existing frameworks of reference. This is evident in the actual translation process, both linguistic and legislative, e.g. in the emphasis on "Livelihood" in the 1920s, or on "People's Livelihood" in the 1930s and 1940s. On the other hand, Chinese translators and legislators interpreted constitutional concepts, institutions, and mechanisms through China's traditions, especially the classical conception of the relationship between state, society, and individual. For instance, Hugo Preuß' advocacy of social autonomy within the liberal constitutional order was construed by Zhang Junmai as equivalent to the political duties of traditional scholar-officials according to the Middle Way. Late Qing scholar-officials and Republican political-legal elites – such as Sun Yat-sen and Mao Zedong – shared this orientation. Fundamental values rooted in tradition not only served as tenets for individuals' conduct, shaping understanding, choices, and decisions in their daily lives, but also undergirded the foundations of the political-legal order, influencing the constitutional system's formation and operating mechanisms. Thus, in the socioeconomic domain, the transformation of the WRV's rights-based model into a policy-oriented Chinese model should not be seen as exotic parody, but rather as a creative translation of normative order grounded in China's own traditions. Moreover, whereas fundamental rights often functioned as primary yardstick for constitutional judgment, the paradigm of Fundamental National Policies in Chinese constitutions was oriented toward anticipated future reforms. This forward-looking orientation reflects a core logic of China's constitutional movement in the 20th century: Nation-state building was viewed as an ongoing process and the project of constructing a "project-state" as continuously evolving.[4]

4 On the concept of the project-state, see Maier (2023).

Bibliography

1. Sources

Anschütz, Gerhard (1933), Die Verfassung des Deutschen Reichs vom 11. August 1919. Ein Kommentar für Wissenschaft und Praxis, 14. Aufl., Berlin: Verlag von Georg Stilke

Baoyun 宝鋆等 et al. (eds.) (1979), Chouban Yiwu Shimo (Tongzhi Chao) 筹办夷务始末 (同治朝) [A Collection of Documents on Foreign Affairs], vol. 27, 台北: 文海出版社 Taipei: Wen Hai Press Company

Bibliography (1901a), Oumei Riben Zhengzhi Falü Jingji Cankaoshu Shaojie 欧美日本政治法律经济参考书绍介 [The Introduction to Reference Books of Politics, Law and Economy in Europe, America and Japan], in: Yishu Huibian 译书汇编 [The Compilation of Translated Books], 2,1, Tokyo

Bibliography (1901b), Oumei Riben Zhengzhi Falü Jingji Cankaoshu Shaojie 欧美日本政治法律经济参考书绍介 [The Introduction to Reference Books of Politics, Law and Economy in Europe, America and Japan], in: Yishu Huibian 译书汇编 [The Compilation of Translated Books], 2,2, Tokyo

Billequin, A.A. 毕利干等 et al. (1882), Faguo Lüli 法国律例 [French Lüli], 日本司法省藏版 Ministry of Justice

Bülau, Friedrich (ed.) (1847), Die europäischen Verfassungen seit dem Jahre 1789 bis auf die neueste Zeit, vol. 4, Leipzig: FA Brockhaus

Canghai 沧海 [pseudonym of Li Jiannong 李剑农] (1920), Deyizhi Xin Xianfa Pinglun 德意志新宪法评论 [Review on the German New Constitution], in: Taipingyang 太平洋 [The Pacific Ocean] 2,7

Chen, Xifu 陈锡符, Sa Mengwu 萨孟武 (eds.) (1922), Shijie Xin Xinafa 世界新宪法 [New Constitutions of the World], 上海: 商务印书馆 Shanghai: Commercial Press

Constituent Assembly 宪法会议 (1923), Xianfa Huiyi Gongbao 宪法会议公报 [Constitutional Convention Bulletin] 52

Constituent Assembly 宪法会议 (1923), Xianfa Huiyi Gongbao 宪法会议公报 [Constitutional Convention Bulletin] 53

Constituent Assembly 宪法会议 (1923), Xianfa Huiyi Gongbao 宪法会议公报 [Constitutional Convention Bulletin] 54

Constituent Assembly 宪法会议 (1923), Xianfa Huiyi Gongbao 宪法会议公报 [Constitutional Convention Bulletin] 55

Constituent Assembly 宪法会议 (1923), Xianfa Huiyi Gongbao 宪法会议公报 [Constitutional Convention Bulletin] 56

Constituent Assembly 宪法会议 (1923), Xianfa Huiyi Gongbao 宪法会议公报 [Constitutional Convention Bulletin] 57
Constituent Assembly 宪法会议 (1923), Xianfa Huiyi Gongbao 宪法会议公报 [Constitutional Convention Bulletin] 58
Dai, Hongci 戴鸿慈 (1982), Chushi Jiuguo Riji 出使九国日记 [Diary of the Mission to Nine Countries], 长沙: 湖南人民出版社 Changsha: Hunan People's Publishing House (first ed.: Beijing 1906)
Dai, Hongci 戴鸿慈 (ed.) (1909), Lieguo Zhengyao Xubian 列国政要续编 [The Continuation of the Essence of the Nations], vol. 1, 上海: 商务印书馆 Shanghai: Commercial Press
Dai, Jitao 戴季陶 (1909), Xianfa Gangyao 宪法纲要 [The Outline of the Constitution], in: Sang, Bing 桑兵 et al. (eds.) (2014), Dai Jitao Juan 戴季陶卷 [The Selected Works of Dai Jitao], 北京:中国人民大学出版社 Beijing: China Renmin University Press, 1–23
Deng, Yuyi 邓毓怡 (ed.) (1922), Ouzhan hou Geguo Xianfa 欧战后各国新宪法 [New Constitutions of Postwar Europe], vol. 1, 宪法学会 Association of Constitutional Law
Dennewitz, Bodo (ed.) (1947), Die Verfassungen der modernen Staaten, Bd. 1, Hamburg: Hansischer Gildenverlag
Dennewitz, Bodo (ed.) (1948a), Die Verfassungen der modernen Staaten, Bd. 2, Hamburg: Hansischer Gildenverlag
Dennewitz, Bodo (ed.) (1948b), Die Verfassungen der modernen Staaten, Bd. 3, Hamburg: Hansischer Gildenverlag
Dippel, Horst (2003), Constitutions of the World: 1776 to the Present. Presentation of two Publication Projects, in: Historia Constitucional 4, 437–443
Duan, Fang 端方, Dai Hongci 戴鸿慈 (eds.) (1907), Lieguo Zhengyao 列国政要 [The Essence of European and American Politics], vol. 1, 上海: 商务印书馆 Shanghai: Commercial Press
Ebert is Cheered as He is Sworn In (1919), in: The New York Times, August 23, 1919, 1
Franz, Günther (ed.) (1950), Staatsverfassungen: eine Sammlung wichtiger Verfassungen der Vergangenheit und Gegenwart in Urtext und Übersetzung, München: Oldenbourg
Full Text of the German Republic's Constitution. New Basic Law Adopted by the National Assembly at Weimar on July 31, 1919 and effective Since Aug. 13 (1919), in: The New York Times, September 14, 1919, 6–7
Gen, Yamawaki 山脇玄, Kensuke Imamura 今村研介 (1885), 独逸六法 [German Six Codes], 独逸学協会 Society of German Studies
Iwai, Sonbun 岩井尊闻, Xiong Yuanhan 熊元翰 (2013), Guofaxue 国法学 [Staatsrechtslehre], vol. 1, 上海: 上海人民出版社 Shanghai: Shanghai People's Publishing House
Kakehi, Katsuhiko 筧克彦 (1906), 憲法 [The Constitutional Law], 日本大學發行 Japanese University
Kakehi, Katsuhiko 筧克彦 (1910), 法學通論 [The General Theory of Jurisprudence], 日本大學發行 Japanese University

Kakehi, Katsuhiko 筧克彦, Chen Shixia 陈时夏 (1907), Guofaxue 国法学 [Staatsrechtslehre], 上海: 商务印书馆 Shanghai: Commercial Press
Kakehi, Katsuhiko 筧克彦, Chen Wu 陈武 (1905), Guofaxue 国法学 [Staatsrechtslehre], 汉口: 湖北法政编辑社 Hankou: Hubei Fazheng Bianjishe
Kakehi, Katsuhiko 筧克彦, Xiong Fanyu 熊范舆 (1907), Guofaxue 国法学 [Staatsrechtslehre], 丙午社 Bingwu She
Kakehi, Katsuhiko 筧克彦, Zhou Hongye 周宏业 (1905), Guofaxue 国法学 [Staatsrechtslehre], in: Li, Guilian 李贵连 et al. (eds.) (2015), Fazheng Suchengke Jiangyilu 法政速成科讲义录 [The Lecture Notes of the Intensive Course in Law and Political Science], no. 1 & 6, 桂林: 广西师范大学出版社 Guilin: Guangxi Normal University Press
Kakehi, Katsuhiko 筧克彦, Li Jiaxiang 李家祥 (1907), Xianfa Fanlun 宪法泛论 [The Introduction to the Constitution], 东华书局 Donghua Shuju
Legge, James (1960), The Chinese Classics (vol. 1). Confucian Analects, The Great Learning, and The Doctrine of the Mean, Hong Kong: Hong Kong University Press
Legge, James (1963), I Ching: The Book of Changes, New York: Dover
Legge, James (1970), The Works of Mencius, New York: Dover
Legislative Yuan 立法院编译处 (ed.) (1933), Geguo Xianfa Huibian 各国宪法汇编 [Compilation of State Constitutions], Self-published
Legislative Yuan 立法院宪法初稿审查委员会 (ed.) (1934), Xianfa Caoan Chugao Shencha Yijianshu Zhaiyao Huibian 宪法草案初稿审查意见书摘要汇编 [The Compilation of the Summaries of Proposals on the First Draft Constitution], Self-published
Legislative Yuan 立法院 (ed.) (1940), Zhonghua Minguo Xianfa Caoan Shuomingshu 中华民国宪法草案说明书 [The Interpretation of the Draft Constitution of Republic of China], 台北: 文海出版社 Taipei: Wen Hai Press Company
Li, Jiannong 李剑农 (1922), Deyizhi Xin Xianfa Pinglun 德意志新宪法评论 [Review on the German New Constitution], in: Sichuan Choubei Shengxian Zhoukan 四川筹备省宪周刊 13 [reprint of Canghai (1920)]
Li, Jiannong 李剑农 (1932), Zuijin Sanshinian Zhongguo Zhengzhishi 最近三十年中国政治史 [Chinese Political History in the Last Thirty Years], 上海: 上海太平书店 Shanghai: Taiping Shudian
Liang, Qichao, 梁启超 (1897), Xixue Shumu Biao 西学书目表 [The Bibliography of Western Knowledge] 质学会
Liang, Qichao, 梁启超 (2011), Qingdai Xueshu Gailun 清代学术概论 [Intellectual Trends in the Qing Period] 北京: 中华书局 Beijing : Zhonghua Book Company
Lin, Changmin 林长民 (1923a), Zengjia Shengji Zhang zhi Liyou 增加生计章之理由 [The Reason for Adding the Chapter of the Livelihood], in: Xianfa Huiyi Gongbao 宪法会议公报 [Constitutional Convention Bulletin] 59, 42–49
Lin, Changmin 林长民 (1923b), Shengji Zhang Tiaoxiang Shiyi 生计章条项释义 [The Interpretation of the Chapter on Livelihood], in: Xianfa Huiyi Gongbao 宪法会议公报 [Constitutional Convention Bulletin] 59, 49–74

Lin, Zexu 林则徐 (2002a), Lin Zexu Quanji 林则徐全集 [Complete Works of Lin Zexu], vol. 5, 福州:海峡文艺出版社 Fuzhou: Haixia Publishing House
Lin, Zexu 林则徐 (2002b), Lin Zexu Quanji 林则徐全集 [Complete Works of Lin Zexu], vol. 10, 福州: 海峡文艺出版社 Fuzhou: Haixia Publishing House
Martin, W. A. P. 丁韪良等 et al. (1864), Wanguo Gongfa 万国公法 [Public Law of All Nations / Elements of International Law], 京都崇实馆 Jingdu Chongshiguan
Martin, W. A. P. 丁韪良等 et al. (1877), Gongfa Bianlan 公法便览 [Introduction to Public Law / Introduction to the Study of International Law], 同文馆 Tongwenguan
Masini, Federico (1993), The formation of modern Chinese lexicon and its evolution toward a national language: the period from 1840 to 1898 (Journal of Chinese Linguistics monograph series 6), Berkeley
Minobe, Tatsukichi 美浓部达吉 (1907), 日本国法学 [Japanese Staatsrechtslehre], 东京: 有斐閣 Tokyo: Yuhikaku Publishing
Minobe, Tatsukichi 美濃部達吉 (1922), 欧洲諸国戦後の新憲法 [New Constitutions in European Countries after World War I], 东京: 有斐閣 Tokyo: Yuhikaku Publishing
Minobe, Tatsukichi 美浓部达吉, Jin Minlan 金泯澜 (1910), Guofaxue Jiangyi 国法学讲义 [The Lecture of Staatsrechtslehre], 上海: 商务印书馆 Shanghai: Commercial Press
Mitsukuri, Rinsho 箕作麟祥 (1873), 仏蘭西法律書 [French Law Books], vol. 1, 文部省 Ministry of Education
National Assembly Secretariat 国民大会秘书处 (1946), Guomin Dahui Shilu 国民大会实录 [The Records of National Assembly], Self-published
Nipperdey, Hans Carl (1930), Die Grundrechte und Grundpflichten der Reichsverfassung. Kommentar zum zweiten Teil der Reichsverfassung, Bd. III, Berlin: R. Hobbing
Pölitz, Karl Heinrich Ludwig (ed.) (1832–1833), Die europäischen Verfassungen seit dem Jahre 1789 bis auf die neueste Zeit, 3 Bde., Leipzig: F. A. Brockhaus
Posener, Paul (ed.) (1909), Die Staatsverfassungen des Erdballs, Charlottenburg: Fichtner
Preuss, Hugo (1895), Rudolf von Gneist, in: Müller, Christoph (ed.) (2012), Gesammelte Schriften, vol. 5: Kommunalwissenschaft und Kommunalpolitik, Tübingen: Mohr Siebeck, 461–465
Preuss, Hugo (1918), Volksstaat oder verkehrter Obrigkeitsstaat in: Lehnert, Detlef (ed.) (2008), Gesammelte Schriften, Bd. 4: Politik und Verfassung in der Weimarer Republik, Tübingen: Mohr Siebeck, 73–75
Preuss, Hugo (1925), Die Bedeutung der demokratischen Republik, in: Lehnert, Detlef (ed.) (2008), Gesammelte Schriften, Bd. 4: Politik und Verfassung in der Weimarer Republik, Tübingen: Mohr Siebeck, 286–288
Preuss, Hugo (1928), Reich und Länder. Bruchstücke eines Kommentars zur Verfassung des Deutschen Reiches. Aus dem Nachlaß hg. von Gerhard Anschütz (1928), in: Lehnert, Detlef, Christoph Müller, Dian Schefold (eds.) (2015), Gesammelte Schriften, Bd. 3: Das Verfassungswerk von Weimar, Tübingen: Mohr Siebeck, 299–476

Saalfeld, Friedrich (ed.) (1809–1810), Recueil historique des lois constitutionnelles et des règlements généraux d'administration, publiés en France depuis le commencement de la révolution jusqu'à présent, 2 vols., Göttingen: Jean Fréderic Roewer
Schmitt, Carl (1932), Inhalt und Bedeutung des zweiten Hauptteils der Reichsverfassung, in: Anschütz, Gerhard, Richard Thoma (eds.), Handbuch des Deutschen Staatsrechts, Bd. II, Tübingen: Mohr Siebeck, 572–606
Shen, Jiaben 沈家本 (1904), Shanchu Lüli nei Zhongfa Zhe 删除律例内重法折 [The Memorial of Deleting Heavy Penalties from the Lüli], in: Shen, Jiaben 沈家本 (2015), Jiyi Wencun 寄簃文存 [Collected Works of Jiyi], 上海: 商务印书馆 Shanghai: Commercial Press, 1–5
Shen, Jiaben 沈家本 (1906), Xiuding Falü Qingxing Bingqing Guibing Fabu Daliyuan Huitong Banli Zhe 修订法律情形并请归并法部大理院会同办理折 [The Memorial of Reporting the Situation of Legal Revision and Applying for the Cooperative Work between the Ministry of the Law and the Daliyuan], in: Gugong Bowuyuan Ming-Qing Dangan Bu 故宫博物院明清档案部 (ed.) (1979), Qingmo Choubei Lixian Dangan Shiliao 清末筹备立宪档案史料 [Archival Sources on the Preparations for Constitutional Government in the Late Qing], vol. 2, 北京: 中华书局 Beijing: Zhonghua Book Company, 837–839
Shen, Jiaben 沈家本 (1909a), Xiuding Falü Dachen Chouban Shiyi Zhe bing Dan 修订法律大臣奏筹办事宜折并单 [The Report and Detailed List by the Minister of Legal Revision], in: 政治官报 Government Gazette 471
Shen, Jiaben 沈家本 (1909b), Xiuding Falüguan Chouban Shiyi Zhe bing Dan 修订法律馆奏筹办事宜折并单 [The Report and Detailed List by the Office for Legal Revision], in: 政治官报 Government Gazette 798
Shen, Jiaben 沈家本 (2015), Caipan Fangwenlu Xu 裁判访问录序 [Preface to the Interview Record of Judges], in: Shen, Jiaben 沈家本 (2015), Jiyi Wencun 寄簃文存 [Collected Works of Jiyi], 上海: 商务印书馆 Shanghai: Commercial Press, 204–207
Sun, Yat-sen 孙中山 (1984), Sun Zhongshan Quanji 孙中山全集 [The Complete Works of Sun Yat-sen], vol. 3, 北京: 中华书局 Beijing: Zhonghua Book Company
Sun, Yat-sen 孙中山 (1985), Sun Zhongshan Quanji 孙中山全集 [The Complete Works of Sun Yat-sen], vol. 6, 北京: 中华书局 Beijing: Zhonghua Book Company
Verhandlungen der verfassunggebenden Deutschen Nationalversammlung (1920), Bd. 326: Stenographische Berichte. Von der 1. Sitzung am 6. Februar 1919 bis zur 26. Sitzung am 12. März 1919, Berlin: Norddeutsche Buchdruckerei und Verlags-Anstalt
Verhandlungen der verfassunggebenden Deutschen Nationalversammlung (1920), Bd. 328: Stenographische Berichte. Von der 53. Sitzung am 10. Juli 1919 bis zur 70. Sitzung am 30. Juli 1919, Berlin: Norddeutsche Buchdruckerei und Verlags-Anstalt
Verhandlungen der verfassunggebenden Deutschen Nationalversammlung (1920), Bd. 336: Anlagen zu den Stenographischen Berichten. Nr. 391: Bericht des Verfassungsausschusses, Berlin: Julius Gittenfeld

Wang, Yitang 王揖唐 (ed.) (1922), Shijie Zuixin Xianfa 世界最新宪法 [The Latest Constitutions in the World], 译者刊 Self-published
Wei, Yuan 魏源 (2005), Weiyuan Quanji 魏源全集 [Complete Works of Wei Yuan], vol. 7, 长沙: 岳麓书社 Changsha: Yuelu Publishing House
Wei, Yungong 魏允恭 (ed.) (1905), Jiangnan Zhizaoju Ji 江南制造局记 [Records of Jiangnan manufacturing Bureau], vol. 2, 上海: 文保书局 Shanghai: Wenbao Publishing House
Yu An 愚庵 (ed.) (1921), Shengxian Jilan 省宪辑览 [A Collection of Provincial Constitutions], 自治学会 Society for the Study of Self-Government
Zhang, Junmai 君劢 (1920a), Deguo Xingonghe Xianfa Pinglun 德国新共和宪法评论 [Review on German New Republic Constitution], in: 解放与改造 Jiefang yu Gaizao 2,9
Zhang, Junmai 君劢 (1920b), Deguo Xingonghe Xianfa Pinglun (Er Xu) 德国新共和宪法评论 (二续) [Review on German New Republic Constitution (continuation)], in: 解放与改造 Jiefang yu Gaizao 2,12
Zhang, Junmai 张君劢 (1922), Xin Deguo Shehui Minzhu Zhengxiang Ji 新德国社会民主政象记 [Comments on Social Democracy of New Germany], 上海: 商务印书馆 Shanghai: Commercial Press
Zhang, Junmai 君劢 (1930), Deguo Xin Xianfa Qicaozhe Bolüsi zhi Guojia Guannian jiqi zai Deguo Zhengzhi Xueshuo shang zhi Diwei 德国新宪法起草者柏吕斯之国家观念及其在德国政治学说上之地位 [Hugo Preuß' Idea of State and His Status in the History of German Political Theory], in: 东方杂志 The Eastern Miscellany 27,24
Zhang, Junmai 君劢, Zhang Dongsun 东荪 (1920), Zhongguo Zhi Qiantu: Deguo hu? Eguo hu? 中国之前途: 德国乎? 俄国乎? [The Prospect of China: Germany? Russia?], in: 解放与改造 Jiefang yu Gaizao 2,14
Ziegler, Wilhelm (1932), Die deutsche Nationalversammlung 1919/1920 und ihr Verfassungswerk, Berlin: Zentralverlag
Zuchardt, Karl (ed.) (1919), Moderne Staatsverfassungen: ihr Wortlaut und ihr Wesen, Leipzig: K. F. Koehler

2. Literature

Albrecht, Klaus (1970), Hugo Sinzheimer in der Weimarer Nationalversammlung: Sein Beitrag zum wirtschaftlichen Rätesystem und zu den arbeits- und wirtschaftsrechtlichen Grundrechten der Reichsverfassung, Dissertation, Johann Wolfgang Goethe-Universität zu Frankfurt am Main
Anderson, Benedict (2006), Imagined Communities: Reflections on the Origin and Spread of Nationalism, New York: Verso Books
Anderson, David L. (1977), Anson Burlingame: American Architect of the Cooperative Policy in China, 1861–1871, in: Diplomatic History 1,3, 239–256, https://doi.org/10.1111/j.1467-7709.1977.tb00240.x (last accessed 01.12.2025)

Bastid-Bruguière, Marianne 巴蒂斯 (1997), Zhongguo Jindai Guojia Guannian Yuanyuan: Guanyu Bolunzhili Guojialun de Fanyi 中国近代国家观念渊源: 关于伯伦知理《国家论》的翻译 [The Conceptual Sources of Modern State in China: A Study on the Translation of Bluntschli's Allgemeine Staatslehre], in: 近代史研究 Modern Chinese History Studies 4, 221–232

Beijing Library (ed.) (1990), Minguo Shiqi Zongshumu 1911–1949: Falü 民国时期总书目 1911–1949: 法律 [The National Bibliography in the Period of the Republic of China 1911–1949: Law], 北京: 书目文献出版社 Beijing: Shumu Wenxian Press

Bendix, Karsten (2002), Die Arbeit des Verfassungsausschusses. Achter Ausschuss der verfassungsgebenden Nationalversammlung von Weimar, Frankfurt am Main: Peter Lang

Bollmeyer, Heiko (2007), Der steinige Weg zur Demokratie. Die Weimarer Nationalversammlung zwischen Kaiserreich und Republik, Frankfurt am Main: Campus

Carrai, Maria Adele (2019), Sovereignty in China: A Genealogy of a Concept Since 1840, Cambridge: Cambridge University Press, https://doi.org/10.1017/9781108564861 (last accessed 01.12.2025)

Chai, Songxia 柴松霞 (2011), Qingmo Wudachen dui Deguo Xianzheng de Kaocha 清末五大臣对德国宪政的考察 [The Five Ministers' Investigation into Germany in Late Qing Dynasty], in: 政法论坛 Tribune of Political Science and Law 1, 133–141

Chang, Hsin-pao (1964), Commissioner Lin and the Opium War, Cambridge (MA): Harvard University Press

Chen, Li (2015), Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics, New York: Columbia University Press, https://doi.org/10.7312/chen17374 (last accessed 01.12.2025)

Chen, Ruxuan 陈茹玄 (1947), Zengding Zhongguo Xianfashi 增订中国宪法史 [The Revised Edition of Chinese Constitutional History], 上海: 世界书局 Shanghai: The World Book

Chen, Yi 陈颐 (2013), Hanyi Liufa Xu 汉译六法序 [Preface to Chinese Translations of Six Codes], in: Li, Xiuqing 李秀清 et al. (eds.), Hanyi Liufa 汉译六法 [Chinese Translations of Six Codes], 上海: 上海人民出版社 Shanghai: Shanghai People's Publishing House

Chen, Yu 陈煜 (2009), Qingmo Xinzheng zhong de Xiuding Falüguan 清末新政中的修订法律馆 [The Office for Legal Revision in Late Qing Reforms], 北京.: 中国政法大学出版社 Beijing: China University of Political Science and Law Press

Coffey, Donal K. (2019), The Influence of the Weimar Constitution on the Common Law World, in: Rechtsgeschichte – Legal History Rg 27, 222–230, https://doi.org/10.12946/rg27/222-230 (last accessed 01.12.2025)

Cohen, Paul A. (1984), Discovering History in China: American Historical Writing on the Recent Chinese Past, New York: Columbia University Press

Covell, Ralph (1978), W. A. P. Martin: Pioneer of Progress in China, Washington, D.C.: Christian University Press

Darian-Smith, Eve, Philip C. McCarty (2017), The Global Turn: Theories, Research Designs, and Methods for Global Studies, New York: University of California Press

Deng, Lilan 邓丽兰 (2008), Weima Xianfa zai Zhongguo de Chuanbo 魏玛宪法在中国的传播 [Weimar Constitution and Transformation of the Constitutional Movement in the Republic of China 1912–1949], in: 中国政法大学学报 Journal of CUPL 3, 25–31

Dreier, Horst (2018), Grundrechtsrepublik Weimar, in: idem / Waldhoff (eds.), 175–194, https://doi.org/10.17104/9783406726774-175 (last accessed 01.12.2025)

Dreier, Horst, Christian Waldhoff (eds.) (2018), Das Wagnis der Demokratie: Eine Anatomie der Weimarer Reichsverfassung, München: C. H. Beck

Duve, Thomas (2014), European Legal History – Concepts, Methods, Challenges, in: idem (ed.), Entanglements in Legal History: Conceptual Approaches, Frankfurt am Main: Max Planck Institute for European Legal History, 3–25

Duve, Thomas (2016), Transnationalization of Law and Legal Scholarship: Intellectual and Institutional Challenges, in: International Journal of Legal Information 44,1, 28–34, https://doi.org/10.1017/jli.2016.4 (last accessed 01.12.2025)

Duve, Thomas (2017), Global Legal History: A Methodological Approach, in: Oxford Handbooks Topics in Law (online edn, Oxford Academic, 2 May 2016), https://doi.org/10.1093/oxfordhb/9780199935352.013.25 (last accessed 01.12.2025)

Duve, Thomas (2018), Legal Traditions: A Dialogue Between Comparative Law and Comparative Legal History, in: Comparative Legal History 1, 15–33, https://doi.org/10.1080/2049677X.2018.1469271 (last accessed 01.12.2025)

Duve, Thomas (2019), Pragmatic Normative Literature and the Production of Normative Knowledge in the Early Modern Iberian Empires in the 16th–17th Centuries, Max Planck Institute for European Legal History Research Paper Series 2019–02, 1–32, https://doi.org/10.1163/9789004425736_002 (last accessed 01.12.2025)

Duve, Thomas, Fupeng Li (2019), Translating Weimar. Introductory Remarks, in: Rechtsgeschichte – Legal History Rg 27, 174–175, https://doi.org/10.12946/rg27/174-175 (last accessed 01.12.2025)

Elliott, M.C. 欧立德 (2014), Chuantong Zhongguo shi Yige Diguo ma? 传统中国是一个帝国吗? [Is the Traditional China An Empire?], in: 读书 Dushu 1, 29–40

Fairbank, John K., Merle Goldman (1992), China: A New History, Second Enlarged Edition (2006), Cambridge: The Belknap Press of Harvard University Press, https://doi.org/10.4159/9780674036659 (last accessed 01.12.2025)

Farquhar, Norma (1954), W. A. P. Martin and the Westernization of China. M. A. thesis. Indiana University

Foljanty, Lena (2015), Legal Transfers as Processes of Cultural Translation: On the Consequences of a Metaphor, Max Planck Institute for European Legal History Research Paper Series 2015–09, 1–19

Fu, Deyuan 傅德元 (2013), Ding Weiliang yu Jindai Zhongxi Wenhua Jiaoliu 丁韪良与近代中西文化交流 [William A. P. Martin and Chinese-Western Cultural Ex-

changes in Modern Chinese History], 台北: 台大出版中心 Taipei: National Taiwan University Press
Glenn, H.P. (2005), Transnational Common Laws, in: Fordham International Law Journal 3, 457–471
Glenn, H.P. (2006), Comparative Legal Families and Comparative Legal Traditions, in: Reimann, Mathias, Reinhard Zimmermann (eds.), The Oxford Handbook of Comparative Law, Oxford: Oxford University Press, 421–440, https://doi.org/10.1093/oxfordhb/9780199296064.013.0013 (last accessed 01.12.2025)
Glenn, H.P. (2014), Legal Traditions of the World: Sustainable Diversity in Law, Oxford: Oxford University Press, https://doi.org/10.1093/he/9780199669837.001.0001 (last accessed 01.12.2025)
Grimm, Dieter (2012), Types of Constitutions, in: Rosenfeld, Michel, András Sajó (eds.), The Oxford Handbook of Comparative Constitutional Law, Oxford: Oxford University Press, 98–132, https://doi.org/10.1093/oxfordhb/9780199578610.013.0006 (last accessed 01.12.2025)
Gusy, Christoph (1993), Die Grundrechte in der Weimarer Republik, in: Zeitschrift für Neuere Rechtsgeschichte 18, 163–183
Gusy, Christoph (1994), Die Entstehung der Weimarer Reichsverfassung, in: Juristenzeitung 49,15/16, 753–763
Gusy, Christoph (1997), Die Weimarer Reichsverfassung, Tübingen: Mohr Siebeck
Gusy, Christoph (2016), Die Weimarer Verfassung zwischen Überforderung und Herausforderung, in: Der Staat. Zeitschrift für Staatslehre und Verfassungsgeschichte, deutsches und europäisches öffentliches Recht 55,3, 291–318, https://doi.org/10.3790/staa.55.3.291 (last accessed 01.12.2025)
Gusy, Christoph (2018), 100 Jahre Weimarer Verfassung, Tübingen: Mohr Siebeck, https://doi.org/10.1628/978-3-16-156319-5 (last accessed 01.12.2025)
Han, Qin 韩琴 (2008), Lun Lin Zexu Zhaiyi Guojifa de Xuanzexing 论林则徐摘译国际法的选择性 [On the Reasons of Lin Ze Xu's Selection Over the Translation of International Laws], in: 福建师范大学学报 Journal of Fujian Normal University 4, 127–135
Hense, Thomas (2002), Konrad Beyerle: Sein Wirken für Wissenschaft und Politik in Kaiserreich und Weimarer Republik, Frankfurt am Main: Peter Lang
Herrera, Carlos M. (2019), Weimar, the South American Way, in: Rechtsgeschichte – Legal History Rg 27, 184–194, https://doi.org/10.12946/rg27/184-194 (last accessed 01.12.2025)
Hu, Qizhu 胡其柱, Jia Yongmei 贾永梅 (2010), Fanyi de Zhengzhi: Ma Ruhan de Diyici Yapian Zhanzheng 翻译的政治: 马儒翰的第一次鸦片战争 [The Politics of Translation: J.R. Morrison and the First Opium War], in: 浙江社会科学 Zhejiang Social Sciences 4, 86–101
Huang, Qintang 黄琴唐 (2013), Proofreader's Preface 点校前言, in: Translation Department of Commercial Press 商务印书馆编译所: Riben Liufa 日本六法 [Japanese Six Codes], 上海: 上海人民出版社 Shanghai: Shanghai People's Publishing House, 1–13
Hunter, William C. (1885), Bits of old China, London: K. Paul, Trench

Jansen, Nils (2006), Comparative Law and Comparative Knowledge, in: Reimann, Mathias, Reinhard Zimmermann (eds.), The Oxford Handbook of Comparative Law, Oxford: Oxford University Press, 305–338, https://doi.org/10.1093/oxfordhb/9780199296064.013.0010 (last accessed 01.12.2025)

Jeans, Roger B. (1997), Democracy and Socialism in Republican China: The Politics of Zhang Junmai (Carsun Chang), 1906–1941, Lanham: Rowman & Littlefield

Jenco, Leigh (2015), Changing Referents: Learning Across Space and Time in China and the West, Oxford: Oxford University Press, https://doi.org/10.1093/acprof:oso/9780190263812.001.0001 (last accessed 01.12.2025)

Jing, Zhiren 荆知仁 (1985), Zhongguo Lixian Shi 中国立宪史, [The History of Chinese Constitutionalism], 台北: 台湾联经出版事业公司 Taipei: Linking Publishing

Kahn-Freund, Otto (ed.) (1981), Labour Law and Politics in the Weimar Republic, Oxford: Basil Blackwell

Karl, Rebecca E. (2017), The Magic of Concepts: History and the Economic in Twentieth-century China, Durham: Duke University Press, https://doi.org/10.1515/9780822373322 (last accessed 01.12.2025)

Kempen, Otto Ernst (2017), Hugo Sinzheimer: Architekt des kollektiven Arbeitsrechts und Verfassungspolitiker, Frankfurt am Main: Societäts-Verlag

Kennedy, Duncan (2006), Three Globalizations of Law and Legal Thought: 1850–2000, in: Trubek, David M. et al. (eds.), The New Law and Economic Development. A Critical Appraisal, Cambridge: Cambridge University Press, 19–73, https://doi.org/10.1017/CBO9780511754425.002 (last accessed 01.12.2025)

Kroll, Stefan (2012), Normgenese durch Re-Interpretation: China und das europäische Völkerrecht im 19. und 20. Jahrhundert, Baden-Baden: Nomos, https://doi.org/10.5771/9783845236506 (last accessed 01.12.2025)

Latour, Bruno, Peter Weibel (eds.) (2005), Making Things Public: Atmosphere of Democracy, Karlsruhe: ZKM, Center for Art and Media Karlsruhe

Laufs, Adolf (1977), Konrad Beyerle: Leben und Werk, in: Bauer, Clemens et al. (eds.), Gestalten und Probleme katholischer Rechts- und Soziallehre, Paderborn: Schöningh, 21–54

Lei, Yong (2010), Auf der Suche nach dem modernen Staat: Die Einflüsse der allgemeinen Staatslehre Johann Caspar Bluntschlis auf das Staatsdenken Liang Qichaos, Frankfurt am Main: Peter Lang

Li, Fupeng (2019), Becoming Policy. Cultural Translation of the Weimar Constitution in China (1919–1949), in: Rechtsgeschichte – Legal History Rg 27, 207–221, https://doi.org/10.12946/rg27/207-221 (last accessed 01.12.2025)

Lin, Yongyu 林永俣 (1985), Lun Lin Zexu Zuzhi de Duoyi Gongzuo 论林则徐组织的迻译工作 [A Research on Lin Zexu's Translation Team], in: History Institute of Fujian Academy of Social Sciences 福建社会科学院历史所 (ed.), Lin Zexu yu Yapian Zhanzheng Lunwenji 林则徐与鸦片战争论文集, 福州: 福建人民出版社 Fuzhou: Fujian People's Publishing House

Lindt, Andreas (1973), Friedrich Naumann und Max Weber: Theologie und Soziologie im wilhelminischen Deutschland, München: Christian Kaiser

Liu, Ducai 刘笃才 (2012), Lülingfa Tixi xiang Lülifa Tixi de Zhuanghua 律令法体系向律例法体系的转化 [The Transfer from the System of Statutes and Decrees to the System of Statutes and Cases], in: 法学研究 Chinese Journal of Law 6, 178–187

Liu, Lydia H. (1995), Translingual Practice: Literature, National Culture, and Translated Modernity – China, 1900–1937, Redwood City: Stanford University Press, https://doi.org/10.1515/9781503615755 (last accessed 01.12.2025)

Liu, Lydia H. (1999), Legislating the Universal: The Circulation of International Law in the Nineteenth Century, in: eadem (ed.), Tokens of Exchange: The Problem of Translation in Global Circulations, Durham: Duke University Press, 127–164, https://doi.org/10.1215/9780822381129-005 (last accessed 01.12.2025)

Liu, Lydia H. (2004), The Clash of Empires: The Invention of China in Modern World Making, Cambridge: Harvard University Press

Maier, Charles S. (2023), The Project-State and Its Rivals: A New History of the Twentieth and Twenty-First Centuries, Cambridge: Harvard University Press, https://doi.org/10.4159/9780674293175 (last accessed 01.12.2025)

Moniz Bandeira, Egas (2022), Creating a Constitutional Absolute Monarchy: Li Jiaju, Dashou, and Late Qing Interpretations of the Japanese Parliament, in: The International History Review 45,2, 243–259, https://doi.org/10.1080/07075332.2022.2139282 (last accessed 01.12.2025)

Nie, Xin (2019), The Chinese Constitutional Social Welfare Articles Before 1949 – Comparison with the Weimar Constitution, in: Rechtsgeschichte – Legal History Rg 27, 195–206, https://doi.org/10.12946/rg27/195-206 (last accessed 01.12.2025)

Note (2019), Dr. Wu's Constitution, in: Harvard Law Review 132,8, 2300–2321

Okada, Asatarou 冈田朝太郎, Xiong, Yuanhan 熊元翰 (2013), Faxu Tonglun 法学通论 [The General Theory of Jurisprudence], 上海: 上海人民出版社 Shanghai: Shanghai Peoples's Publishing House

Osterhammel, Jürgen (2009), Die Verwandlung der Welt: Eine Geschichte des 19. Jahrhunderts, München: C.H. Beck, https://doi.org/10.17104/9783406615016 (last accessed 01.12.2025)

Pan, Chong 潘崇 (2014), Qingmo Wudachen Chuyang Kaocha Yanjiu 清末五大臣出洋考察研究 [Research on the Five Imperial Commissioners Investigating Abroad in the Late Qing Dynasty], 北京: 中国社会科学出版社 Beijing: China Social Sciences Press

Pauly, Walter (2004), Grundrechtslaboratorium Weimar: Zur Entstehung des zweiten Hauptteils der Reichsverfassung vom 14. August 1919, Tübingen: Mohr Siebeck

Platt, Stephen R. (2012), Imperial Twilight: The Opium War and the End of China's Last Golden Age, London: Penguin

Preller, Ludwig (1949), Sozialpolitik in der Weimarer Republik, Stuttgart: Franz Mittelbach Verlage

Schrecker, John (2010), For the Equality of Men – For the Equality of Nations: Anson Burlingame and China's First Embassy to the United States, 1868, in: Journal of American-East Asian Relations 17,1, 9–34, https://doi.org/10.1163/187656110X523717 (last accessed 01.12.2025)

Siedentop, Larry (2014), Inventing the Individual: The Origins of Western Liberalism, Cambridge: Harvard University Press, https://doi.org/10.4159/9780674736245 (last accessed 01.12.2025)
Stolleis, Michael (2014), History of Social Law in Germany, Berlin: Springer, https://doi.org/10.1007/978-3-642-38454-7 (last accessed 01.12.2025)
Stolleis, Michael (2017), Geschichte des öffentlichen Rechts in Deutschland, Bd. 2: Staatsrechtslehre und Verwaltungswissenschaft 1800–1914, München: C.H. Beck
Stolleis, Michael (2018), Die soziale Programmatik der Weimarer Reichsverfassung, in: Dreier / Waldhoff (eds.), 195–218, https://doi.org/10.17104/9783406726774-195 (last accessed 01.12.2025)
Sun, Hongyun 孙宏云 (2004), Wang jingwei, Liang Qichao Geming Lunzhan de Zhengzhixue Beijing 汪精卫、梁启超"革命"论战的政治学背景 [The Political Science as Knowledge Background for Debates on Revolution between Wang Jiangwei and Liang Qichao], in: 历史研究 Historical Research 5, 69–83
Sun, Qian 孙谦, Han Dayuan 韩大元 (eds.) (2012), Shijie Geguo Xianfa 世界各国宪法 [The Constitutions of the World], 北京: 中国检察出版社 Beijing: China Procuratorial Press
Svarverud, Rune (2000), Jus Gentium Sinense: The Earliest Chinese Translation of International Law with some Considerations regarding the Compilation of Haiguo tuzhi, in: Acta Orientalia 61, 203–237
Svarverud, Rune (2007), International Law as a World Order in Late Imperial China: Translation, Reception and Discourse. 1847–1911, Leiden: Brill, https://doi.org/10.1163/ej.9789004160194.i-322 (last accessed 01.12.2025)
Svarverud, Rune (2011), Re-constructing East Asia: International Law as Intercultural Process in Late Qing China, in: Inter-Asia Cultural Studies 12,2, 306–318, https://doi.org/10.1080/14649373.2011.554656 (last accessed 01.12.2025)
Taga, Akigorou 多賀秋五郎 (1972), 近代中国教育史资料 清末编 [Materials on the History of Chinese Education. Late Qing Dynasty], 日本学术振兴会 The Japan Society for the Promotion of Science
Teng, Ssu-yü, John King Fairbank (1979), China's Response to the West: A Documentary Survey, 1839–1923, Cambridge: Harvard University Press
Theiner, Peter (1983), Sozialer Liberalismus und deutsche Weltpolitik: Friedrich Naumann im Wilhelmischen Deutschland (1860–1919), Baden-Baden: Nomos
Thornhill, Chris (2016), The Constitutionalization of Labour Law and the Crisis of National Democracy in: Kjaer, Poul F., Niklas Olsen (eds.), Critical Theories of Crisis in Europe: From Weimar to the Euro, London: Rowman & Littlefield, 89–106, https://doi.org/10.5040/9798216219378.ch-006 (last accessed 01.12.2025)
Tian, Tao 田涛, Li Zhuhuan 李祝环 (2000), Qingmo Fanyi Waiguo Faxue Shuji Pingshu 清末翻译外国法学书籍评述 [A Overview on the Translation of Foreign Legal Books in Late Qing Dynasty], in: 中外法学 Peking University Law Journal 12,3, 355–371

Translation Department of Nanyang College et al. 南洋公学译书院等 (2007), Xinyi Riben Fagui Daquan 新译日本法规大全 [The New Translation of Japanese Laws and Regulations], 上海: 商务印书馆 Shanghai: The Commercial Press

Vismann, Cornelia (2008), Akten. Medientechnik und Recht. Englisch translation by Geoffrey Winthrop-Young: Files: Law and Media Technology, Stanford (CA): Stanford University Press

Vita, Leticia (2019), Weimar in Argentina: A Transnational Analysis of the 1949 Constitutional Reform, in: Rechtsgeschichte – Legal History Rg 27, 176–183, https://doi.org/10.12946/rg27/176-183 (last accessed 01.12.2025)

Völtzer, Friedrich (1992), Der Sozialstaatsgedanke in der Weimarer Reichsverfassung, Frankfurt am Main: Peter Lang

vom Bruch, Rüdiger (ed.) (2000), Friedrich Naumann in seiner Zeit, Berlin: Walter de Gruyter, https://doi.org/10.1515/9783110800531 (last accessed 01.12.2025)

Wagner, Andreas, Fupeng Li (2020), rg-mpg-de/fupeng: Citation Network Visualisation of two Drafts (1923 and 1936) of the Chinese Constitution (Version v1.0). Zenodo

Wang, Jian 王健 (2001), Goutong Liangge Shijie de Falü Yiyi: Wanqing Xifangfa de Shuru yu Falü Xinci Chutan 沟通两个世界的法律意义: 晚清西方法的输入与法律新词初探 [Communicating Legal Meaning between Two Different Worlds. The Introduction of Western Laws and the Emergence of New Legal Terms in the Late Qing], 北京: 中国政法大学出版社 Beijing: China University of Political Science and Law Press

Wang, Weijian 王维俭 (1985), Lin Zexu Fanyi Xifang Guojifa Zhuzuo Kaolue 林则徐翻译西方国际法著作考略 [A Study on Translating Western International Works led by Lin Zexu], in: 中山大学学报 Journal of Sun Yat-sen University 1, 58–67

Wu, Jingxiong 吴经熊, Huang Gongjue 黄公觉 (1937), Zhongguo Zhixian Shi 中国制宪史, [The History of Chinese Constitutionalism], 上海: 商务印书馆 Shanghai: The Commercial Press

Wu, Zongci 吴宗慈 (1988), Zhonghua Minguo Xianfashi Houbian 中华民国宪法史后编 [Supplement to Constitutional History of Republic of China], 台北: 文海出版社 Taipei: Wen Hai Press Company

Zacher, Hans F. (2013), Social Policy in the Federal Republic of Germany. The Constitution of the Social, Berlin: Springer, https://doi.org/10.1007/978-3-642-22525-3 (last accessed 01.12.2025)

Zhao, Tingyang (2006), Rethinking Empire from a Chinese Concept All-under-Heaven (Tian-xia), in: Social Identities 12,1, 29–41, https://doi.org/10.1080/13504630600555559 (last accessed 01.12.2025)

Zhu, Fuhui 朱福惠, Wang Jianxue 王建学 (eds.) (2012), Shijie Geguo Xianfa Wenben Huibian 世界各国宪法文本汇编 [The Compilation of Constitution Texts of the World], 厦门: 厦门大学出版社 Xiamen: Xiamen University Press

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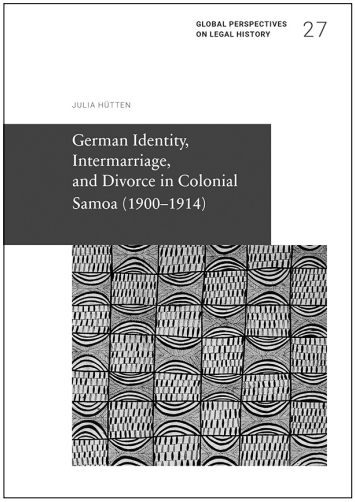

Julia Hütten

German Identity, Intermarriage and Divorce in Colonial Samoa (1900–1914)

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