

LIBERALISM, CULTURAL PARTICULARISM, AND THE RULE OF LAW IN MODERN EAST ASIA: THE ANTI-CONFUCIAN ESSENTIALISMS OF CHEN DUXIU AND FUKUZAWA YUKICHI COMPARED

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How and why are universalist modes of political thought transformed into culturally essentialist and exclusionary practices of governance and law? This article considers this question by analyzing the interaction between Confucianism and liberalism in East Asia. It argues that liberalism, particularly as it was used in attacking Confucianism, was instrumental in embedding ideas of cultural particularism and cultural essentialism in the emergence of modern political thought and law in both China and Japan. Both Confucianism and liberalism are self-imagined as universalist traditions, theoretically applicable to all global societies. Yet in practice both have regularly been defined in culturally determined, culturally exclusivist terms: Confucianism as “Chinese,” liberalism as “British” or “Western.” The meeting of Confucian and liberal visions of universalism and globalism in nineteenth-century East Asia provides an intriguing case study for considering the interaction between universalism and cultural exclusivism. This article focuses on the role of nineteenth-century global liberalism in attacks upon the previous Confucian order in East Asia, demonstrating the complicity of liberalism in new, culturally essentialist and particularist constructions of governance and law in both China and Japan.

We must adhere to the particularity of the Chinese socialist legal system . . . and firmly resist the influence of erroneous Western ideas and opinions.

Zhou Qiang, chief justice of the Supreme Peoples’ Court (25 Feb. 2015)¹

¹ As reported in the *Peoples’ Daily* and online Chinese state news at http://news.china.com.cn/2015-02/26/content_34888966.htm, accessed 9 Feb. 2017.

How and why are universalist modes of political thought transformed into culturally essentialist and exclusionary practices of governance and law? This article considers this question by analyzing the interaction between Confucianism and liberalism in East Asia. I argue that liberalism, particularly as it was used in confronting Confucianism, was instrumental in embedding ideas of cultural particularism and cultural essentialism in the emergence of modern political thought and law in both China and Japan. Despite sharing an inherently universalist epistemology, in practice both liberalism and Confucianism have regularly been defined in culturally determined, culturally exclusivist terms: Confucianism as “Chinese,” liberalism as “British” or “Western.”² The “meeting” of Confucian and liberal visions of universalism and globalism in nineteenth-century East Asia, and the continuing interaction between the two, provide an intriguing case study of a relatively long-term interaction between two comparable worldviews occupying the same political and conceptual spaces.³

The article will, first, establish that Confucianism and liberalism initially functioned together as a shared vision of universalist politics and law during the early conceptualization of modern Western statecraft in mid-nineteenth-century Japan and China. Second, it will analyze how Confucian and liberal visions of universalism were then put into conflict with each other in these same two countries in the later nineteenth and early twentieth centuries. This process occurred under the influence of social practices of law, which mediated in the conflict between modern empires in East Asia—including, notably, the unequal treaties imposed upon China and Japan by the Western powers. Respective Chinese and Japanese cultural reformulations of liberal political thought, however, also ultimately adopted culturally essentialist and exclusivist constructions of political liberalism and law, similar to those projected upon the region by the British and other Western imperial players. Although these

² On culturalist characterizations of “liberalism” see Duncan Bell, “What Is Liberalism?”, *Political Theory* 42 (2014), 682–715; and also comments by Pankaj Mishra, Edmund Fawcett, and Kiri Paramore in the *London Review of Books*, at www.lrb.co.uk/v37/n23/pankaj-mishra/bland-fanatics, accessed 9 Feb. 2017. For the role of Confucianism in European secularist and rationalist thinking see Lionel M. Jensen, *Manufacturing Confucianism: Chinese Traditions and Universal Civilization* (Durham, NC, 1997); and Suzanne L. Marchand, *German Orientalism in the Age of Empire: Religion, Race, and Scholarship* (Cambridge, 2009). On the construction of Confucianism as negative cultural other in the European Enlightenment see Jürgen Osterhammel, *Die Entzauberung Asiens: Europa und die asiatischen Reiche im 18. Jahrhundert* (Munich, 1998); Willy R. Berger, *China-Bild und China-Mode im Europa der Aufklärung* (Cologne, 1990).

³ Exposing the tension between the “status of universal norms in a world characterized by cultural differences,” as flagged by Andrew Sartori, *Liberalism in Empire: An Alternative History* (Berkeley, 2014), 14.

particularist reformulations originated in Japan and China respectively, the manner and context of their formulation reveal an inherent underlying link between liberal thought and cultural particularism often ignored in other analyses of the global history of liberalism. Liberalism is commonly portrayed as a force necessarily opposed to the politics of cultural essentialism.⁴ This article instead presents liberalism as the vehicle through which modern forms of cultural essentialism and particularism were imposed upon the previously universalist East Asian system of political thought and law represented by Confucianism.

COEXISTENCE: LIBERALISM AS CONFUCIANISM

Academic writing has a long tradition of portraying Confucianism as inherently opposed to the politics of Western modernity.⁵ Yet the earliest positive Chinese, Japanese, Korean, and Vietnamese assessments of Western governance in general, and democracy, liberalism, and law in particular, were made through Confucian lenses and argued in Confucian terms by Confucian scholars. The Chinese Qing Dynasty scholar Xu Jiyu's (1795–1873) positive Confucian assessment of modern Western statecraft in a tract published in China in 1850 was representative of a broad range of opinion across East Asia. His writings received multiple reprintings in Japan in 1861, were distributed in Vietnam, and were read by Korean diplomats in China.⁶ Nineteenth-century history is narrated predominantly in terms of the rise of Western empire and its sociological and political systems across the globe. In early nineteenth-century China, Japan, Korea, and Vietnam, however, this rise did not initially trigger a decline in the Confucian infrastructure—which regulated early modern East Asian political relations—but was rather entangled with its strengthening and

⁴ For instance in recent intellectual history writing see C. A. Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge, 2012), 312. My argument rather parallels other histories that have exposed liberalism's role in facilitating racism in nineteenth-century history. For instance, see Domenico Losurdo, *Liberalism: A Counter-history* (London, 2011), 221, particularly his section on the link between liberal reform and the acceleration of extermination campaigns against aborigines in Australia.

⁵ Classically in relation to China, for instance G. W. F. Hegel, *Philosophy of History*, trans. J. Sibree (New York, 1956); John Stuart Mill, *On Liberty; with The Subjection of Women; and Chapters on Socialism* (Cambridge, 1989), 72; Karl Marx, *Grundrisse*, trans. Martin Nicolaus (New York, 1973), 467–79; Adam Smith, *Wealth of Nations* (Basil, 1791), 76–7. This is also the case even with relatively recent history on Japan; see, for instance, Herman Ooms, *Tokugawa Ideology: Early Constructs, 1570–1680* (Princeton, 1985).

⁶ Xu Jiyu, *Ying Huan Zhi Lue* (A Historical Geography of the Overseas World), (Beijing, 2000).

modernization.⁷ This meant that new, increasingly global systems from the West, like liberalism and international law, were culturally reimagined and translated in nineteenth-century East Asia through the lens of the still extant reformist early modern global structures of Confucianism.⁸

In China, the new universalist ideologies of the West impacted primarily through the direct effects of the unequal treaties, and secondarily through the mediation of Christian missionaries and their particular analyses of contemporary Western society and politics.⁹ In Japan, however, Western political theory and law were imported and translated by Japanese intellectuals themselves. The large number of senior Japanese statesmen and thinkers who spent time in Europe and in the United States on diplomatic and study missions during the 1850s and 1860s arrived there just as works like J. S. Mill's *On Liberty* were being published. Many of them studied law in the elite European circles which were, just at this moment, seeing the crystallization of both political liberalism itself and modern international law. Their local informants, mediators, and facilitators were top-line politicians and jurists in Europe and the US. This was certainly the case for men who would go on to become prime figures in the rise of Japanese liberalism, and indeed in the construction of the modern Japanese state, including Fukuzawa Yukichi, Nakamura Masanao and Nishi Amane, all of whom spent significant time in Europe on official business of the Tokugawa Shogunate before its fall in the Meiji Restoration of 1868.

The longest-engaged work by Tokugawa officials in a Western country is a good example of how Confucianism and liberalism interacted at this early stage. Between 1863 and 1865, Nishi Amane and Tsuda Mamichi were dispatched for two years to Leiden, in the Netherlands, with the explicit mission of studying Western statecraft, and, in particular, law. This was the most serious, sustained, institutionalized, and influential East Asian attempt to engage and understand the institutional structures of Western statecraft before the 1868 Meiji Restoration.

⁷ Watanabe Hiroshi, *A History of Japanese Political Thought, 1600–1901* (Tokyo, 2012), 320, 330; K. W. Taylor, *A History of the Vietnamese* (Cambridge, 2013), 175–223.

⁸ Watanabe Kazan, Takano Chōei, Sakuma Shōzan, Yokoi Shōnan, and Hashimoto Sanai, *Nihon Shisō Taikei*, vol. 55 (Tokyo, 1971), 448–9; Watanabe Hiroshi, *A History of Japanese Political Thought*, 330; Yokoi Shōnan, “Kokuze Sanron” (1860), in William Theodore de Bary, Carol Gluck, and Arthur Tiedermann, eds., *Sources of Japanese Tradition*, vol. 2, *1600 to 2000*, 2nd edn (New York, 2005), 644; Kiri Paramore, *Japanese Confucianism: A Cultural History* (Cambridge, 2016); Watanabe Hiroshi, *Nihon seiji shisōshi: jūshichi—jūkuseiki* (Tokyo, 2010), 371–2.

⁹ Major late Qing reformers like Kang Youwei who deployed Western political ideas had often come into contact with these through missionary texts. See Ya-pei Kuo, “‘Christian Civilization’ and the Confucian Church: The Origin of Secularist Politics in Modern China,” *Past & Present* 218/1 (2013), 235–64.

Nishi would go on to write almost the entire military legal code of the modern Japanese state in the 1870s. Nishi and Tsuda's mission in 1863, as recorded by them in Japanese, was to study *chikokugaku*—literally “the learning of national governance.” The Dutch government had them sent to the premier university in the Netherlands, and arranged for them to be taught weekly by Simon Vissering, a professor in its premier Faculty of Law. Vissering, who would shortly thereafter be appointed finance minister of the Netherlands, was the prize student of J. R. Thorbecke (1798–1872), a major early nineteenth-century European liberal thinker, and author of the Dutch Constitution.¹⁰ Vissering now occupied the professorial chair that his teacher had vacated, while Thorbecke served as prime minister. Nishi and Tsuda were not just being tutored by a renowned law professor, but by someone at the center of the public intellectual and political networks of European liberalism.

LAW AND NATURE, GOVERNANCE AND MORALS

Vissering personally formulated a five-subject regime for Nishi and Tsuda, comprising natural law, national law, international law, statistics, and economics. It was an integrated series of private lectures centering on Western laws, the philosophy underlying them, and the finance and accounting practices that made them work in governance.¹¹ The basis of this system, as Vissering presented it, was natural law. As Nishi later translated into Japanese from his Dutch-language notes of Vissering's early lectures, “Natural law is rooted in man's nature; that is why it is called natural law.”¹² The word Nishi chose for “nature” was the Confucian term for one's inherent—and, following the Mencian and neo-Confucian traditions, inherently good—nature: *sei* in Japanese and *xing* in Chinese. Nishi thus initially conceptualized natural law in Confucian terms, but he was also aware that it was different.¹³ As Tsuda put it in eloquent Confucian terms, “different from legal morality, Confucian morality is deeply concerned with benevolence, righteousness, rites, and education, but law only discusses the right and wrong of a matter.”¹⁴ Nishi, like Tsuda, concurred with this division

¹⁰ Siep Stuurman, *Wacht op onze daden: Het liberalisme en de vernieuwing van de Nederlandse staat* (Amsterdam, 1992); H. van Riel, *Geschiedenis van het Nederlandse liberalisme: In de negentiende eeuw* (Assen, 1982).

¹¹ Watanabe Yōgorō, *Shimon Fisseringu kenkyū* (Research on Simon Vissering), (Tokyo, 1985); Okubo Takeharu, *Kindai Nihon no seiji kōsō to Oranda* (Holland and the Political Conception of Modern Japan) (Tokyo, 2010).

¹² Nishi Amane, *Seihō Setsuyaku* (A Short Explanation of Western Law) (Otsu, 1879), 1–4.

¹³ *Ibid.*, 7–8.

¹⁴ Tsuda Mamichi, *Tsuda Mamichi zenshū* (The Complete Works of Tsuda Mamichi), vol. 1 (Tokyo, 2001), 228.

between rule-of-law governance on the one hand, and morals on the other. Crucially, however, in his explanation of natural law he explained that although it did not conform with neo-Confucian ideas of morality, it did conform to broader, truer visions of the Confucian Way. For Nishi, it was only the neo-Confucians since China's Song dynasty (960–1279) who had seen “making true one's intention and rectifying the mind as wanting to equalize all under heaven” by making morality and governance contiguous.¹⁵ Earlier, purer forms of Confucianism, argued Nishi, resembled more the Western liberal system he was studying.

As Nishi himself pointed out, his synthesis of Vissering's explanation of natural law within a particularly nonmoralistic Confucian intellectual framework was facilitated by employment of the innovative theories of early modern Japan's premier Confucian theorist, Ogyū Sorai (1666–1728).¹⁶ Ogyū had held that neo-Confucian morality did not conform to the true classical history of Confucian governance. Classical Confucianism, he held, was focused on pragmatic political outcomes, not individual morality. If Confucianism was utilitarian good governance, as the powerful Sorai-ist tradition of Confucianism in Japan had suggested, then surely this perfectly ordered world of Dutch law, society, and economics was a Confucian order. In this way, Nishi employed tools from the early modern Confucian political thought tradition he had originally been educated in, to culturally mediate what had been one of the core problematics of late nineteenth-century Western legal and political thought (not only for East Asians, but notably also for European Christians): the place of morals. Through this mediation, Nishi presented natural law as the basis of a Western legal system, which did not oppose the Confucian Way, but rather completed it.

Liberalism itself was similarly presented as an inherently Confucian mode of thought, and not only in Japan. Nakamura Masanao's heavily Confucian-influenced, and particularly timely, translation of J. S. Mill's *On Liberty* in 1872, only thirteen years after its initial English publication in 1859, also influenced Chinese modernizers resident in Japan from the 1890s, notably Kang Youwei and Liang Qichao.¹⁷ Proposals for the modernization of China sometimes fully embraced Confucian universalism, attempting to present it in new modernized forms.

¹⁵ Nishi Amane, *Nishi Amane zenshū* (The Complete Works of Nishi Amane), vol. 1 (Tokyo, 1962), 236–8.

¹⁶ Okubo Takeharu, *Kindai Nihon no seiji kōsō to Oranda*, 50.

¹⁷ John Stuart Mill, *Jiyū no ri* (*The Principle of Freedom: On Liberty*), trans. Nakamura Masanao (Tokyo, 1872). On the influence of Nakamura Masanao's translation into Japanese on Liang Qichao, and indirectly on Kang Youwei, see Joshua A. Fogel, *The Role of Japan in Liang Qichao's Introduction of Modern Western Civilization to China* (Berkeley, 2004), 81. Mill's *On Liberty* was first translated into Chinese only in 1903, by Yan Fu.

Western political universalism, including liberalism specifically, and law concretely, was thus portrayed as not only compatible with Confucian universalism, but indeed a manifestation of it. This was the case in the early reconstruction of liberalism in Japan, in its reception by intellectuals from China and Korea, and in late nineteenth-century Chinese modernizers' attempts to engage it. In short, in this period it was possible for both systems to exist in the same space and to continue to project interwoven universalist visions.

OPPOSITION/DICHOTOMY: LIBERALISM AND LIBERAL LAW AS MODERN PROGRESS, CONFUCIANISM AS BACKWARD DESPOTISM

This was brought to an end with the most famous early East Asian liberal's direct attack on Confucianism. Fukuzawa Yukichi, in his 1872 *An Encouragement of Learning* (*Gakumon no sususme*) contrasted his entire program for having the Japanese population modernized along liberal educative lines against what he presented as an alternative vision of "spiritless and unprincipled Confucians."¹⁸ Fukuzawa's attacks continued through his various publications, including his most famous work, *An Outline of a Theory of Civilization* (*Bunmeiron no gairiyaku*) of 1875, and climaxing in later confluences of his negative reading of Confucian culture and negative prognoses on the possibility of indigenous modernization in Korea and China—later used to justify Japanese imperialist dominion over these countries.

In China, crystallization of a clear contrast between the old and the new, the obsolete and the useful, in terms of exclusive conceptions of Western and Confucian culture was much longer coming. Although late Qing reformers like Kang Youwei and especially Liang Qichao discussed the differences between China and the West, their analysis and correlate plans for reform involved, utilized, and indeed, in the case of Kang, actually relied upon modernized visions of Confucianism.¹⁹ It was only in the 1910s that a marked iconoclastic presentation of Eastern and Western culture as totally opposed to each other emerged as the dominant outlook in China. This clear separation has been attributed primarily to Chen Duxiu, famous as a cofounder of the Chinese Communist Party in 1921,

¹⁸ Fukuzawa Yukichi, *Gakumon no susume* (Tokyo, 2003), 156; Fukuzawa Yukichi, *An Encouragement of Learning* (New York, 2012), 114.

¹⁹ Many non-liberal reformers, notably Shimaji Mokurai and Inoue Enryō in Japan, as well Zhang Taiyan in China, attempted the same with Buddhism. See Hans Martin Krämer, *Shimaji Mokurai and the Reconceptation of Religion and the Secular in Modern Japan* (Honolulu, 2015).

who in 1916, not yet a Marxist but rather representing more general progressive attitudes from his position as professor and dean at Peking University, wrote,

If we wish to construct a Western-style new state and organize a Western-style new society in order to seek an existence suitable to our modern times, then the fundamental issue is that we must import the foundation of a Western-style society and country, that is to say, the new faith in equality and human rights . . . Unless [Confucianism] is suppressed, [the new Way] will not prevail; unless [supporters of Confucianism] are stopped, [the new Way] will not be practiced.²⁰

Fellow reformist intellectual Liang Shuming attributed the beginnings of a hard distinction between old and new as East and West to the upheavals of the late 1910s and to Chen in particular.²¹

Although separated by about a half-century, this process of disengagement and polarization between visions of Confucianism and Western politics and law in Japan and China shared a range of interesting similarities and some instructive differences that are worth examining. In both countries, mutually exclusive definitions of culture and civilization were used as the prime categories of political analysis. The arguments were set in relation to the particular, differing manifestations of Confucianism faced by political thinkers in Japan and China. This was then used to determine what was “wrong” with Confucianism, argued through historical narrative, which was the primary method at the time for justifying attacks on Confucianism in Europe as well as in both China and Japan.

What’s wrong with Confucianism?

The core of Fukuzawa’s attack on Confucianism in the 1870s lay in what he perceived as its historical monopolization of political thought, its (alleged) suppression of diversity of opinion in the public sphere, and the resultant overall passivity and lack of creativity, where even Confucian scholars themselves “possessed no views of their own”.²²

²⁰ Chen Duxiu, “Xianfa yu kongjiao” (The Constitution and Confucianism), *Xin qingnian* (New Youth) 2/3 (1916), English translation in *The Chinese Human Rights Reader* (New York, 2015), 73–4.

²¹ Liang Shuming, *Dongxi wenhua ji qi zhixue* (Eastern and Western Cultures and Their Philosophies) (Shanghai, 1937), 2. Liang published this book in 1921, but the content was in the making when he gave two series of public lectures, first at Beijing University and then in Shandong, in 1920–21. For the book’s immediate impact and reception see Guy S. Alitto, *The Last Confucianism: Liang Shu-ming and the Chinese Dilemma of Modernity* (Berkeley, 1979), 78–9.

²² Fukuzawa Yukichi, *Gakumon no susume*, 108; Fukuzawa Yukichi, *An Encouragement of Learning*, 87.

If you maintain only one doctrine, even if that doctrine is pure and good, then freedom cannot arise. One should know that the spirit of freedom can only come into existence through competitive discussion between a plurality of positions . . . [the Chinese imperial system was] despotic [*dokusai*] governance . . . The symbolism of the sacred, and the power of strength, combined as one to control the people. And since the teachings of Confucius and Mencius were most convenient for the maintenance of this system, only they were propagated throughout the country.²³

Here we see the core of Fukuzawa's attack on Confucianism, and also what he wants to represent as the heart of liberal freedom: diversity of opinion, competition between opposing outlooks. It is an outlook of classical liberalism that resonated well with the late nineteenth-century British tradition he admired. Although Fukuzawa in late nineteenth-century Japan thus rejected Confucianism because of a perceived lack of commitment to intellectual autonomy, early twentieth-century Chinese reformers instead focused on a completely different issue: equality. Writing in 1915, Chen Duxiu attacked Confucianism with the same vehemence as Fukuzawa had, but first he defined advanced Western civilization in quite different terms, pinpointing egalitarianism rather than competition as its essence: "socialism is, therefore, a theory of social revolution succeeding political revolution; its aim is to eliminate all inequality and oppression. We can call it 'contemporary' European civilization, which opposes the (merely) 'modern'."²⁴ The prime problem of Confucianism for Chen was that it opposed the social-progressive goals that by the early twentieth century had become attached to the European Enlightenment vision. As Chen saw it, "there should not be any doubt that the education of the people of a republic should actualize the spirit of human rights [Ch. *renquan*, Jp. *jinken*] and equality."²⁵

For Chen, Confucianism was wrong because it was not consistent with the egalitarian "spirit of republican education."²⁶ Here we see terms like "human rights," only recently created as Sino-Japanese words in Fukuzawa's Japan, and yet to be formalized in international law, now being deployed in what was a quite different, and ultimately more enduring, Chinese attack on Confucianism.

²³ Fukuzawa Yukichi, *Bunmeiron no gairyaku (An Outline of a Theory of Civilization)* (Tokyo, 2003), 37–8. See also Fukuzawa Yukichi, *An Outline of a Theory of Civilization*, trans. D. A. Dilworth and G. C. Hurst (Tokyo, 1973), 21–2.

²⁴ Chen Duxiu, "Falanxiren yu jinshi wenming" (The French and Modern Civilization), *Xin Qingnian (New Youth)* 1/1 (1915), in *Chen Duxiu wenzhang xuanbian* (Selected Essays by Chen Duxiu), vol. 1 (Beijing, 1984), 79–81, English translation in *The Chinese Human Rights Reader*, 65.

²⁵ Chen, "The Constitution and Confucianism," 70.

²⁶ *Ibid.*

Historical narrative as tool of culturalization

Although the bases of their respective attacks on Confucianism were thus different, Chen and Fukuzawa shared a core methodology: national historical narrative. The quote above where Fukuzawa labels the Chinese imperial system “despotic” is part of a longer passage from *An Outline of a Theory of Civilization* where he narrates contrasting *longue durée* intellectual histories of China and Japan, constructing different culturally specific national characters which he holds determine their varying levels of “openness to progress.”²⁷ According to Fukuzawa’s narrative, in both ancient Japan and ancient China a hard difference between the governors and the governed was established and sacralized. Mediated through Confucian ritual, this made both ancient (Zhou) China and pre-medieval Japan dictatorships. Intriguingly, however, Fukuzawa then saw a moment emerging in China where “the roots of freedom” were opened out. This was the long pre-common-era period of competing Chinese states, when the so-called Hundred Schools, including Confucianism, arose (770–221 BCE). The imperial history of China thereafter (from 221 BCE to the present), however, saw the restoration of a situation where the Chinese respected the despotic power of the sovereign, conflating ideas of sacredness (respect) and strength: two millennia of Asian (Chinese) despotism.²⁸

In Fukuzawa’s vision of Japanese history, by contrast, the rise of the warrior household governments (the shogunates) from the twelfth century meant that sacred and brute power were separated, and this is what led to the Japanese capacity to “imagine” freedom: the multiplicity of sources of power. The samurai governance’s reliance on violence thus ironically represented “the birth of the spirit of freedom” in Japan for Fukuzawa.²⁹ Because in Japan samurai governance continued into the nineteenth century, contemporary Japanese had, according to Fukuzawa, inherited the potentiality of this “spirit of freedom,” whereas the Chinese had already—nearly two thousand years earlier—had this potential freedom shut down:

But in the medieval age of the warrior houses [late twelfth-century Japan] the social system had broken down, and the political power lay in the hands of the military households [samurai caste] . . . The two concepts of sacred rank and strength of power were so obviously distinct that people could hold in their heads, as it were, the simultaneous existence and functioning of two ideas. Once they did so, they could not help adding a third, the principle of reason. With the principle of reason added to the idea of reverence

²⁷ Fukuzawa Yukichi, *Bunmeiron no gairyaku*, 37–8. See also the Dilworth and Hurst translation of Fukuzawa Yukichi, *An Outline of a Theory of Civilization*, 21–2.

²⁸ Fukuzawa Yukichi, *Bunmeiron no gairyaku*, 36–8.

²⁹ *Ibid.*, 39.

for the imperial dignity and the idea of military rule, none of the three concepts was able to predominate. And since no single concept predominated, there naturally followed the spirit of freedom. This obviously was not the same for China . . .³⁰

In this manner, Fukuzawa culturalized the idea of freedom, linking it to a particularly macho and militarist formulation of Japanese national identity. This formulation mirrored contemporaneous northwestern European, particularly British, tropes that linked ideas of intellectual autonomy to cultural historical imaginations of martial culture. His contrastive histories of China and Japan allowed Fukuzawa to condemn China in totality, in much the same way as his Protestant triumphalist role models in Europe condemned the Catholic, the Jew, and the Muslim, and in a similar context of Japanese imperial competition and colonial expansion.

Importantly, however, Fukuzawa's culturally essentialized reading was not the norm among the first generation of liberals in Japan. In *Hyakugaku renkan*, Nishi Amane had presented his own, very different, and very universalist, historical vision of the premodern. "Feudalism was the same in Japan, China and Europe."³¹ In fact, Fukuzawa's historical narrative outlined above appears to have been a direct counter to Nishi's position. The two foremost early Japanese liberals were pitted against each other, one advancing a universalist analysis (Nishi), the other a hard culturalist one (Fukuzawa).³² For Fukuzawa, history was a key tool for differentiating China from Japan, deployed in domestic Japanese intellectual debates against liberal forerunners like Nishi Amane and Nakamura Masanao, and resulting in a subjugation of China in the historical narrative. Fukuzawa's essentialization of culture was related to an essentialization of Confucianism itself, through his claim that it was a single theory not allowing plural opinion—a claim which, as an active participant in late Tokugawa politics, he must have known was not true. This was the discursive background to his adoption of the idea of oriental despotism, a term he reconstructed and propagated as "Asian despotism" (*ajia dokusaisei*).³³

A half-century later in China, in an early twentieth-century world of ever-deepening race theory and propagation of ideas of cultural hierarchy, Chen Duxiu would come to present a similar historical deconstruction of premodern China, which, like Fukuzawa's, confirmed the particular evil of China's history of Confucianism. Tellingly, however, for Chen the evil was no longer represented

³⁰ Fukuzawa Yukichi, *Bunmeiron no gairyaku*, 37–8. See also Dilworth and Hurst translation of Fukuzawa Yukichi, *An Outline of a Theory of Civilization*, 21–2.

³¹ See Fukuzawa Yukichi, *Gakumon no susume*, editorial annotations, 321 n. 67:6.

³² This section was a direct riposte to Nishi Amane's article "Kokumin kifuron" (On National Character), *Meiroku Zasshi*, 32. See Fukuzawa Yukichi, *Gakumon no susume*, 314 n. 38:2.

³³ Fukuzawa Yukichi, *Bunmeiron no gairyaku*, 37–8.

through Protestant tropes of theocratic rule, but rather by Marxist-influenced ideas of “class.” Chen also presented a short historical narrative of Chinese history, which, like Fukuzawa’s, ultimately claimed that pre-nineteenth-century traditional Chinese culture lacked the basic elements of progressive Western society and freedom. He concluded his own slapdash history of premodern Confucian political thought, however, by asserting that it was ultimately a “class system” for the separation of “high and low, noble and base.”³⁴

Confucianism as competing force in modern society

In addition to aspects of methodology, Chen and Fukuzawa also shared particular practical reasons to attack Confucianism, reasons that had more to do with social positioning than with political thought. Fukuzawa wrote about Confucians in *An Encouragement of Learning* at a time in the 1870s when Confucians were still major competitors for him in his prime market of education. Unlike most other early Meiji intellectuals, Fukuzawa refused to take up government appointment, which meant that he had to fund his substantial publishing and public speaking activities, and his family, through income generated by private schools he set up, notably Keio Gi Juku (now Keio University). *Juku* was the word traditionally used to signify elite private schools in early modern Japan. In the 1870s and 1880s the most common form of *juku* in Japan were still *Kangaku juku* (Confucian schools).³⁵ So at the time he launched his most vociferous attacks on Confucianism, Confucian schools were the main competition his own institutions faced in the education market.

Chen Duxiu, in China of the 1910s, was writing as the strong political movement led by Kang Youwei sought to project a modernized vision of Confucianism to the center of state building in the early republic. At that time, Kang’s vision was supported by strong grassroots social groups and even, during the brief reign of Yuan Shikai, the state.³⁶ It is this context that informs the opening passage of Chen’s 1916 essay on Confucianism and constitutionalism:

Confucianism is fundamentally an inefficacious idol and a fossil of the past. It should cause no problems for the constitution of a democratic country. Yet thanks to the ill consequences of Emperor Yuan [Shikai]’s interference with the constitution, a section honoring Confucius was added to the nineteenth article of the Temple of Heaven Draft

³⁴ Chen, “The Constitution and Confucianism,” 72.

³⁵ On the important role of Confucian schools in early Meiji Japan see Makoto Kurozumi, *Kinsei nihon shakai to jukyō* (Early Modern Japanese Society and Confucianism) (Tokyo, 2003), 177.

³⁶ Anna Sun, *Confucianism as a World Religion: Contested Histories and Contemporary Realities* (Princeton, 2013), 42–3.

Constitution in order to recklessly satisfy the desire of the “traitor of the people” [Yuan Shikai].³⁷

It is thus important to note that both for Fukuzawa in 1870s Japan, and for Chen in 1910s China, Confucianism was a real-world competitor—for Fukuzawa in the realm of education, for Chen in the realm of reformist politics.

CONCLUSION

At the beginning of this essay I posed the question: how and why are universalist modes of political thought transformed into culturally essentialist and exclusionary practices of governance and law? The history discussed above, of political ideas and their concrete manifestations in social phenomena like law, suggests several answers to this question. In the first part of the essay, I confirmed that different political thought systems (Confucianism and liberalism) can, and did, coexist in the same political and social milieu, being interpreted in similar terms, and often being understood as different manifestations of basically similar, compatible systems—including in the concrete institutionalized context of law. In the second part of the essay, I examined a range of aspects through which a particularistic interpretation of liberalism was re-created and strengthened in Japan and China by local politically reformist intellectual leaders. This process set Confucianism and liberalism against each other, portrayed them as mutually irreconcilable, and included value judgments of culture, civilization, past, and present. The analytical process through which political thinkers like Fukuzawa Yukichi and Chen Duxiu tied liberalism—and indeed the concept of liberty—to a construction of “Western civilization” or “modern culture” involved creating a similar culturally particularistic interpretation of Confucianism in which Confucianism was no longer a universally applicable theory, but a particularism of Sinitic culture. This was achieved in both Fukuzawa and Chen’s case through the use of similar intellectual and rhetorical devices, notably the creation of new historical narratives that were national in character, the deployment of new interpretations of key conceptual categories like culture and civilization, and the utilization of recent global political paradigms—predominantly from mid-nineteenth-century classical liberalism in the case of Fukuzawa, and from rising egalitarian and culturalist ideas of the early twentieth century in the case of Chen. In these historically constructed visions, the entire social system, including law, was essentialized as national culture.

It is important to note that Fukuzawa and Chen’s interpretations each, in their respective countries and periods, became the dominant outlooks on the nature

³⁷ Chen, “The Constitution and Confucianism,” 67.

of liberalism, modern society, and Confucianism. In other words, Fukuzawa's interpretation of liberalism and modern law as "Western" and progressive, and his characterization of Sinitic Confucianism as "despotic" Asiatic, was broadly accepted and became the dominant narrative in Japan thereafter. Similarly, in China, Chen's outlook, although reflecting more recent global socialist and culturalist ideas, was articulated in a new, much more developed, local political thought form, and went on to dominate political thinking about Confucianism and modern society in China for the next eighty years, affecting the way other social technologies of governance, like law, were culturally characterized.

This all goes—in some way—to explaining the nuts and bolts of the "how" in our question, but not the "why." To think further about why this happened, it is edifying to contrast the positions of Fukuzawa and Chen not against each other, but against their reformist intellectual peers in their own countries. As noted in both the first and the second sections of this article, Fukuzawa's interpretation of liberalism's position in relation to East Asian culture was markedly different from that of other major Japanese liberal and legal thinkers of his time. Nakamura Masanao and Nishi Amane, both somewhat earlier in their embrace and dissemination of liberalism than Fukuzawa, clearly saw Confucianism and liberalism as broadly compatible. Fukuzawa's cultural-particularist outlook, his ultimately successful and enduring casting of liberalism as culturally determined by whether different national/societal histories contained "the spirit of freedom," was only one of several interpretations of liberalism on offer in the Japan of his time. Nishi, who laid the basis of much of the modern Japanese legal system, and the influential educator Nakamura, both maintained much more universalist outlooks.

Similarly, Chen Duxiu's choice to make a hard-and-fast delineation between past and future in culturalist East and West terms was not at all a universal position of reformist Chinese intellectuals at the time. Indeed, Liang Shuming both identified the rise of this outlook in China as a new phenomenon of the 1910s associated with Chen, and overtly opposed it in his writings of the 1920s and thereafter. Liang Qichao's later positions also advocated a more nuanced reading of culture. Chen's views, however, dominated. In this sense, Chen's particularization and culturalization of political thought and legal tradition, both progressive egalitarianism and Confucianism, became the dominant trend in China, as Fukuzawa's had become in Japan. But at the time that need not have happened; there were other competing reformist intellectual figures who took a more universalist approach.

One reason that we might offer as probable explanation for why political thinkers like Fukuzawa and Chen sought to particularize and culturalize universalist doctrines like Confucianism and liberalism is related to the larger political vision, strategy, and ultimate success of both their positions. In

comparison to Nishi Amane and Liang Shuming, Fukuzawa and Chen, by casting one doctrine, Confucianism, as totally backward and despotic, and another vision as totally progressive, were able to create much clearer and contrasting political categories. The absolutism added to the political ideologies through the process of particularization gave them a simplicity and urgency that was more easily transferable to programs of revolutionary change. Particularizing the political doctrines also created a sense of crisis, because the nature of political thought became tied to the desperate struggle for national survival, which was portrayed as the dominant crisis in both Japan and China in these periods. Confucianism and liberalism (and later socialism) reworked in culturally particularist modes became perfectly packaged for integration into a political spectrum dominated by the idea not just of crisis, but of crisis in the existential nature of the core political unit—the nation as *Rechtsstaat*. In this sense, the context is similar to other examples, say in 1930s France and Germany, where crisis in the existential nature of the nation leads to a strengthening of political ideologies that culturally particularize their narratives of that crisis, and of visions of the rule of law.

What is striking and intriguing about the East Asian case at the turn of the nineteenth century to the twentieth, however, is that this particularization of political thought occurred simultaneously with the crystallization of new core global ideologies like liberalism and socialism, effecting totalistic radical reactions against other forms of global universal political thought that had been operating in situ for centuries—notably Confucianism. It was also during this same period that modern law was institutionalized in both countries, and that the state itself was legally reconstituted in modern legal terms (China in the 1910s, and again in 1949; Japan through the 1870s and 1880s, and again in 1947). In this way, the crystallization of liberalism in Japan and China, and the foundation of law, occurred through the process of cultural particularization and the creation of an absolutist and culturally exclusivist vision of political thought. Yang Xiao has recently argued that this created an idea of liberalism in China which was basically a “negative liberal” vision³⁸—an idea that we could perhaps extend into the legal field. This was definitely also the case in the much more influential manifestation of liberalism that arose in modern Japan, and which continues to dominate the politics of that country today.

Even more importantly, perhaps, the process through which Confucianism and liberalism were culturally particularized also affected how change through time was taken into account. The late twentieth-century intellectual historian Lin Yü-sheng described the culturalization of Chinese political thought after

³⁸ Yang Xiao, “Republican Beginnings: Liberty as Non-domination in the Chinese Republican Tradition,” in Jun-Hyeok Kwak and Leigh K. Jenco, eds., *Republicanism in Northeast Asia* (London, 2015), 142.

the 1910s, notably its vision of “the West,” as leading to “a hypostatized understanding of culture and society.”³⁹ The negative results of this ossification and particularization of political thought, visible in the later modern histories of both nations, and discussed at length by late twentieth-century historians like Lin and many others, draws our attention to the potential danger of this kind of cultural particularization of political thought—notably including the case of liberalism. We are used to theories that equate socialism and ultra-conservatism with radical and absolutist forms of politics. Yet this article has demonstrated that at the roots of some of the most disturbing political developments in both China and Japan lay a radically culturalized absolutist vision of liberalism.

³⁹ Lin Yü-Sheng, *The Crisis of Consciousness: Radical Antitraditionalism in the May Fourth Era* (Madison, 1979), 153.