



ZEITSCHRIFT FÜR GLOBALGESCHICHTE UND
VERGLEICHENDE GESELLSCHAFTSFORSCHUNG

Herausgegeben im Auftrag der
Karl-Lamprecht-Gesellschaft e. V. (KLG) / European Network in
Universal and Global History (ENIUGH) von
Matthias Middell und Hannes Siegrist

Redaktion

Gerald Diesener (Leipzig), Andreas Eckert (Berlin), Ulf
Engel (Leipzig), Harald Fischer-Tiné (Zürich), Marc Frey
(München), Eckhardt Fuchs (Braunschweig), Frank Hadler
(Leipzig), Silke Hensel (Münster), Madeleine Herren (Basel),
Michael Mann (Berlin), Astrid Meier (Halle), Katharina
Middell (Leipzig), Matthias Middell (Leipzig), Ursula Rao
(Leipzig), Dominic Sachsenmaier (Bremen), Hannes Siegrist
(Leipzig), Stefan Troebst (Leipzig), Michael Zeuske (Köln)

Anschrift der Redaktion

Global and European Studies Institute
Universität Leipzig
Emil-Fuchs-Str. 1
D-04105 Leipzig

Tel.: +49 / (0)341 / 97 30 230
Fax.: +49 / (0)341 / 960 52 61
E-Mail: comparativ@uni-leipzig.de
Internet: www.uni-leipzig.de/comparativ/

Redaktionssekretärin: Katja Naumann
(knaumann@uni-leipzig.de)

Comparativ erscheint sechsmal jährlich mit einem Umfang von
jeweils ca. 140 Seiten. Einzelheft: 12.00 €; Doppelheft 22.00 €;
Jahresabonnement 50.00 €; ermäßigtes Abonnement 25.00 €.
Für Mitglieder der KLG / ENIUGH ist das Abonnement
im Mitgliedsbeitrag enthalten.

Zuschriften und Manuskripte senden Sie bitte an die
Redaktion. Bestellungen richten Sie an den Buchhandel oder
direkt an den Verlag. Ein Bestellformular finden Sie unter:
<http://www.uni-leipzig.de/comparativ/>

Wissenschaftlicher Beirat

Gareth Austin (London), Carlo Marco Belfanti (Brescia), Christophe Charle (Paris), Catherine Coquery-Vidrovitch (Paris), Michel Espagne (Paris), Etienne François (Paris / Berlin), Michael Geyer (Chicago), Giovanni Gozzini (Siena), Regina Grafe (Evanston / Chicago), Margarete Grandner (Wien), Michael Harbsmeier (Roskilde), Heinz-Gerhard Haupt (Florenz), Konrad H. Jarausch (Chapel Hill), Hartmut Kaelble (Berlin), Markéta Křížová (Prag), Wolfgang Küttler (Berlin), Marcel van der Linden (Amsterdam), Hans-Jürgen Lüsebrink (Saarbrücken), Barbara Lüthi (Köln), Attila Melegh (Budapest), Alexey Miller (Moskau), Patrick O'Brien (London), Diego Olstein (Pittsburgh), Juan Carmona Pidal (Madrid), Lluís Roura y Aulinas (Barcelona), Jürgen Schriewer (Berlin), Hagen Schulz-Forberg (Aarhus), Alessandro Stanziani (Paris), Edoardo Tortarolo (Turin), Eric Vanhaute (Gent), Peer Vries (Wien), Susan Zimmermann (Budapest)

Leipziger Universitätsverlag GmbH
Oststraße 41
D – 04317 Leipzig
Tel. / Fax: +49 / (0)341 / 990 04 40
info@univerlag-leipzig.de
www.univerlag-leipzig.de

The Dimensions of Transcultural Statehood

**Herausgegeben von
Christina Brauner und Antje Flüchter**



Leipziger Universitätsverlag

Comparativ.

Zeitschrift für Globalgeschichte und vergleichende Gesellschaftsforschung / hrsg. von
Matthias Middell und Hannes Siegrist – Leipzig: Leipziger Univ.-Verl.

ISSN 0940-3566

Jg. 24, H. 5. **The Dimensions of Transcultural Statehood.** – 2014

The Dimensions of Transcultural Statehood. Hg. von Christina Brauner und Antje
Flüchter – Leipzig: Leipziger Univ.-Verl., 2015

(Comparativ; Jg. 24, H. 5)

ISBN 978-3-86583-935-0

© Leipziger Universitätsverlag GmbH, Leipzig 2015

Comparativ.

Zeitschrift für Globalgeschichte und vergleichende Gesellschaftsforschung 24 (2014) 5

ISSN 0940-3566

ISBN 978-3-86583-935-0

Inhaltsverzeichnis

Aufsätze

Christina Brauner/Antje Flüchter

Introduction: The Dimensions of Transcultural Statehood 7

Ines Eben v. Racknitz

Political Negotiations during the China War of 1860:
Transcultural Dimensions of Early Chinese and Western Diplomacy 27

Gauri Parasher

Between *Saree* and Skirt: Legal Transculturality in Eighteenth-Century
Pondicherry 56

Verena Steller

The “Rule of Law” in British India, or a Rule of Lawyers?
Indian Barristers *vs* the Colonial State 78

Christina Brauner

Loss of a Middle Ground? Intercultural Diplomacy in Dahomey
and the Discourse of Despotism 99

Forum

Yeong-Jo Hwangbo

The Political Uses of History of the Franco Regime and the Park Regime 124

Autorinnen und Autoren 136

Introduction: The Dimensions of Transcultural Statehood*

Christina Brauner / Antje Flüchter

RESÜMEE

Zunächst führt die Einleitung kurz in die Problematik der Historisierung von Staat und Staatlichkeit ein und gibt einen Überblick über die Entwicklung der einschlägigen Historiographie. In einem zweiten Schritt werden die zentralen Analysekonzepte vorgestellt, namentlich jenes der „Transkulturalität“ und des „Staates“. Wie relevant die Frage nach transkulturellen Dimensionen von Staatlichkeit auch in theoretisch-methodischer Hinsicht ist, macht der Blick auf die Debatten um Staat/Staatlichkeit deutlich, der zugleich von der Persistenz des Mythos von der „europäischen Erfindung des Staats“ zeugt. Abschließend werden die nachfolgenden Fallstudien kurz eingeführt und einige übergreifende Linien und gemeinsame Befunde herausgestellt.

Once it went without saying: The state was the very subject of historiography. Leopold von Ranke, for example, famously equated states with the “thoughts of God” and clearly identified “great” or “noteworthy” events with “external relationships of the different states”.¹ Since the mid-20th century, however, the state has increasingly forfeited, if not

* We would like to thank Rudolph Ng for assistance with editorial work and Bastian Lasse for helping with the corrections on short notice. Many thanks also to copy-editor Jan Ryder for reviewing all articles with regard to English orthography and style.

1 “... auch halte ich mich absichtlich an die großen Begebenheiten, an den Fortgang der auswärtigen Verhältnisse der verschiedenen Staaten [...]” L. von Ranke, *Die großen Mächte – Politisches Gespräch*, Göttingen 1955, p. 4; English translation in id., *The Theory and Practice of History*, ed. by G. G. Iggers and K. von Moltke, Indianapolis 1973, pp. 65-101, here: p. 66. “Statt jener flüchtigen Konglomerate, die sich dir aus der Lehre vom Vertrag erheben wie Wolkengebilde, sehe ich geistige Wesenheiten, originale Schöpfungen des Menschengesistes, – man darf sagen, Gedanken Gottes.” L. von Ranke, *Mächte*, p. 61, translation: id., *A Dialogue on Politics*, in: id., *Theory*, pp. 102-130, here: p. 119.

this leading position itself, then the way in which this position has been ascribed as a matter of course.

By the end of the 20th century, the state as object of academic investigation had taken a back seat. Culturalist and postcolonial approaches were focusing on individual agency, the ascription and negotiation of meaning and preferred microhistory to grand narratives. This intra-scientific trend was reinforced by the general *zeitgeist* of the day: The relevance and the power of nation-states seemed to have declined in favour of global networks, international enterprises and the flows of goods and ideas across national borders.² However, today the state is back, and has even made it onto the agenda of those historiographical approaches which formerly used to challenge its relevance. In Germany, for example, cultural historians have initiated a renewal of political history and tackled the phenomenon of statehood in innovative, theoretically embedded ways. It is no coincidence that such a new approach has been developed in Germany, where state, governance and rule have always played a central role in historiography.³ Similar demands for a re-consideration of states and their making, however, are also coming from other parts of the scientific community as well. Important representatives of global history, for example, have emphasized the lasting relevance of states in a globalized world.⁴

Nevertheless, considerations about state and state formation are still centred on the modern European or Western state or at least modelled on the European ideal. Despite the

- 2 Cf., e.g., M. van Creveld, *The Rise and Decline of the State*, Cambridge 1999; M. Albrow, *The Global Age. State and Society Beyond Modernity*, Stanford 1996 and S. Strange, *The Retreat of the State. The Diffusion of Power in the World Economy*, Cambridge 1996. See, for an overview, the sceptical account of such "end of nation-state" theses" provided by H. Dittgen; H. Dittgen, *World without Borders? Reflections on the Future of the Nation-State*, in: *Government and Opposition*, 34 (1999) 2, pp. 161-179. A more historical view on such hypotheses is presented by A. Benz, *Der moderne Staat. Grundlagen der politologischen Analyse*, München 2008, pp. 259-266.
- 3 For early modern history: B. Stollberg-Rilinger, *Was heißt Kulturgeschichte des Politischen? Einleitung*, in: ead. (ed.), *Was heißt Kulturgeschichte des Politischen*, Berlin 2005, pp. 9-24; R. G. Asch/D. Freist (eds.), *Staatsbildung als kultureller Prozess. Strukturwandel und Legitimation von Herrschaft in der Frühen Neuzeit*, Köln [i.a.] 2005, cf. also the more general considerations about these approaches in the omnibus review by G. Schwerhoff, *Theoretische und methodische Fragen*. Rezension zu: R. G. Asch; D. Freist, *Staatsbildung als kultureller Prozess*. Köln 2005; B. Stollberg-Rilinger (ed.): *Was heißt Kulturgeschichte des Politischen?* Berlin 2005; S. Brakensiek/ H. Wunder (eds.): *Ergebene Diener ihrer Herren? Herrschaftsvermittlung im alten Europa*. Köln 2005, in: *H-Soz-u-Kult*, 07.10.2006, URL: <http://hsozkult.geschichte.hu-berlin.de/rezensionen/2006-4-021> [accessed 2 January 2015]; comparable discussions regarding modern history in: U. Frevert, *Neue Politikgeschichte: Perspektiven einer historischen Politikforschung*, Frankfurt/Main [i.a.] 2005; T. Mergel, *Kulturgeschichte der Politik*. Version 2.0, in: *Docupedia-Zeitgeschichte* (22.10.2012). URL: http://docupedia.de/zg/Kulturgeschichte_der_Politik_Version_2.0_Thomas_Mergel?oldid=92884 [accessed 17 July 2014]. This strong and critical interest in states and statehood is specific to German and European historiography, whereas in the US-American historiography a critical and conceptionally reflected discussion about these terms and phenomena set in only recently; cf. S. Leibfried and M. Zürn, *Von der nationalen zur post-nationalen Konstellation*, in: S. Leibfried/M. Zürn (eds.), *Transformationen des Staates?*, Frankfurt/Main 2006, pp. 19-65, here: p. 22; C. A. Bayly, *The Birth of the Modern World, 1780–1914: Global Connections and Comparisons*, Malden [i.a.] 2009, pp. 249-252; J. Brewer and E. Hellmuth (eds.), *Rethinking Leviathan. The Eighteenth Century State in Britain and Germany*, New York/Oxford 1999.
- 4 Compare the discussions about the relevance of statehood in a globalized world: P. Vries, *State, Economy and the Great Divergence: Great Britain and China. 1680s to 1850s*, London 2015 [forthcoming]. Robinson argues that state theory "became a hot topic in the 1960s and 1970s" because globalization challenged the state; W. I. Robinson, *Social Theory and Globalization: The Rise of a Transnational State*, in: *Theory and Society*, 30 (2001), pp. 157-200, here: p. 190.

renewal the “New Political History” has brought about in many regards, it shares with its predecessors a Eurocentric focus and the belief in the singularity of the European state, either implicitly or explicitly.⁵ Furthermore, the state is usually constructed as the very opposite of transnational, international or transcultural flows, institutions or social groups.⁶ In other words, the concept of statehood is still firmly linked to notions of nationality and homogeneity. Thus, “the state” itself seems not to be a relevant object for transcultural approaches at all.

In the following we want to combine insights drawn from the New Political History with its strong theoretical backdrop with an explicit attempt to overcome its Eurocentric limitations. In order to provide the reader with demonstrative examples which may lead to more general methodological discussions, we have decided to focus on concrete encounters between Europeans and extra-Europeans within contact zones. Thus, we want not only to integrate extra-European politics into the framework of enquiry but furthermore to try to study processes of state-building and state institutions as entangled phenomena, developing in and by exchange.

Analyzing the transcultural dimensions of statehood, state institutions and procedures of governance in contact zones outside Europe will serve as a starting point. We examine, for example, diplomacy and its ceremonial, trading practices, transfer in the context of the military and its institutional and organizational relevance, and judicial institutions and procedures.⁷ This introduction will provide the methodological and theoretical framework for the case studies that follow and thereby help to enhance the coherence of this special issue. Specifically, we outline our understanding of transculturality and shortly introduce the conceptual and methodological instruments for analyzing transcultural phenomena. Furthermore, an account of the debates on the concept of state/statehood

5 The neglect of extra-European events is, in our opinion, only partly due to mere lack of interest but more firmly rooted in time-honoured concepts of statehood and narratives of state-building.

6 Cf., e.g., J. Delbruck, *Exercising Public Authority Beyond the State: Transnational Democracy and/or Alternative Legitimation Strategies?*, in: *Indiana Journal of Global Legal Studies*, 10 (2003), pp. 29-43 about transnational democracy beyond the state; E. C. Nisbet/T. A. Myers, *Challenging the State: Transnational TV and Political Identity in the Middle East*, in: *Political Communication*, 27 (2010), pp. 347-366 about transnational media challenging national, state-based identities; P. Lupsha, *Transnational Organized Crime Versus the Nation-State*, in: *Transnational Organized Crime*, 2 (1996), pp. 21-48 about the danger of transnational crime threatening the nation-state. Recent political or jurisprudential considerations about the future state also take the challenge by globalization and transnational structures as a starting point, e.g. S. Leibfried/M. Zürn (eds.), *Transformationen des Staates?* (3), esp. pp. 34-40; R. Voigt, *Zwischen Leviathan und Res Publica. Der Staat des 21. Jahrhunderts*, in: *Zeitschrift für Politik*, 54 (2007), pp. 259-271.

7 This special issue is based on the papers and discussions of a conference hosted by the Cluster of Excellence *Asia and Europe* and held in Heidelberg May 10-12, 2012. For different reasons, not all the papers could be included in this volume. Some participants, however, have published their findings otherwise: see e.g. U. Theobald, *The Use of Artillery in Eighteenth Century Chinese Warfare and the Need for Metals*, in: id./G. B. Souza (eds.), *Representations of Money: International Trade, Monetary Metals, and Money in Religion in China and East Asia*, Leiden 2014 [forthcoming]; B. Noordam, *Military Intelligence and Early Modern Warfare: The Dutch East India Company and China 1622–1624*, in: A. Flüchter/J. Schöttli (eds.), *The Dynamics of Transculturality. Concepts and Institutions in Motion*, Cham [i.a.] 2014, pp. 113-136; and R. Ng, *The Chinese Commission to Cuba (1874): Reexamining International Relations in the Nineteenth Century from a Transcultural Perspective*, in: *Transcultural Studies*, 2 (2014), pp. 39-62.

is provided; this will serve not least to underline the usefulness of asking about the transcultural dimensions of statehood not only from the perspective of transcultural history but also from that of “state history”.

1. The transcultural approach

Before we turn to the problems around the concept of state/statehood and the empirical phenomena of transcultural state structures, a few words about our understanding of “transcultural” are necessary. For some decades now, a closed or static concept of culture or nation or society, along with other labels for social groupings, has been challenged.⁸ Recent research is keen on discovering the mixtures and mingling within these groupings as well as their hybrid structures, procedures and institutions. There are several concepts and terms discussed in this context. We have developed our own concept of transculturality in the conceptual and theoretical discussions at the Cluster *Asia and Europe in a Global Context* in Heidelberg (Germany).⁹ It has been influenced and inspired by Homi Bhabha’s concept of hybridity and postcolonial theory in general.¹⁰ However, the concept of transculturality differs from the notion of hybridity: Whereas hybridity, at least in Bhabha’s understanding, is ultimately connected to the colonial situation and its aftermath, the notion of “transculturality” is conceptualized to be independent of a specific historical situation and thus can be applied to various settings of power relations. Especially for the contact zones of the early modern period this is important as to avoid anachronistic projections of European dominance into situations where the dawn of modern colonialism was still far away. The second major difference lies in the character of our approach, which aims less at ontological assumptions about culture(s) in general and more at heuristic tools for analysis. With the understanding that human history results from processes of exchange and interaction, one may claim that everything is

8 In a global context, postcolonial criticism is of course crucial. Moreover, it is – though often unacknowledged – accompanied by comparable theoretical conceptions in “normal” or Western history. The turn from traditional social to culturalist and, most of all, constructivist approaches questioned all kinds of fixed structures and entities; cf. A. Flüchter, Einleitung: Der transkulturelle Vergleich zwischen Komparatistik und Transkulturalität, in: ead./W. Drews (eds.), *Eliten – Sakralität – Memoria. Ein transkultureller Vergleich monarchischer Herrschaftsformen*, Berlin 2015 [forthcoming].

9 This concept of transculturality is outlined by Monica Juneja; Understanding Transculturalism. Monica Juneja and Christian Kravagna in Conversation, in: F. Amir et al. (eds.), *Transcultural Modernisms*, Berlin 2013, pp. 22–33; M. Herren/M. Rüesch/C. Sibille, *Transcultural History: Theories, Methods, Sources*, Heidelberg 2012; R. G. Wagner, China “Asleep” and “Awakening.” A Study in Conceptualizing Asymmetry and Coping with It, in: *Transcultural Studies*, 2 (2011) 1, online available: <<http://archiv.ub.uni-heidelberg.de/ojs/index.php/transcultural/article/view/7315>> [accessed 28 March 2012] ; A. Flüchter and J. Schöttli, The Dynamics of Transculturality. Concepts and Institutions in Motion, in: A. Flüchter/J. Schöttli (eds.), *Dynamics* (7), pp. 1–23.

10 H. K. Bhabha, *The Location of Culture*, London [i.a.] 1994 (reprint London 2010); id., *Nation and Narration*, London [i.a.] 2009. In addition, we build on other influential concepts like F. Ortiz, *Cuban Counterpoint. Tobacco and Sugar*, transl. by H. de Onís, Durham/London 1995; A. Appadurai, Disjuncture and Difference in the Global Cultural Economy, in: *Public Culture*, 1 (1990), pp. 1–24; id., How History Makes Geographies: Circulation and Context in a Global Perspective, in: *Transcultural Studies*, 1 (2010), pp. 4–13.

hybrid (Said) or transcultural (Welsch).¹¹ For us, however, this statement is just where the enquiry begins. Because even if we understand everything as transcultural in the way of Said or Welsch, what remains unexplained is how ideas and practices actually mingle and mix, as well as the processes that instigate and constitute the transcultural phenomena. In other words, if everything is labelled as transcultural, the term loses its analytical edge.¹²

For conceptual accuracy, it is helpful to use the complementary terms “intercultural” as well as “transcultural”. In a contact zone where different groups meet and interact, we can label this situation as intercultural. Yet not every intercultural contact results in something tangibly transcultural. Some intercultural contacts have even resulted in something like the extinction of one or the other group. In other cases, the intercultural interaction may simply result in the addition of different cultural elements. For the process of transculturalization, however, it is essential that cultural boundaries are crossed.¹³ Thus, we use “transcultural” in a narrow sense, that is, “transcultural” designates only those outcomes of an intercultural contact that bring about something new, something that is different from the institutions, procedures and concepts of all interacting groups. This implies that transculturality is not just a further object of research but a category in itself. And thus it structures our research, which focuses on interacting groups and cultures.

In contrast to Welsch’s position, we understand transculturality not as a phenomenon merely to be found in the modern age and caused by increasing globalization, but as something fundamental and constitutive for all historical periods.¹⁴ In this issue, we therefore bring together case studies both before and after 1800.

11 E. W. Said, *Kultur und Identität – Europas Selbstfindung aus der Einverleibung der Welt*, in: *Lettre International*, 34 (1996), pp. 21–25, here: p. 24; W. Welsch, *Transkulturalität. Zwischen Globalisierung und Partikularisierung*, in: *Zeitschrift für Kulturaustausch*, 45 (1995) 1, pp. 39–44, here: p. 39.

12 If the usage of this concept becomes too frequent and too unspecific, it may lead to a “transification-trap” (“Transifizierungsfalle”) as pointed out by M. Hühn, D. Lerp, K. Petzold and M. Stock, *In neuen Dimensionen denken? Einführende Überlegungen zu Transkulturalität, Transnationalität, Transstaatlichkeit und Translokalität*, in: M. Hühn/D. Lerp/K. Petzold/M. Stock (eds.), *Transkulturalität, Transnationalität, Transstaatlichkeit, Translokalität: theoretische und empirische Begriffsbestimmungen*, Berlin/Münster 2010, pp. 11–46.

13 Cf. the concept of cultural boundaries: J. Osterhammel, *Kulturelle Grenzen in der Expansion Europas*, in: *Saeculum*, 46 (1995), pp. 101–138.

14 A transcultural approach is not only applied to analyse modern phenomena but is used even in prehistorical and Egyptological studies: J. Maran, *One World Is Not Enough: The Transformative Potential of Intercultural Exchange in Prehistoric Societies*, in: P. W. Stockhammer (ed.), *Conceptualizing Cultural Hybridization. A Transdisciplinary Approach*, Berlin [i.a.] 2012, pp. 59–66; P. W. Stockhammer, *Conceptualizing Cultural Hybridization in Archaeology*, in: *ibid.*, pp. 43–58; J. F. Quack, *Importing and Exporting Gods? On the Flow of Deities between Egypt and Its Neighbouring Countries*, in: A. Flüchter/J. Schöttli (eds.), *Dynamics* (7), pp. 255–277. At this point, it seems necessary to explain that we understand transnationality as a special case of transculturality, similar to the understanding of the nation-state as a special case in history. Whereas “transnational” wants to challenge national entities, “transcultural” can be applied to different social formations. Cf. A. Höfert, *Geschlecht und transkulturelle Perspektiven*, in: A. Rathmann-Lutz/A. K. Liesch/S. Wenger/M. Ineichen (eds.), *Gender in Trans-it. Transkulturelle und transnationale Perspektiven. Beiträge zur 12. Schweizerischen Tagung für Geschlechtergeschichte*, Zürich 2009, pp. 17–29. Besides this more general understanding of transculturality, it is the more apt term for state systems before the implementation of “nation” as a primordial category.

Intercultural and transcultural approaches as well as comparative ones always entail a certain danger of essentializing the entities of analysis. Especially important as well as precarious in this regard is the underlying concept of culture. In the discussions on cultural or culturalist history, it is often held to be self-evident that the name-giving “culture” mostly refers to constructivist and interactionist concepts of culture. Standard references in this regard, the “canon” of quotation so to speak, include Clifford Geertz, Peter Berger and Thomas Luckmann, Max Weber, and Erving Goffman (amongst others).¹⁵ Thus, it seems clear that “culture” is always a constructed and not a given entity, that it is not just a certain part of social super-structure dealing with the fine arts but is basically defined as the encompassing, self-spun “webs of meaning” in which the human animal is suspended.¹⁶ However, as self-evident as this concept of culture seems to be in the discussions among cultural historians, it becomes just as problematic if one applies it in a transcultural context. Is the “culture” in “trans-culturality” and “inter-cultural” the one that Geertz means? How can these terms be related to the standard theoretical references mentioned above? These theories, including Geertz, are of rather little help because they mostly argue “intraculturally”, that is, they serve above all as an instrument to understand the actors, institutions and phenomena in *one* cultural context; thus, the question of cultural differences and cultural boundaries (apart from the question of identity perhaps) is not central to them.¹⁷ If we speak, however, about intercultural interactions in a contact zone, a definition different from, or rather in addition to, Geertz’ semiotic one is needed. Whereas Geertz et al. use “culture” exclusively as an analytical notion, our understanding aims at including the actors’ perspective, too. The case studies collected in this volume use the notion of “culture” to designate social, ethnic or national groups whose members have some sort of shared identity, the sense of being different from others and regarded as something different by others. Of course, these social formations, again, are not homogenous or self-contained.¹⁸ They can be defined as the results of different ascribing practices. Firstly, the historical actors can understand themselves as a group or culture, and they can be defined as a group by other contemporaries.¹⁹

15 This concept relies above all on the work of Clifford Geertz: C. Geertz, *The Interpretation of Cultures. Selected Essays*, London 1993. This and similar culturalist theories were very influential in German historiography in the last 30 years; however, they are not totally congruent with cultural studies in the Anglo-American world; cf. for the German context: U. Daniel, *Kompendium Kulturgeschichte. Theorien, Praxis, Schlüsselwörter*, Frankfurt/Main 2001; A. Landwehr, *Kulturgeschichte*, Stuttgart 2009; S. S. Tschopp, *Die Neue Kulturgeschichte. Eine (Zwischen-) Bilanz*, in: *Historische Zeitschrift*, 289 (2009), pp. 573-605; for different approaches in Europe: J. Rogge, *Cultural History in Europe: Institutions – Themes – Perspectives*, Bielefeld 2011.

16 See C. Geertz, *Interpretation* (15), p. 5 (“Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs [...]”). As often as this wording is quoted, as often it is neglected that Geertz himself borrows this image from Max Weber.

17 Cf. C. Brauner, *Kompanien, Könige und caboceers. Europäisch-afrikanische Beziehungen und interkulturelle Diplomatie an Gold- und Sklavenküste, 17.-18. Jahrhundert*, Köln [i.a.] 2015 [forthcoming], pp. 19-20.

18 For a more detailed account of these two entangled concepts of culture, cf. A. Flüchter, *Der transkulturelle Vergleich* (8).

19 Identity is understood, of course, not in the sense of an essentialized collective identity but rather interpreted as social construction; cf. J. Assmann, *Kollektives Gedächtnis und kulturelle Identität*, in: id./T. Hölscher (eds.), *Kultur und Gedächtnis*, Frankfurt/Main 1988, pp. 9-19; A. Flüchter, „Deutsche“ in der Vereinigten Ost-Indische Compa-

Secondly, the identification of the number of people as belonging to the same culture or group can also result from an ascription by the researcher. The most important point to note here is that, in our analytical perspective, these cultures are never a given but are always constructed, despite the contemporaries' belief that they are given and natural. The edge of a transcultural perspective thus consists in analysing this very ambivalence: how transfers and constructions of homogeneity can go together, why adaptations happen there and not here and why they are forgotten in the end, how universalism can be exclusive and inclusive at the same time, what leeways can grow from cultural variety despite all attempts to order it, and so on.

2. Difficulties conceptualizing the state from a transcultural perspective

The transcultural approach opens up new horizons for many objects of investigation.²⁰ Why is it still so difficult to ask for the transcultural dimensions of statehood, at least as compared to other topics? This is a problem encountered most of all regarding the historiography of the European or Western past and with the scholars working about it. One important reason seems to be the relevance of the Westernness or Europeanness of the modern state as a central element for constructing European or Western identity as well as for the powerful master narrative of the rise of the West.²¹ The modern state is seen as a cornerstone for European dominance in the nineteenth century, and consequently it became the European export hit. In all world regions, political institutions

gnie oder: Welche Identität konstruiert man in einer „transnationalen“ Gemeinschaft, in: C. Dartmann/C. Meyer (eds.), *Identität und Krise? Zur Deutung vormoderner Selbst-, Welt und Fremderfahrungen*, Münster 2007, pp. 155-186; C. Dartmann/C. Meyer, *Einleitung*, in: *ibid.*, pp. 9-22; M. Pyka, *Geschichtswissenschaft und Identität. Zur Relevanz eines umstrittenen Themas*, in: *Historische Zeitschrift*, 280 (2005), pp. 381-392. Here, concepts such as Anderson's notion of "imagined community" (B. R. O. G. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London 1990) or Rahden's "situated construction of identity" can be helpful (T. von Rahden, *Weder Milieu noch Konfession. Die situative Ethnizität der deutschen Juden im Kaiserreich in vergleichender Perspektive*, in: O. Blaschke/F.-M. Kuhlemann (eds.), *Religion im Kaiserreich. Milieus – Mentalitäten – Krisen*, Gütersloh 1996, pp. 409-434; T. von Rahden, *Jews and the Ambivalences of Civil Society in Germany, 1800–1933. Assessment and Reassessment*, in: *Journal of Modern History*, 77 (2005), pp. 1024-1047).

20 Transcultural approaches can be found in many disciplines, and they are applied to many different fields and subjects of research. Cf., for instance, the numerous projects in the Cluster *Asia and Europe* in Heidelberg, encompassing a broad timeframe, from prehistoric to modern times, and bringing several disciplines together.

21 Similar considerations might be found in P. Eich/S. Schmidt-Hoffner/C. Wieland, *Der wiederkehrende Leviathan: Zur Geschichte und Methode des Vergleichs spätantiker und frühneuzeitlicher Staatlichkeit*, in: P. Eich/S. Schmidt-Hoffner/C. Wieland (eds.), *Der wiederkehrende Leviathan. Staatlichkeit und Staatswerdung in Spätantike und Früher Neuzeit*, Heidelberg 2011, pp. 11-40, esp. pp. 15-16; a detailed account of this master narrative is provided by W. Reinhard, *Geschichte der Staatsgewalt. Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart*, München 2002, pp. 15-29. Cf. master narratives: M. Middell, *Europäische Geschichte oder global history – master narratives oder Fragmentierung. Fragen an die Leittexte der Zukunft*, in: K. H. Jarausch/M. Sabrow (eds.), *Die historische Meistererzählung. Deutungslinien der deutschen Nationalgeschichte nach 1945*, Göttingen 2002, pp. 214-252; K. H. Jarausch, *Die Krise der nationalen Meistererzählungen*, in: *ibid.*, pp. 140-162; F. Rexroth, *Meistererzählungen und die Praxis der Geschichtsschreibung. Eine Skizze zur Einführung*, in: *id.* (ed.), *Meistererzählungen vom Mittelalter. Epochenimaginationen und Verlaufsmuster in der Praxis mediävistischer Disziplinen*, München 2007, pp. 1-22.

and structures were modelled on the example of the European nation-state in modern times.²² Central contributions to the study of the development of Western statehood as an evolution – from medieval feudalism to modern statehood via a formation phase in the early modern period – have been made by Charles Tilly and Wolfgang Reinhard.²³ These scholars did not understand their results as a fixed schema or even a teleological direction;²⁴ nevertheless, in the reception they were often simplified and merged with normative assumptions. Since statehood, state institutions and the very idea of the Europeaness of the modern state are very important for the construction of Western identity, one can presume that historiography has deliberately or unconsciously concealed external influence in these areas. Michael G. Müller and Cornelius Torp claim that Western historians have understood the nation-state as “the obvious and ‘natural’ object of historical research [...] and proved to be both unwilling and incapable of putting national phenomenon into a broader perspective”.²⁵ In most of the literature about state and statehood in a Western or European context, the belief in the specifically European origin of modern statehood seems unbroken.²⁶

However, global history approaches or those studies dealing with regions outside Europe describe the situation quite differently. In this context, the importance of Asian empires and territories is generally acknowledged in the discussions about the “great divergence”. More specifically, studies about rule and governance in Asia claim that these institutions can be understood as states – not as modern nation-states, but as states.²⁷ John Darwin,

22 On the one hand, Wolfgang Reinhard depicts this idea of the state as a European export hit. On the other hand, however, he stresses that this transfer took quite different shapes in different world regions which varied not least according to the respective European involvement. He concludes that the exported states are hybrid states; cf. W. Reinhard, *Staatsgewalt* (21), p. 482, and id., *Geschichte der Staatsgewalt und europäische Expansion*, in: id./E. Müller-Lückner (eds.), *Verstaatlichung der Welt? Europäische Staatsmodelle und außereuropäische Machtprozesse*, München 1999, pp. 316–356, esp. pp. 321–328.

23 The schema outlined by Charles Tilly consists of five steps: 1. “the formation of a few early national states amid a great variety of other political structures in Europe”, 2. “the mapping of most of Europe into distinct national states through wars, alliances, and a great variety of other maneuvers”, 3. “the extension of political and economic domination from that European base to much of the rest of the world, notably through the creation of client states and colonies”, 4. “the formation – though [sic] rebellion and through international agreement – of formally autonomous states corresponding approximately to the clients and colonies”, 5. “the extension of this state system to the entire world”, C. Tilly, *Western State-Making and Theories of Political Transformation*, in: id. (ed.), *The Formation of National States in Western Europe*, Princeton 1975, pp. 601–638, here: p. 636. W. Reinhard, *Staatsgewalt* (21); id., *Einführung: Moderne Staatsbildung – eine ansteckende Krankheit*, in: id./E. Müller-Lückner (eds.), *Verstaatlichung der Welt?* (22), pp. VII–XIV.

24 Cf. the critical analysis of development theories by Charles Tilly at the beginning of this article, C. Tilly, *Western State-Making* (23), pp. 611–621. Reinhard also includes in a comparative manner the development in other world regions; cf. footnote 22.

25 M. G. Müller/C. Torp, *Conceptualising Transnational Spaces in History*, in: *European Review of History*, 16 (2009), pp. 609–617, here: p. 609.

26 This is especially true with regard to the introductory literature; see e.g. A. Benz, *Staat* (2), esp. chap. 1, who mainly clings to a simplified version of the narrative provided by M. van Creveld, *Rise* (2).

27 Generally speaking and in comparison to other extra-European states, the findings about Chinese statehood seem to be best known in a broader scientific community, not least because of the debate on the “great divergence”; cf. for example: P. C. Perdue, *China Marches West. The Qing Conquest of Central Eurasia*, Cambridge 2005; further references: P. Vries, *State* (4). Comparable statements are advanced about Indian history, most of all the history of the Mughal empire: Already in 1985, Lloyd I. Rudolph and Susanne Hoeber Rudolph compared

for example, concludes in his comparative study of empires that “state-building and cultural innovation were striking features of Eurasian, not just European, history in the early modern era”.²⁸ More than other topics, studies about state and state formation demonstrate the lack of exchange among historians of European and non-European history. Asian and other non-European institutions have been neglected in terms of empirical studies; conceptually, they are often treated “as a residual or irrelevant category”.²⁹ This is, of course, most obvious in the case of historiographical bestsellers like N. Ferguson, *Civilization: The West and the Rest* (2011) or D. S. Landes, *The Wealth and Poverty of Nations* (2007). But even in more recent works, non-European governance is mainly dealt with in terms of a history of deficiency.³⁰ In contrast, Peter Coclanis states explicitly that “it is no longer possible for any serious student of pre-modern history to overlook – or even understate – the size, sophistication and wealth of the major economic centres in Asia”.³¹

There are several reasons for this lack of exchange between the disciplines. Firstly, the perception of Asian rulership and governance was influenced, or rather obstructed, by the more than powerful narrative of Oriental despotism. Lloyd I. Rudolph and Susanne Hoeber Rudolph, who study statehood in the Mughal empire, have complained that the knowledge of Indian statehood in the Western discourse is nearly exclusively limited

European and Western statehood and state-building with Indian phenomena and complained that knowledge about Indian statehood in Western discourse was very limited, L. I. Rudolph/S. Hoeber Rudolph, *The Subcontinental Empire and the Regional Kingdom in Indian State Formation*, in: L. I. Rudolph/S. Hoeber Rudolph (eds.), *The Realm of Institutions. State Formation and Institutional Change*, New Delhi 2008, pp. 5–25, here: p. 1. A very important contribution to a new evaluation of Mughal statehood has been made by M. Alam/S. Subrahman-yam, *The Mughal State, 1526–1750*, Delhi 1998. The study by Farhat Hasan, who highlights the coercive and consensual character of the Mughal empire, is also of interest in a comparative perspective; cf. F. Hasan, *State and Locality in Mughal India. Power Relations in Western India, c. 1572–1730*, Cambridge 2004, pp. 2–7 and pp. 32–34. Evaluations like this should be linked to the concepts of consensual rule in medieval Europe; cf., e.g., B. Schneidmüller, *Rule by Consensus Forms and Concepts of Political Order in the European Middle Ages*, in: *The Medieval History Journal*, 16 (2013), pp. 449–471. With regard to the Ottoman Empire, Rifa’at Ali Abou-El-Haj, amongst others, complains that this Empire served only as an antipode to Europe in historiography. The emphasis he puts “on the incomparability and incommensurability of Ottoman history”, though, leads to his sceptical attitude towards an empirical comparison of governmental institutions and practices; cf. R. A. Abou-El-Haj, *Formation of the Modern State: The Ottoman Empire, Sixteenth to Eighteenth Centuries*, New York 2005, pp. 2–3.

28 J. Darwin, *After Tamerlane: The Rise and Fall of Global Empires 1400–2000*, 2010, p. 104.

29 L. I. Rudolph/S. Hoeber Rudolph, *Empire* (27), p. 5. Cf. the statement by Peer Vries: “There indeed existed far fewer checks and balances for rulers in the big Asian empires than in Western European states, but terms like ‘totalitarian’, ‘despotic’ and ‘absolute’ clearly exaggerate the level of un-freedom and constraint in Asia, while exaggerating that of freedom and liberty in the West”; P. Vries, *Escaping Poverty: The Origins of Modern Economic Growth*, Wien/Göttingen 2013, p. 60. Cf. also the comparative study of elite formation in Western and Eastern monarchies: C. Dartmann/A. Flüchter/J. R. Oesterle, *Eliten im transkulturellen Monarchienvergleich*, in: W. Drews/A. Flüchter (eds.), *Eliten* (8).

30 N. Ferguson, *Civilization. The West and the Rest*, London [i.a.] 2011; D. S. Landes, *The Wealth and Poverty of Nations. Why Some Are so Rich and Some so Poor*, London 2007. See for more recent examples: W. Demel, *Reichs- und Staatsbildungen*, in: id. (ed.), *WBG Welt-Geschichte*, vol. IV: *Entdeckungen und neue Ordnungen 1200–1800*, Darmstadt 2010, pp. 162–212. Perry Anderson may serve as another example; he mentions the Ottoman empire in his comparative study of absolutism but only as an inferior counterpart; P. Anderson, *Lineages of the Absolutist State*, London 1974 [reprint 2013], cf. the critique by: R. A. Abou-El-Haj, *Formation* (27), pp. 2–3.

31 P. A. Coclanis, *Ten Years After: Reflections on Kenneth Pomeranz’s The Great Divergence*, in: *Historically Speaking*, 12 (2011) 4, pp. 10–12, here: p. 11; cf. also P. Vries, *Poverty* (29), p. 60.

to the narrative of oriental despotism.³² This is because the master narrative of the rise of European statehood with its rational rule, its intermediary powers and elites, and its coercive power needed, according to the Rudolphs' pointed statement, the counterpart of a weak, lascivious and arbitrary oriental despot. This narrative twin or dichotomy was thus central for the construction of the exclusively European character of the modern nation-state and has obstructed the perspective of the state as a result of exchange and entanglement, or at least the governmental sphere as a third space.³³

A second, more implicit but also more persistent, obstacle is the specific definition of state, shared in most historical work about Western statehood – a definition that in some respects is built upon the mentioned narrative twin of Western state/Oriental despotism. The definition of the modern state is based fundamentally on the writings of Max Weber as well as those of Georg Jellinek. For Weber's definition of state, rule over a defined territory and the monopoly of the legitimate use of coercive force is central.³⁴ Jellinek developed a congruence model ("Drei-Elemente-Lehre") of the modern state which is especially influential in German historiography. In this model, three elements constitute a state: the fixed borders that surround the territory (*Staatsgebiet*), a single and homogenous population (*Staatsvolk*) and the governmental power that rules over this territory (*Staatsgewalt*).³⁵ Both models, Weber's as well as Jellinek's, are still crucial if we look at up-to-date concepts about the state.³⁶

32 L. I. Rudolph/S. Hoeber Rudolph, *Empire* (27), p. 1; also: "Much of theory about state formation in Europe depends on misconceived or historically false contrasts with Asia", *ibid.* (footnote 11).

33 A vivid example of this phenomenon is provided by M. van Creveld, *Rise* (2); not only does he group most Asian polities under the heading of "empires", that is, as non-states, without any further reflection, but his descriptions also rely on elements of classical "despotism" concepts (esp. pp. 35-52). In the section "Frustration in Asia and Africa" (pp. 315-332), Creveld admits that there was a "bewildering variety of political systems ranging all the way from the loosest tribes without rulers to strongly governed, relatively stable chiefdoms, emirates and sultanates [...]". Yet it cannot be emphasized too often that government, even strong government, does not in itself a state make" (p. 315). This is everything Creveld has to say about Asian political structures. The remaining part of the section is dedicated to the first (quite un-statelike) ventures of Europeans in Asia and Africa during early modern times and the era of colonialization.

34 M. Weber, *The Theory of Social and Economic Organization*, transl. by A. M. Henderson and T. Parsons, New York 2009, pp. 154-157 [German original 1921/22]. James Sheptycky labelled these components as the "standard Weberian terms" for the state, J. Sheptycky, Introduction, in: *id.* (ed.), *Issues in Transnational Policing*, New York 2002, pp. 1-42, here: p. 3.

35 Cf. the discussion of this state concept in German historiography in detail: A. Flüchter, *Structures on the Move. Appropriating Technologies of Governance in a Transcultural Encounter*, in: ead./S. Richter (eds.), *Structures on the Move: Technologies of Governance in Transcultural Encounter*, Berlin/Heidelberg 2012, pp. 1-27, esp. pp. 4-7.

36 D. Nagl/M. Stange, *Staatlichkeit und Governance im Zeitalter der europäischen Expansion*, in: SFB 700: SFB-Governance Working Paper Series, Nr. 15, Februar 2009, p. 6; Leibfried and Zürn, *Konstellation* (3), esp. pp. 19-22. In some respects the renewed interest in the state can be understood as a revival of Weberian theorizing; see for example: T. Skocpol, *States and Social Revolutions: A Comparative Analysis of France, Russia and China*, Cambridge 1979. Weber's model is still of crucial importance even in the latest conceptual debates. For example, the respective definition by Michael Mann is founded on Weber's writings and is frequently referred to in the Anglo-American discussion. For Mann, a "state" requires a differentiated set of institutions, together with a personal embodiment (1) a territory over which it rules, and (2) a centre from which the power relations reach to the borders; M. Mann, *States, War and Capitalism: Studies in Political Sociology*, Oxford [i.a.] 1992, p. 4. About Jellinek cf. D. Kelly, *Revisiting the Rights of Man: Georg Jellinek on Rights and the State*, in: *Law and History Review*, 22 (2004), pp. 493-529, and J. Kersten, *Georg Jellinek und die klassische Staatslehre*, Tübingen 2000.

Such a conceptualization of the state causes several problems. It is bound up with an evolutionary development from the medieval feudal state to the modern state, which is part of the mentioned master narrative. Too stringent evolutionary models are always a problem because the contingencies of historical development are neglected.³⁷ Moreover, this definition, based on the writings of Weber or Jellinek, may be very useful for studying the modern state, but it is built on a post-French Revolution phenomenon and definitions. Basically, it is a definition of the nation-state. It is shaped according to the ideal of the nation-state in 19th-century Europe but is nonetheless held to be of universal validity.³⁸ Therefore, it is not astonishing, but rather self-explanatory, that only modern European states (or those modelled closely on their example) meet the acquired criteria.³⁹ We deal here, to put it bluntly, with circular reasoning. Though most scholars would agree that state and nation-state are not the same and, furthermore, that the nation-state can be considered as a special case of state and statehood, the nation-state continues to serve implicitly as the model for all kinds of states and the yardstick which they have to live up to.

Alternative ways of conceptualizing the state

There are several possibilities for how to tackle this problem. Firstly, we can completely abdicate the term “state/Staat” if we are talking about premodern or non-European forms of governance and ruling. This position is above all founded on the argument that the term “state” is an anachronism if applied to these objects of research. Instead, the usage of other, more adequate terms is suggested, for example “polity”, “government” or “*Obrigkeit*”. However, this “anachronism” argument is a tricky one: Although it seems methodologically correct on first glance, it implicitly stabilizes the master narrative of European/Western hegemony because it claims that the modern state is both: a European specificity and the most powerful institution which ever developed in the political

37 Shmuel N. Eisenstadt's work about multiple modernities is one of the most influential concepts challenging the narrative of a nearly teleological evolution of the modern state; S. N. Eisenstadt, *Multiple Modernities*, in: *Daedalus*, 129 (2000), pp. 1-29.

38 Rüdiger Voigt, for example, maintains that the modern state is a European invention and that its conception was shaped by (continental) European lawyers: “Der moderne okzidentale Staat, wie wir ihn kennen, ist eine europäische Erfindung. Es waren vor allem kontinentaleuropäische, römisch-rechtlich geschulte Juristen, welche die moderne Staatsauffassung entwickelt haben.” R. Voigt, *Leviathan* (6), p. 260. Voigt is not alone with this observation; cf. for example W. Wallace, *Rescue or Retreat? The Nation State in Western Europe, 1945-93*, in: *Political Studies*, 42 (1994), pp. 52-76, here: p. 61: “The nation state’ is an artificial contract, an ideal type heavily dependent upon the historical experience of only two of Western Europe’s states: Britain and France”. However, it is interesting that such a constraint is forgotten if Western Europe is compared with non-European polities. Charles Tilly also stressed this point and argued for a reconsideration of the applicability of such a Eurocentric model to other world regions; C. Tilly, *Western State-Making* (23), p. 1: “most of the theories which are now available for application to the present and future build, implicitly or explicitly, on ideas of what happened in Europe”.

39 Besides, these definitions always describe an ideal type and not a “real” institution. Even in modern Europe, the order-obedience scheme central for the modern state à la Weber is rather a myth than reality; cf. C. A. Bayly, *Die Geburt der modernen Welt. Eine Globalgeschichte, 1780-1914*, Frankfurt/Main [i.a.] 2006, pp. 309-321.

field.⁴⁰ The claim of incommensurability inhibits all comparative approaches, leads to an essentialization of the Western modern state and obstructs any research about external, probably even non-European influences. Therefore, we have deliberately decided to use the term “state” in this special issue but in a broader sense that is not limited to the modern national or centralized unitary state.

There are, generally speaking, various definitions of the term “state/Staat” at hand. The classical definitions, referred to so far, mostly draw on one or several closely circumscribed characteristics, as mentioned above. However, there are other definitions that make it easier to apply a comparative or even a transcultural perspective. Tamar Herzog defines, for example, “states” as “entities that act in the name of public authority and political community”,⁴¹ a definition that enables her to look for exchange and negotiation of state-building in colonial South America. The German medievalist Hans-Werner Goetz suggests that, instead of referring to one single characteristic, one could understand “state/Staat” as a historical and therefore always changing phenomenon.⁴² It is interesting to see that the more inclusive definitions are mostly advanced by scholars working either on non-European or non-modern history.⁴³ To question narrow definitions focussed on the modern, unitary state by using concepts from beyond the modern timeframe appears promising in a twofold way. Firstly, the historical perspective gives the discussion of statehood some depth of focus. In the historical perspective, the nation-state with its homogeneity and seclusiveness appears as a special case in the history of statehood, one that is possibly dissolving in its national characteristics under the impact of globalization.⁴⁴ Thus, it is useful to study open-state structures that were characteristic of the early modern period in Western Europe. Secondly, the broader historical perspective may also enhance our understanding and evaluation of changing state structures both nowadays and in the future.⁴⁵

At the same time, transnational approaches have been quite successful in challenging national historiography or at least putting it in a more global perspective. However, the homogeneity of the modern Western nation-state has seemed so successfully constructed that transnational approaches have tackled mostly the (apparent) antagonists of

40 Cf. some more recent discussions about the usefulness of anachronisms in challenging master narratives: C. Arni, “Moi seule”, 1833: Feminist Subjectivity, Temporality, and Historical Interpretation, in: *History of the Present: A Journal of Critical History*, 2 (2012) 2, pp. 107-121; J. Rancière, Le concept d'anachronisme et la vérité de l'histoire, in: *L'inactuel*, 6 (1996), pp. 53-68.

41 T. Herzog, Upholding Justice: Society, State, and the Penal System in Quito (1650–1750), *Ann Arbor* 2004, p. 1.

42 H.-W. Goetz, “Staat” und Staatlichkeit im frühen Mittelalter, in: id. (ed.), *Moderne Mediävistik. Stand und Perspektiven der Mittelalterforschung*, Darmstadt 1999, pp. 180-185.

43 Cf. the definitions by Ernst Pitz or Susan Reynolds referred to in T. Horstmann / J. Peltzer, Die Wissensbasierung des Staates in historischer Perspektive, in: G. F. Schuppert / A. Voßkuhle (eds.), *Governance von und durch Wissen*, Baden-Baden 2008, pp. 33-48, here: p. 34.

44 Leibfried and Zürn ask, for example, if a total re-conceptualization of state is necessary after being challenged by globalization; cf. Leibfried / Zürn, *Konstellation* (3), p. 37.

45 Such relevance for today's world is also mentioned by Charles Tilly; cf. C. Tilly, *Western State-Making* (23), p. 2. Cf. also M. Albrow, *Global Age* (2), pp. 168ff.

the modern state (e.g. transnational movements or institutions) and not the state itself.⁴⁶ But there are also some concepts that question the national and homogenous character at least of the future state. For example, William Robinson has questioned the dichotomy of the global and the national and the conflation of state and nation-state.⁴⁷ Arguing from a Marxist point of view, he consequently criticizes the Weberian state concept, or rather its underlying dualism of nation-states and the economic sphere, most of all the markets.⁴⁸ While we do not want to follow Robinson's return to historical materialism,⁴⁹ his plea may serve as a thought-provoking reminder that the generally shared concept of state is not set in stone but that different ways of conceptualizing statehood – also nowadays – are possible.⁵⁰

Robinson, as well as other authors looking for alternative state models or an alternative vocabulary to describe state structures,⁵¹ is interested in an evolving transnational state, forming just now and with multi-centred and multi-layered structures. This transnational state often appears as another stage in the continuous evolutionary process of state-building. Trapped – and maybe even unconsciously – in the evolutionary model of modern statehood, the perspective on early modern states is often too simplifying. Theories developed by political science or other social sciences define modern homogeneity and centrality as a central characteristic of the nation-state and, through their attempt to project this model into the past, present an image of premodern rule which is homogenizing. Whereas these theories define homogeneity as the central characteristic of modern statehood, other approaches on the contrary present the very opposite quality, that is, the flexibility and permeability of boundaries, as the specifically modern trait of statehood. Globalization, in this argument, has brought separate units, political or economic, together and has enabled or forced interaction. Consequently, their early modern predecessors are imagined as thoroughly separate and self-contained.⁵²

As discussed above, the work of Charles Tilly is an important point of reference for the classic model of state formation. Tilly also highlighted the fact that the early modern state came in many varieties, and that it was less homogenous than either the feudal or the modern state.⁵³ After the recent debate on medieval feudalism initiated by Susan

46 See H. Thompson, *The Modern State and its Adversaries*, in: *Government and Opposition*, 41 (2006) 1, pp. 23–42. Cf. also footnote 2.

47 W. I. Robinson, *Social Theory* (4).

48 *Ibid.*, pp. 161–163.

49 Last but not least, the Marxist concept is a problem for contact zones because Marx also modelled it on the Western or even the British example. Coming from a critical point of view, he nevertheless wrote another Eurocentric master narrative. This is one of the reasons that postcolonial thinkers, even those starting from a Marxist point of view, came to criticize its teleological direction. This is most obvious in the debate about Indian feudalism; cf. for example: H. Mukhia (ed.), *The Feudalism Debate*, New Delhi 1999.

50 He argues that the state has to be understood “as a specific social relation inserted into larger social structures that may take different, and historically determined, institutional forms, only one of which is the nation state”, W. I. Robinson, *Social Theory* (4), p. 165.

51 Another author who sketches alternative ways and a new vocabulary for state and statehood is James Sheptycki; cf. J. Sheptycki, *Introduction* (34).

52 Cf., for example, M. G. Müller/C. Torp, *Conceptualising* (25), p. 610.

53 C. Tilly, *Coercion, Capital, and European States, AD 990–1990*, Oxford 1990; *id.*, *Western State-Making* (23), p. 636.

Reynolds,⁵⁴ it can be doubted whether the feudal state was really that homogenous; however, that is not the topic of this issue. The variety of political types in early modern times is in any case considered by several scholars as “one of the most historically pregnant [sic!] aspects of pre-modern Europe”.⁵⁵ This pronounced and rich variety of early modern statehood is an aspect that is generally rather neglected in the historiography about state-building. However, it has been the starting point for some considerations relevant in our context. There are, amongst others, the concepts of the composite monarchy (Elliott) or the conglomerate state (Gustafsson), which have had a lasting impact on discussions on early modern political culture.⁵⁶ Whereas Elliott rather carefully terms this form of governance a monarchy, Gustafsson deliberately uses the notion of “state” and defines the conglomerate state as “a state area consisting of several territories, usually brought together by a ruling house but kept together by a few other factors”.⁵⁷

In the conceptual framing of the composite monarchy or conglomerate state, there were cases where the territories came together in an “accessory” union; in these cases, the new provinces were “regarded juridically as part and parcel” of the “main” kingdom or territory.⁵⁸ For the objective of this volume, the other possibility, a union *aeque principaliter*, is more interesting, because here the units were “treated as distinct entities”.⁵⁹ Whereas

54 S. Reynolds, *Fiefs and Vassals. The Medieval Evidence Reinterpreted*, Oxford [i.a.] 1994; a good introduction into this debate is provided by S. Patzold, *Das Lehnswesen*, München 2012.

55 S. R. Epstein, *The Rise of the West*, in: J. A. Hall / R. Schroeder (eds.), *An Anatomy of Power: The Social Theory of Michael Mann*, Cambridge 2006, pp. 233–262, here: p. 252.

56 J. H. Elliott, *A Europe of Composite Monarchies*, in: *Past & Present*, 137 (1992), pp. 48–71; id., *Spain, Europe and the Wider World, 1500–1800*, New Haven [i.a.] 2009, Chapter 1: *A Europe of Composite Monarchies*, pp. 3–24; H. Gustafsson, *The Conglomerate State: A Perspective on State Formation in Early Modern Europe*, in: *Scandinavian Journal of History*, 23 (1998), pp. 189–213. As a starting point the inaugural lecture by Koenigsberger has to be named; cf. H. G. Koenigsberger, *Dominium Regale or Dominium Politicum et Regale: Monarchies and Parliaments in Early Modern Europe: Inaugural Lecture in the Chair of History at University of London King’s College* 25th February 1975, London 1975.

57 H. Gustafsson, *Conglomerate State* (56), p. 194. Gustafsson’s choice of terminology is deliberate; in fact he embedded his concept of state into the historiographical framework and refers to Otto Hintze, Max Weber, Anthony Giddens, Perry Anderson and Charles Tilly, cf. *ibid.* (footnote 189–193). We, however, decided to use the term “state” as an umbrella term, encompassing empires as well as monarchies. A terminological distinction between state and monarchy might be made; compare, for example, the definition of state by Tilly: C. Tilly, *Western State-Making* (23), p. 638 “as an organization, controlling the principal means of coercion within a given territory, which is differentiated from other organizations operating in the same territory, autonomous, centralized and formally coordinated”, with the definition of monarchy by T. Herzog, *Upholding Justice* (41), p. 5: “made of several political entities each independent of the other and each subjected to the king”. However, in studies about French “Absolutism” or the Prussian or even Habsburg monarchies, the term “state” is mostly used without any reflection on the problems that come up when applying it to non-European rule; see for example the essays in J. R. Maddicott / D. M. Palliser (eds.), *The Medieval State. Essays presented to James Campbell*, London [i.a.] 2000, where only one contributor reflects on the definition of state but quickly dismisses the question with a short reference to S. Reynolds (A. Thacker, *Peculiaris Patronus Noster. The Saint as Patron of the State in the Early Middle Ages*, pp. 1–24, here: pp. 1f.). Regarding the relation between the terms “empire” and “state”, see the more extensive discussion in A. Flüchter, *Structure* (35), pp. 7–9.

58 J. H. Elliott, *Europe* (56), p. 52.

59 *Ibid.*, p. 52. Elliott explains that these monarchies consisted of several territories which could be geographically contiguous (like Poland and Lithuania, England and Wales) but might also be separated even by oceans (like the Spanish Habsburg or Hohenzollern monarchies).

these territories had a ruling dynasty in common, they kept their independent status and had separate estate assemblies or legal systems.

According to Elliott, the majority of early modern forms of governance can be described as composite monarchies.⁶⁰ Such a union had advantages for the ruler as well as for the ruled, since “by ensuring the survival of their customary laws and institutions it made more palatable to the inhabitants the kind of transfer of territory that was inherent in the international dynastic game”.⁶¹ According to Elliott, the creation of such a composite monarchy was the “natural and easy” strategy to embark on when an early modern monarch wanted to enlarge his territory.⁶² Therefore this type of rule seems to be a more appropriate and adequate model for an assessment of early modern rule than the modern unitary nation-state.⁶³ Gustafsson carries this argument even further: “I claim that this was not only an alternative state form, coexisting with emerging ‘national’ more unitary states, but that it was *the* state of early modern Europe.”⁶⁴

Elliott limits his concept to European cases.⁶⁵ Furthermore, he states explicitly that “imperialism and composite monarchy made uncomfortable bedfellows”, because the overseas territories of some parts of a composite monarchy would disturb the internal equivalence.⁶⁶ Thus, he not only restricts the usage of his own concept to European history, but implicitly argues as well for an essential difference between rule inside and outside Europe.⁶⁷ However, the empirical success of such transfers has proved Elliott wrong: Several studies about European forms of governance outside of Europe have already applied these concepts in a very fruitful way.⁶⁸ Their findings point to numerous structural parallels between early European rule outside of Europe and the conglomerate state, above all with regard to the coexistence of different judicial and political systems.⁶⁹ Compare, for

60 Ibid., p. 51; Gustafsson describes this structure as a “political, judicial and administrative mosaic”; H. Gustafsson, *Conglomerate State* (56), p. 189.

61 J. H. Elliott, *Europe* (56), p. 53. Above all, the alliances with the local and regional elites were crucial; cf. *ibid.*, p. 55; a very convincing account of the regional elites under the so-called Danish absolutism and the French elite under Louis XIV is provided by Gustafsson: H. Gustafsson, *Conglomerate State* (56), pp. 200–202 and p. 205.

62 J. H. Elliott, *Europe* (56), p. 52; other possibilities like conquest are estimated as “too risky for most sixteenth century rulers”, *ibid.*, p. 54.

63 *Ibid.*, p. 51.

64 H. Gustafsson, *Conglomerate State* (56), p. 194.

65 Elliott considers the few contact zones or early colonial territories he mentions as an accessory union at the utmost and interprets Spanish India, for example, as a typical example for an accessory union: J. H. Elliott, *Europe* (56), p. 52.

66 *Ibid.*, pp. 59–60.

67 Thus, it seems significant that Armitage criticizes the equation of Ireland’s position in the United Kingdom with that of non-European colonies “rather than making it comparable to the outlying territories of other European composite monarchies such as Naples or Bohemia”; D. Armitage, *Greater Britain: A Useful Category of Historical Analysis?*, in: *American Historical Review*, 104 (1999), pp. 427–445, here: p. 433. By such an equation Ireland is excluded from Europe and set in the area of the not comparable.

68 Cf. *ibid.*, pp. 440–441, about the transatlantic world; T. Herzog, *Upholding Justice* (41), p. 5 for Spanish America. In a more general way but in the same framework, several scholars have examined the colonial state as a consensual model; see for example the work of J. L. Phelan, H. G. Koenigsberger, S. N. Eisenstadt or Magali Sarfatti Larson; cf. also J. P. Greene, *Negotiated Authorities: Essays in Colonial Political and Constitutional History*, Charlottesville [i.a.] 1994.

69 Most of all in Asia, European rule mostly had to integrate into the ruling system.

example, different instances of French rule in the world. The statement of Gustafsson, that “what makes the states conglomerates *as states* is the fact that the different sectors had different administrative, judicial and political positions”, is here very apt.⁷⁰ At the beginning of European rule beyond Europe, Europeans were often dependent on alliances with the local elites, and that was easier if they did not meddle too much in local affairs and, for example, allowed a coexisting local legal system.⁷¹ Against the backdrop of the “normality” of a conglomerate state in Europe, it is not astonishing that Europeans who started ruling in other parts of the world accepted the independency of local or regional structures and institutions.⁷² According to Elliott and Gustafsson, this could even be the regular course of action for integrating another territory into a larger union. With the development of a mature colonialism or imperialism, the independence of the local areas and their elites was reduced or even discarded. The concept of a unitary nation-state obviously provides no adequate instrument to analyse this process of independency and change – and it is also much more difficult to grasp the agency of the ruled people.⁷³

One could, however, argue against the feasibility of the concept of the composite monarchy in describing the early colonial encounter by alluding to Elliott’s statement that this form of governance lost its attractiveness in the course of the seventeenth century.⁷⁴ He admits that some enlightened monarchies maintained their composite character but concludes that the overall trend led to the unitary nation-state.⁷⁵ However, Gustafsson is much more critical regarding this trend of unification and homogenization. He argues not only with the Scandinavian cases but also with France under Louis XIV – that is, the standard example of fully-fledged absolutism that has come under attack only during

70 H. Gustafsson, *Conglomerate State* (56), p. 196.

71 Of course, one has to distinguish between different instances of European rule beyond Europe, not least because the local political systems varied enormously in set-up and degree of organizational institutionalization. There is not *the* one situation of *the* typical contact zone but rather the conditions and power relations were quite different in 17th-century China and contemporary North America. Moreover, even under the condition of fully-fledged colonialism or imperialism, rule can never be totally imposed but always has to find some acceptance by the ruled actors. See T. von Trotha, *Koloniale Herrschaft. Zur soziologischen Theorie der Staatsentstehung am Beispiel des “Schutzgebietes Togo”*, Tübingen 1994; B. N. Lawrance / E. L. Osborn / R. L. Roberts (eds.), *Intermediaries, Interpreters, and Clerks. African Employees in the Making of Colonial Africa*, Madison 2006.

72 See, i.a., P. J. Stern, *The Company-State. Corporate Sovereignty and the Early Modern Foundations of the British Empire in India*, Oxford [i.a.] 2011; id., “A Politie of Civill & Military Power”: Political Thought and the Late Seventeenth-Century Foundations of the East India Company-State, in: *Journal of British Studies*, 47 (2008) 2, pp. 253–283.

73 Whereas Elliott and Gustafsson highlight, above all, the relevance of the regional elites, there are also some studies that combine a focus on rule in a contact zone with concepts of state-building from below; see for example: T. Herzog, *Upholding Justice* (41) and G. Parasher, *State-Building in a Transcultural Context: The Case of the French in India during the Early Eighteenth Century*, in: A. Flüchter / S. Richter (eds.), *Structures* (35), pp. 243–249.

74 “Forms of union which in the sixteenth century seemed adequate enough were beginning by the early seventeenth to seem inadequate.” J. H. Elliott, *Europe* (56), p. 70.

75 *Ibid.*, pp. 67–68.

the course of the last decades.⁷⁶ For him, the real caesura regarding this conglomerate governance is brought about by the French Revolution.⁷⁷

To look for and to analyse the transcultural dimensions of statehood, a more flexible concept of state, like the notion of a conglomerate state, is much more promising than the traditional, static concepts whose implicit influence still lingers on even in the latest publications in the field. Our concept of state in this transcultural endeavour is therefore neither the traditional one, as used and discussed in German historiography, nor does it aim at a fixed model at all. Rather, we conceive of the “state” as a space for interaction and a result of interactive processes. Thus, we define “state” as an organized socio-political system, above the family level, with one government that structures everyday life and the distribution of power and resources; however, it can work and function in different parts in different ways.⁷⁸

Governmental fields of transculturalization in contact zones

We do not want to write histories of influence but rather ask why cultural transfers and processes of transculturation happened and what meaning they had in their respective historical context, and especially for the actors involved. We are interested in the changes brought in the objects, concepts or actors during and by the process of transfer. We are even more interested in the agency of the involved persons and cultures and the process of appropriation (in the understanding of de Certeau)⁷⁹ that accompanies it. To study phenomena that evolve in contact zones, notions of “flows” or “processes of transfer” are important but not enough to describe and explain them. That is why we need concepts that allow us to study interactions. What does that mean for our focus on statehood? For rule and governance to be established in a functional manner in a contact zone, the different cultural (in this case mostly governmental) routines have to be made compatible. This can be accomplished in different ways, such as by force or by negotiation. However, even the cruellest despot needs some cooperation from those he rules over; rule based entirely on force is impossible. Negotiation (in a broad sense), on the other hand, can take place in the context of different power constellations, from more or less balanced relations to situations of striking power asymmetries.

76 Whereas Gustafsson observed some attempts to integrate the area around Nantes, such policy came to an end after the War of the Spanish Succession; cf. H. Gustafsson, *Conglomerate State* (56), pp. 199–200.

77 Ibid., p. 196. This evaluation is shared by several historians.

78 Cf. the discussions of state as a concept: A. Flüchter, *Structure* (35), pp. 4–14; concerning the definition of state: pp. 13–14.

79 Cf. M. de Certeau, *The Practice of Everyday Life*, Berkeley [i.a.] 2003; R. Chartier, *Culture as Appropriation. Popular Culture Uses in Early Modern France*, in: S. L. Kaplan (ed.), *Understanding Popular Culture. Europe from the Middle Ages to the 19th Century*, Berlin [i.a.] 1984, pp. 229–253; M. Füssel, *Die Kunst der Schwachen. Zum Begriff der ‘Aneignung’ in der Geschichtswissenschaft*, in: *Sozial.Geschichte. Zeitschrift für historische Analyse des 20. und 21. Jahrhunderts*, 21 (2006) 3, pp. 7–28. In this conceptual framing, appropriation is close to the concept of agency and subaltern studies.

For example, the rather comprehensive concept of empowering interaction or state building from below⁸⁰ is utilized to examine the implementation of new laws⁸¹ and the instrumentalization of the legal system from below.⁸² These concepts, developed mainly for a European context in the first place, will be combined with the approach of legal pluralism.⁸³

The traditional, state-based approaches to diplomatic studies also deserve another look.⁸⁴ For a long time, the modern system of international diplomacy has been understood as typically and exclusively European. Diplomacy has long been taken for a “state affair” only, that is, it has been viewed exclusively as the result of state-directed policies among sovereign nations. Along this line, some historians have claimed that diplomats could not adapt too much to the customs of a foreign court because they had to represent their ruler and their own culture.⁸⁵ The articles in this special issue, however, suggest that there was much more leeway in international diplomacy than formerly assumed and argue for a re-examination of diplomatic history from a transcultural perspective.

Trade has also been studied in strongly nation-based categories. History has been written as if the state was the predominant, if not the only, factor in the development and direction of trade. Therefore, the history of trade from a micro-perspective – focusing on the local cooperation among merchants of various nationalities, non-compliance with state-sanctioned commercial policies, and the biographies of cosmopolitan traders, to name just a few possibilities – is often neglected, and even more so when it comes to inter-regional trade of global dimensions.

80 Cf. A. Holenstein, *Empowering Interactions. Looking at Statebuilding from Below*, in: id./W. Blockmans/J. Mathieu/D. Schläppi (eds.), *Empowering Interactions. Political Cultures and the Emergence of the State in Europe, 1300–1900*, Farnham 2009, pp. 1–31 – as well as the critical comment by W. Reinhard, *No Statebuilding from Below! A Critical Commentary*, in: *ibid.*, pp. 300–304; S. Brakensiek, *Lokale Amtsträger in deutschen Territorien der frühen Neuzeit. Institutionelle Grundlagen, akzeptanzorientierte Herrschaftspraxis und obrigkeitliche Identität*, in: R. A. Asch/D. Freist (eds.), *Staatsbildung als kultureller Prozess* (3), pp. 49–67.

81 For example: A. Landwehr, *Policey im Alltag. Die Implementation frühneuzeitlicher Polizeyordnungen in Leonberg, Frankfurt/Main 2000*.

82 M. Dinges, *Justiznutzung als soziale Kontrolle in der Frühen Neuzeit*, in: A. Blauert/G. Schwerhoff (eds.), *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, Konstanz 2000, pp. 503–544.

83 S. E. Merry, *Legal Pluralism*, in: *Law and Society Review*, 22 (1988) 5, pp. 869–896; L. Benton, *Law and Colonial Cultures. Legal Regimes in World History (1400–1900)*, New York/Cambridge 2002. On the concept in general see J. Griffiths, *What Is Legal Pluralism?*, in: *Journal of Legal Pluralism and Unofficial Law*, 24 (1986), pp. 1–55 and the more recent account by Tamanaha, who tries to sketch a history of legal pluralism; B. Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, in: *Sydney Law Review*, 30 (2008), pp. 375–411.

84 Historians of the Islamic world and Asia have studied such diplomatic practices for quite some time; however, historians of Europe have only recently started to broaden their focus beyond their own backyard: J.-P. Niederkorn/R. Kautz/G. Rota (eds.), *Diplomatisches Zeremoniell in Europa und im mittleren Osten in der Frühen Neuzeit*, Wien 2009; C. Windler, *La diplomatie comme expérience de l'Autre. Consuls français au Maghreb (1700–1840)*, Genf 2002; id., *Diplomatic History as a Field for Cultural Analysis. Muslim-Christian Relations in Tunis, 1700–1840*, in: *Historical Journal*, 44 (2001), pp. 79–106; id., *Tribut und Gabe. Mediterrane Diplomatie als interkulturelle Kommunikation*, in: *Saeculum. Jahrbuch für Universalgeschichte*, 50 (1999), pp. 24–56; P. Burschel/C. Vogel (eds.), *Die Audienz. Ritualisierter Kulturkontakt in der Frühen Neuzeit*, Köln [i.a.] 2014; A. Flüchter, *Den Herrscher grüßen? Grußpraktiken bei Audienzen am Mogulhof im europäischen Diskurs der Frühen Neuzeit*, in: *ibid.*, pp. 125–164; C. Brauner, *Kompanien* (17).

85 C. Wieland, *The Consequences of Early Modern Diplomacy: Entanglement, Discrimination, Mutual Ignorance – and State Building*, in: A. Flüchter/S. Richter (eds.), *Structures* (35), pp. 271–285.

In the military field, transfer from Europe to Asia is an important topic. On the one hand, weapons and military technology were some of the few European goods Asian rulers were interested in;⁸⁶ on the other hand, the history of military technology is still very much overshadowed by the master narrative of the military revolution.⁸⁷ However, in the context of transcultural statehood, our interest is not only directed to the “simple” transfer of technologies, but also tries to understand how such transfers are embedded in military organization and social structures within the respective contact zone.

3. Case studies: Overview and some shared findings

Chronologically speaking, the case studies presented here range from the early 18th to the second half of the 19th century, thereby bridging a period of time that is still too often set apart by the caesura of 1800. Though they have pursued their respective aims of analysis, the case studies, taken together, narrate an overarching story of transcultural statehood and the way it has been dealt with. This is most obvious if one compares the two studies focusing on the realm of diplomacy and war: Ines von Racknitz’s detailed analysis of the China War of 1860 and the interactions between Westerners and Chinese leading up to it, and Christina Brauner’s paper on Afro-European diplomacy in 18th-century Dahomey and the discourse of despotism. Despite their different geographical focuses, the papers trace a similar development: Although in the mid-19th century there was still a need for Europeans to take local concepts of politics and diplomatic protocols into account, the general attitude Europeans bore towards foreign diplomacy and extra-European states had changed. Whereas in earlier encounters at the West African court of Dahomey, as Brauner shows, an inclusive idea of court diplomacy could open up spaces for transculturation, it was an exclusive and excluding notion of civilization that increasingly dominated the worldview and the behaviour of European diplomats all over the world. Both papers, however, also demonstrate that it is important not to interpret intercultural encounters too quickly in terms of colonialism and thus to view events as necessarily developing in one specific direction. Even at the very dawn of fully-fledged colonialism, Racknitz argues, an intercultural appropriation of Western institutions and concepts was possible. In West Africa, there was a huge and meaningful divide between the imaginations and discursive representations Europeans nurtured and the practices on the spot they submitted to and engaged in. To grasp this divide, however, it is necessary to scrutinize the sources in detail and – especially if there is no other material available – not to

86 S. Trakulhun, *Kanonen auf Reisen. Portugal und die Kunst des Krieges auf dem südostasiatischen Festland. 1500–1600*, in: id./T. Fuchs (eds.), *Das eine Europa und die Vielfalt der Kulturen. Beiträge zur Kulturtransferforschung in Europa 1500–1850*, Berlin 2003, pp. 307–327.

87 Cf. B. Noordam, *Ming Military Organization through the Lens of Contemporary European Observers: A Study in the History of Perception*, in: S. Meurer/S. Richter/N. Schillinger (eds.), *Migrating Ideas of Administration and Governance between Asia and Europe since the Early Modern Period*, Leiden [i.a.] [forthcoming].

take European representations for granted. Such a detailed source criticism seems to be a necessary precondition for any analysis of transculturation.

The two other case studies deal with legal order and the practice of jurisdiction in India. Gauri Parasher analyses trials in the small French entrepôt of Pondicherry during the 18th century, while Verena Steller focuses on a specific group of go-betweens in the British crown colony of India, namely the first generation of London-educated Indian attorneys. Both papers share the focus on individual agency in the contact zone and the insight that law was an important field of cultural encounters and processes of transculturation. They show, however, different forms of such encounters and processes of transculturation. Parasher describes how inhabitants of Pondicherry strategically used the different legal codes and traditions available in the cosmopolitan town and how judges and other officials responded by equally flexible decisions. The situations she describes are ones of formally ordered, that is, “strong” legal pluralism⁸⁸ which, in practice, turn out to be less ordered and more open to self-fashioning in the court than might appear on first glance. The space of transculturation she analyses opened up between the courts, which were partly mixed tribunals of local specialists and French officials, and the quarrelling parties in question who tried their best to fight for their interests. Steller, in contrast, locates the space of transculturation within the legal institutions themselves. After a short introduction into the ambivalences and contradictions of the “Rule of Law”, a core element of British identity as well as the empire’s legitimation, she traces how Indian attorneys use these very British concepts in their own way to reinforce Indians’ political or juridical rights or to prove the illegitimacy of measures taken by colonial officials. Taken together, these two papers remind us about longstanding traditions of dealing with variety and difference, and about the leeways for individual actors that these phenomena could open up.

88 See L. Benton, *Law* (83), pp. 11f. Benton distinguishes between “strong” and “weak pluralism”, the major difference being the existence of a formal order as an attempt to govern the different legal orders and mutual relations. Ross and Stern build on a similar distinction; they define it, though, the other way around with “weak pluralism” indicating an ordered variety of legal orders; R. J. Ross / P. J. Stern, *Reconstructing Early Modern Notions of Legal Pluralism*, in: L. Benton / R. J. Ross (eds.), *Legal Pluralism and Empires, 1500–1850*, New York / London 2013, pp. 109–141. See also above, n. 83.

Political Negotiations during the China War of 1860: Transcultural Dimensions of Early Chinese and Western Diplomacy

Ines Eben v. Racknitz

RESÜMEE

Der China-Feldzug der britisch-französischen Truppen von 1860 endete zwar mit einer Niederlage für China, leitete aber gleichzeitig eine neue Phase der diplomatischen Beziehungen zu den Westmächten ein. Die vorliegende Untersuchung der während des Krieges geführten politischen Verhandlungen zeigt, dass es zu Annäherungen kam, indem beide Seiten die diplomatischen Gepflogenheiten und Systeme des jeweils anderen zu erkennen trachteten und in einem transkulturellen Prozess in die Fortführung der Verhandlungen integrierten. Damit wird der traditionellen Deutung dieses Ereignisses als Meilenstein des europäischen Imperialismus eine neue Dimension hinzugefügt: Das chinesische System der Außenbeziehungen war wie das europäische sehr flexibel, und auch die „informal empires“ mussten stets neu verhandelt werden.

The China War of 1860 (or the “China expedition”, as it was called by British and French participants in their memoirs) changed the mode of negotiation between China and the European powers forever. In this war, lasting from August to October 1860, British and French allied troops were deployed in the north of China, reaching the gates of Beijing. European powers demanded not only the further opening of several more treaty ports on the coast of the Qing Empire, but also permission to establish European embassies in Beijing in order to gain direct access to the court.

The Qing government finally was forced to come to terms with the fact that the Western foreigners were no longer content to be confined to the southern borders of the empire, subject to the power of provincial governors, and now were insisting on negotiating with

the power holders in Beijing directly. The China War of 1860 was the last chapter and the pinnacle in a series of conflicts and struggles between China and the Western powers that started in 1839 with the First Opium War and continued with the Second Opium War in 1856–1858. The Treaty of Tianjin was negotiated to conclude the Second Opium War and was meant to be ratified in 1859. After the Qing reconsidered, then seemingly rescinded the treaty and forcibly repulsed the British and French ratification party's access to Beijing in 1859, inflicting a military defeat, Lord Elgin and Baron Gros, who had already led the negotiations in 1857/8, were sent with troops again to China to demand again the ratification of the treaty. In 1860, all tools of the Qing diplomatic system, according to which the elites of the Qing Empire had hitherto conducted their foreign relations, seemingly had failed. The Western allies were threatening the capital with their army and had caused the emperor to flee. In October 1860, British forces looted and burned the Yuanming Yuan, at the time one of the world's most beautiful garden ensembles, an act that speaks for itself.

In the end, the European allies were granted their demands in the Treaty of Beijing (concluded on October 24 and 25 of 1860), which granted them a considerable extension of their privileges in China, among them the opening of several more treaty ports and permission to establish embassies in Beijing, allowing a close and direct observation of Qing politics.

The China expedition of 1860 has usually been interpreted as another milestone of British and French imperialism in China on the way to China's subjection by the Eight-Nation Alliance in 1900 during the Boxer rebellion.¹ I do not contest this narrative. However, it is my contention that the diplomatic negotiations that accompanied the military actions of the allied armies also ushered in a new stage in the diplomatic relations between China and the Western powers, in which China was left with some room for agency and self-determination. Although the Chinese government, for the first time directly confronted in their own capital, had to come to terms with a Western system of diplomatic relations, its negotiators did not remain passive; instead they actively grasped the new conditions and even integrated several practices and techniques from the foreign system into their own and then used these transcultural elements to establish common ground between the Western powers and the Qing Empire.

The figure behind this strategy was Prince Gong (Yixin), who was forced to conclude the negotiations with the British and French after his brother, the Xianfeng Emperor, left Beijing and fled to Chengde. One illustration of Qing adaptation and agency was the foundation, in the aftermath of the China War of 1860, of the Zongli Yamen in Beijing,

1 For the China expedition of 1860 analyzed within the parameters of imperialism, see J. Hevia, *English Lessons: The Pedagogy of Imperialism in Nineteenth-Century China*, Durham 2003, and L. Liu, *The Clash of Empires: The Invention of Modern China in Modern World Making*, Cambridge 2004. A detailed analysis of the whole conflict beginning in 1857 in Canton is provided by J. Y. Wong, *Deadly Dreams: Opium, Imperialism and the Arrow War (1856–1860) in China*, Cambridge 1998.

an institution with the sole aim of getting to know and manage exclusively all affairs in connection with Europeans and other Western foreigners.²

What about the British and the French? Both Lord Elgin and Baron Gros, who served as heads of their respective British and French missions, knew from the negotiations in 1857/8 what to expect in China. Although the ultimate act of burning the Yuanming Yuan would not lead one to suspect it, the fact is that Elgin, as head of the British diplomatic mission, had received orders to act carefully: British China policy forbade any colonial adventures on Chinese soil in order to prevent it from becoming a second India.³ On the other hand, he had to take care not to be subjected by the Chinese government to what he perceived as their “traditional diplomatic customs”, but rather to act as an agent of a British Empire which desired to be treated on even footing with the Qing Empire. France had given her diplomatic representative, Baron Gros, almost the same instructions as Lord Elgin, but Gros often had to follow Elgin’s suggestions and leads since British forces outnumbered the French, and the French China policy was not nearly as clearly defined as the British. Despite their alliance during the expedition, Britain and France each followed more or less their own agenda and goals in China, particularly with respect to their “civilizing mission”: the British heralded free trade and Christian missions, while the French sought to establish itself as the protective power of Catholic missionaries and the Catholic Church in China.

In what ways, then, did the Western allies have to come to terms with the Chinese diplomatic system, appropriate it, and even integrate elements of it in a transcultural process? Additionally, in what ways did Britain and France follow their own agenda, and what were the repercussions?

I thus argue, the situation of war and violence notwithstanding, that an “appropriation” of some sort took place on both sides. All parties concerned had to come to terms with each other’s negotiating strategies, and had to integrate foreign elements into their diplomatic negotiations in a process of “transcultural acknowledgment”. From this point of view, and under the auspices of a theory of “entangled history”, a new perspective can be added to the history of Western involvement in China if we ask what *both* sides gained from their mutual engagement.⁴ The aftermath of the China War of 1860, for example, points to an agreement of some kind, since British troops supported the Qing government in defeating the Taiping rebels who were threatening the government in the south.⁵

2 One of the best studies about the founding of the Zongli Yamen is still M. Banno, *China and the West 1858–1861. The Origins of the Tsungli Yamen*, Cambridge 1964. The Zongli Yamen was dissolved in 1901 and replaced by the Ministry of Foreign Affairs, which finally really heralded in China’s emergence as a political entity with a way to conduct its foreign affairs corresponding with an international (meaning Western) standard of diplomacy that had developed during the nineteenth century.

3 J. Osterhammel, *China und die Weltgesellschaft. Vom 18. Jahrhundert bis in unsere Zeit*, München 1989, p. 152.

4 For theories of entangled history, please refer to S. Conrad/S. Randeria (eds.), *Jenseits des Eurozentrismus. Postkoloniale Perspektiven der Geschichts- und Kulturwissenschaft*, Frankfurt a.M. 2002, Introduction.

5 This is the conclusion of Stephen Platt, who claims that the Qing were saved through Zeng Guofan’s provincial military on the one hand and haphazard foreign intervention of the British on the other: S. Platt, *Autumn in*

I additionally argue that the different systems of diplomatic customs, or rather the different modes of conducting relations with the outside world, were not fixed entities, but rather were flexible, negotiable and renegotiable, particularly in situations of crisis and war as during the China expedition of 1860. Thus we have on the one side the system of the Qing Empire, which during the eighteenth century had analyzed and managed its heterogeneous frontier areas successfully according to changing political circumstances. In the nineteenth century, after a time of decline, the Qing Empire had to come to terms with a transformation from “frontier policy” to “foreign policy” as well as with the fact that it was no longer the sole contender for political power in the East, but rather was locked in competition with other entities, like Britain.⁶

On the other side were the ambitious and powerful British and French empires, allied here yet differentiated by slightly different motives, who acted as representatives and agents for free trade and the Christian mission in China. How did they come to terms with the diplomatic system of the Qing Empire? Which points were open to discussion, which points could not be discussed?

Although the Zongli Yamen is not the topic of this paper, if we consider an approach of entangled history between China and the Western powers and ask whether there were common interests between them, then we can also ask whether the Zongli Yamen as a platform of communication between Western and European diplomats was indeed forced on the Chinese government by the British and French, or whether it was established as an addition and a new instrument by the Qing Empire to a foreign policy undergoing transformation.⁷

It is the aim of this paper to disentangle the diplomatic negotiations between the allies Great Britain and France and the Qing Empire in order to show how they respectively perceived and acted upon mutual diplomatic systems and strategies. This will be undertaken in three steps. Firstly, the position of departure applying to all concerned parties will be determined in the form of a comprehensive “worldview”, the outlook of each party on its own system of state and politics and position in the world, its cultural practices with regards to the conduct of foreign affairs, and eventual political factors taking place during the negotiations (e.g. power struggles among different factions at the Qing court).

A second section describes crucial moments of the diplomatic negotiations that shed light on actual self-perceptions or on perceptions of the others. Finally, in my conclusion I describe the results of the negotiations and evaluate the mutual process of appropriation in comparison to the point of departure. This analysis relies mainly on materials found in British and French archives, as well as from eyewitness accounts that appeared

the Heavenly Kingdom: China, the West, and the Epic Story of the Taiping Civil War, New York / London, 2012, p. 525.

6 This is the argument of M. W. Mosca, *From Frontier Policy to Foreign Policy: The Question of India and the Transformation of Geopolitics in Qing China*, Stanford 2013, p. 3, on which I will elaborate elsewhere.

7 Jennifer Rudolph also argues in this direction: J. Rudolph, *Negotiated Power in Late Imperial China: The Zongli Yamen and the Politics of Reform*, Ithaca 2008, p. 3.

in Europe after the China War. The Qing court's perspective has been reconstructed from the Chinese correspondence found in British and French archives, as well as from the *Chouban yiwu shimo* (Complete Records on Managing Foreign Affairs).

The worldview and cultural set-up of the Qing Empire in 1860: Foreign relations, state and military

Theories of how the Qing Empire conducted its relations with the outside world have changed during the last few years. Until recently, John King Fairbank's theory of a "Chinese world order" served as a general framework to explain the Chinese worldview and the management of foreign relations during the Ming and Qing eras. This Chinese world order was, according to Fairbank, founded on a sinocentric ideology, with the emperor at the apex, and designed to enforce this hierarchy on foreign peoples. According to this thinking, the only possible relationship with the emperor of China was that of a "tributary".⁸ The Chinese emperor had several modes of conduct towards foreign peoples that he used to "convince" them of this world order. First, of course, there was military enforcement by an almost invincible army, and second, a system of bureaucratic regulations which was taught to and then exercised by the headmen of non-Chinese peoples, for instance, in the southwest. A third mode was the rule of virtue, in which the emperor, as the sage Son of Heaven, exercised a normative influence and thus impressed his superiority. Finally, for all foreigners who were out of reach geographically and culturally, the Chinese emperor was very skilled in the art of manipulating by means of material interests. Among the strategies employed against these foreigners were permitting trade or giving gifts (in particular the cupidity of Western foreigners was well-attested), keeping them at the border of the empire or using a strategy of playing out "one barbarian against another". This collection of institutional procedures made up the "tributary" system. This also meant that the rulers and officials had an a priori system of categorizing and managing foreign peoples and, according to Fairbank, did not require a clear knowledge of the outer world, that is, about the conditions among the tributary peoples or with each other. There have always been difficulties with the application of Fairbank's model of a sinocentric world order to the Qing Empire, since it has long been recognized that Qing policy toward Inner Asia differed significantly from that towards the European maritime empires and hints at a rather flexible scheme. But over the last twenty years, thinking on the empire's foreign relations has been undergoing reformulation.⁹ The result is that the Qing dynasty's Manchu rulers, whose vision was seemingly unclouded by sinocentric assumptions, can be shown to have been using logistical, technological and administrative innovations similar to the state-building projects carried out by European and Russian

8 D. Twitchett / J. K. Fairbank (eds.), *The Cambridge History of China*, Vol. 10, *Late Ch'ing, 1800–1911*, Part 1, Cambridge 1978, pp. 30ff.

9 Mosca, *From Frontier Policy to Foreign Policy* (6), p. 7.

governments of the same era. These Manchu rulers perceived the world surrounding them as consisting of a multitude of rulers and sought to make themselves “overlords” by analyzing and managing each according to its own political circumstances, developing a number of geopolitical strategies to maintain their top position as unifiers of the empire.¹⁰ From the leaders of the central Asian peoples they demanded recognition of the superiority of the Qing emperor while maintaining their freedom to rule locally. New artificial ethnic identities were created, and high local governmental posts were given to local princes while a variety of religious belief systems were integrated into their own.¹¹ Another strategy was the decentralization of power and the forging of loyalty not to a “China” (which was only one part of the Qing Empire) but to the ruling family of the Aixin Gioro.¹² The Qing Empire thus was multicultural, multiethnic and multilingual. This achievement still came at the heavy price of vast military expeditions in order to subject the peoples of central Asia. One must, however, assess the Qing rulers as well-versed and open to what can be called “transcultural techniques” in integrating new systems of governance to consolidate their power.¹³ European merchants and traders (represented in powerful trading companies) were during the eighteenth century limited to the port of Guangzhou, where a number of Chinese merchants (Cohong merchants) were specially licensed by the emperor to trade with them.¹⁴ Until the end of the eighteenth century, the Europeans integrated themselves into the Chinese system without protest. Once the conquest or integration of a foreign people had been completed, however, the daily routine was handled similar to the way described by Fairbank’s model of a Chinese world order.

By the beginning of the nineteenth century, the situation had changed, and the Chinese government was faced with a multitude of problems.¹⁵ Due to the long period of peace during the Qianlong era in the eighteenth century, many structural problems had developed that had not yet been properly met and confronted during the Xianfeng era (1850–1861).¹⁶ Among them were, first of all, rapid population growth (increasing from 100 to 450 million people during the Qianlong era), an overexploitation of natural resources and serious flooding in central China. Secondly, the expansive and expensive military

10 J. L. Hevia, *Cherishing Men from Afar: Qing Guest Ritual and the Macartney Embassy of 1793*, Durham 1995, p. 32.

11 This foreign policy has been identified by proponents of the New Qing History as typical for the Manchu emperors. The New Qing History is best characterized in a review: J. Waley-Cohen, *The New Qing History*, in: *Radical History Review*, 88 (2004), pp. 193–206.

12 Foret claims that the architectural design of the imperial retreat at Chengde, where the tributary missions during the eighteenth century came to pay their respects, reflects this foreign policy. See Ph. Foret, *Mapping Chengde, The Qing Landscape Enterprise*, Honolulu 2000, pp. 14ff.

13 P. K. Crossley / H. F. Siu / D. S. Sutton (eds.), *Empire at the Margins: Culture, Ethnicity, and Frontier in Early Modern China*, London 2006, pp. 3ff.

14 P. A. van Dyke, *Merchants of Canton and Macao: Politics and Strategies in Eighteenth-Century Chinese Trade*, Hong Kong 2011, pp. 2ff.

15 For an overview of the Jiaqing and Daoguang eras, see S. Mann Jones / P. A. Kuhn, *Dynastic Decline and the Roots of Rebellion*, in: Fairbank (ed.), *Cambridge History of China*, vol. 10 (8), pp. 107–162.

16 The term “Xianfeng” describes the motto of the government of the emperor. Accordingly, Qianlong and Kangxi are not the personal names of these emperors, but just the names of their reigns.

expeditions of the eighteenth century, undertaken by the Qianlong emperor in order to consolidate the empire, had caused a serious financial crisis in the nineteenth century. Local protests against the government were channeled into religious movements, which developed everywhere in China, the most serious of them being the Taiping rebellion in the south of China.¹⁷ The founder of the Taiping rebellion, Hong Xiuquan 洪秀全 (1814–1864), saw the reigning Manchu dynasty as the cause of China's abysmal situation and attracted followers from all strata of society. This enabled him to build a forceful army as well as a capable administration for his "Kingdom of Heavenly Peace", the Taiping Tianguo. In 1850, Hong had 20,000 followers, and from 1853 onward Nanjing became the capital of the steadily growing movement (by 1853 its members numbered 60,000).¹⁸

Rebellions also arose in the imperial border regions of the Empire from peoples who demanded independence from Qing rule and voiced discontent with the rulers; in consequence, the tributary system eroded. Moreover, European merchants, who had been confined to the southern borders of the Empire until 1842, caused unrest among the Chinese population and additionally demanded access to the capital and additional rights not compatible with a traditional tributary system.¹⁹ The Qing army during the 1850s had only limited capacity to defend the interests of the Qing government and to maintain peace since it was dispersed throughout the empire. But although a certain "outdatedness" of military technology has been noted, it would probably still have been able to defeat the Europeans in 1860 if commanded properly.²⁰

Matthew Mosca has recently demonstrated that since the beginning of the nineteenth century, the Qing elites were well aware that they had to face several challenges to their mode of conducting relations with the outside world. Far from being oblivious to the world outside their realms, archival records show that the Qing court was informed in at least the outlines of most military engagements fought in the Empire's vicinity, including those of India, as well as about the major conflicts carried out in Europe and among the European empires.²¹ This was also reflected in the scholarship of the period, in which connection one could mention the works of Wei Yuan, published in 1844 under the title *Haiguo tuzhi* (*Illustrated Treatise on the Maritime Kingdoms*), which is a compilation of all available knowledge on the interests of the Western European states in Asia, and

17 Among the religious uprisings were the Nian rebellion (1851–1868) in the north, the Muslim-Panthay rebellion (1855–1873) in Yunnan and Guizhou, and the White Lotus uprisings in southern China.

18 In the end (during the mid-1860s), the Taiping were not able to deprive the Qing of their power for several reasons, which became apparent only after 1860. At the end of the 1850s, however, with the Europeans approaching fast from the coast, the Taiping rebels still posed a threat to the Qing.

19 Although some of the religious rebellions arose due to the inability of the Qing government to keep the Western foreigners in check. See F. Wakeman, *Strangers at the Gate: Social Disorders in South China, 1839–1861*, Berkeley 1966, which deals particularly with the protest of the local population against the British in Canton.

20 This was suggested by R. Horowitz, *Beyond the Marble Boat: The Transformation of the Chinese Military, 1850–1911*, in: D. Graff/R. Higham (eds.), *Military History of China*, Boulder 2002, pp. 153–174, here: p. 173.

21 M. W. Mosca, *From Frontier Policy to Foreign Policy* (6), p. 10.

which exerted considerable influence at the Qing court during the 1850s.²² Wei Yuan also demanded a modernization of the military and projects to gather knowledge about the impressive Western military technology.

The Qing government was also aware of the fact that the rising British Empire was involved in most geopolitical struggles from Southeast Asia throughout the Indian subcontinent and to Afghanistan. But unlike European empires, which were about to develop a “grand strategy” including all tools of international negotiation and communication, and judging their crises on a global scale, Qing statesmen had their interests atomized across a range of discreet frontiers, while intelligence gathering was limited to threats in the immediate border areas. This frontier-based approach prevented Qing statesmen from piecing together a big picture of the geopolitical situation of the Qing Empire in total; here the culprit was not a sinocentric worldview, but rather a different perspective. Over time, at least some Qing observers shifted to a new perspective.²³ Observing the rise of the British on the borders of the Qing Empire from 1750, the ruling elites realized that they had to shift from a “frontier policy” to a “foreign policy”, and that they had to come to terms with the fact that they were not a solitary empire but one of several large entities locked in competition.²⁴

The divided Qing court in 1860

Although the Qing observers who realized what was at stake were a rather small faction at the Qing court, they nonetheless developed a more modern strategy to be employed against the allies. The European empires were still not easy for the Qing to assess, but during the 1850s it had become clear that, since the Opium War and the conclusion of the Treaty of Nanjing in 1842, they had decided to support the Qing government against the Taiping rebels.²⁵ Behind this strategy were obvious economic interests: European traders were aware that the Taiping leaders wanted to prohibit the opium trade and so they tried to convince the Qing government to legalize the trade by helping to keep the Taiping threat at bay. This help, however, was not gladly accepted by the imperial court in Beijing, where opinion about the Europeans and their mounting aggression towards the Qing government was divided. The Qing court at large and its head, the Xianfeng Emperor, adhered to a philosophical school of thought that sought reform and revitalization as the focus of internal politics and thus turned away from foreign politics and ne-

22 Wei Yuan, *Haiguo tuzhi*, 50 vols., Peking 1844. Wei Yuan died in 1856 and the influence of his work did not extend beyond his death. Jane Leonard demonstrates, however, that this work was a compilation: J. Leonard, *Wei Yuan and China's Rediscovery of the Maritime World*, Cambridge 1984.

23 M. W. Mosca, *From Frontier Policy to Foreign Policy* (6), p. 11.

24 *Ibid.*, p. 3.

25 J. Spence, *The Search for Modern China*, New York 1990, p. 177.

gotiations particularly with the Europeans, whose influence they dreaded and resisted.²⁶ The European allies recognized this and called this faction “the war party”.²⁷ Another, much smaller political faction (among them, until his death, Wei Yuan) saw the solution for the numerous problems of the Qing government in the opposite attitude. They believed that an orientation towards the Western powers, an attempt to learn about their motives and strategies, and an integration not only of new ways of thinking but also of their technologies, would stabilize the Qing Empire. These thinkers were impressed by the performance of the British army and their technological and military skills demonstrated during the confrontation of the First Opium War in Guangzhou in 1842, when the Chinese were for the first time confronted with the very efficient British gunboat.²⁸ It was when this party, headed by Prince Gong, took over negotiations that the Treaty of Beijing could be concluded.

The worldview of the British and the French empires in 1860

History and background

Rather than being a unified West, Great Britain and France, although they seemingly acted in China as allies, had very different concepts of their empires and thus had different visions for their mission in China. British peace and prosperity in the 1850s depended largely on foreign trade. Between 1841 and 1872, overseas exports quadrupled, free trade enjoyed almost unconditional support and most contemporaries were of the opinion that these were the preconditions for all development and progress worldwide.²⁹ To secure and continue this development for the British, commodities had to be imported from overseas and manufactured goods had to be exported and sold on the overseas markets. The wish for free access to the large markets in Asia thus became one of the most important points in British foreign politics in the 1840s, with China coming more and more into focus.

Since the beginning of the nineteenth century, the political framework of Chinese-British encounters had changed. Traders in eighteenth-century China, confined to Canton, had obeyed local rules and directed their protests to the local governors of Canton. This changed with the abolition of the trade monopoly of the East India Company (EIC) in China. Until 1833, the EIC represented the interests of British traders in China and was endowed with certain privileges of sovereignty and thus was able to conclude treaties

26 P. Kuhn, *Rebellion and its Enemies in Late Imperial China: Militarization and Social Structure 1796–1864*, Cambridge 1979, pp. 135ff.

27 M. Banno, *China and the West* (2), p. 60.

28 See also M. Wright, *The Last Stand of Chinese Conservatism: The T'ung-Chih Restoration, 1872–1874*, Stanford 1957; D. Pong, *Shen Pao-chen and China's Modernization in the Nineteenth Century*, Cambridge 1994; P. A. Kuhn, *Rebellion and its Enemies in Late Imperial China*, Cambridge 1970. Already Lin Zexu had taken measures after the defeat in 1842 to learn from the foreigners and their technology by founding a translation bureau.

29 F. Trentman, *Free Trade Nation: Commerce, Consumption and Civil Society in Modern Britain*, Oxford 2008, p. 17.

with foreign princes.³⁰ When the trade monopoly of the EIC in China was abolished in 1833 in favor of free trade, Chinese traders demanded that a new representative be named for the European traders. London therefore sent an envoy who represented the European traders in China on behalf of the British Crown.³¹ This envoy had to mind the reputation of Great Britain and her sovereign, and any assault on British traders or British subjects worldwide could now *de jure* be regarded and interpreted as an insult to the British Crown. Whereas the EIC had been able to handle any assault on one of their members flexibly, any assault on subjects of the British Crown could in theory be seen as a diplomatic incident. But in practice, the aim of British China policy was not to strive for political power, but rather to create (e.g. by manipulating the indigenous elites) “informal empires” rather than formal colonial rule. These informal empires were rather loosely defined, but they meant means of control without taking over actual political power. Their establishment was justified by the British demand for free trade (which was perceived as underlying all trade systems worldwide) and the establishment of a British judicial system for British or, in the beginning, for other Western subjects, and by the demand for free Christian missions in the country.

As for France, it was the goal of Napoleon III during the 1850s to return his country to its former splendor. Great Britain was France’s great rival in Europe and the two countries were several times at the brink of war due to this rivalry. France had emerged successfully from the Crimean War in 1857 and had demonstrated to all other European powers that it possessed a good army as well as a remarkable economic infrastructure and industry. In terms of foreign trade, possession of colonies and worldwide presence, however, France was no match for the British Empire. Its reconstruction of a colonial empire had begun only in the 1830s with the annexation of Algeria. With respect to its civilizing mission, Napoleon III not only had a system of free trade in mind to serve his empire, but was also eager to promote and accelerate the process of Christianization and “civilization” worldwide, an ambition which was critically eyed by his adversaries. In Asia, French interests were directed towards Indochina rather than China. In the 1850s, French influence in Vietnam consisted primarily of the Catholic Church founding missions in the name of France, rather than active French politics of economic expansion.³² French and British rivalries in Europe notwithstanding, they acted together whenever it was necessary outside of Europe to defend European political and trade interests.³³

30 See Christina Brauner’s contribution in this volume.

31 An excellent characterization of the preconditions of Britain’s imperialism can be found in J. Osterhammel, *China und die Weltgesellschaft* (3), pp. 137ff.

32 F. Quinn, *The French Overseas Empire*, Westport 2000, pp. 107ff. See also N. Cooper, *France in Indochina: Colonial Encounters*, Oxford 2001, p. 13.

33 R. Tombs/I. Tombs, *That Sweet Enemy: The French and the British from the Sun-King to the Present*, London 2006, describes the history of Great Britain and France, particularly their rivalry in the nineteenth century in full detail.

The British and French armies and the conduct of a European diplomacy

In 1860, both the British and the French China expedition forces were equipped with the latest technological standards and perceived by the Chinese armies as superior to themselves.³⁴ The British army had the advantage of more experience in the conduct of colonial wars, particularly in Asia. The experience abroad of the French army of the Second Empire was confined to Algeria and a short stint in Vietnam, but their guns and other technological armament impressed the Chinese government nevertheless. In terms of diplomatic negotiations, both Britain and France justified their aggressive style by their respective civilizing missions, consisting of the economic policies of free trade and the spread of Christianity. In the later stages of their negotiations with China, both European powers claimed to be acting in accordance with an “international law”.³⁵ Although it is not easy to define international law, the question is particularly difficult within a colonial context in the nineteenth century. For Europeans, this system of international law was supposed to regulate the conduct of European diplomacy and was, as the nineteenth century progressed, perceived as underlying political systems worldwide. All states with a European-defined “standard of civilization” were subject to this law, while the others were “uncivilized”.³⁶ This line of thinking made it possible for the European states to attack or invade political entities on the grounds that these were refusing European “civilization standards” and free trade.

Judging by Lord Elgin’s negotiation strategies in 1860, the European powers themselves found international law difficult to determine. The creation of an international law in the nineteenth century stemmed from the attempt to create a legal basis for the relationship with the world outside Europe, and it can even be argued that the interaction with the “colonized” was crucial for its genesis.³⁷ Verena Steller’s paper, also in this volume, shows that the adaption of the English rule of law in India has to be told as a story of interaction, relation and entanglement, and that the transposition of English law to India was by no means a simple transition, but rather a very complex process of “dis- and re-embedding”. This same term could be applied to the situation in China in 1860, where Elgin introduced the concept of international law only towards the end of negotiations, when the safety of hostages had to be negotiated, and with sketchy detail. He seems to have been more concerned with the reaction of the British public than the attitude of the Qing negotiators.³⁸

34 D. R. Headrick, *The Tools of Empire: Technology and European Imperialism in the Nineteenth Century*, New York 1981.

35 R. Horowitz, *International Law and State Transformation in China, Siam, and the Ottoman Empire during the Nineteenth Century*, in: *Journal of World History*, 15 (2005) 4, pp. 445-486.

36 B. Bowden, *The Colonial Origins of International Law: European Expansion and the Classical Standard of Civilization*, in: *Journal of the History of International Law*, 7 (2005), pp. 1-23, p. 2. Bowden quotes G. W. Gong, *The Standard of “Civilization” in International Society*, Oxford 1984, p. 3.

37 A. Anghie, *Imperialism, Sovereignty and the Making of International Law*, Ithaca 2002, p. 3.

38 N. Krisch, *International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order*, in: *The European Journal of International Law*, 16 (2005) 3, pp. 370-408. This created the contradictory

In the eighteenth century, and here I would like to draw a parallel to Christina Brauner's paper,³⁹ diplomatic agents, missionaries and trading companies believed in a shared political framework and concepts of empire and power; the Asian state system was accepted as "equally just" and acting according similar beliefs and values.⁴⁰ In the nineteenth century this had considerably changed: China was perceived in Europe as a stagnant society and Asian nations and rulers as "despotal" (with parallels to Christina Brauner's findings in the case of Dahomey). Since they were no longer envisaged as powers corresponding on the same levels as European societies in values and culture, and seemingly refused to become part of the "family of nations", warlike actions were considered appropriate in order to raise their standard of civilization.⁴¹

Within the societies of Great Britain and France, the inequality between states in the colonial context was known. The humanitarian catastrophe of the Crimean War as well as the Indian Mutiny had been photographed (both by the same photographer, who also took pictures from the China expedition from 1860, Felice Beato) and reported in newspapers, and thus information was available to a shocked European public.⁴² There were many opponents of the "small wars" that were carried out in the name of free trade and civilization outside of Europe, the most prominent in the case of the China expedition of 1860 being Victor Hugo. The public in Europe was very well aware of the injustices of this presumed international law, and voices of protest were often raised against it.

The China War of 1860: Historical background, events and actors

The Opium Wars consisted of violent clashes between Western powers and the Qing government over trading privileges and diplomatic representations, whereby the questions of trading privileges always took precedence over diplomatic representation. For the expanding British Empire, the closed Cohong system and the system of licensed merchants in Guangzhou, although accepted in the eighteenth century, was now in the nineteenth century a provocation; it was only a question of time before a war would break out. In the First Opium War (started in 1839 by the destruction of opium on a British vessel by special commissioner Lin Zexu, who had been dispatched by the emperor to stop the opium trade), Great Britain and France demanded retribution for the destroyed opium as well as the opening of more ports on the Chinese coast for Western trade. Both demands, as well as an indemnity, were granted in the Treaty of Nanjing in

situation where, on the one side, the claim to act in accordance with international law helped a strong state to enforce the demands of a weaker state, but on the other side prevented it from taking over total control.

39 C. Brauner in this volume, p. 99-123.

40 J. Fisch, *Die europäische Expansion und das Völkerrecht*, Stuttgart 1984, p. 482.

41 This argument is central to Hevia's interpretation of the pedagogical intention of an "informal empire". J. Hevia, *English Lessons* (1), p. 4. Gerrit Gong claims this "standard of civilization" caused most of the clashes in the nineteenth century.

42 Ch. Herbert, *War of No Pity: The Indian Mutiny and Victorian Trauma*, Princeton 2008, claims that the Indian Mutiny and its atrocities were greatly exaggerated in the British press.

1842. The clashes between the Western traders and the Chinese government continued over the following years, the Europeans demanding continuous improvement of their conditions, local administration always declining their requests. A small conflict in 1856 (which developed into the Arrow War or the Second Opium War) was finally used by Great Britain and France as a pretext for the dispatch of a large contingent of military troops to solve these conflicts and demand more privileges: diplomatic representation in Beijing, the opening of seven more treaty ports, as well as free inland travel in China for European traders and Christian missionaries. Lord Elgin and Baron Gros represented Great Britain and France respectively as diplomats, and were explicitly given permission to use military force if necessary. Russian and American diplomats backed the British and French negotiations but had been instructed by their respective governments to solve the conflict peacefully.⁴³ From April of 1858, the negotiations were held at the Dagu Forts. During this time, Elgin and Gros not only made the acquaintance of the Qing negotiators, but also became acquainted with the Qing diplomacy, concepts and strategies that they would all encounter again later during the China expedition of 1860. To name just a few of these, first the Qing court tried to keep the problem at the borders of the empire by sending provincial officials to negotiate, in consequence of which Elgin and Gros broke off the negotiations and occupied the Dagu Forts. Also, the Qing government opposed the demands for a diplomatic representation in Beijing as well as free inland travel for European traders and Christian missionaries. The attempt to draft a single reply from all the Western powers together to this answer almost caused a rift between the Westerners.

The United States and Russia were inclined to give in, abandoning the demand for diplomatic representation, but Elgin insisted on it, which put the Qing negotiators under pressure. In response, the Qing delegates Guiliang and Huashana tried to defuse the negotiations with a double-pronged strategy. On the one hand, they tried to convince the Qing court to accept the European demands, advancing several arguments for this purpose: the political situation was very difficult, and the military superiority of the British and French had been proven on several occasions. On the other hand, they tried to convince Elgin and Gros to abandon their demands.

In the end a compromise was reached between both sides: the Qing government agreed to allow free inland travel for traders and missionaries, but only with special passports. Also, the Qing granted the right of diplomatic representation, but demanded that the British and French only make use of this right one year later, in 1859, a condition which the allies gladly accepted. Although a contract was signed to this effect at the end of June 1858, the Qing court (now headed by the war party, which feared that the foreigners

43 For a description of the Second Opium War, see H. B. Morse, *The International Relations of the Chinese Empire*, 1910 reprint Taipei 1971, vol. 2: *The Period of Submission, 1861–1893*, London/New York 1910, pp. 489–538 [reprint Taipei 1971]. For Russian and American interests, see R. Quested, *The Expansion of Russia in East Asia*, Kuala Lumpur 1968, and E. Swisher/K. Rea (eds.), *Early Sino-American Relations, 1841–1912*, Boulder 1977.

would gain insights too close into Qing politics if they were in Beijing) reopened negotiations later in 1858 and attempted to rescind the contract.⁴⁴

The Qing court was offering to remove all taxes for merchants in exchange for the annulment of the points that were the most important for the British: diplomatic presence in Beijing and free inland travel on the rivers as well for Christian missionaries.

Lord Elgin declined this proposal but made a conciliatory counteroffer by promising to suggest to his government that they not exercise the right to permanent representation in Beijing, provided that the treaties would be respectfully ratified and exchanged in the following year and all other conditions fulfilled.⁴⁵

The government in Beijing was still alarmed by these arrangements since its main goal was to avoid any situation that would jeopardize the balance of power and the authority at the Qing court. In order to keep the foreigners out of the city, they offered to exchange the treaties in Beijing, but Guiliang objected, correctly, that the British would never accept this. Thus, the Qing government issued an edict on March 29, 1859, stating that Beijing would be a possible site for the treaty ratification. To this was attached the condition that the European entourage would consist of no more than ten people, and that they should arrive by sea and travel by a route suggested by the Qing court. The carrying of weapons would not be allowed, nor even transport in a sedan chair. After the negotiation of the contracts, the envoys should return home as soon as possible.⁴⁶ General Senggerinchin would be responsible for the protection of the foreigners.⁴⁷

British and French representatives found it advantageous to pretend not to be aware of all these developments in Beijing and refused further communication with the Qing negotiators. They were determined to carry out the ratification as agreed upon with Elgin and Gros. The reasoning behind this strategy, from the inconclusive hints available in all the source materials, may have been that the British and the French had a concept of a Chinese tributary system after all. The route suggested by the Qing court as well as the instructions according to which the foreign envoy was to be equipped resembled very closely those of the Korean tributary missions. Such treatment was completely unacceptable to Great Britain and France. Frederick Bruce, younger brother of Lord Elgin, accompanied by M. de Bourbolon, French representative, sailed in June 1859 to Tianjin with the intention of traveling to Beijing, bearing the “autographs” (meaning treaties with the Queen’s signature) of the Queen and the authorization to act as Her Majesty’s representative.

The British and French warships were attacked by Qing troops at the Dagou Forts and defeated. Frederick Bruce, having lost 432 men, returned to Shanghai a beaten man. He was further embarrassed by the fact that the American envoy John Ward, having obeyed the instructions of the Qing Empire, was granted a treaty on August 16, 1859, and a

44 See in addition H. Cordier, *L'expédition de Chine; histoire diplomatique, notes et documents*, Paris 1906, p. 8.

45 M. Banno, *China and the West* (2), p. 28.

46 *Ibid.*, p. 29.

47 P. Crossley, *The Manchus*, Cambridge 1997, p. 162. A short biography in A. W. Hummel (ed.), *Eminent Chinese of the Ch'ing Period*, Washington 1944, vol. 2, pp. 632-634.

Russian treaty was concluded as well.⁴⁸ Ward had been treated like any tributary mission and was chided for that by the British, but in any event he had concluded the treaty. The news of Bruce's behavior in Shanghai did not meet with full approval in London and was highly criticized. There were even voices who suggested that Bruce should also have traveled on the route of John Ward.⁴⁹ In the end, however, the situation prompted the governments in Great Britain and France to dispatch a new expedition, with orders to ratify the Treaty of Tianjin, if necessary by force, and to extract an apology from the Qing government.

This allied China expedition, consisting of roughly 17,000 soldiers (only British and French, since the American envoy was watching in the first days from a distance, and the Russian envoy was acting as an intermediary between the Chinese and Western allies) appeared in August of 1860 at the Dagu Forts, and remained for roughly twelve weeks on Chinese soil, attaining, after a series of battles and fierce negotiations, their goal of treaty ratification and indemnity.

London made the goal of this mission quite clear to Lord Elgin, who was appointed as diplomatic representative, as well as to Hope Grant, the commander of the military troops: they were to extract an excuse for the "unexpected" defeat in 1859, a financial indemnity for the damage of the ships in 1859, and the ratification of the treaties of Beijing. A military confrontation should be avoided in order not to further weaken the Qing government. If a military clash was unavoidable, it should be restricted to the vicinity of the original incident.⁵⁰ Elgin's mission was quite ambivalent: on the one hand, he was instructed to employ peaceful means; on the other, it was impressed on Elgin that it was important not to disturb the emperor since his flight from Beijing would have disastrous consequences. A military confrontation thus had to be avoided; the armies were solely for the protection of the diplomatic staff.⁵¹ Hope Grant, as a general and military commander, had to follow Lord Elgin's instructions.

The French general de Montauban and the French diplomat Baron Gros had received similar objectives from their government: extraction of an excuse, the demand of an indemnity, and the ratification of the treaties. Unlike the British case, however, and according to the memoirs of General de Montauban, the French diplomatic representative (i.e. Baron Gros) was subordinate to the military command (i.e. Montauban).⁵² Queen Victoria and Emperor Napoleon III were of the opinion that the war had to be limited to North China, and the British and the French received instructions to put their rivalries aside and act together. The Chinese government personnel, in contrast to the British and French negotiators, were very diverse. Beijing first dispatched the governor of Northern Zhili, Hengfu, to negotiate. During the later stages of the war, and when it

48 D. L. Anderson, *Imperialism and Idealism. American Diplomats in China, 1861–1898*, Bloomington 1985, p. 12, describes this as a defining moment of the young American foreign policy.

49 W. Costin, *Great Britain and China, 1833–1860*, Oxford 1937, p. 294

50 Sidney Herbert to Hope Grant, January 9, 1860, London, in *Foreign Office (FO) 405/5*, pp. 1–13.

51 Russell to Bruce, January 3, 1860, in *FO 881/847*

52 Ch. G. Montauban, *Souvenirs du Général Cousin de Montauban, Cte. De Palikao*, Paris 1932, p. 8.

became clear that Elgin and Gros were demanding to deal with high-ranking imperial officials, Hengqi, Wenxiang and Guiliang were dispatched, all of whom had already had negotiated with Elgin and Gros in Canton. Prince Yi Zaiyuan, uncle of the emperor, represented the Imperial Family alongside Muyin, the minister of war; Yi Zaiyuan was later replaced by Prince Gong Yixin, the younger brother of the Xianfeng Emperor, who concluded the negotiations. The Chinese military troops, allegedly numbering 30,000 men, were commanded by General Sengerrinchin, a Mongol, who already had fought successfully against the Nian rebels.

The diplomatic negotiations between Great Britain / France and China during the China Expedition of 1860

The first phase of the China expedition, August 1 to September 8, 1860

The plan of the allies was clear: the China expedition was supposed to have two stages. The first stage had the character of a punitive expedition. The Dagou Forts were to be captured in retaliation for the defeat from 1859. The allies were then to move forward to Tianjin, demand an apology for the defeat inflicted by the Qing army in front of the Dagou Forts in 1859, as well as an indemnity and ratification of the treaty, if necessary by force. In the second stage, it was hoped that no military action would be needed. Only the diplomatic envoys Lord Elgin and Baron Gros were meant to proceed onward to Beijing, with the troops being left behind in Tianjin.

The Qing government's actions and strategies against the allies were planned and carried out from August 1 until September 21 by the faction that the allies called the "war party". This party was backed by the Xianfeng Emperor and consisted of Princes Hui, Yi and Cheng, who, emboldened by the victory of 1859, argued for a continuation of the aggressive strategy against the foreigners.⁵³ The Qing government took notice of the disembarking of foreign troops on August 1. Apparently unaware of the heightened state of aggressiveness of the British position, the orders of the emperor were to maintain peace, and General Sengerrinchin was ordered not to attack. The plan was (and Elgin only learnt this later when a pack of letters, found at the Xinhe Forts on August 13, had been translated) to negotiate with the foreigners peacefully and perhaps subsequently enlist their help in defeating the Taiping rebels.⁵⁴ The Qing government pretended to consider the European demand for indemnities for the damages inflicted in 1859 as the

53 Princes Yi Zaiyuan, Hui Mianyu, Cheng Tuanhua. Prince Yi is mentioned in A. W. Hummel (ed.), *Eminent Chinese*, vol. 2 (47), p. 924. Prince Hui (1814–1865) is mentioned as the fifth son of the Jiaqing emperor, and direct superior of Sengerrinchin, in: *ibid.*, p. 968.

54 The letters were found at the conquered Xinhe Fort. For a translation of these letters refer to Foreign Office 405/5, pp. 147ff. Also, Banno believes that Sengerrinchin, who was perceived by the Europeans as rather belligerent and the culprit behind all the attacks on Europeans during the China expedition, was actually quite peaceful. M. Banno, *China and the West* (2), p. 76. Translation of an official communication between provincial governor Hengfu and De, commander of the forts, found later in Xinhe, in FO 405/5, p. 136.

principal point (rather than the demand for diplomatic representation), and the emperor signaled his intention to give in on this matter. All the other initial reactions of the Qing government to the sudden Western presence in August 1860 can be interpreted within the framework of a tributary system, in which the Western foreigners were categorized as culturally and geographically arriving from outside the realm. The government's first strategy was to attempt to restrict the problem to a local matter concerning relations with the foreigners, and thus assigned the provincial governor of Beizhili, Hengfu 恆福, with the task of communicating with the foreigners. Hengfu's responsibility was to find out the demands of the foreigners and to suggest that they take a special designated route to Beijing. Hengfu seemed unaware of the warlike attitude of the allies and enlisted the help of the American and Russian envoys John Ward and Nikolai Ignatiev, whose countries already had treaties with the Qing Empire. Ward and Ignatiev appeared in the French and British camps to notify the allies of Hengfu's messages: Hengfu assured Elgin and Gros that they would have free access to Beijing if they agreed to take the route prescribed by the Qing government. He also made it clear that the conflict concerned Great Britain and China, and that France had no part in it.⁵⁵ Elgin, suspecting renewed foul play, refused all communication and declined to respond to this overture to negotiate with Hengfu. Instead, he responded that his first task was to seek revenge for the defeat of 1859 by attacking the forts.⁵⁶ Additionally, and with respect to the diplomatic negotiations, he demanded to negotiate with imperial envoys only, not with the provincial governor, and declined to negotiate on the behalf of France, which should be addressed separately.⁵⁷ Elgin's response can be explained from his previous experiences with the Qing negotiators. It is clear also from his private correspondence that he had no inkling of a tributary system.

Elgin and Hope Grant retained the original plan of attack, and in the beginning everything went according to plan: the allies succeeded in capturing all the forts guarding the mouth of the Peiho (i.e. Baihe) River leading from the Bohai Sea to Beijing. Between August 9 and 14, they took the forts of Xinhe and Tanggu. On August 19, Governor Hengfu attempted one last time to avert the dreaded military attack on the Dagou Forts, explaining that Chinese troops would be withdrawn and the way to Beijing up the river cleared if European troops would stop the hostilities. He further signaled the intention of his government to acquiesce to Elgin's and Gros' request to negotiate only with imperial delegates, and for that reason announced the arrival of two imperial envoys, Hengqi and Wenxiang, in Tianjin. Wenxiang, explained Hengfu to Elgin and Gros, was one of

55 Hengfu to Elgin, August 19, FO 405/5, p. 129. The diplomatic negotiations have been reconstructed from a multitude of materials from the National Archives (Foreign Office [FO], War Office [WO]) in London and archives in Paris. For the reconstruction of the Chinese side, I have used published source materials: Chouban Yiwu shimo, Beijing 1979, Zhongguo diyi lishi danganguan (ed.), Yuanming yuan qingdai dangan shiliao, Shanghai 1991, 2 vols., and Y. Shen (ed.), Jindai Zhongguo shiliao congkan xubian, Taipei 1963, as well as the Chinese letters written to Lord Elgin and Baron Gros by Prince Gong (FO 682/1993).

56 Hengfu to Elgin, FO 405/5, p. 129.

57 Elgin to Hengfu, August 8, 1860, FO 405/5, p. 131.

the highest-ranking diplomats, along with Hengqi, and thus the European diplomats would no longer be dealing with provincial-level officials. From the Qing government's perspective, there thus ought to be no further obstacles in the signing of the treaties.⁵⁸ But Hengfu's efforts were to no avail since the British and the French needed to punish the Qing government for the embarrassment from the previous year. On August 21, the south and north Dagu Forts fell into the hands of the allies. Two thousand Chinese soldiers were killed along with their commander.⁵⁹ Between August 22 and August 31, the allies marched to Tianjin and quartered their troops there. Governor Hengfu wrote to Lord Elgin and Baron Gros on August 23 that he expected them in Tianjin to conclude the treaty, along with Wenxiang 文祥, Hengqi 恆祺 and Guiliang. Now that the defeat of 1859 had been avenged, Elgin and Gros became more outspoken with the Chinese negotiators and stated their demands.

Baron Gros, using the opportunity to gain a favorable position with the Qing government and to distinguish himself from the British, demanded an apology for the defeat in 1859 and the immediate signing of the Treaty of Tianjin, an exchange of treaties in Beijing, and their choice of means of transport. He also reduced his indemnity demands to 8 million taels, much less than before, reasoning that the Chinese government was in a difficult situation with the Taiping rebels and apparently wishing to accommodate the government.⁶⁰ Elgin demanded more: eight million taels indemnity, and additional money for the damage inflicted on the British troops by the defeat in front of the Dagu Forts in 1859. He affirmed his demands, emphasizing the gains the Chinese government could obtain through a treaty with the Westerners, by pointing to the fact that the Taiping rebels in Shanghai had been defeated successfully with the help of the Europeans.

Meanwhile, in Beijing, the Qing court was shocked by the defeat on August 21, as well as by Elgin's unbending demands. They feared that the allies would directly march to Beijing and would even demand an audience with the emperor, an unthinkable circumstance. The "war" as well as the "peace parties" both had to consider Senggerinchin's suggestion that the emperor should pretend to make an annual hunting trip to Chengde and thus escape the possible sack of Beijing.

All hope rested on Guiliang and his negotiations with Elgin. On September 2 he wrote to Elgin that as imperial commissioner he was authorized to ratify the treaties in Tianjin. Afterwards, the diplomatic mission could proceed to Beijing, without guns and with

58 Wenxiang and Hengqi were well known to Lord Elgin and Baron Gros. Hengqi had already negotiated with Elgin on behalf of the Chinese government in 1858, and came to Beijing in the summer of 1860 to become the director of the imperial arsenal. In an imperial edict from August 16, he had been ordered to Beitang to accompany the British and French envoys. Wenxiang (1818–1876) was considered even by the Europeans to be one of the ablest statesmen of the Qing. A. W. Hummel (ed.), *Eminent Chinese* (47), pp. 853–855.

59 For a detailed account of the events, see War Office (WO) 32/8232, Napier to Sidney Herbert. See also H. Cordier, *L'expédition de Chine* (44), pp. 263ff. H. Knollys, *Incidents in the China War of 1860* compiled from the private journals of General Hope Grant, Edinburgh 1875, pp. 92ff, and R. Swinhoe, *Narrative of the North China Campaign of 1860*, London 1861, pp. 141ff. The pictures of photographer Felice Beato are shown in D. Harris, *Of Battle and Beauty. Felice Beato's Photographs of China*, Santa Barbara 1999, pp. 63ff.

60 H. Cordier, *L'expédition de Chine* (44), p. 277.

only a small entourage, during which time European troops should cease all hostilities.⁶¹ Elgin responded that he would prepare a treaty within the next few days, sign it, and then march towards Beijing to exchange the treaties. Elgin had so much experience now with Qing policy and changing strategies that he did not want to order the troops to stop the hostilities yet, since this might give Qing officials a feeling of security. Thus, he added that hostilities would cease only after the signing of the treaties as a strategy to secure their signature.

Both parties believed that it was only a matter of days until the China expedition was over, and the date for the ratification of the treaties was set for September 8. But to the disappointment of all parties involved, the negotiations had to be broken off on September 8. This failure was attributed to the fact that commissioners Hengqi, Wenxiang and Guiliang failed to produce sufficient written authorization from the imperial government.⁶² The authorizations of Guiliang were sufficient only to ratify the treaties, not enough to grant indemnity and an excuse for the defeat of 1859.⁶³ Elgin and Gros thus assumed that the Chinese government was causing strategic delays to keep the Europeans in the country during the long and cold northern Chinese winter. They were also afraid that the Qing soldiers whom they had released from captivity after the sacking of the Dagu Forts would be gathering in and around Tongzhou and become a serious enemy once more.⁶⁴ The Qing negotiators, on the other hand, were seriously afraid that the allies would march on Beijing and sack the city. Their promises to deliver the additional imperial authorizations were in vain: Elgin and Gros were determined to march towards Beijing. As a last chance for the Chinese government, Elgin and Gros demanded that Guiliang himself come to meet Elgin and a small detachment of troops in Tongzhou on the way to Beijing and ratify the treaty there.⁶⁵

The second phase of the China expedition, September 8 to September 21

To recapitulate the mutual concessions and appropriations made by each party to the other's diplomatic mode during the first phase: Lord Elgin and Baron Gros went ahead and had the Dagu Forts conquered as retaliation for Bruce's defeat in 1859. From their own perspective, they had acquired the right to do so with the successful negotiations in 1858, which, with the attack on Bruce, the Qing government apparently had not honored. But the Qing government had agreed to sign the treaties in Tianjin, after which Lord Elgin and Baron Gros would travel with only a small entourage to Beijing to exchange the treaties. On the other side, the Qing government understood the necessity of having the treaty signed by a direct envoy of the emperor, realizing that other "diplomatic framings" of their own tributary system were necessary, and acted accordingly

61 Guiliang to Elgin, September 2, 1860, in FO 405/5, p. 187ff.

62 Elgin to Russell, in FO 405/5, p. 196.

63 Elgin to Hope Grant, September 8, Tianjin, in FO 405/5, p. 200.

64 Ibid.

65 Elgin to Guiliang, September 7, Tianjin, in FO 405/5, p. 199.

by sending Guiliang, a high official. The negotiations had to be broken off because the Qing government was still seemingly attempting (in Elgin's eyes) to deceive the allies by not delivering the full authorizations. Guiliang had been unaware of this, or at least pretended to be unaware of his authorizations being insufficient, but Elgin suspected that here was another trick to avoid recognizing the Western empires on equal terms. Thus, he declined to give Guiliang the time he needed to produce the written authorization, and the signing of the treaty failed. Guiliang's efforts have to be seen in the light of the two parties he negotiated for: the Qing government feared the direct confrontation of the emperor with Elgin and Gros, the humiliation of an apology for an action that they considered to be correct (1859) and the recognition of the Western allies as equal, all of which would be against their traditional notions of diplomacy. The Europeans, on the other hand, could not accept Guiliang's compromise since they were really striving for equal recognition by the Qing.

The second phase sees two major military confrontations and ends with the flight of the emperor to Chengde (disguised as an annual hunting trip). In order to put pressure on the Qing government, but also out of sheer necessity because now a long-term provisioning for the army had to be organized, the civil population became involved: villages were destroyed and food was confiscated. Official communications, declaring the intentions of the Chinese government and the allies respectively, were distributed in the form of posters that were pinned on the walls of official buildings.⁶⁶ The strategy of making use of Guiliang had failed, and the Qing court realized that the Europeans would negotiate only with imperial envoys. The Qing court dealt with this precondition and subsequently sent members of ministries and of the imperial family to negotiate with the Europeans: Elgin and Gros received news on September 11 that new negotiators had been appointed, namely Prince Yi Zaiyuan, an uncle of the Xianfeng Emperor, and Muyin 穆陰, secretary of war. They were on their way to Tianjin to enquire about the difficulties with the negotiations and asked Elgin and Gros to return to Tianjin and await further instructions.⁶⁷ The strategy of "benevolence" and accommodation had failed, and Prince Yi and Muyin were humiliated by the necessity to meet with the foreigners. Meanwhile, members of the war party used other "traditional techniques": they threatened Elgin and Gros by pointing out that the Qing troops might attack if the allied troops advanced any further, and that the Qing cavalry far outnumbered the European allies.

Elgin and Gros refused to take notice of the new Qing strategies and marched towards Tongzhou, but started to negotiate with Prince Yi before they arrived in Tongzhou. Elgin had to abandon his original plan of delaying negotiations, firstly owing to the military situation: British general Hope Grant had pointed out that an occupation of Beijing had to be planned very carefully and that he needed more time, his troops not yet being ready. The second reason had to do with diplomatic strategy: Elgin was well aware that Prince Yi was a key figure at the imperial court and he hoped that the prince needed no

66 Edict of Zaiyuan and Muyin, in: Chouban Yiwu shimo (55), p. 2315.

67 Elgin to Russell, September 16, Hexiwu, in FO 405/5, p. 211.

further imperial authorization, making it possible to sign the treaties directly in Tongzhou. But he was still aware that he had to be careful in order not to scare the emperor into leaving Beijing, and that Prince Yi was not likely to alter his view on the European foreigners, negotiating only within the framework of the tributary system and using force to keep them away from Beijing. Elgin thus decided (after the “misunderstandings” in Tianjin with Guiliang) to prevent all misunderstandings by transmitting a message to Prince Yi via his accomplished translators Harry Parkes and Thomas Wade: he, Elgin, demanded only the ratification of the treaty of Tianjin and a compensation for the losses from 1859, and wanted in no way to threaten Qing power. Elgin then added that he would not come to Beijing if his presence was unnecessary; he understood this to be a very important point for Chinese negotiators.⁶⁸

Prince Yi met with Harry Parkes and Thomas Wade in Tongzhou at the Yamen. Prince Yi, for whom it must have been an unusual experience to be interviewed by two lowly translators, politely opened the negotiations and demanded to know the nature of Elgin's objections. Parkes explained that it was not quite clear to Elgin who actually was in charge of the negotiations and whether they had the authority to negotiate in the name of the emperor and the imperial government, or whether they were again only provincial governors acting on their own accord. Prince Yi did not make any attempt to explain Chinese concepts of authority, but seems to have understood that dealing with Europeans required an imperial envoy of a certain standing. Thus he replied and explained that he, an imperial prince, would manage the negotiations. He apologized for Guiliang's behavior from September 5, characterizing it as incompetent and due to old age. Then, Harry Parkes explained to Prince Yi the meaning of this “letter of legitimation” and explained that in the last version some key elements had been left out, among them the right to a diplomatic representation in Beijing, a key demand of the European envoys. Prince Yi agreed to bring a corrected version of this letter of legitimation, although his status as an imperial prince should convince the foreigners (who had explicitly demanded an imperial prince) that he could sign all treaties on behalf of the emperor.⁶⁹ But he insisted that he would grant only the economic demands of the Europeans, and that the Qing government would not allow foreign embassies in Beijing or the opening of the port of Tianjin to European trade.⁷⁰

Harry Parkes and Thomas Wade, experienced Chinese translators and negotiators who were well acquainted with Chinese strategies of double negotiations, explained later that it was their belief that Prince Yi was only pretending to object to their demands, as dictated by Chinese protocol, but would (much like Guiliang) try to find a solution. This impression was clearly wrong. Archival documents show that Prince Yi had the intention not to yield to the foreigners or to treat them as if on the same level, but instead to deal with them according to traditional diplomatic strategies. Prince Yi pretended to interpret

68 Wade to Elgin, September 23, 1860, Baliquiao, in FO 405/5, pp. 213-216.

69 Prinz Yi and Muyin to the throne, in: Chouban Yiwu Shimo (55), p. 2307.

70 Ibid., pp. 2303-2304.

the Western demands solely as economic interests and was prepared, in order to recognize these interests as the central demand, even to pay indemnity for the defeat in 1859. From his perspective, as a Chinese prince accustomed to receive tribute missions, these were magnanimous concessions; on the other hand, he needed to stop the foreigners from proceeding to Beijing and thus took threats related to this question very seriously.⁷¹ British and Chinese negotiators agreed that Elgin should come to Tongzhou, and that he and Prince Yi would once more discuss how he would proceed to Beijing. Negotiations between the French representatives and Prince Yi on September 15 produced similar results. Meanwhile, another crisis was starting to unfold, this time in the military sphere. Rather than withdrawing, the Chinese army was collecting in and around Tongzhou, obviously at Prince Yi's command. Parkes and Wade were able to observe the battle preparations underway. The emperor had given instructions to keep the European troops away from Beijing, or at least not to let them cross the bridge at Baliqiao, close to Beijing. In the end, it was decided that, rather than letting the allies into Beijing, the Qing army should attack in the vicinity of Tongzhou and drive the European forces away.⁷² The sources do not provide conclusive results regarding who ordered the abduction of thirty-two British and French officers on September 18 (among them the almost indispensable Harry Parkes and *Times* correspondent Thomas Bowlby), but this event was later used by Elgin as the pretext for burning the Yuanming Yuan.⁷³ It also destroyed the trust of Elgin and Gros in Prince Yi and his integrity as an imperial prince and heightened the aggressiveness of the military troops, who sought revenge for this further humiliation. Two open battles fought on September 18 and 21 at Baliqiao, which were won against a Qing army of 30,000 cavalry troops, cleared the way to Beijing for the foreign troops, and the British and French began to plan to sack the capital of the Chinese empire.⁷⁴ The emperor and his entourage of 4,000 men, expecting the worst, left Beijing hastily on September 21.⁷⁵ Prince Yi, hostile to the European powers, left with the imperial retinue, leaving Prince Gong, half-brother of the emperor, in charge. On him alone now rested the task of dealing with the expected foreign attack on the city of Beijing. The second phase had shown that both sides were still negotiating on different premises: Prince Yi realized that the foreigners would never agree to diplomatic relationships with the Qing Empire in tributary style. Thus, he continued to treat the problem as if it were solely economic in nature and insisted on refusing foreign representations in Beijing. His only concession to the foreigners was a letter of legitimation, which had apparently not been customary in previous Qing relations with foreigners. Elgin and Gros for their part had made it clear that what they needed was to ratify the treaties and extract an apology, and they would even waive the voyage to Beijing – that was the extent of the concessions they would make. They would not abandon the question of diplomatic representation.

71 Prince Yi and Muyin to the emperor, September 14, 1860, in *ibid.*, pp. 2303-2304.

72 Edict of the Xianfeng Emperor, in: Xianfeng Tongzhiliang Chaoshang shangyu dang, Guangxi 2002, p. 1498.

73 Elgin to Russell, September 23, 1860, Baliqiao, in FO 405/5, pp. 216ff.

74 Hope Grant and Sidney Herbert, in WO 32/8233. Ch.-G. Montauban, *Souvenirs*, pp. 277-280.

75 M. Banno, *China and the West* (2), p. 171.

The third phase of the China expedition, September 22 to October 25

Prince Gong Wang Yixin 恭王奕訢, now negotiating on behalf of the absent emperor, was the younger half-brother of the Xianfeng Emperor and the head of the “peace party” which favored relations with the foreigners. However, this by no means meant that his relationship with the foreigners was relaxed or amicable.

In addition to the failed negotiations, the abducted European officers, the fled emperor and the two big battles, the European diplomats were under considerable pressure as winter was approaching and European troops were badly equipped. Elgin and Gros feared that they would not be able to ratify or exchange treaties, and that they had put the Chinese government in serious jeopardy. The urgent wish on both sides was for a rapid and peaceful conclusion to negotiations.

The new Chinese plenipotentiary, Prince Gong, twenty-seven years old, certainly entertained no belief in European superiority, and according to some assessments he could be considered a traditional Confucian.⁷⁶ But he had been all of his life an adversary of the politics of the Xianfeng Emperor and, influenced by his father-in-law Guiliang, believed that good relations with the Western powers and the use of their technology could help solve the imminent problems of the Qing dynasty and restore a strong Confucian state. But Prince Gong’s first task was to prepare Beijing against an advance of the foreigners.⁷⁷ He re-appointed Guiliang, Wenxiang, Hengqi and Chonglun 崇綸 as his advisors for their considerable experience in dealing with the foreigners as well as for their belief in a peaceful coexistence with them. Chonghou 崇厚, an official from Tianjin, was also summoned to assist, as well as Huang Huilian, who had worked since 1858 as an unofficial “channel of information” between the British and the Chinese.⁷⁸ Then Prince Gong resumed the negotiations with Elgin, notifying him on September 21 that Prince Yi and Muyin had not acted in the best interests of China by keeping the foreigners waiting so long, and that he was now in charge.⁷⁹

Elgin and Gros now had a new problem at hand and replied that the diplomatic negotiations would be resumed only if all the hostages were returned safely and in good health.⁸⁰ Prince Gong did not consider the hostage issue an important matter for negotiation, and responded that the hostages, though healthy, would be returned only upon the signature of the treaty. They, Gros and Elgin, would certainly not want to risk the peace between their nations and China on account of the lives of a few men who had provoked Chinese troops. Then Prince Gong went on to explain the misunderstandings from September 15 from his perspective and as it had been explained to him. The only point of disagreement between Prince Yi, Muyin and the British was, according to Prince

76 M. Wright, *Last Stand of Chinese Conservatism, The T’ung-chi Restoration, 1862–1874*, Stanford 1857.

77 M. Banno, *China and the West* (2), p. 171.

78 *Ibid.*, p. 181. Banno states that Prince Gong’s committee was rather extensive and comprised probably fifty-five or more people, including Chonglun, sixty-nine years old, in charge of grain supplies for the capital, and Chonghou, thirty-three years old, salt commissioner of Tianjin.

79 Prince Gong to Elgin, September 21, 1860, FO 405/5, p. 222.

80 Elgin to Prince Gong, September 22, 1860, FO 405/5, p. 222.

Gong's account, the handover of the treaties between a representative of Queen Victoria and the Xianfeng Emperor. In this version, Parkes and Wade had provoked the battle of September 18, leading to an argument with Qing officers and resulting in their being taken as hostages.⁸¹

Elgin and Gros sent a letter clarifying their point of view, and now employing for the first time a notion of "international law" to justify their actions to Prince Gong. It is interesting to note that concepts of international law had not been used before with respect to the issue of foreign diplomatic representation in Beijing. But evidently the hostage incident changed the premises of negotiations, since another peculiarity of diplomacy had to be introduced to Prince Gong: the concept of diplomatic immunity. The delegation taken hostage on September 18, explained Elgin, had been carrying a white flag. This meant that they were sent as diplomatic envoys and were not subject to the laws of foreign countries, in this case China.⁸² The legal corpus justifying Lord Elgin's reasoning is mentioned on September 25, 1860. On this day, Elgin introduced international law into the game for the first time, explaining its logic to Prince Gong, who had never heard the term. Previously, the concept of international law had not yet, it seems, been deployed. The wish for a diplomatic representation in Beijing was understood to be a reasonable reaction to the corruption of the Cohong merchants in Kanton. It can be assumed that Elgin used the introduction of an international law as a last resort, and also as a manner of securing his defense in London. Not only had he failed as commanded to obtain the treaties peacefully, but he had also caused the emperor to flee. The taking of the hostages, explained Elgin to Prince Gong, was against international law, which guaranteed diplomats immunity from legal action. Also, it was considered a major diplomatic incident and sufficient reason for the Europeans to attack Beijing. Additionally, there had been another misunderstanding: the personal encounter with the Xianfeng Emperor had always been negotiable and had never been a precondition. Then Elgin added explanations for his behavior, which he had never offered before and which gave Prince Gong insight into the European system of diplomacy. Elgin added that the mutual exchange of papers of accreditation belonged to a European mode of conduct of diplomatic affairs, but was, although highly symbolic, negotiable. However, governments who refrained from engaging in such practices would make themselves vulnerable to the accusation that they did not wish to belong to the "family of nations". Montauban seconded Elgin's remarks.⁸³ Prince Gong's response gave no indication that he had any expectations that Elgin and Gros would behave in a way expected in China's tributary relations. In his response on September 27 he answered that if Prince Yi and the war minister Muyin had deceived Elgin and Gros, then he was very sorry. But he himself was a close relative of the emperor and had conceded every single point of negotiations since he wished peace.⁸⁴

81 Prince Gong to Elgin, September 23, in FO 682/1993/58.

82 H. Knollys, *Incidents* (59), p. 119.

83 Elgin to Prince Gong, September 21, in FO 405/5, p. 222.

84 Prince Gong to Elgin, September 27, 1860, in FO 682/1993/60.

Then he pointed to the contradiction in Elgin's and Gros' behavior: the aggressive behavior of the European military and their wish to destroy the city was not in accordance with their wish for peace and a desire for a harmonious "family of nations". (It cannot be determined whether Prince Gong knew that the concept of Lord Elgin's family of nations included mainly European "family members", but it can be assumed that he was able to relate this concept to a Confucian world order.) Also, the emperor would not be able to exchange the treaty ratification with them personally, but he, Prince Gong, would do it in his stead. Regarding the hostages, he had no knowledge of the affair.⁸⁵ This situation persisted for a few days: Prince Gong demanded the retreat of the allied forces while Elgin and Gros demanded the return of the hostages, and meanwhile the troops advanced towards Beijing. Meanwhile, Prince Gong, despite the implications of international law and the question of the missing hostages, proceeded with his plans and had the treaty ready and translated by October 8. But Elgin and Gros still refused to sign because the hostages had not yet been returned, a difficulty which was not understandable to Prince Gong. It seemed to him incomprehensible that Elgin and Gros, having almost achieved their objectives, should stall now because of a few men, abducted during an incident regarding which he, Prince Gong, had no knowledge.

In the course of the next days, several things happened that both sped up the process and caused the conflict to escalate. Between October 6 and 9, European troops looted the Yuanming Yuan (the looting was started by the French, the British followed the next day), and confiscated many of its treasures. The theft of works of art was considered legitimate during the China War of 1860 and was only banned in 1954 by the Hague Convention. But since the looting of the Yuanming Yuan greatly endangered the negotiations, it must be classified as an escalation and loss of discipline among the French troops.⁸⁶ The European hostages, some of them mutilated and dead, were found there and freed and the dead bodies recovered. The British general Hope Grant declared the looted goods from the Yuanming Yuan as war booty and made his officers hand over all the goods they had taken to him since they belonged rightfully to Queen Victoria. On October 10 and 11, the looted goods from the Yuanming Yuan were auctioned off among the British officers in front of the Lama temple, near the city.⁸⁷ The French general also declared the goods looted by the French as prizes of war and shipped a large part of them back to France as gift for Empress Eugénie, while also letting his men keep their individual "treasure".

Meanwhile, the European troops gathered in front of the city gate of Beijing, ready to attack. Prince Gong refused all responsibility for the death of the hostages. He also criticized Elgin and Gros for following such a belligerent course. On October 14, the city gate Andingmen was taken peacefully by the European troops, and the remaining

85 Prince Gong to Elgin, September 27, FO 682/1993/62.

86 A description of the act of looting can be found in A. Lucy, *Lettres intimes sur la campagne de Chine*, Marseille 1862, pp. 101ff. The Xianfeng Emperor first heard of these events on October 10. Memorial of Yixin, Guiliang and Wenxiang, in: Chouban Yiwu shimo (55). The Chinese eyewitnesses, who were very few, usually reported the burning of the Yuanming Yuan and only rarely mentioned this first looting at the beginning of October.

87 G. J. Wolseley, *Narrative of the War with China in 1860*, London 1862, p. 240; R. Swinhoe, *Narrative* (59), p. 311.

hostages were freed. Of thirty-nine hostages, twenty-six survived while thirteen had been killed. Prince Gong conceded to the demands for the Treaty of Beijing made by the British as well as the French. Elgin accepted, but felt obliged to additionally demand a financial indemnity for the families of the dead hostages. To underline the gravity of his demands, Elgin used means that would be in no way justified by an international law: he threatened that if Prince Gong did not agree to these demands by October 20, he would burn down all imperial palaces in Beijing.

Baron Gros also had additional demands in the wake of the death of French hostages, and for France as the protective power of the Catholic Church, such as the return of the property of the Catholic Church in Beijing. Prince Gong answered the demands by granting them all.

During the next few days, Lord Elgin proceeded to demonstrate to Prince Gong the opposite of what he had been trying to impress on him: that he belonged to a civilized nation operating according to international law. By burning Yuanming Yuan to the ground, Lord Elgin (though he justified it by the remains of the dead hostages found there) proved that his talk of “international law” and “family of nations” was shallow and apparently not to be applied to China. On the contrary, he justified this act in London with the reasoning that he felt he had to teach the Qing government a “lesson” for making the negotiations so difficult. He was thus conducting a civilizing mission with no civil content.⁸⁸

Elgin also claimed that it had to be impressed on the Chinese government that foreign diplomats had to be granted immunity and could not be taken hostage. General de Montauban, although his soldiers looted heavily on October 6 and 7, did not participate in the final burning of the Yuanming Yuan, which he believed to be too severe a retaliation. He rather suspected, wrongly, that Elgin was indeed attempting to take power from the Chinese emperor.⁸⁹ The European powers however, had just demonstrated their barbarianism despite all their talk of a “civilizing mission”, free trade and Christian values.

Conclusion

To come back to our question: how did the representatives of the Qing Empire and those of Great Britain and France come to terms with each other's diplomatic systems, and were there processes of transcultural appropriation?

Firstly, a process of mutual appropriation definitely took place and was necessary to conclude the treaties. The point of departure for the European allies, particularly the British, was the firm belief in their civilizing mission, free trade and their rights in seeking to force the Chinese empire to bow to their principles. Initially, the British perceived

88 Elgin to Prince Gong, October 16, Beijing, in FO 405/5, pp. 279ff. See also Elgin to Russell, October 25, in FO 17/331.

89 H. Cordier, *L'expédition de Chine* (44), p. 398.

the Qing Empire as not interested in bowing to their demands, as deliberately delaying the signing of the contract, and interpreted their actions accordingly, usually as hostile. Elgin, although becoming increasingly aware of the difficulties of the Qing Empire as the negotiations unfolded, performed nevertheless as an “incontrollably fierce barbarian”.⁹⁰ The question of whether Elgin and Gros had a full vision about an existing traditional tributary system cannot be answered in full, since no explicit reference is made in the texts. However, they understood the largest obstacles for the Qing government with respect to the signing of the treaties: their declining to accept other powers as equal or to allow diplomatic representation or free inland travel, as well as their refusal to send imperial envoys and dispatching provincial governors instead. On the other hand, Elgin and Gros connected the fact that the Russian and American envoys traveled the prescribed routes with an existing tribute system and clearly reacted to it by deciding on their own route.

That the British and French did not form a unified “West” and tried to act according to their own civilizing missions, in which the French represented the Christian mission and the British defended notions of free trade, surfaced on only two occasions: firstly, when the French demanded less indemnity than the British at the beginning of the negotiations, and secondly, when Baron Gros and General de Montauban refused to participate in the burning of the Yuanming Yuan at the end of October, but instead reclaimed all the Catholic churches and buildings in Beijing for France. They certainly would have liked to pronounce their “civility” more, but during the diplomatic negotiations Baron Gros often had no choice and had to follow the lead of Lord Elgin, who had, due to his much stronger troops, a considerable advantage.

The point of departure for the Qing government at large was the traditional tributary system, which had developed during the eighteenth century. The Qing Empire, multinational and multi-lingual (Han China being just one part of it), ruled during the eighteenth century with a very flexible set of diplomatic practices that allowed them to also integrate the European traders at the southern fringes of the empire. Peace was maintained through a very strong army, through administrative practices, through the impressive sage-like behavior of the emperor, or through keeping foreign traders at the borders and pacifying them by meeting their economic demands. Although facing a multitude of crises in the mid-nineteenth century, particularly rebellion at the fringes of the empire and erosion of this tributary system, the imperial court at large, with the exception of a small faction around Prince Gong, the younger brother of the Xianfeng Emperor, refused to adapt this system to the demands of the Europeans, who wished for access and diplomatic representation in Beijing. The China War of 1860 shows for the first time a direct conflict between these two diplomatic systems. Both parties had to avoid war: Elgin and Gros had been instructed accordingly in Europe and had the difficult task of accommodating the interests of the aggressive British and French empires and at

90 Letter from Elgin to his wife, June 5, 1860, in: T. Walrond (ed.), *Letters and Journals of James, Eighth Earl of Elgin*, London 1872, p. 215.

the same time not endangering the legitimation of the government of the Qing Empire, which was in a multitude of crises.

In the end, the negotiations came to a conclusion only because the first set of Qing negotiators, opposing the Europeans and their access to China and acting in accordance with the Xianfeng Emperor, was replaced by Prince Gong, who acted on behalf of the emperor after his flight to Chengde. But also during the first part of the negotiations, both parties had to deviate from their initial demands. The first party of the Qing government acted in accordance with traditional diplomatic customs: they refused diplomatic representation in Beijing, inland travel, indemnity and an apology for the events in 1859, as well as direct contact with imperial officials. Elgin and Gros insisted on their demands, but offered not to take up the embassies immediately, instead deferring this to the following year. Also, they ensured that a personal encounter with the emperor remained negotiable. The Qing officials deviated from their customs insofar as they sent imperial princes to negotiate with Elgin and Gros, which means that they recognized the wish of the foreigners to negotiate with high-ranking imperial officials.

Only during the third phase of the negotiations, and after Prince Gong had taken them over, did the full scale of deviation from the tributary system become apparent. Originally attempting to ignore the diplomatic dimension of the European demands and pretending to understand them in purely economic terms, Prince Gong eventually had to grant the diplomatic representation. At the same time, he had to appropriate and integrate European diplomatic customs, like diplomatic immunity, the exchange of ratified treaties, and the fact that Europeans wanted to deal only with imperial commissioners (a fact that had already been conceded by his predecessors).

Elgin and Gros, who were able to act much more in accordance than the Qing government, had to concede only the fact that the embassies would be taken up in the following year.

The question of international law was raised only during the last phase of the negotiations, when Elgin was in contact with Prince Gong, who seemed to have a much better grasp of the worldview of the British and the French than did his predecessors. Elgin explained it as underlying the system of his diplomatic negotiations but remained rather hazy about it, and only certain rules were mentioned to Prince Gong. Prince Gong, however, followed up on it, and Henry Wheaton's *Elements of International Law* was among the first books translated into Chinese in the aftermath of the war. But the international law unfolded as a major relevance in connection with the fate of the abduction of a high-ranking delegation of European diplomats. In order to guarantee the safety of further diplomats in China and to make the point that their taking hostages was not an option for further negotiations, Elgin explained the concept of "diplomatic immunity" within the framework of international law. When some of the hostages were returned mutilated and dead, Elgin retaliated using the reason that this was a violation of international law and so put the Yuanming Yuan to the torch.

Eventually Prince Gong had to acknowledge during the negotiations not only the existence of a European diplomatic system, but particularly the fact that the British and

French empires wanted to be accepted as equal. Additionally, this European system employed its own notion of what underlay all political entities in the form of an international law. In the end, the Qing government was able to suffer the humiliation of the burning of the Yuanming Yuan without losing all legitimacy of rule over China. With the emperor gone to Jehol, it became possible to follow a path of foreign policy that included other types of diplomatic worldviews.

The Zongli Yamen, from this perspective, certainly is a transcultural institution. By establishing the Zongli Yamen, the Chinese government integrated international law as a transcultural element and technique of governance.

In the years to come, the Qing court took many measures to improve its situation, including even the help and technology of the Westerners. On the other side, during this phase until the 1890s, the interest of the Westerners and Europeans was always to stabilize the Qing government insofar as they were able to accommodate Western interests.

Under these premises, it seems, theories of informal empires still remain a valid framework of interpretation. But the approach of entangled histories and the analysis of transculturality show, as in the case of the China War of 1860, that an informal empire was also a constant process of negotiation and renegotiation, and that the Chinese government indeed initiated the most important reforms themselves.

Between Saree and Skirt: Legal Transculturality in Eighteenth-Century Pondicherry¹

Gauri Parasher

RESÜMEE

Der Aufsatz erprobt das Konzept der transkulturellen Staatlichkeit am Beispiel der Rechtsordnung, d. h. Rechtsprechung und Gesetzgebung. Untersucht werden ausgewählte Aspekte der französischen Rechtsprechungspraxis gegenüber indischen Akteuren in Pondicherry, der wirtschaftlichen wie administrativen Zentrale der französischen Unternehmungen in Südindien, während des 18. Jahrhunderts. Obwohl die Haltung des frühen französischen Kolonialregimes gegenüber der zivilen Gerichtsbarkeit darauf ausgerichtet war, über jede soziale Gruppe gemäß ihrer eigenen Rechtsnormen Recht zu sprechen, argumentiert diese Arbeit, dass die Situation in der Praxis weitaus uneindeutiger war. Dies gilt insbesondere für die indischen Christen, deren Existenz bereits Resultat von Kulturkontakt war und die daher nicht in die sozial-rechtlichen Kategorien passten, die durch das frühe Kolonialregime als Grundlage für die Rechtsprechung definiert worden waren. Ausgehend von einer Untersuchung verschiedener Rechtsstreitigkeiten aus der zweiten Hälfte des 18. Jahrhunderts zeigt der Aufsatz auf, dass die Demarkationslinien in dieser Situation der Rechtsvielfalt insbesondere in Bezug auf indische Christen viel flexibler und in höherem Maße offen für Aushandlung waren als bisher in der Forschungsliteratur angenommen. Die Prozesse brachten gerichtliche Entscheidungen hervor, die einen Kompromiss zwischen verschiedenen Rechtstraditionen darstellen. Durch diesen Kompromisscharakter standen die Urteile paradoxerweise nicht nur im Konflikt mit eben jenem Prinzip, welches die Verwaltung von Pondicherry der Rechtsprechung eigentlich zugrundelegte, sondern sie sind zugleich paradigmatisch für die Transkulturalität des in der Entstehung begriffenen französischen Kolonialstaats in Indien.

1 This article is partly based on the fourth chapter of my ongoing doctoral dissertation provisionally entitled "The Religion of the Tribunal: Transcultural Dimensions of State-Building in the French Territories in India during the Eighteenth Century." I am very grateful to the editors, Tobias Graf and Julie Marquet for critical readings of the article.

1. Introduction

Although the concept of transculturality can refer to both an analytical method and an object of investigation, it is the latter understanding that guides this article.² In this sense, transculturality refers to ‘processes through which local forms emerge within circuits of exchange’ and is at once conceived of as a process and its result.³ Such a conceptualisation of transculturality allows us to regard cultures and cultural encounters within the same conceptual matrix, wherein both are constituted and reconstituted processually through entanglement, exchange, appropriation, hybridization, and circulation on the one hand, and relationally through dissonance, rejection, alterity, and asymmetries of power on the other.⁴ In this article, the concept of transculturality is employed to take cognisance of processes and products of interaction in the cultural encounter between the French and the Indians, even as the very nature of this encounter was transitioning from commercial to colonial.⁵ As a consequence, when used as an attribute of the idea of statehood, transculturality signifies an examination of processes of interaction between the French and Indians as well as its effects on the emerging French colonial rule in India.

At the heart of this enquiry on dimensions of transcultural statehood lies the hypothesis that the interactive exchange between the binary of French and Indian, congruent with that of the ruler and the ruled, albeit not exclusively so, was liable to produce new forms of governance hitherto unforeseen. This assumption is based, on the one hand, on the now commonplace understanding of the dynamics of colonial encounters in which subordinate groups are no longer viewed as entirely passive subjects but rather as active agents who, although ‘not in control of what emanates from the dominant culture, do determine to varying extents what they absorb, and what they use it for.’⁶ On the other, it draws partially on the idea of ‘empowering interactions’ according to which the state is an unintentional outcome of interactive processes between political authority and local subjects.⁷ The crucial link that sustains this superimposition of cultural encounters on

2 M. Herren/M. Rüesch/C. Sibille (eds.), *Transcultural History: Theories, Methods, Sources*, Heidelberg 2012.

3 Monica Juneja, *Understanding Transculturalism*. Monica Juneja and Christian Kravagna in *Conversation*, in: F. Amir et al. (eds.), *Transcultural Modernisms*, Berlin 2013, pp. 22–33.

4 This formulation is based on M. L. Pratt’s concept of transculturation as a phenomenon of cultural encounter and W. Welsch’s non-essentialist understanding of culture or cultural formation as transcultural. See M. L. Pratt, *Imperial Eyes: Travel Writing and Transculturation*, London 2003, Introduction, and W. Welsch, *Transculturality: The Puzzling Form of Cultures Today*, in: M. Featherstone/S. Lash (eds.), *Spaces of Culture: City, Nation, World*, London 1999, pp. 194–213. For an excellent introduction to the multiple terms currently in use to describe and analyse cultural interaction, see P. Burke, *Cultural Hybridity*, Cambridge 2010.

5 For the significance of the eighteenth century in Indian history in light of the debates on whether the pattern of change witnessed by this period was revolutionary, resulting from the disruptions caused by European domination, or evolutionary, showing continuities with the precolonial past, see P. J. Marshall (ed.), *The Eighteenth Century in Indian History – Evolution of Revolution?*, New Delhi 2003; D. Washbrook, *South India 1770–1840: The Colonial Transition*, in: *Modern Asian Studies*, 38(2004) 3, pp. 479–516.

6 M. L. Pratt, *Imperial Eyes: Travel Writing and Transculturation*, (4), p. 6.

7 A. Holenstein, Introduction: *Empowering Interactions: Looking at Statebuilding from Below*, in: W. Blockmans/A. Holenstein/J. Mathieu (eds.), *Empowering Interactions: Political Cultures and the Emergence of the State in Europe 1300–1900*, Farnham 2009, pp. 1–34.

state-building is the very idea of interaction, which is also operative in the concept of transcultural statehood, thus making it doubly fruitful to study state-building in Europe and elsewhere during the early modern period. Because the concept of transcultural statehood understands state and state-building not only as 'a space for interaction and a result of interactive processes' between political authority and subjects at a local level, but also as a result of contact and exchange between cultures, state-building in the metropolis and the colony becomes part of a shared and entangled history, rather than a top-down process, initiated at the centre and percolating in a linear manner to the bottom.⁸ Indeed, by conceptualising the state in terms of interaction and cultural exchange, the concept of transcultural statehood levels the analytical framework for the analysis of state and state-building in Europe and elsewhere while at the same time answering to the growing need, articulated predominantly by Anglo-American scholarship, to view state-building in the metropolis and the colony not as parallel but rather interdependent processes.⁹ Thus, the concept can be successfully employed to account for both the role of cultural encounter in its myriad forms, and the role of the colonies as one of the locations for that encounter, in state-building in France and elsewhere in Europe during the early modern period. In this article, however, my geographical focus remains a single territory under French rule in south India.¹⁰

In the following I will apply the concept of transcultural statehood principally to examine the administration of justice and legislation related to this sphere as an integral aspect of governance. The choice of the eighteenth-century judiciary as a field of investigation to demonstrate the transcultural dimension of the emerging colonial rule rests on its recognition not solely as an instrument of colonial control, but rather as 'a relatively open arena where colonial as well as indigenous agents could advance their interests and hope to gain strategic advantages.'¹¹ As this article will show, not only was this a forum where indigenous interests were most directly manifested, but it was also a forum that saw these interests alter the administration of justice.

8 The idea of studying the state and state-building as transcultural phenomena was developed by Antje Flüchter to counter the spatio-temporal centrality of Europe and its modernity in conceptualizing its own experience as a fixed model that was later exported to the rest of the world. Among other things, she historicizes the concept by taking into account the extra-European factors that contributed to its formation in Europe and advocates a processual understanding of the state. See A. Flüchter, Introduction, in: ead./S. Richter (eds.), *Structures on the Move: Technologies of Governance in Transcultural Encounter*, Heidelberg 2012, pp. 1–27.

9 H. Dewar, *Litigating Empire: The Role of French Courts in Establishing Colonial Sovereignities*, in: R. J. Ross/L. Benton (eds.), *Legal Pluralism and Empires, 1500–1850*, New York 2013, pp. 49–79, p. 51.

10 Besides Pondicherry, the French had several other enclaves in India, most of them situated along the eastern and western coasts of the Indian peninsula. Mahé, Karaikal, Yanam, and Chandernagore, along with a few trading posts and Pondicherry, were commonly referred to as French India or as French territories in India. Today, with the exception of Chandernagore, these former French colonies are part of the Union Territory of Puducherry. It may be noted that the town officially changed its name to Puducherry in 2006. The change of name, however, has been slow to emerge in academic usage.

11 As N. Brimnes has observed, this is based largely on the change of perception among scholars of the Anglo-Indian judiciary in South India. N. Brimnes, *Beyond Colonial Law: Indigenous Litigation and the Contestation of Property in the Mayor's Court in Late Eighteenth-Century Madras*, in: *Modern Asian Studies*, 37 (2003) 3, pp. 513–50, p. 517.

The litigation examined in this article is drawn from the records kept by the two official forums principally involved in settling civil disputes among the inhabitants of Pondicherry: the *Tribunal de la Chaudrie* (hereafter the Chaudrie) and the *Conseil Supérieur* or the Sovereign Council (hereafter the Council).¹² These judicial records provide detailed summaries of the contested issues which present the contents of the arguments made by the litigants in their pleas to the court in addition to the final verdict.¹³ The bulk of the litigation, especially for the Chaudrie, relates to debts and contracts, although a significant number of records concern issues of succession, adoption, and marriage – issues that are now categorized under the rubric of personal law.¹⁴ This article concentrates on inheritance disputes as it was mainly in the context of these that the clash between legal traditions emerged. Given the relative minority of Indian Christians, compared to the *gentils*, and that of inheritance disputes in the sources, the records of legal conflicts over inheritance among Indian Christians are not numerous. Yet despite the relative dearth of the material, it is still possible to illustrate the complexities in litigation involving Indian Christians, as well as the clash and compromise between legal traditions that these generated.

2. Complicated Categories: Social and Legal Pluralism in Pondicherry

In line with Alf Lüdtke's observation that any authority rests on the obeisance of some, if not all, of its subjects, the emergence of colonial authority also hinged on the cooperation of at least some local actors.¹⁵ In the particular case of French rule in Pondicherry,

12 The Council, also the principal administrative organ of the French territories in India, was composed of five or more members, including the Governor. The first councilor (i.e. the deputy governor), along with two associates, presided over the Chaudrie. Together, the two courts held mixed jurisdiction over the French and Indian population of Pondicherry. For example, although designated as a native tribunal, the Chaudrie adjudicated litigation not only between Indians, but also between European claimants and Indian defendants. Similarly, the Council, in its capacity as an appellate court, also adjudicated litigation between Indians. M. Laude, *Études sur les origines judiciaires dans les établissements français de l'Inde, Pondicherry 1860*. Although this dual-court system, one native and one foreign, was common in European colonies in India, their respective jurisdictions over the population was subject to some variation. For an initial comparison of this jurisdictional set-up between Madras under the English and Pondicherry under the French, see A. F. T. Reyes, *English and French Approaches to Personal Laws in South India, 1700–1850*, PhD Dissertation, University of Cambridge, 1986.

13 The records of the Council decisions from 1701 to 1814 were published in G. Diagou (ed.), *Arrêts du Conseil Supérieur de Pondichéry*, 8 vols., Pondicherry 1935. Although the Chaudrie, too, functioned from the beginning of the eighteenth century, its judgments started being recorded only in 1766. A selection of the Chaudrie decisions was published much more recently in J.-C. Bonnan, *Jugements du tribunal de la Chaudrie de Pondichéry: 1766–1817*, 2 vols., Pondicherry 1999. The litigations examined in this article are drawn from the two compilations as well as archival research in the National Archives of India, Pondicherry Records Centre (hereafter NAI RPC), which houses the registers containing the civil judgments given by the Chaudrie.

14 For more details on the type of litigation adjudicated by the Chaudrie, see J.-C. Bonnan, Introduction, in: id., *Jugements du tribunal de la Chaudrie de Pondichéry: 1766–1817*, vol. 1 (13), p. xlvii.

15 A. Lüdtke, Einleitung, in: id. (ed.), *Herrschaft als soziale Praxis. Historische und sozialanthropologische Studien*, Göttingen 1991, pp. 9–63; as cited in S. Brakensiek, *New Perspectives on State-Building and the Implementation of Rulership in Early Modern European Monarchies*, in: A. Flüchter/S. Richter, *Structures on the Move* (8), pp. 31–41.

the cooperation of Indian subjects was contingent on one condition: the freedom to live according to their manners and customs. In 1673, when Sher Khan Lody, the regional ruler, granted the small fishing village that was later to become Pondicherry to the French to set up a trading post, it was on the promise that they would respect the natives' customs and protect their temples.¹⁶ In 1708, in an effort to make the colony commercially profitable by attracting as many Indians as possible to settle there, the administration issued public notices in several languages granting prospective migrants liberty of commerce as well as conscience, that is, 'the freedom to live according to their ways and customs'.¹⁷ Thus, from the very beginning, this administrative stance or 'indigenous policy' (*la politique indigène*), as Jacques Weber terms it, was critical to the growth of prosperity and colonial authority in Pondicherry.¹⁸

Besides its impact on the social and religious spheres, this policy also had certain implications for the legal sphere.¹⁹ As different groups of Indians had their respective laws, norms, and customs, civil justice had to be administered through a plurality of indigenous laws.²⁰ This is how the principle of administering justice was formally expressed in the edict detailing the functions of the Civil Judge in Pondicherry. Article 16 of this edict states:

*As the nation has undertaken to judge Malabars and other Indians, who take recourse to French justice, according to Malabar mores, usages, customs, and laws, since the beginning of its establishment in Pondicherry, the Civil Judge will conform in this regard to what has been practised to date at the civil seat of the Chauderie.*²¹

16 J. Weber, *La mosaïque pondichéenne*, in: R. Vincent (ed.), *Pondichéry, 1674–1761: L'échec d'un rêve d'empire*, Paris 1993, pp. 144–63. For eighteenth-century history of French territories in India, see A. Ray, *The Merchant and the State: The French in India, 1666–1739*, 2 vols., New Delhi 2004; S. P. Sen, *The French in India: First Establishment and Struggle*, Calcutta 1947; id., *The French in India, 1763–1816*, 2nd ed., New Delhi 1971; G. B. Malleson, *History of the French in India: From the Founding of Pondicherry in 1674 to the Fall of That Place in 1761*, London 1868.

17 *Règlement du 29 juillet 1708*, in: A. Martineau (ed.), *Procès-Verbaux des délibérations du Conseil Souverain de la Compagnie des Indes*, vol. 1, Pondicherry 1911, pp. 46–47.

18 J. Weber, *Pondichéry et les comptoirs de l'Inde après Dupleix: la démocratie au pays des castes*, Paris 1996, chap. 4.

19 In the first decades of the century, this policy was a sore point in the relations between the administrators and the Jesuit missionaries, who were insistent that the religious freedom given to the Indians be curtailed. P. Olganier, *Les Jésuites à Pondichéry et l'affaire Naniapa, 1705 à 1720*, Paris 1932. P. Haudrière, *Des chrétiens chez les hindous*, in: R. Vincent (ed.), *Pondichéry (16)*, pp. 88–105. F. Richard, *Les missions catholiques*, in: P. Le Tréguilly/M. Morazé (eds.), *L'Inde et la France, deux siècles d'histoire commune, XVIIe–XVIIIe siècles: Histoire, sources, bibliographie*, Paris 1995.

20 Although the distinction between laws, norms, and customs is a matter of much debate, it suffices to say here that in the legal context and with regards to Indians, the French administration used them interchangeably. See, for example, article 16 of the edict of 1769 quoted below (footnote 21).

21 'La nation s'étant engagé dans les commencements de son établissement à Pondichéry à juger les Malabars et autres Indiens qui auraient recours à la justice Française suivant les mœurs, us, coutumes et loix malabars, le Lieutenant Civil se conformera à cet égard à ce qui s'est pratiqué jusqu'à ce jour au siège civil de la Chauderie.' Article 16^{ème} du règlement du 30 décembre 1769. *Expéditions des règlements fait tant par MM les administrateurs que par le Conseil Supérieur de Pondichéry depuis le 6 Mars 1742 jusqu'au 18 octobre 1777*. ANOM, *Le Fonds Ancien, 1690–1855*, Microfilms, p. 107. All translations in this article are mine.

Almost exactly half a century later, in 1819, this principle was rearticulated when the colonial state promulgated the French codes in their territories in India. Although aimed at the French segment of the population, this regulation nonetheless contained an article concerning the administration of justice to the Indians that reiterated the stance of the colonial state's eighteenth-century predecessor: 'Indians, whether Christians, *maures* or *gentils*, will be judged, like in the past, according to the laws, usages, and customs of their caste.'²² In essence, through these proclamations, the French administration was not only acknowledging the existence of various personal laws among the local population but also promised to administer civil justice according to those laws. Thus, the administration of justice in Pondicherry and other French territories in India was formally proclaimed to be legally plural in civil affairs throughout the eighteenth century.²³

Evidently in acknowledging the existence of these various sets of laws and judging individuals in relation to these laws, the French were no different from their European counterparts elsewhere in Asia and Africa. Legal pluralism or rather, what Sally Merry has termed the 'classic legal pluralism' saw the intersections of European and indigenous laws in colonial regimes.²⁴ However, the particular patterns of intersection between European and indigenous laws and their outcomes varied in these territories.²⁵ Tracing transculturality in the legal sphere in Pondicherry, in effect, amounts to examining the entanglement between French and Indian laws. In the case of French territories in India, historians have often used these proclamations, especially that of 1819, to acknowledge the plurality of laws prevalent among the Indian population and reiterate that conversion to Christianity did not bring any change in an individual's legal status. For example, a nineteenth-century French judge in Pondicherry began his treatise on Hindu law by quoting the above-mentioned article 3 of the 1819 regulation and observed that even though the article distinguished three kinds of categories based on religion, juridically speaking there were only two because those who converted to Christianity had to be governed according to the same laws and customs as the *gentils*.²⁶ More recently, David Annuossamy, one of the foremost legal historians of French India, explained the very same article in no uncertain terms: 'Christians did not change laws because of their

22 Règlement du 6 février 1819, article 3 – 'Les Indiens soit chrétiens, soit Maures ou gentils seront jugés, comme par le passé, suivant les Lois, us et coutumes de leur caste.' G. Diagou, Arrêts du Conseil Supérieur, 13), pp. 279–80.

23 This is not surprising given that early modern France, much like most other European polities, consisted of a plurality of legal frameworks and political authorities. See J. H. Elliott, A Europe of Composite Monarchies, in: Past & Present, 137 (1992), pp. 48–71. For example, the French Civil Code, also known as the Napoleonic Code, replaced as many as sixty general systems of law in France. P. Curzon, Jurisprudence, London 1998, p. 290. On the history of law in early modern France, see F. Olivier-Martin, Histoire du droit français: des origines à la révolution, Paris 2010.

24 S.E. Merry, Legal Pluralism, in: Law & Society Review, 22(1988) 5, pp. 869–96, p.872.

25 This is a subject that needs further research in a comparative framework than has been undertaken till now. For some notable works in this direction, see M. B. Hooker, Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws, Oxford 1975; W. J. Mommsen / J. A. de Moor (eds.), European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-Century Africa and Asia, Oxford 1992; L. Benton, Law and Colonial Cultures: Legal Regimes in World History, 1400–1900, Cambridge 2001.

26 L. Sorg, Introduction à l'étude du droit hindou, Pondicherry 1895, p. 1.

conversion, they continued to follow their ancient Hindu customs.²⁷ Although correct in principle, simply acknowledging the plurality of laws and observing that conversion brought no change hardly suffices to show the realities on the ground and the complexities that beset the administration of justice time and again. Above all, such observations fail to recognise and explain the complex and contingent character of the legal ordering and categorization of difference through which justice had to be administered. For example, how are we to reconcile the categories of caste and religion not only with regards to *gentils*, but also with regards to *maures* and Christians, as employed in the proclamation of 1819, in their relevance to determining an individual's legal status? Let us, then, begin by examining the sheer multiplicity of categories identified by the official proclamations quoted above as the basis for administering personal laws among the population of such diverse make-up. In the remainder of this section, I will briefly describe these various categories and their interrelation to depict the social diversity of the Indian population and, more importantly, to illustrate the complexity subsumed in the legal categorisation that formed the basis for administering personal laws.. It must be noted that the following analysis discusses only such social categories that had legal relevance and is by no means an exhaustive ethnographical account of the social stratification in Pondicherry.²⁸

The simultaneous use of the terms *Indians*, *Malabars*, *gentils*, *chrétiens*, *Maures*, and *caste* in the official proclamations quoted above aptly exemplifies how an individual's legal status, far from being simply a matter of religious affiliation, lay at the varying intersections of ethnic, social, and religious axes. The basic demarcation is evidently ethnic: Indians as opposed to Frenchmen or Europeans. Its corresponding legal demarcation prescribed that while the French were subject to the Custom of Paris, Indians were subject to Malabar laws.²⁹ Although a misnomer, the term Malabar, as employed in the proclamation of 1769, was a sub-category of the term Indian and generally referred to the local, Tamil-speaking population of the south-eastern coast of the Indian peninsula (present-day Tamil Nadu). Within this ethno-linguistic category, a further distinction of religions was recognised. The second proclamation identifies three religious categories

27 D. Annoussamy, *L'intermède français en Inde: secousses politiques et mutations juridiques*, Pondicherry 2005, p. 239.

28 For such an account, see L. S. Vishwanath, *Social Stratification in Colonial India with Special Reference to French India*, in: K. S. Mathew/S. Jeyaseela (eds.), *French in India and Indian Nationalism (1700 A.D.–1963 A.D.)* vol. 1, New Delhi 1999, pp. 273–97; J. Weber, *La mosaïque pondichérienne* (16); J. Deloche, *Le vieux Pondichéry (1673–1824) revisité d'après les plans anciens*, Pondicherry 2005, pp. 18–22.

29 The Custom of Paris was the customary law of the Parisian region. The first collection of the Parisian customary law was printed in 1510. L. Warner, *Customary Law? Roman Law? Sixteenth-Century Lawyers' Pleadings before the Parlement de Paris*, in: A. Bauer/K. H. L. Welker (eds.), *Europa und seine Regionen: 2000 Jahre Rechtsgeschichte*, Köln 2007, pp. 253–62, p. 253. In the French colonies in the East Indies, just like in the North Atlantic colony of New France in the seventeenth century, 'the French state allowed only the custom of Paris to operate' (ibid. p. 256); Article 33 of the founding charter of the French East India Company expressly bids the judges to administer justice following the laws and ordinances of the kingdom of France and to conform to the 'coutume de la prévôté et vicomté de Paris'. *Déclaration du Roy portant établissement d'une Compagnie pour le commerce des Indes Orientales*, enregistrée en la cour de Parlement le premier septembre 1664, in: Le Sieur Dernis (ed.), *Recueil ou collection des titres, édits, déclarations, arrêts, réglemens et autres pièces concernant la Compagnie des Indes Orientales établie au mois d'août 1664*, vol. 1, Paris 1755, p. 62.

among the Malabars: *gentils*, *chrétiens*, and *maures*. The French word *gentil*, like the English *gentoo*, originated from the Portuguese *gentio*, meaning heathen, and was an early modern label for the non-Christian and non-Muslim population of India that was later supplanted by the term *Hindu*.³⁰ Similarly, the French term *maure*, a derivative of the Portuguese *mouro*, designated Mohammedans or Muslims.³¹ The religious distinction is further supplemented by the social category of caste, understood here as one of the many hereditary and socially distinct groupings constituting the Indian population, as an equally fundamental determinant of an individual's legal status.³² What is important and interesting to note here is that the caste category was a legal determinant not just for *gentils*, but for all three religious denominations. The administration's 1819 proclamation effectively confirmed the administration of justice to Indians according to caste laws, be they *gentils*, Christians, or Muslims. Indeed, although castes and the caste-system as a principle of social organisation are predominantly associated with Hinduism, as an empirical phenomenon they were observed across different religious denominations throughout south India in the early modern period.³³ French travellers and colonial officials alike observed that the *maures* constituted one of the castes among the *gentils*.³⁴ In fact, the colonial state itself eventually recognised them as a caste with the qadi as their caste-chief.³⁵ Thus, caste was recognised as a trans-religious category and an important marker of legal identity.

Seen from this perspective, and as indicated in the official proclamations, the term *Malabar laws* is to be understood as a collective heading for a conglomeration of custom-

30 H. Yule / A. C. Burnell / W. Crooke (eds.), *Hobson-Jobson: A Glossary of Colloquial Anglo-Indian Words and Phrases and of Kindred Terms, Etymological, Historical, Geographical and Discursive*, London 1903, p. 367.

31 *Ibid.*, p. 581. The term was used to refer to the descendants of Mughals, Arab merchants who settled on the coast during the medieval period, as well as local converts to Islam. For the different origins of Muslims in the French territories in India, see J. Weber, *Les établissements français en Inde au XIXe siècle (1816–1914)*, vol. 2, Paris 1988, pp. 554–62.

32 Much ink has been spilled over the historical, sociological and anthropological aspects of the caste system in India. As this debate is not central to my argument here, my own use of the term follows its use in my sources as a way to designate a social group, often, though not exclusively, used in conjunction with a proper noun qualifier, for instance 'caste agamboudia' or 'caste pally'. For some of the notable works on this debate, see L. Dumont, *Homo Hierarchicus: The Caste System and Its Implications*, Chicago 1980; N. B. Dirks, *Castes of Mind: Colonialism and the Making of Modern India*, Princeton 2001; S. Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age*, Cambridge 2001. For a nineteenth-century ethnographical survey of the castes and sub-castes in India identified by French colonial officials, see A. Esquer, *Essai sur les castes dans l'Inde*, Pondicherry 1871.

33 For a study on how three major world religions came to interpenetrate each other in South India, see S. Bayly, *Saints, Goddesses, and Kings: Muslims and Christians in South Indian Society, 1700–1900*, Cambridge 1989.

34 Guillaume Joseph Hyacinthe Jean Baptiste Legentil de la Galaisière, *Voyage dans les mers de l'Inde fait par ordre du roi, à l'occasion du passage de Vénus, sur le disque de soleil, le 6 juin 1761, et le 3 du même mois 1769*, vol. 1, Paris 1779, p. 93. As per his observations of the *maures* of Pondicherry, LeGentil, a French astronomer who spent some time in Pondicherry during his travels in the East Indies in 1760s, made an interesting distinction between Mughals (French *mogols*) and the *maures* of South India and cautioned readers against the mistake of confusing the two.

35 The official proclamations of 5 March 1840 and 11 November 1861 recognise *maures* as a fifth caste among the local population and the qadi as their caste-chief. L. de Langlard, *Leçon de droit Musulman*, Pondicherry 1887, pp. 20–21.

ary laws applicable in eighteenth century Pondicherry that varied from caste to caste.³⁶ Given the customary character of these laws, eighteenth-century judicial administrators possessed no code to administer them and had to rely on their working knowledge of them. Consequently, judges often took recourse to individual caste-chiefs, other caste-members, and caste-assemblies to settle disputes that required detailed knowledge of a specific body of caste-laws.³⁷ In the case of 'Muslim' groups, such as the *choulías*, it was the qadi and the mullah who were called upon as legal experts. These local bodies of dispute resolution, often designated as 'arbitrators' in the Chaudrie documents, played an active role in settling conflicts in family matters such as succession, adoption, marriages, and so forth.³⁸ Thus, in practice, the administration of Malabar laws by the French relied heavily on the support of these indigenous authorities.³⁹ They continued to be an important source of Malabar laws for the colonial administration well into the nineteenth century till the administration's repeated efforts to codify these laws with the help of consultative bodies eventually proved successful.⁴⁰

In any case, administering personal laws in eighteenth-century Pondicherry required above all establishing the ethno-socio-religious status of a person. The rather common intersection and juxtaposition of these various categories, which today seem paradoxical, best emerge in the very registration of litigation in the eighteenth century records. As these were categories that determined an individual's legal status, officials were careful to note these especially for litigants involved in familial disputes over property. Thus, for instance, one commonly encounters references to Christians who are qualified as *agamboudia* or *pally*, two of the local caste-groups. Choulías, a Muslim social group, are referred to as *caste choulia*. The ethno-linguistic category of Malabar, generally used to distinguish the mass of the local population, as in 'the Malabars', from Indians from

36 In the nineteenth century, however, such a description became associated only with what the colonial state labelled as Hindu law. L. Sorg, Introduction(26), p. 7. This same understanding underpins the current understanding of Hindu law in which it is defined as a conglomeration of customary laws that varied from caste to caste and locality to locality. J. D. M. Derrett, *Essays in Classical and Modern Hindu Law*, Leiden 1976, p. 233.

37 Although historians and anthropologists have acknowledged the presence of these caste-bodies, also known as caste panchayats, within the colonial and post-colonial legal system in India, there is a dearth of in-depth studies on these indigenous forums for conflict resolution. For some ethnographic forays in this direction, see S. G. Vincentnathan, *The Social Construction of Order and Disorder*, in: *The Journal of Legal Pluralism and Unofficial Law*, 24 (1992) 32, pp. 65–102; R. M. Hayden, *A Note on Caste Panchayats and Government Courts in India*, in: *The Journal of Legal Pluralism and Unofficial Law*, 16 (1984) 22, pp. 43–52.

38 J.-C. Bonnan, *L'organisation judiciaire de Pondichéry au 18ème siècle: l'exemple du tribunal de la Chaudrie*, in: K. S. Matthew (ed.), *French in India and Indian Nationalism (1700 A.D.–1963 A.D.)*, vol. 1, Pondicherry 1999, pp. 535–52.

39 The functioning and jurisdiction of such legal intermediaries within, or even parallel to, the colonial institutional regime also indicates another aspect of legal transculturality and has been explored more extensively in my dissertation (1).

40 With the help of the *Comité Consultative de Jurisprudence Indienne*, the *Code des lois, us et coutumes de la côte de Coromandel* was produced in 1840. J. Weber, *Pondichéry*(18), p. 94. Although the history of the codification of indigenous laws by the French needs further exploration, the French approach to codifying indigenous laws does present interesting contrasts and similarities to the British approach, and like the latter, is not without its critics. For a brief comparison, see L. S. Vishwanath, *Social Stratification* (28), pp. 284–86; for a deeper comparison, see A. F. T. Reyes, *English and French Approaches* (12). For an incisive critique of the process of codification, see L. Sorg, Introduction (26).

other regions, such as Bengal or Gujeratis, was further qualified to help differentiate between religious affiliations. Malabar Christian, for example, was used in opposition to Malabar *gentil* to highlight the difference in religion among the locals. Furthermore, for reasons that we shall presently explore, the term *Malabar Christian* also acquired a finer meaning, especially when contrasted with *pariah Christian*, to designate someone from one of the higher caste-groups in the *gentil* caste-hierarchy.

These are just a few examples to illustrate the complicated and entangled character of the socio-legal categories along which personal laws had to be administered. They reflect the flexible and fluid nature of the terms and categories employed to express and establish legal difference. They also show contemporary officials' efforts of getting to grips with the emerging diversity: their relational, rather than essential, understanding of these categories indicates that the use of any clear-cut analytical or source-based terms to refer to these categories is troublesome.

Although historiography has emphatically written off conversion to Christianity as having no legal relevance, this certainly does not preclude the possibility – as apparent in some of the categorical examples given above – that the emergence of Indian Christians did indeed add another dimension to the complex character of this social and legal plurality.⁴¹ In Pondicherry, Christianity came in the wake of the French East India Company. As a result of conversions, the town witnessed the proliferation of a number of social groups that straddled the socio-religious and ethnic boundaries between Europeans and Indians in varying degrees and modes.⁴² Besides the creoles, products of interaction of a more physical kind, there were the Indian Christians.⁴³ Although judicial sources from the eighteenth century did not employ this expression, my use stems from its utility as an umbrella term to denote a heterogeneous group that nonetheless shared two traits: Indian ethnicity and Christian religion. Some such groups identified in the judicial records were the *topas*, the Malabar Christians, and pariah (Tamil *paraiyan*, plural *paraiyar*) Christians. The terms *topas* and 'the people of the hat' (*les gens à chapeau*) referred to Christian converts who claimed to be of European descent and dressed as

41 The existence of a community of Syrian Christians in Kerala, claiming the Apostle Thomas as its founder, attests to the presence of Christianity in South India from the fifth century CE. However, it was not until after the arrival of the Europeans in the sixteenth and the seventeenth centuries that it spread to other parts of India. J. Weber, *Les établissements français en Inde* (31), p. 571.

42 As evident in article 30 of its founding charter, the French East India Company was committed to propagating the Christian religion. See the *Déclaration du Roy portant établissement d'une Compagnie pour le commerce des Indes Orientales, enregistrée en la cour de Parlement le premier septembre 1664* in: Le Sieur Dernis (ed.), *Recueil* (29), p. 61. In Pondicherry, moreover, several legislative policies were adopted to help the propagation of Christianity in India, such as the baptism of slaves and the employment of Indian Christians in the Company's service. Pressure, persuasion, and preference were employed to increase conversions among the local population. J. B. P. More, *Hindu-Christian Interaction in Pondicherry, 1700–1900*, in: *Contributions to Indian Sociology*, 32 (1998) 1, pp. 97–121.

43 I borrow this term from recent English-language research on the legal implications of Indians' conversion to Christianity during the eighteenth and nineteenth centuries. See N. Chatterjee, *Religious Change, Social Conflict and Legal Competition: The Emergence of Christian Personal Law in Colonial India*, in: *Modern Asian Studies*, 44 (2010) 6, pp. 1147–95; C. Mallampalli, *Christians and Public Life in Colonial South India, 1863–1937: Contending with Marginality*, London 2004.

Europeans. They were generally, though not universally, applied to soldiers of this class.⁴⁴ An early eighteenth-century source describes them as ‘the natives that are brought up and dressed as French, and who are instructed in the Christian religion by some of our missionaries.’⁴⁵ This description captures the essential markers of identity of this community – the Europeans looked upon them as locals who dressed as Europeans and were of the Christian faith.

Malabar Christians and pariah Christians, on the other hand, were those who had adopted Christianity without the appropriation of European dressing habits. The origin of the distinction between Malabar Christians and pariah Christians lies in the strategy of accommodation through the so-called Malabar Rites advocated by the Jesuits. Among other things, the Rites allowed for the continuation of caste distinctions among converts. Thus, as mentioned before, the term *Malabar Christians* referred to converts from higher caste groups such as, for example, *agamboudia* Christians, while pariah converts were referred to as pariah Christians.⁴⁶ The plight of the pariahs in Indian society is a well-documented phenomenon. Suffice it to say that, in spite of conversion to Christianity, pariahs continued to be at the bottom of the social hierarchy.⁴⁷

Indeed, Indian Christians were a product of Indo-European interaction in two different modes: one based solely on conversion to a religion brought by the Europeans, and the other on the adoption of the Europeans’ religion as well as their clothing habits. While the common profession of Christianity set these groups apart from other non-Christian Indians, the *topas*’ claim to a mixed origin and their habit of dressing as Europeans also set them apart from other Indian Christians. This social distinction was also reflected at the level of personal laws. Unlike the latter, the *topas* were, like the French, subject to the Custom of Paris, which historians have been quick to assert, albeit without referring to any legislation regarding this practice.⁴⁸ As we shall see a little later, that the *topas* had come under the jurisdiction of the Custom of Paris was itself a result of processes of cultural appropriation and serves as a case in point of the transculturality in the colonial legal sphere.

Having provided an overview of the social makeup of the colony and the plurality of laws along which justice was to be administered to the inhabitants of Pondicherry, this article turns in the following section to analyse a select number of litigations to por-

44 H. Yule/A. C. Burnell/W. Crooke, *Hobson-Jobson* (30), p. 933. In fact, the etymology of the term itself captures an important outward marker of identity of this community. In spite of the different origins proposed for the term, the one that seems most plausible is that it derives from the Hindi word *topi* (a hat), which refers to the characteristic hat worn by the men of this community as a marker of their cultural attachment to the European community.

45 ‘... *Topas, qui sont des gens du pays qu’on élève et qu’on habille à la Française, lesquels ont été instruits dans la Religion Catholique par quelques-uns de nos missionnaires.*’ *Luillier, Voyage du Sieur Luillier aux Grands Indes ...*, Paris 1705. As quoted in *ibid.*, p. 934..

46 On Malabar Rites, see S. Neill, *A History of Christianity in India: 1707–1858*, Cambridge 2002, p. 75; A. Launay, *Histoire des missions de l’Inde, Pondichéry, Maïssour, Coïmbatour*, Paris 1898, p. 105.

47 J. Weber, *Les établissements français en Inde* (31), p. 580.

48 See for example, D. Annonssamy, *L’intermède français en Inde* (27), p. 250; J. Deloche, *Le vieux Pondichéry* (28), p. 112.

tray the processes and actors that underpinned the emergence of transculturality in the administration of justice. Although historiography on French India has reaffirmed the administration of justice to the *topas* in accordance with the Custom of Paris and to other Indian Christians in accordance with caste laws, the need to reconsider these assertions arises from the evidence gleaned from descriptive sources. It was especially, though not exclusively, with regards to Indian Christians, by virtue of being the products of Indo-French interaction, that legal distinctions were blurred. The result was, paradoxically, a reconfiguration of the very legal categorization that, in principle, was to have guided the administration of justice by the French to the Indians in the eighteenth century.

3. Legal Transculturality: Processes, Actors, and Results

On 9 November 1766, two men appeared before the Chaudrie, each claiming to be the sole heir to Moutané, a Malabar physician. One of the petitioners, Chinadou, was a Malabar *gentil* and claimed the inheritance on the basis that he was Moutané's universal legatee as declared in Moutané's testament. On the other hand, the second petitioner, Dobascayen, who was a Malabar Christian, declared that he was the sole inheritor as he was the only son born of a legitimate marriage between Moutané and Anna Christinne.⁴⁹

This short exposé of a rather banal inheritance dispute serves to highlight an ubiquitous process that underpinned the administration of justice at the grass-roots level. This was the appropriation of foreign legal practices and laws by the litigants and its sanction by the judges in the administration of justice. It is this appropriation that lay at the root of creating legal conundrums whose resolution escaped the legal principle. Chinadou was a Malabar Hindu whose claim rested on the fact that he was named as the universal legatee in Moutané's testament. While in itself such a claim is ordinary enough, it nonetheless highlights the appropriation of a foreign legal practice – that of writing a testament – by Indians. Traditionally, Malabar law did not provide for making a will and did not contain any provisions for making a testament. Various legal treatises from the nineteenth century, as well as more contemporary research, point out that this practice had clearly come from Roman law and was adopted by Indians during the course of their encounter with Europeans.⁵⁰ In the case of Pondicherry, court evidence suggests that this practice had indeed taken root earlier in the century and was accepted by the courts as legally relevant.⁵¹ Thus, by the latter decades of the century, it had emerged as a legal norm

49 J.-C. Bonnan, *Jugements du tribunal de la Chaudrie* (13), pp. 4–5.

50 Ibid., p. 5; L. Sorg, *Avis du Comité consultatif de jurisprudence indienne*, Pondicherry 1897, p. 93; F. N. Laude, *Manuel de droit Indou et de législation civil et criminelle applicable dans les établissements français de l'Inde*, Pondicherry 1856, p. 180; J. D. M. Derret, *Essays* (36), p. 148.

51 *Ambavalem vs Moutayen*, 2nd June 1775, Sentence 393, Folder 224, Chauderie, sentences et jugements civils, Public Records, NAIIRC, (hereafter cited as Chaudrie Jugements). This entry refers to a testament dated 4 December 1738; the last case examined in this article mentions that an inheritance dispute dated 1750 was settled in accordance with the deceased's testament (58); *Apou Modély vs Aya Modély*, 30th April 1767, Folder 223,

and it was on the basis of this appropriated norm that the court admitted Chinadou's claim of being Moutané's universal legatee. It is also the basis for asserting the validity of Moutané's testament, which, as the record informs us, was 'in the correct and due form, written on an *ollah* which has been verified by the experts of the Chaudrie ...'⁵² Eventually, the practice of making testaments acquired the force of law in 1775, when the Council set in place a regulation regarding the testaments made by Indians. Article 19 of this *Règlement du Conseil Supérieur* prescribes the conditions under which Indians' testaments should be noted:

*The testaments of Malabars, gentils or Christians, of Maures, or other Indians, will be admitted only by the notary of the Chaudrie, who will be summoned for this purpose along with an official interpreter and two witnesses of the same religion as the testator, and the Muhammadans will summon the qadi and the mullah along with two witnesses.*⁵³

The fact that this and several other cases involving testaments predate the actual legislation only goes to illustrate that the practice of writing testaments had become an established norm among Indians and was accepted by the administration even before the 1775 regulation.⁵⁴ The ensuing legislation is rather the end result of a process of cross-cultural appropriation of practices, in this case the writing of testaments, and serves to illustrate how the administration of justice itself was adapted to these new practices. Indeed, tailored to meet the different religious affiliations of individuals, it is a case in point of the transculturality in the colonial state.

Apart from the material issue, this case also presented a contest between a standard European practice – a man's right to will – and the local norms and customs of inheritance. On the one hand, a *gentil* was laying claim to a man's inheritance on the basis of the deceased's testament – a practice clearly appropriated from a foreign legal system – while, on the other, his opponent Dobascayen, a Malabar Christian, based his claim on Malabar laws according to which a man's inheritance automatically devolved onto his males relatives. Such were the complications that often appeared in the settlement of disputes and generated a clash of laws that impeded an unequivocal application of the basic tenet of legal pluralism in the administration of justice.

Chaudrie Jugements; 23rd March 1773, Sentence 198, Folder 223, Chaudrie Jugements, also in J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 50–51. This last entry shows the Chaudrie's approval of a widow's request for the certification of her husband's testament.

52 'Vu le testament bien et dument en forme, écrite sur une olle laquelle olle a été vérifiée par les experts de la Chaudrie, entendu les témoins cités dans la dite olle ...' J.-C. Bonan, Jugements, du tribunal de la Chaudrie (35). The English *ollah* or *olle* in French referred to a palmyra leaf used for writing in India. H. Yule/A. C. Burnell/W. Crooke, Hobson-Jobson (30), p. 636.

53 'Les testaments des Malabars gentils ou chrétiens, des Maures ou autres Indiens, ne pourront être passés que par le tabellion de la Chaudrie, lequel sera appelé à cet effet avec un interprète juré et deux témoins de la religion du testateur, et les mahométans appelleront le cazi et le molla avec deux témoins.' Règlement du Conseil Supérieur de Pondichéry du 2 Septembre 1775 in P. Dislère, Traité de législation coloniale, 3rd ed., vol. 2, Paris 1906, p. 3.

54 See footnote 44.

Like many similar litigations on succession, the French judges sought a clarification on the subject of inheritance in Malabar law from the *nattars*, or caste-chiefs.⁵⁵ They consulted 21 *nattars* on the following queries: 'According to Malabar norms and usages, can a father, at the moment of his death, disinherit his son and give away his property to any other individual other than his son? Does he have the authority to do so?'⁵⁶ Of the twenty-one *nattars*, sixteen affirmed that a father could do as he saw fit.⁵⁷ The judges, however, decided to overlook the affirmation given by the majority of *nattars* and adopted a different solution. As this case record is one of the very rare examples in which the motivation behind the judges' decision is clearly mentioned, the entire passage that gives the final verdict is worth quoting in full:

*We have, as a consequence, obtained the knowledge of Malabar practices, mores, and customs, and at the same time, to not hurt or harm the propagation of the Christian religion that Moutané professed, [have decided] that his possessions will be divided into two equal parts, one for Dobascayen and his mother Anna and the other for Chinadou, [his] universal legatee.*⁵⁸

The resulting verdict, then, is a settlement that simply divided Moutane's property into two equal halves, one for the universal legatee and the other for his legitimate wife and son.

Indeed, this is a telling example of the judges' none-too-infrequent disregard of the opinions and decisions of caste-chiefs and other local bodies in the dispensation of justice.⁵⁹ But more significantly for our purpose, this verdict is also a telling example of the administration's agency in circumventing the very principle of judging Indians according to their own laws that it had promised to uphold. Even after having formally established that Malabar law allowed for the father to disinherit his son, the judge's decision partially ignored this provision in favour of the propagation of the Christian religion, thereby bringing the administration's very overt support for Christians in its legislative policies

55 Chody vs Yagapen, 9th November 1767, Folder 223, Chaudrie Jugements; Colandé, Vengatassalam vs Candapan, 20th November 1767, Folder 223, Chaudrie Jugements; Maduron vs Louis Labéry, 20th August 1771, J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 31–32; Ayatal and Vengoche vs Armougam and Arnasalam, 31st March 1775, in: *ibid.*, pp. 75–80;

56 'Un père suivant les usages et moeurs des malabars peut-il déshériter son fils ou donner son bien en mourant à tout autre que son fils ? En a-t-il le pouvoir?' J.-C. Bonan, Jugements du tribunal de la Chaudrie (13).

57 There can be several interpretations to the sixteen *nattars*' answer in the affirmative, which seems rather puzzling in the face of the received knowledge that the traditional 'Hindu' legal framework did not envisage the right to disinherit one's offspring by willing away one's entire property to a third person. I discuss these at length in my dissertation (1).

58 'Nous avons en conséquence ordonné pour connaitre tout à la fois les usages, les moeurs et les coutumes malabars, et en même temps ne pas blesser ou nuire à la propagation de la religion chrétienne [emphasis added] que professait le dit Moutané, que ses biens seraient partagés en deux parts égales, l'une à Dobascayen sa mère Anna, et l'autre à Chinoudou légataire universel.' J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13).

59 Asarapen vs Visserayamodély and Vaitinadanmodély, 29th July 1774, no. 321, Folder 223, Chaudrie Jugements; Darmachivenpoullé vs Candapachetty, 20th September 1774, no. 342, Folder 224, Chaudrie Jugements; François Xavier Naniapa vs Louis and Thomas Labéry, 3rd January, 1775, no. 365, Folder 224, Chaudrie Jugements; Pontchamalle vs Chinivasachery, 25th April 1775, no. 386, Folder 224, Chaudrie Jugements; Devion vs Sandou, 5th May 1775, no. 390, Folder 224, Chaudrie Jugements.

to have a bearing on judicial decisions. Furthermore, cases such as this pitted against each other claims founded on two different legal traditions, one Indian and the other French. By dividing the inheritance between Chinadou and Dobascayen, this verdict symbolizes reaching a material settlement between the opposing parties as well as a settlement between different bodies of law.

A similar settlement is also reflected in the resolution of an inheritance dispute in a *topas* family.⁶⁰ Two brothers, Francois and Jacques Tarabellion, claimed that Marie Pereira, a deceased *topassine*, had left her inheritance to them by way of a verbal testament. This was contested by Marie Pereira's widowed sister, who claimed to be the sole inheritor and therefore to have exclusive right to her sister's inheritance. In accordance with witnesses' accounts and on the written testimony of Père Dominique, the superior of the Capuchin order in Pondicherry, the court established that Marie Pereira was the adoptive mother of the two brothers and had made them her universal legatees.⁶¹ Consequently, Pereira's sister's claim was dismissed and the two brothers were declared as Pereira's rightful heirs. However, the court also ordered the brothers to pay a regular sum for the maintenance of Marie Pereira's sister.⁶²

Once again, this seemingly straightforward inheritance dispute illustrates the court's agency in thwarting the legal principle vis-à-vis the *topas* as well as a pragmatic resolution between two legal traditions. By ordering the brothers to pay a certain amount of maintenance to the widowed sister of the deceased, the court actively participated in reinforcing a Tamil custom on the *topas*. This specific custom, called *caypencourou* (*cayempencourou*, *kaymancourou*, *kaimpeu*, *kūru*), entitled widows to a maintenance derived from communal property. Even in the event of partition of property among community members, widows had a right to receive either immovable property or money in proportion to the resources of the family.⁶³ However, unlike in the first case I discussed, the judges' motivation behind this solution was not specified in court records. Nevertheless, the final verdict at once makes use of the testament to establish the rightful ownership of the inheritance, and of a Tamil custom to provide for Pereira's sister.⁶⁴ By doing so, the judges' decision was not confined solely to settling the main issue of contention, namely, establishing the rightful ownership of the inheritance; they additionally used their authority to secure maintenance of the *topas* defendant by the application of a Malabar custom.⁶⁵

The cases discussed above demonstrate some of the complexities in administering justice strictly along plural lines in the face of changing social norms. Although the administra-

60 J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 3–4. J.-C. Bonnan has incorrectly dated this case: the entry is dated to 5 December 1766 in the archival records and not 9 December 1766 as published in *ibid*.

61 Like the French, but unlike other Indian Christians, the *topas* were under the religious purview of the Capuchins. Hence the involvement of Père Dominique in ascertaining the validity of Marie Pereira's verbal testament.

62 J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 3–4.

63 L. Sorg, Introduction (26), p. 10; J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), p. 959.

64 J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 3–4.

65 Surprisingly, J.-C. Bonnan does not comment on this discrepancy between the verdict and the principle of applying French law to the *topas* in his explanatory note on the case. *Ibid*.

tive principle and the historiography prescribed the application of Malabar laws to Tamil Christians and the Custom of Paris to *topas*, the underlying process of appropriation necessitated a departure from the strict application of this principle by issuing verdicts that mirrored this appropriation by compromising between Malabar laws and the Custom of Paris. The partial rejection of the *nattars*' opinions, the support for Christian converts, and the application of Malabar customs to the *topas* family amply demonstrate the administration's active role in blurring the legal faultlines along which justice had to be administered to these different social groups. Yet, often enough, it was not the judges alone, but the litigants themselves who were instrumental in perpetrating this complexity. As the next example will show, litigants also instrumentalised cross-cultural appropriations to reflect on their legal status.

An entry dated 13 January 1770 in the registers of the minutes of the Council's decisions describes a case concerning an inheritance dispute among the members of a family of pariah Christians. The opening lines of the entry introduce the crux of the dispute and the litigants involved:

[T]he request presented at the Chaudrie Tribunal by Antique, attorney for Dominique, Georges and Antoine of Pariah caste dressed as topas, fraternal nephews, claiming to be legitimate heirs of the deceased [Michel] Dragam, a Pariah, holds that Marie André, a Pariah dressed as a topassine, daughter of Francisca Demonte [Dragam's daughter], Pariah dressed as a Malabar, is falsely claiming the succession of the said Dragam. [The request states that,] as a Pariah, she is subject to Malabar laws where women have no right to inherit when there are male relatives from the paternal line and that this case [should] be sent for adjudication to the Maganattars, judges for caste disputes, [and] then be decided by the Chaudrie Tribunal.⁶⁶

Besides giving us the main cause of dispute, these lines also bring to the fore another level of cultural appropriation that serves to highlight the shifting and flexible nature of the legal categories. All members of Michel Dragam's family were Christians of the pariah caste. Equally important, all members except Francisca Demonte (i.e. Dragam's daughter) were dressed *à la topas*. In other words, these were Indians who had not only converted to Christianity, but had also adopted European dress like the *topas*, and, in doing so, had also claimed a different social identity. However, as the nephews' claim shows, their legal identity was still a matter of debate: notwithstanding the change in attire, the nephews requested that the dispute be settled according to Malabar laws. Thus, by dressing as *topas* and yet claiming for the jurisdiction of Malabar laws as pariah Christians, such actors further proliferated jurisdictional complexity and defied being categorized simply as pariah Christians or as *topas*.

The nephews' claim for the application of Malabar laws, as presented by Antique, evidently stemmed from the advantage these laws provided for men in matters of succes-

66 G. Diagou (ed.), *Arrêts du Conseil Supérieur de Pondichéry*, vol. 2 (13), pp. 174–78.

sion.⁶⁷ Like many other personal laws that discriminate(d) explicitly on the basis of sex, Malabar law prescribed that the estate of a deceased man passed on to his male descendants.⁶⁸ Indeed, in matters relating to inheritance, male members of the family frequently used this claim to prevent female relatives from inheriting, possessing, or disposing of any property independently of male control beyond that allocated to them as *caypencourou*.⁶⁹ Even in the absence of a direct male heir, as in this case, an indirect male heir rather than a direct female heir was the prime contender for the inheritance.⁷⁰ In fact, it was on this point, concerning collateral descendants that, compared to the Custom of Paris, Malabar laws provided a significant advantage to the nephews. Unlike Malabar laws, the Custom of Paris prescribed that, among the four kinds of successors, direct descendants took precedence over collateral descendants.⁷¹ Thus, by staking a claim to Malabar laws, the nephews, as collateral descendants, hoped to and could exploit the gender bias in their favour and gain their uncle Dragam's inheritance.

Claude Sof, a European, husband and attorney to Marie André, presented several reasons why the nephews' claims should be dismissed. Firstly, they were contesting an issue that had already been settled almost twenty years earlier. The Chaudrie judge at that time, M. Bartélemy, had dismissed their claims and divided the inheritance between Francisca Demonte and Marie André, in accordance with Dragam's testament.⁷² They now made the same request again because Michel Dragam's testament had recently been destroyed in a house fire. Secondly, Sof targeted the discrepancy created by the nephews' claim to Malabar laws and their *topas* identity expressed by the adoption of European dress:

67 The role of these earliest Indian pleaders or 'attorneys', predecessors of the nineteenth-century Indians, trained formally as lawyers, still remains to be mapped. For a study of Indian lawyers as transcultural agents in the nineteenth-century Anglo-Indian judiciary, see the contribution by Verena Stellar in this special issue.

68 J. Nair, *Women and Law in Colonial India: A Social History*, Bangalore 1996, p. 10. Indeed, as Nair points out, because personal laws are often considered to have a basis in religion, reforming them and redressing the explicit gender bias has been a long and hesitant enterprise.

69 Lazaro Modeliar vs Natchattiramamal, 20th March 1747, G. Diagou (ed.), *Arrêts du Conseil Supérieur de Pondichéry*, vol. 1 (13), pp. 178–181; Canagarayen and Cheganivasa vs Velavendren, 19th December 1766, Folder 233, Chaudrie Jugements; Sandaye vs Arlapean and others, 30th September 1774 in J.-C. Bonan, *Jugements du tribunal de la Chaudrie* (13), pp. 69–71. Nonetheless, there were exceptions to this practice; Poullé Moultapoullé vs Gnanamoutamal, 20th February 1767, Folder 223, Chaudrie Jugements; Pogamalle vs Vinayagapoullé et Vedaguirypoullé, 2nd August 1774 in J.-C. Bonan, *Jugements du tribunal de la Chaudrie* (13), pp. 67–68; Pragachen vs Canagapen, 2nd September 1774, no. 349, Folder 224, Chaudrie Jugements.

70 F.N. Laude, *Manuel de droit Hindou* (50), p. 120.

71 See the opening lines of the section on succession in Duplessis' treatise on the Custom of Paris, in C. Duplessis, *Traité de Mr. Duplessis, ancien avocat au Parlement, sur la Coutume de Paris*, Paris 1754, p. 191. Similarly, Bourjon's commentary on the succession laws in the Custom of Paris declares that 'the law summons collateral descendants only when there are no children ...': F. Bourjon, *Le droit commun de la France et la Coutume de Paris réduits en principe*, vol. 1, Paris 1770, p. 935.

72 G. Diagou (ed.), *Arrêts du Conseil Supérieur*, vol. 1 (13), p. 176. Given that Chaudrie judgments started to be registered only in 1766, the earlier verdict is not available in the Chaudrie registers. However, I have been able to confirm the existence of the judge, M Bartélemy. This was Louis Barthélemy, who had been in the Company's service since 1728. He served as a counsellor on the Provincial Council of Chandernagore from at least 1739 to 1742. He was a councillor at the Sovereign Council in Pondicherry between 1745 and 1759 and died in 1760. A. R. Pillai/H. Dodwell (ed.), *The Diary of Ananda Ranga Pillai, from 1736 to 1761*, vol. 8, Madras 1922, p. 27; G. Diagou (ed.), *Arrêts du Conseil Supérieur*, vol. 1 (13), pp. 60, 99, 139, 324, 358.

Michel Dragam's nephews are falsely claiming pariah laws in their favour, for it is a custom among all European nations established in India that the said laws do not affect the people of the hat who are entirely subject to the laws of the Europeans under whose pavilion they reside, through privileges whose origins the petitioner [Claude Sof] does not know but which have passed into laws...⁷³

In the absence of definite legislation regarding the administration of justice to *topas* according to French law – or perhaps in the face of historiography's inability to pinpoint its exact origin – Sof's argument is a rather accurate description of how French laws came to be applied to the *topas*. Judging *topas* according to European laws had originally been a custom in the European enclaves but had eventually acquired the force of law. At the origin of this custom lay cultural appropriation – the *topas*' adoption of French attire – which, over time, became legally relevant and thus brought a change in the administration of justice according to the basic tenet of legal pluralism in the French territories in India. In a way, this process was similar to that which eventually turned the practice of making testaments among Indians, appropriated from a foreign legal tradition, into positive law. That the source of both these customary practices that acquired the force of law were 'subjects from the local society' rather than the administration also effectively illustrates the idea of 'empowering interactions.'⁷⁴ The end result – that a section of the Indian population, the *topas*, came to be formally recognised as being under the jurisdiction of French law – is symptomatic of transculturality in the emerging French colonial state.

In the immediate context, Sof further pointed out that if the contrary were to be done – that is, if the present case were to be subject to the practices and judgments of the people of the turban (*les gens de toque*) – all the deeds that his parents-in-law and his wife had executed in accordance with French laws, which they had adopted to the exclusion of all other laws, risked being annulled. Indeed, this would reversely affect not only his own, but all hat-wearing families. Thus, Sof pointed out the repercussions not only for his spouse's family, but also those that would probably affect society at large, if this pariah Christian *topas* family were to be subject to Malabar laws.

As a rebuttal, Antique raised several objections to the very legitimacy of Sof's contesting the nephews' claims at the Council. First of all, he remarked that there was no legal basis for Sof to contest Dragam's nephews for his succession. Since Francisca Demonte was still alive, she alone could contest her cousins, Dragam's nephews, for Dragam's inheritance, whereas her daughter would be able to acquire her mother's inheritance only after

73 'Les dits neveux de Michel Dragam réclament mal à propos en leur faveur les lois des Paréas, étant de coutume parmi toutes les nations Européennes établies dans l'Inde que les dites lois ne touchent point les gens à chapeau qui sont soumis en tout, aux lois des Européens sous le pavillon des quels ils résident, par des privilèges dont le suppliant ignore l'origine mais qui sont passés en lois.' G. Diagou (ed.), Arrêts du Conseil Supérieur, vol. 1 (13), p. 176.

74 For an examination of custom as a source of law from below and, therefore, an important aspect of state-building from below in Europe, see R. Garré, The Dynamics of Law Formation in Italian Legal Science during the Early Modern Period: The Function of Custom, in: W. Blockmans/A. Holenstein/J. Mathieu (eds.), Empowering Interactions (7), pp. 91–100.

the latter's death. Having pointed out the legal technicalities to disqualify Sof's request at the Council, Antique brought forward a jurisdictional objection. He rightly stated that, as a dispute involving only Indians, this case fell under the jurisdiction of the Chaudrie and should therefore be judged and settled there before an appeal could be made to the Council. As to Sof's central argument for the application of French laws to decide this case, Antique replied:

*[W]hat he [Claude Sof] says, that the hat or the turban decides the law that one should be subject to, is not a fixed axiom, especially for pariahs who, according to the circumstances, their fancy or necessity, sometimes use one and sometimes the other; that for them the freedom in dressing and eating essentially characterises their caste; that by admitting this axiom, one must also inevitably admit the other, that the skirt or the saree equally decides [the law], and that according to this Dragam's daughter, having never worn a skirt but, on the contrary, always a saree, was always subject to pariah law, according to which men inherit to the exclusion of women.*⁷⁵

Thus, Antique pointed out the fallacy in Sof's claim for the application of French law to pariah Christians, and ended his petition with a brilliant stroke of 'lawyerly' logic that cleverly demonstrated that even by conceding the other side's line of argument, Dragam's nephews, and not Dragam's daughter, were his legitimate heirs. What is remarkable in Antique's argument is his description of the essential characteristics of the Pariah caste and its use to form the basis of his argument. Antique used this characteristic – the freedom of eating and dressing habits, the very quality at the root of pariahs' supposed impurity that situated them on the bottom rungs of the caste hierarchy while at the same time earning them the reputation of being licentious and the 'dregs of the society' by Europeans⁷⁶ – to support his claim for the application of Malabar laws. His reasoning was that, if such a norm, that is, 'the hat (*le chapeau*) or the turban (*la toque*) decides the law', were to be admitted for the pariahs, it would have dire legal consequences.⁷⁷

75 '... que ce qu'il [Sof] avance en disant que le chapeau ou la toque décide quelle est la loi à laquelle on doit être soumis, n'est pas un axiome bien certain, surtout pour les Paréas qui suivant circonstances, leur caprice ou la nécessité, se servent tantôt de l'un tantôt de l'autre ; que parmi eux la liberté dans le vêtement et le manger, caractérise essentiellement leur caste ; qu'en admettant cet axiome il faut nécessairement admettre aussi cet autre que la jupe ou la pagne décide également pour les femmes et que suivant ce dernier, la fille de Dragam n'ayant jamais porté jupe mais au contraire toujours la pagne, elle a toujours été et est soumise à la Loi paréate, suivant laquelle les mâles héritent à l'exclusion des femelles.' G. Diagou (ed.), Arrêts du Conseil Supérieur, vol. 1 (13), pp. 177–78.

76 For example, in a letter dated 15 February 1710 to le Compte de Pontchartrain, *Secrétaire d'État à la Marine*, the Governor of Pondicherry observed that of all the *gentils* who had embraced Christianity, most were pariahs who were also the most licentious. As cited in P. Olganier, *Les Jésuites à Pondichéry* (19), p. 18. Almost half a century later, the famous Pierre Sonnerat observed that most of the converts were 'the miserable dregs of society.' P. Sonnerat, *Voyage aux Indes orientales et à la Chine*, Paris 1782, vol. 1, pp. 194–95.

77 The distinction between the hat-wearers and the turban-wearers seems to have been a common feature of early modern Eurasia. In early modern Europe, the turban was predominantly associated with Muslims – hence, for example, the expression, 'donning the turban' became synonymous with converting to Islam in early modern England. See the section on 'turbans' in G. MacLean/N. Matar, *Britain and the Islamic World, 1558–1713*, Oxford 2011, chap. 6. In India, however, the hat/turban dichotomy symbolised the distinction between Europeans and Indians, Muslims or *gentils* alike. H. Yule/A. C. Burnell/W. Crooke, *Hobson-Jobson* (30), p. 935.

For example, if the same man were to appear in the court on two different occasions, wearing a hat and a turban respectively, he would be subject to French law in one case and Malabar law in the other. Furthermore, if the hat/turban binary distinction were to be admitted as the decisive factor for men, then the skirt/*saree* (*jupe/pagne*) distinction had to be admitted for women. From this point of view, Francisca Demonte, who had always worn a *saree*, was still under the jurisdiction of Malabar laws. And, as this law dictated that men inherited to the exclusion of women, Dragam's nephews would be his legitimate successors.

Evidently, like many litigations of this kind, material gain rather than ideological affinity lay at the source of each party's claim to have the issue resolved according to a different set of laws. If the case were decided in accordance with Malabar laws, the nephews stood to gain the inheritance. On the other hand, if the French laws were applied, then Dragam's daughter, Francisca Demonte and her offspring, Marie André, would continue to be in possession of Dragam's inheritance. Clearly, if the positions had been reversed, actors such as these would not have hesitated to take advantage of the alternate side of their transcultural status to claim a different set of laws.

Although this case is one of a kind, it nonetheless brings to the fore a general tendency among pariah Christians to adopt *topas* dress, thereby blurring the very distinction that set the *topas* apart from the rest of the Indian Christians. Antique did not entirely refute Sof's claim that *les gens à chapeau* were subject to French laws; rather, he argued that, for pariahs, this was not a fixed rule considering their indiscriminate use of hats and turbans. Evidence that Antique's impression of a tendency towards the indiscriminate use of headgear among pariahs, and possibly even among the Indian population at large, is provided not least by the French administration itself. A decree issued on 7 July 1826 made it illegal for 'Indians of both sexes, Christians, *maures*, *gentils*, and pariahs, to take on the costume of the *topas*'.⁷⁸ Although the particular context of this decree remains to be examined, it nonetheless illustrates another process of cultural appropriation and symbolises the nineteenth-century state's disparaging attitude towards it.

In the immediate context, however, the question remained: which law was applicable to pariah Christians dressed as *topas*? The conundrum before the judges was not just that of identifying the rightful inheritor, but, more importantly, the legal tradition according to which the rightful heir was to be determined. Should it be French or *Malabar* law? Should the verdict be based on the legal principle that underlay the administration of justice, or on a judicial norm that had emerged in and through Indo-European cultural interaction and was in direct contradiction to this very principle?

Like in the previous verdicts, the judges decided to choose a middle path and resolve the dispute through a settlement, rather than declare one party the rightful heir. They reinstated the status quo at the time of Dragam's death and ordered the inheritance to be divided in half between the nephews and the granddaughter. That it was Dragam's grand-

daughter Marie André and not his daughter Francisca Demonte who was declared the partial heir to his inheritance was the result of an inter-vivos donation by which Marie had become her mother's heir. For this reason, Antique's shrewd observation that French laws were not applicable to Francisca Demonte because she had always worn a *saree* was ultimately irrelevant. In issuing the new verdict, the administration revoked the previous verdict given nineteen years earlier. This litigation, therefore, also presents a case in point of Indian Christians' successful manipulation of the administrative principle of judging each caste according to its laws to paradoxically produce a verdict that was at odds with this very principle.

As is typical of this source material, however, the verdict does not elaborate on the exact process and specific concerns that guided the judges' decision. It makes no mention of any particular law emanating from any one set of laws that could be considered as a basis for the judges' decision to divide the property equally among the claimants. Nevertheless, the verdict was not just a settlement of the inheritance, but, in a way, also a settlement between the two legal systems pitted against one another in this dispute. By dividing the inheritance equally between the two parties on the basis of their claims to two different legal systems, the verdict, like the verdicts of the preceding cases, made concessions at once to Malabar laws and the Custom of Paris. A pragmatic compromise between a *saree* and a skirt and the different sets of laws they symbolised ruled the day.

4. Conclusion

The cases and the verdicts examined in this article illustrate the processes of appropriation that introduced transculturality in the social and legal spheres. Although in principle, legal pluralism, whereby the French and the Indians were under the jurisdiction of the Custom of Paris and Malabar laws respectively, this principle was time and again circumvented in the administration of justice in order to adapt it to the changing norms of local society. This was especially apparent in conflicts involving Indian Christians who, as by-products of Indo-French interaction, straddled the socio-legal categories of French and Indian. The appropriation of the testament as a legal tool by Indians, the *topas*' adoption of a European lifestyle and legal status, the adoption of *topas* attire and, by extension, European laws by pariah Christians, were processes of appropriation that effectively challenged the materialization of legal pluralism along the prescribed legal categories of 'French' and 'Indian'. For it was often, though not exclusively, with regards to these actors that legal disputes also became disputes about which law was applicable. Only a minute analysis, such as the one conducted in this article, reveals that the ensuing verdicts were compromises between two legal systems. Either because of the judges' active intervention or as a result of the claims made by the litigants themselves, such verdicts drew on elements of both the Custom of Paris and Malabar laws. This matter-of-fact compromise between legal traditions not only reflects the rather pragmatic

approach adopted by eighteenth century judges in settling familial disputes, but also laid the groundwork for the Indo-French jurisprudence of the nineteenth century.⁷⁹

As mentioned in the beginning, this much-too-brief analysis of the administration of justice in eighteenth-century Pondicherry was also undertaken with the objective of assessing the relevance of the concept of transcultural statehood in a colonial context. Tracing transculturality in this sphere of governance – that is, by bringing to light such verdicts and the underlying processes that led to them – served to highlight one particular dimension of the transcultural nature of the emerging colonial state. At the root of the transculturality in the functioning of the early colonial state lay the selectiveness and inventiveness of subordinate groups in adopting practices of a dominant culture and using them to their own advantage. Equally important, the analysis illustrates how these appropriations came to have legal relevance over time and influenced judicial verdicts as well as legislation, thus highlighting the ability of individual and group actors to instrumentalise aspects of governance in order to influence it to respond to their needs and interests, in spite of the prevailing power asymmetries. The concept of transcultural statehood thus compels us to take into account the agency of both rulers and ruled, the processes of cultural interaction, and their eventual outcome on governance in order to develop a more nuanced picture of the colonial transition in India.

79 How, to what extent, and in what areas is, of course, a matter of further enquiry. J.-C. Bonnan, *L'organisation Judiciaire* (38), p. 549.

The “Rule of Law” in British India, or a Rule of Lawyers? Indian Barristers vs the Colonial State

Verena Steller

RESÜMEE

Wie alle Kolonialregime hat auch das britische Empire sein Recht und Gesetz bei der kolonialen Expansion mit sich geführt. Im kolonialen Kontext Britisch-Indiens wurde die englische „rule of law“ im letzten Drittel des 19. und zu Beginn des 20. Jahrhunderts zu einem äußerst umstrittenen Konzept. Basierend auf zeitgenössischen viktorianischen Diskussionen über die „rule of law“, ihre Ambivalenzen und Ansatzpunkte für Kritik rückt der Beitrag die erste Generation indischer Barrister, ihre berufliche Tätigkeit und ihr öffentliches Engagement in Hochverratsprozessen in den Mittelpunkt. In den „Großen Wahabiten-Prozessen“ 1864–1872 konfrontierten indische Anwälte die „rule of law“ mit ihren Paradoxa. Durch ihre Multipositionalität als offizielle Repräsentanten der britischen Krone und zugleich *cultural brokers* im transkulturellen Kontext stritten sie für politische Rechte und trugen zur Herausbildung von Konstitutionalismus bei.

“A mockery of justice” and of the rule of law, a procedure “repugnant” to “civilised methods and principles” of “British justice” – that is how the first practising Native Indian barrister, Manmohan Ghose, commented on the high treason trial against the Manipur Princes before a Special Military Tribunal in 1891.¹

When after a palace revolution in Manipur, the British Chief Commissioner of Assam in charge of the administration of Manipur had tried to arrest the leading General of the Manipur Army, he and four of his officers had been killed in the subsequent fight as

1 M. Ghose, Did the Manipur Princes Obtain a Fair Trial? Memorandum of Arguments on Behalf of Kula Chandra Sing, Maharaja, Regent of Manipur, and Tikendrajit Bir Singh, Jubrai, or Senapati of Manipur, submitted to the Government of India. Submitted by Mano Mohim Ghose, Lincoln's Inn, Barrister at Law, Advocate of the Calcutta High Court, London 1891. Barristers are specially trained lawyers educated at one of the four London Inns of Court exclusively entitled to plead before all British High Courts on behalf of the Crown (“right of audience” in superior courts). See R. Cocks, *Foundations of the Modern Bar*, London 1983; P. Polden, Art. “Barristers” in: *The Oxford History of the Laws of England*, Oxford 2010, vol. XI, 1017–1062.

they were "taken prisoners, [...], beheaded, and their bodies mutilated."² The Manipur General and a Senior Member of his staff, who had apparently ordered the execution of the British officers, were put to trial before a special military tribunal. Although Manipur was one of the rather small 600 Princely States, its strategic geographical position connecting Assam and North Burma put it on top of the political agenda of both Houses of Parliament. At Westminster, the events of the summer of 1891 were soon well-known as "The Manipur Disaster".³ Legal debates arose on the question of whether or not legal defence of the accused would have to be admitted. From the onset, the special military tribunal had denied legal representatives, even though the process was to be a state trial on the charge of high treason for disloyalty to the Crown. In India, section 125 of the Indian Penal Code of 1860 defined "Waging War against the Queen" as "high treason", that is, "armed resistance, justified on [political] principles, to the established law of the land".⁴ A prosecution under section 125 IPC was a most serious charge implying the death penalty or deportation for life. Yet, the Special Military Tribunal in the Manipur case was willing to accept only barrister Manmohan Ghose's written "Memorandum of Arguments" in defence of the Manipur Princes.

My argument is that it was to a considerable extent the first generation of Indian barristers, who entered the courtrooms of the Indian Empire in the late 1860s, who set out to confront the "rule of law" with its inherent paradoxes in the formative years of the Indian nationalist movement born between 1870 and 1890 – an aspect that has yet to receive adequate attention.⁵ The cases on which these Indian barristers worked presented starting and leverage points for critique of colonial rule in two fora of justification: the public and the courtroom. This was especially true for the very prominent category of state trials dealing with "Offences against the (imperial/colonial) State", in which the validity of the English law and its principles as well as the promises of the "rule of law" were tested.⁶

2 1894 (43) East India (progress and condition). Statement exhibiting the moral and material progress and condition of India during the year 1891-92, and the nine preceding years. Twenty-eighth number (being the third decennial report), London 1894, 24.

3 All in all twenty-six Parliamentary debates between 6 April 1891 and 22 June 1891. See N. Sanajaoba (ed.), *Manipur: Treaties and Documents (1110–1971)*, Vol. I, New Delhi 1993, 59-230.

4 K. Smith, Art. "Securing the State, the Institutions of Government, and Maintaining Public Order", in: *The Oxford History of the Laws of England*, Vol. XIII: 1820-1914, Oxford 2010, 334-351, 334.

5 See the incentives by R. Cocks, *The Middle Temple in the 19th Century*, in: R.O. Harvey (ed.), *History of the Middle Temple*, Oxford 2011, 285-336, 332sq; M. Mukherjee, *India in the Shadows of Empire, A Legal and Political History 1774–1950*, Delhi 2010, Ch. IV: "Vakil Ray"; M. Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947*, Cambridge 2014.

6 My approach owes much to the studies of L. Benton, *Law and Colonial Cultures. Legal Regimes in World History, 1400–1900*, Cambridge 2001; N. Hussain, *The Jurisprudence of Emergency, Colonialism and the Rule of Law*, Ann Arbor 2006; E. Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law*, Cambridge 2010; R. Kostal, *Jurisprudence of Power: Victorian Empire and the Rule of Law*, Oxford 2005; M. Wiener, *An Empire on Trial: Race, Murder, and Justice under British Rule, 1870–1935*, Cambridge 2009; and R. Singha, *A Despotism of Law: Crime and Justice in Early Colonial India*, Oxford 2000, whom I would like to thank for her generous advice and support.

The fact that legal counsel was denied a *viva voce* defence in court and had to present his defence in written form was indeed most unusual. Yet much in this case was quite characteristic of the debates on the validity of the “rule of law” and its principles in British India in the second half of the nineteenth century. To contemporaries, the “rule of law” meant “supremacy of the law”, that is, a legal principle “whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes”.⁷ “Government by law and not by men” was supposed to offer procedural securities given under the English constitution against arbitrary state intervention. Consequently, in the context of State trials such as the Manipur high treason trial, constitutional questions on a variety of issues would arise. Manmohan Ghose, as barrister and exponent of the Crown, constantly had to deal with these questions with constitutional impact in his professional life.

As in this case, debates would start on a general level of (international) law, on the definition of imperial sovereignty, on the status of the Princely States, and on their rights and duties of allegiance to the British Crown.⁸ The discussion would then centre on the independence of the judiciary and the separation of judicial and executive powers, and finally culminate in controversies over safeguards of political liberties against arbitrary state intervention in general. Would the traditional English liberties of the “rule of law”, with its political liberties and legal safeguards securing the individual against arbitrary state intervention, also be valid in India? Ambivalences and paradoxes were ubiquitous in a regime constantly oscillating between the “rule of law” and a state of emergency.

Legal actors – British and Indian judges, lawyers, barristers – did engage in major debates on the character of the law, on the distinctive features between law and non-law, and on law and morals. Furthermore, they took positions in “jurisdictional politics” as “conflicts over the preservation, creation, nature, and extent of different legal forms and authorities”.⁹ Thus, state building proved to be a topic of contemporary discourse. It offered interesting options to barristers as go-betweeners who could profit from their multi-positionality and plural identities – not only to handle cultural translation, but to use their position for critique of the law from in-between.¹⁰

7 W. Cornish, M. Lobban, K. Smith, Art. “Rule of law”, Oxford English Dictionary, 2011³; W. Cornish, M. Lobban, K. Smith, Art. “Government and People” and “Empire’s Law”, in: The Oxford History of the Laws of England: Volume XI: 1820–1914, English Legal System, Oxford 2010.

8 W. Lee-Warner, The Protected Princes of India, London 1894; The Collected Papers of John Westlake on Public International Law, ed. by L. Oppenheim, Cambridge 1914, Ch. X: The Empire of India. On “imperial constitutional law”, see L. Benton, From International Law to Imperial Constitutions: The Problem of Quasi-Sovereignty, 1870–1900, in: Law and History Review, 26 (2008) 3, 595–619; on legal “anomalous zones” and the “interrelation of geographic discourse, colonial legal politics, and international law”, see L. Benton, A Search for Sovereignty: Law and Geography in European Empires, 1400–1900, Cambridge 2010; D.S. Bell, Empire and International Relations in Victorian Political Thought, in: The Historical Journal, 49 (2006) 1, 281–298. As a challenge for the “imperial turn”, see L. Benton, AHR Forum. Law and Empire in Global Perspective, Introduction, in: American Historical Review, 117 (2012) 4, 1092–1100, 1093sq.

9 L. Benton, Law and Colonial Cultures, 10 (6).

10 See also M. Pernau, Bürger mit Turban. Muslime im Delhi des 19. Jahrhunderts, Göttingen 2008, 13.

Hence, this paper analyses dimensions of transcultural statehood between Europe and Asia from the perspective of the law. To focus on the English "rule of law" as a "traveling (legal) culture/concept" and on Indian barristers as its agents in the second half of the 19th century represents a promising conceptual approach to discerning the long-neglected controversial processes of state-formation in the British Empire in all their complexities and ambiguities in their transcultural dimension. The entanglement of histories, the circulation of knowledge, and the transfer of (legal) technologies are some of the core issues of the "rule of law" in British India.¹¹

In fact, the cases Indian barristers dealt with in their professional life represent a kaleidoscope of the difficulties the English law and its self-perception as a "rule of law" had to face in the colony after 1858. Empires have always brought their law with them. Yet the transition of the English law to India was by no means a simple transfer, but rather a very complex process of "dis- and re-embeddedment"¹² of "living law". For the English law was territorially bound, a "province of law", and stood for a legal form and discourse practice, a way of thinking, a style of legal reasoning deeply rooted in its sense of history, an amalgam of cultural memory and constitutional culture.¹³ To relocate this "Common law mind" (*Pocock*) proved to be a real challenge for a "travelling culture". How did this "living law" react to the context of British colonial rule in India?

Moreover, was this really a debate on the relation between "metropolis" and "colony", or rather between "metropolis" and "metropolis in the colony"? In fact, what we do witness in the course of the debate is the creation of a third space of critique: "a single analytical field".¹⁴ Empires as spaces of mobility, experience, and imagination offered to both colonisers and colonised a common framework of debate on the relevance of laws, rightful demands, and mutual obligations.¹⁵ For this reason, a law-and-empire history is a history of processes of appropriation and negotiation: the story of the "rule of law" in British India to be told is a story of interaction, relations, and entanglements.¹⁶ Ann Laura Stoler and Frederick Cooper's conceptual approach to empirical practice, which opened up the perspective of the transcultural dimension, is still challenging. Fortunately, the historiography on law and empire has shown a growing interest in the ambivalences of the "rule

11 See the editors' introduction: Dimensions of Transcultural Statehood; A. Flüchter, Structures on the Move: Appropriating Technologies of Governance in a Transcultural Encounter, in: A. Flüchter, S. Richter (eds.), Structures on the Move, Heidelberg 2010, 1-26.

12 A. Giddens, The Consequences of Modernity, Cambridge 1990, 29; A. Appadurai, Sovereignty without Territoriality: Notes on a Postnational Geography, in: S. Low, D. Lawrence-Zúñiga (eds.), The Anthropology of Space and Place: Locating Culture, Oxford 2006, 337-349.

13 J.G.A. Pocock, The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century, Cambridge 1990, 37, 207.

14 A.L. Stoler, F. Cooper, Between Metropole and Colony: Rethinking a Research Agenda, in: A.L. Stoler, F. Cooper (eds.), Tensions of Empire: Colonial Cultures in a Bourgeois World, Berkeley 1997, 4.

15 With reference to Stoler/Cooper: S. Randeria, A. Eckert, Einleitung: Geteilte Globalisierung, in: id. (eds.), Vom Imperialismus zum Empire, Frankfurt a. M. 2009, 9-33, 14; see also M. Rolf, Einführung: Imperiale Biographien. Lebenswege imperiale Akteure in Groß- und Kolonialreichen, in: Geschichte und Gesellschaft, 40 (2014), 5-21, 10.

16 U. Baxi, The Rule of Law in India: Theory and Practice, in: R. Peerenboom (ed.), Asian Discourses of the Rule of Law, New York 2004, 324-345.

of law” in recent years. But although judicial agents have played some part in it, Indian barristers usually do not feature that prominently in these histories.

In order to highlight my working hypothesis of the law as a travelling concept and Indian barristers as its agents, I will deal first with contemporary Victorian notions of the “rule of law”, its dilemmas, and bases for critique (Part I). This is followed by a brief sketch of the state of the art in historiography (Part II). Finally, I will concentrate on the Indian barrister Manmohan Ghose and his public commitment and professional activity in two high treason trials as “Scandals of Empire” (Part III).

1. The “rule of law” travels

The “rule of law” as “government by law and not by men” was one of the most powerful and most contested normative concepts of the British Empire. To the Victorian, the “rule of law” meant a judicial and constitutional doctrine, a combination of legal principles, values, and procedures, that is, both a concept of political *theory* and of judicial and political *practice*, venerated since the Glorious Revolution at the latest.¹⁷

In the second half of the 19th century, the “rule of law” owed its popularity largely to Albert V. Dicey, the eminent contemporary authority of British constitutional law and later Vinerian Professor of English law at Oxford.¹⁸ In his celebrated *Introduction to the Law of the Constitution* (1885), Dicey defined the “rule of law” as “supremacy of the law” and “security given under the English constitution to the rights of individuals”.¹⁹ To him, the “rule of law” represented a “byword” of the English: he considered the English law to be “the most original creation of the English genius”. Moreover, he saw the “rule of law” as “the distinguishing characteristic of the English constitution”,²⁰ an opinion interpreted for the colonial context by James Fitzjames Stephen, Law Commissioner and heir of Thomas Macaulay’s project of Anglo-Indian law codification. According to Fitzjames Stephen, law amounted to “the gospel of the English, and it is a compulsory gospel which admits of no dissent and no disobedience.”²¹ Fitzjames Stephens’ remark

17 For a historical summary, see W. Holdsworth, *A History of the English Law*, Boston 1922-72, Vol. X; T. Bingham, *The Rule of Law*, London 2010; from the perspective of legal pluralists: B. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge 2004; on legal comparison: L. Heuschling, *État de droit, Rechtsstaat, Rule of Law*, Paris 2002; from the point of view of political theory: R. Bellamy, *The Rule of Law*, in: R. Bellamy, A. Mason (eds.), *Political Concepts*, Manchester 2003, 118-130.

18 This was one of the most renowned professorships of law and the first to focus on common law.

19 A.V. Dicey, *Introduction to the Law of the Constitution* [1885], London 1889³, 171, 172, 175. Joseph Raz enumerates eight criteria the rule of law has to fulfill: “1) All laws should be prospective, open and clear. 2) Laws should be relatively stable. 3) The making of particular laws should be guided by open, stable and clear rules. 4) The independence of the judiciary must be guaranteed. 5) The principles of natural justice must be observed. 6) The courts should have review powers. 7) The courts should be easily accessible. 8) The discretion of crime prevention agencies should not be allowed to pervert the law.” J. Raz, *The Rule of Law and its Virtue*, in: id., *The Authority of Law: Essays on Law and Morality*, Oxford 2002 (1977), 210-229.

20 A.V. Dicey, *Constitution*, 171sq, 174, 175 (19).

21 F. Stephen, *Legislation under Lord Mayo*, in: W. H. Hunter, *Life of the Earl of Mayo*, vol. 2, London 1875, 143-226, 169.

on the compulsory character of the "rule of law" represents a kaleidoscope of the tensions between liberal ideals, myths, and the constraints of authoritarian governance. It was the same Fitzjames Stephen who spoke of military power as the second pillar of British governance in India.

The slogan of the "rule of law" played a crucial role in "Victorian visions of global order"²² and the self-perception of "Britishness".²³ Its key role in British "imperial and missionary nationalism"²⁴ was re-inforced by the establishment of history as an academic discipline. To use historian Richard Cosgrove's words: "In Victorian England, especially after 1870, the development of a national narrative focused on constitutional history as its primary vehicle."²⁵ Such an interpretation of history was an integral part of both Whig history and young analytical jurisprudence and easily merged with the British civilising mission: "The particularity of the Anglo-Saxon heritage, the long legacy of free institutions and parliamentary government, enabled them to establish a different pattern of imperial rule from that of their European neighbours. If the 'backward' peoples of the East were to be taught the rule of law and respect for the individual, the British were uniquely equipped to fulfil the task."²⁶

Similarly, just as the combat terms of "rights", "citizenship", and "public/private sphere", the "modern" "rule of law" belonged to the major justification narratives that sought to legitimate the "modern state" and its institutions, in contrast to the "medieval" "oriental despotism" of the Mughal Empire in India.²⁷ The "rule of law" represented one of the mightiest moral justifications of British imperialism and one of the most visible manifestations of British control and governance. It seems necessary to disentangle these seemingly homogenous justifications and to hand them back to political philosophy and history with all their contradictions, "in the same way as suspect coins return to their owners in an Indian bazaar"²⁸ and well aware of the fact that in the colonial encounter, the categories of this global currency are no longer to be taken for granted.

The claim of a monolithic "rule of law" stood in contrast to the empirical legal pluralism of Indian society and to the fact that Indian legal actors were used to acting according to this multi-positionality. In fact, at the beginning of the British presence in India, the English legal order had been only one among many judicial systems and of rather experimental character.

22 D. Bell, *Victorian Visions of Global Order*, especially the contribution by S. den Otter, "A legislating Empire": Victorian Political Theorists, *Codes of Law, and Empire*, Cambridge 2008, 89-112.

23 W. Cornish, M. Lobban, K. Smith, "Empire's Law", 235 (7); *Englishness vs Britishness*: K. Kumar, *Nation and Empire*, English and British Identity on Comparative Perspective, in: *Theory and Society*, 29 (2000), 575-608.

24 Ibid.

25 R. Cosgrove, *A Usable Past: History and the Politics of National Identity in Late Victorian England*, in: *Parliamentary History*, 27 (2008), 30-42, 30.

26 Ibid.

27 N. Hussain, *Jurisprudence of Emergency*, 4 (6).

28 D. Chakrabarty, *Postcoloniality and the Artifice of History: Who Speaks for Indian Pasts?* In: *Representations*, 37 (1992), 1-26, 21sq.; L. Benton, "Not just a concept": Institutions and the "Rule of law", in: *The Journal of Asian Studies*, 68 (2009) (Special Issue: J.K. Ocko, D. Gilmartin [eds.], *State, Sovereignty, and the People: A Comparison of the "Rule of Law" in China and India*), 117-122..

The charter of the East India Company of 1600 granted the Company to administer justice to its employees in the Province towns and to issue legal norms for the administration of justice into the colonial territories. From 1726 onwards, English Common law Courts of the Crown were responsible for this task in Madras, Bombay, and Calcutta. The Regulating Act of 1773 then made the Supreme Court of Calcutta answerable solely to the Crown and thus independent of the EIC-executive. The Supreme Court should be guided by common law in civil law procedures except in cases of inheritance or family law, which had to be decided according to the “personal laws” (e.g. Hindu or Muslim law), norms, and customs of the social groups and religious communities, by a presiding English judge assisted by Native legal experts. At the beginning, the intention had been to apply “Indian law” to “Indian” civil law cases and “to add as little as possible by analogy or inference from the known authoritative rules.”²⁹ In her article in this volume, Gauri Parasher has highlighted the difficulties in determining what these laws, norms, and customs might be, and in discerning the way in which both claimants and defendants might use the blurring of definitions in a strategic way.³⁰

Even in the 1830s with its zeal for legal reform and codification, three different systems of administration of justice had continued to co-exist in the three Presidency towns of Bombay, Madras, and Calcutta. This had corresponded to a dual system of courts and of law, which was divided into the Supreme Courts of the Presidencies responsible to the British Crown and administering English law to English citizens, and the Courts of the East India Company (Company Courts) led by Indian administrators presiding over Native subjects’ demands between civil and penal law, and between English law and the “personal (Muslim or Hindu) laws” according to the social and religious status of plaintiff and defendant.³¹

It had been just this segmentation of the political, social, and religious landscapes on the Indian continent that had made it possible for the “tree of English liberties” to strike roots in India.³² Only the Indian Revolt of 1857 had curbed considerably the enthusiasm for experiments.³³ With the transfer of power from the EIC to the Crown in 1858, the British legal order was systematically centralised and institutionalised by convoking nine Law Commissions to codify Anglo-Indian law (in which the Indian Penal Code liter-

29 L.I. Rudolph, S. Hoeber Rudolph, Barristers and Brahmins in India: Legal Cultures and Social Change, in: *Comparative Studies in Society and History*, 8 (1965), 24-49, 32, 41; M. Sarkar, *Justice in a Gothic Edifice, The Calcutta High Court and Colonial Rule in Bengal*, Calcutta 1997, 29; E. Stokes, *The English Utilitarians and India*, Oxford 1963.

30 For a parallel in the disputation process between Muslim and Christian norms in British India in the 19th century, see: N. Chatterjee, *Muslim or Christian? Family Quarrels and Religious Diagnosis in a Colonial Court*, in: *American Historical Review*, 117 (2012)4, 1101-1122.

31 J.P. Green, *Empire and Liberty*, in: id. (ed.), *Exclusionary Empire: English Liberties Overseas 1600–1900*, Cambridge 2009, 18; R. Travers, *Contested Despotism*, in: *ibid*, 191-219.

32 J.P. Greene, *English Liberties Overseas*, Cambridge 2009; S. Kaviraj, *Modernity and Politics in India*, in: *Daedalus* 129 (2000), 137-162, 143; L. Benton, *Law and Colonial Cultures* (6); M.C. Finn, *Law’s Empire: English Legal Cultures at Home and Abroad*, in: *Historical Journal*, 48 (2005), 295-303.

33 T.R. Metcalf, *Ideologies of the Raj*, Cambridge 1995, 43-49; T.R. Metcalf, *The Aftermath of Revolt: India 1857–1870*, Princeton 1964.

ally travelled various times from London to Calcutta and vice versa with its drafters), by establishing a legal counselling body within the Governor’s Executive Council, and last but not least, by declaring the Calcutta High Court in 1862 to be the highest court of appeal in India de facto answerable to discuss all constitutional questions arising from the colonial encounter.³⁴ All positions were now principally open to Native Indian experts. If the eminent Victorian Albert V. Dicey had thought the English constitution to be the result of “innumerable battles” at Court, it was also in the arena of the courtrooms of the Indian continent that barristers, English and Indian, fought for the constitution of the Empire.

It was above all the first generation of Indian barristers who helped to confront the “rule of law” with its inherent paradoxes. After three years of formation at one of the four London Inns of the Court (Middle Temple, Inner Temple, Lincoln’s Inn, Gray’s Inn), they had been called to the Bar and were entitled to plead before all British High Courts as representatives of the Crown. They returned to India and entered the arena of the newly chartered High Court of Calcutta at the end of the 1860s. They specialised in courtroom advocacy, gave legal opinions as experts, and drafted legal pleadings.³⁵ The lawyers’ role as exponents of the “rule of law” and cultural brokers embedded in a multipolar network of legal, religious, and social pluralism is of paramount interest. For the management of legal pluralism in India, they had to find professional ways of appropriating knowledge, cope with the transfer of legal technologies, and participate in the circulation of knowledge.³⁶

Even if Native Indian barristers are the centre of interest in this study – an approach that might be criticised for its elitist focus – my consideration here is neither “collaboration”³⁷ nor “mimicry”. Instead of limiting the analysis to a binary scheme of collaboration and resistance, I concentrate on the dialogical structure and process of interaction in the colonial encounter. According to Homi Bhabha, the issue then at stake is the “ambivalence produced within the rules of recognition of the dominating discourses as they articulate the signs of cultural difference and re-implicate them within the deferential relations of colonial power [...]”.³⁸ The “colonial identity” “lies between the colonized and the colo-

34 See India High Court Act (1861). Prints of Letter Patent for High Court 1865 at Calcutta, IOR, L/PJ/5/423. Files of the Establishment of High Courts, 1862–1865, IOR/L/PJ/5/422. The newly chartered Calcutta High Court was interpreted as the “literal embodiment of the belief that ours is a government of laws, and not of men,” PW. Khan, *Freedom, Autonomy, and the Cultural Study of Law*, Chicago 1999, 155.

35 P. Polden, “Barristers” (1).

36 See the editors’ Introduction to this volume.

37 R. Robinson, *Non-European Foundation of European Imperialism: Sketch for a Theory of Collaboration*, in: R. Owen, B. Sutcliffe, *Studies in the Theory of Imperialism*, London 1972, 117–142.

38 H. Bhabha, *Signs Taken for Wonders: Questions of Ambivalence and Authority under a Tree outside Delhi*, May 1817, in: id., *The Location of Culture*, London 2004, 145–174, 158. See also M. Freeden, A. Vincent, *Comparative Political Thought*, London 2012, commenting on Bhabha, *Location of Culture*, 175: “The colonial mentality is thus more incoherent and ambivalent than many post-colonial cultural critics will acknowledge. It is far simpler intellectually to posit an originary pre-colonial or subaltern perspective, exemplifying say Eurocentrism or India, than to do the really hard work and recognize significant multifaceted cultural differences and interweaving within each perspective.” M. Freeden, A. Vincent, *Comparative Political Thought*, 14 (38).

nizer”.³⁹ In a similar way, Martin Fuchs underlines that these in-between moments in which cultures, identities, socialities, and societies encounter one another should not be conceived of as spaces of “quasi extra-territoriality” (to his mind obviously quite popular in debates on interculturality), but as spaces of a common ground in which rules of recognition have to be negotiated. In his opinion, the idea of a “third space” between two parties could falsely convey the notion of an initial separation/segregation, instead of understanding segregation and the drawing of boundaries as a result and product of the process of interaction itself.⁴⁰ Here my conceptual framing meets with the question of the transcultural dimensions of statehood. I am especially interested in the way in which this common third space is fashioned, including those “reserves which hadn’t earlier seemed capable of being linked in”.⁴¹ How did contemporary legal actors deal with these transcultural aspects within the third space? Was this transcultural dimension used as an argument, and if so, in which way? I opt for a dynamic handling and openness for the influence of experiences and contexts. From this perspective, barristers as exponents of the “rule of law” embody various entangled histories and cultures. My concern is to show Indian barristers as cultural brokers of legal pluralism against a monistic state in this third space and to analyse “in-between-moments”, that is, moments in which battles over political rights and the character of the imperial constitution were fought in the public sphere of the Empire and the arena of the courtrooms of the Raj. In these “significant moments when the rule of law was put to its test”,⁴² technologies of governance and statehood were open to debate, became objects of reflection⁴³ and critique, and “display[ed] the importance of the hybrid moment of political change”.⁴⁴ The history of the “rule of law” in British India and Indian barristers as its agents thus is a story of creating entanglements – and drawing boundaries.

2. The State of the Art: The “rule of law” in historiography

How is this reflected in the historiographical scholarship in the field of empire studies? Some historians consider the plea for a thorough analysis of the “rule of law” in the

39 M. Freeden, A. Vincent, *Comparative Political Thought*, 14 (38).

40 M. Fuchs, *Kampf um Differenz. Repräsentation, Subjektivität und soziale Bewegungen: das Beispiel Indien*, Frankfurt a. M. 1999, 11: “Das Bild des dritten Raumes zwischen zwei anderen unterstellt eine ursprüngliche Separierung, statt Separierung selbst als Produkt des Interaktionsprozesses zu begreifen.” On the relevance of both analyzing the common ground and the drawing of boundaries in a history of relations, also see: J. Osterhammel, *Kulturelle Grenzen in der Expansion Europas*, in: *Saeculum*, 46 (1995), 101-138; and lately: A. Epple: *Lokalität und die Dimensionen des Globalen*, in: *Historische Anthropologie*, 21 (2013), 4-25, 16.

41 W. Welsch, *Transculturality – the Puzzling Form of Cultures Today*, in: M. Featherstone, S. Lash (eds.), *Spaces of Culture: City, Nation, World*, London 1999, 194-213; id., *Was ist eigentlich Transkulturalität?*, in: L. Darowska, T. Lüttenberg, C. Machold (eds.), *Hochschule als transkultureller Raum? Beiträge zu Kultur, Bildung und Differenz*, Bielefeld 2010, 39-66.

42 P. Fitzpatrick, *Tears of the Law: Colonial Resistance and Legal Determination*, in: K. O’Donovan, G.R. Rubin (eds.), *Human Rights and Legal History*, Oxford 2000, 126-148, 128; U. Mehta, *Liberalism and Empire*, Chicago 2007.

43 W. Steinmetz, M. Albert, *Be- und Entgrenzungen von Staatlichkeit im politischen Kommunikationsraum*, in: *Aus Politik und Zeitgeschichte*, 20-21 (2007), 17-23.

44 H. Bhabha, *Location of Culture*, 41 (38).

colonial and imperial context and the role of legal actors less as an attractive task for the devil's advocate than an outright provocation. Because of the part the "rule of law" played in "imperial and missionary nationalism" and the Whig interpretation of history, and because Indian barristers could be perceived as collaborators in the mere rhetoric of the "rule of law", it still represents a challenge to the historiography of the British Empire. In its early stages as a profession, historiography in Britain had been constitutional history – a British *Sonderweg*. It shared its evolutionary thinking and a strong belief in progress typical of modernisation theories. Of course, colonialism always had its critics; yet, a systematic analysis of the ambivalences of the "rule of law" only seemed to become possible when Empire, the politics of history, and historiography moved apart after the end of empire. Finally, Empire history has now ceased to be an all-embracing *histoire totale*; instead it acknowledges the pluralism of methods and perspectives and, at last, considers ambivalences and paradoxes as its constituent features.

On these new basic assumptions, "state"/"statehood", law, and the constitution have thus re-entered the stage of research.⁴⁵ Under the impact of cultural history, area studies, and postcolonial and subaltern studies, Empire history now tends to reconsider the relations between metropolis and colony and to perceive the colonial encounter no longer as a one-way communication. In contrast, with reference to Derrida's *différance*, the relation between metropolis and colonies is seen as a "playing movement", that is, a process in which meaning is produced not through juxtapositions, but through the continuous transition between metropolis and colony.⁴⁶ Under these premises, a new reflexive Empire history tends to link legal history, the history of concepts, and discourse theory.

The "rule of law" is part and parcel of both English/British and Indian political and legal culture, a fact that has so far largely been neglected in historiographical scholarship. Recently, Partha Chatterjee has underlined the remarkable continuity of techniques of law and governance from the colonial to the post-colonial period (in its double sense), from Empire to Indian independence, with all its promises: although justifications differed, techniques for the most part stayed the same.⁴⁷ This is one more reason to consider the "rule of law" as a shared and entangled history ("*geteilte Geschichte und verwobene Moderne*")⁴⁸ of the British Empire and the Republic of India.

This said, the analysis of the "rule of law" should finally take profit from the reflexive impetus of postcolonial and subaltern studies and pay attention to actors that have been blind spots to research. If postcolonial, subaltern, and cultural studies take their mission

45 See U. Baxi, *The Rule of Law in India: Theory and Practice*, in: R. Peerenboom (ed.), *Asian Discourses of the Rule of Law*, New York 2004, 324-345; U. Baxi, *The State's Emissary: The Place of Law in Subaltern Studies*, in: P. Chatterjee, G. Pandey (eds.), *Subaltern Studies VII*, Delhi 1992, 247-254; S. Kaviraj, *The Imaginary Institution of India, Politics and Ideas*, New York 2010.

46 A.L. Stoler, F. Cooper, *Tensions of Empire* (14).

47 P. Chatterjee, A. Çubukçu, *Empire as a Practice of Power: Empire as Ideology and as Technique. The Legitimation of Imperial Practices*, in: *Humanity*, 3 (2012) 2, 2012. P. Chatterjee, *The Black Hole of Empire: History of a Global Practice of Power*, Princeton 2012.

48 S. Randeria, *Geteilte Geschichte und verwobene Moderne*, in: J. Rüsen et al. (eds.), *Zukunftsentwürfe: Ideen für eine Kultur der Veränderung*, Frankfurt a. M. 2000.

of ideological critique seriously and hold on to their demand to give a voice to all the actors implicated in the political process, then the time has come to focus on judicial actors and their professional activities, for instance, British and Indian lawyers, judges, judicial agents of the Indian civil service, and Indian barristers, of course.⁴⁹ As Frederick Cooper deliberated: “[I]f we wish to study power from ‘below’ [or from in-between], can we afford to miss the importance of making claims for resources, rights, or access on an empire on the basis of belonging – a claim that rulers of empire needed to take seriously?”⁵⁰

3. Indian Barristers: On cultural brokers, hybrid regimes, and in-between moments

The first generation of Indian barristers entered the High Court of Calcutta in the late 1860s. Between 1868 and 1878, twenty-four Indian barristers were called to the Indian bar in Calcutta, a kind of vanguard of an expanding judicial profession in India.⁵¹ In the last quarter of the 19th century alone, 424 Indian candidates left the most “cosmopolitan” of the four London Inns of Court, namely Middle Temple. Manmohan Ghose, virtually the first Indian barrister to practice in Calcutta and a member of Lincoln’s Inn, belonged to a group of six Indian lawyers who became barristers, the others being Pherozeshah Mehta (Lincoln’s Inn), Badruddin Tyabji (Middle Temple), W.C. Bonnerjee (Middle Temple), Lalmohan Ghose, and Anandamohan Bose, who together would form the nucleus of the Indian National Congress.⁵² In London, they had studied together with Surendranath Banerjea und Romeshchandra Dutt to pass their barrister exams or to receive admission to the Indian Civil Service and had gotten into contact with Dadabhai Naoroji and his efforts to organise an All-India Association.

Indian legal advisers had been present in the colonial law courts since 1793, that is, Muslim or Hindu legal counsels (*Maulvis* or *Pandits*) who had to provide their legal opinion in cases of colliding juridical norms.⁵³ However, lacking so far were judicial actors who were entitled to apply English common law in the Indian courtroom, to plead and prosecute cases in the High Courts, or to deliver judgements as representatives of the Crown and contribute to the development of case law. Neither had they been in a position to

49 R. O’Hanlon, Recovering the Subject. Subaltern Studies and Histories of Resistance in Colonial South Asia, in: Modern Asian Studies, 22 (1988) 1, 189-224.

50 F. Cooper, Introduction, Colonial Questions, Historical Trajectories, in: id., Colonialism in Question: Theory, Knowledge, History, Berkeley 2005, 3-32, 30.

51 J. McLane, Indian Nationalism and the Early Indian Congress, Princeton 1964, 52-54; B.B. Misra, The Indian Middle Classes, Oxford 1961, 316; A. Seal, The Emergence of Indian Nationalism. Competition and Collaboration in the later Nineteenth Century, Cambridge 1986, 123-130.

52 M. Sarkar, Justice in a Gothic Edifice (29).

53 L.I. Rudolph, S. Rudolph, Barristers and Brahmins, 41sq. (29); M. Galanter, The Study of the Indian Legal Profession, in: Law & Society-Review, 3 (1968/69) 2/3: Special issue devoted to lawyers in developing societies with particular reference to India, 201-218.

advise the Governor-General in the Executive’s Law Council, nor did they participate in the Law Commissions established to codify applicable law in India. This scope of functions was new to barristers, who earlier had to defend their contested discursive positions.⁵⁴ The legal system of the “rule of law” was to be perceived not only as a “body of rules” but also as a “body of men”.⁵⁵ Who were these barristers, and how did they act and interact with society? “What is the legal system they staff, support and produce?”⁵⁶ To answer these questions, let us follow the traces of Manmohan Ghose, the very first practising Indian barrister.⁵⁷

3.1 Barristers and their public commitment

Manmohan Ghose (1844–1896), son of a Subordinate Judge, member of a Kayastha family of Bikrampur (Dacca), and friend of the eminent reformer Rammohan Roy, was educated at Lincoln’s Inn. He was called to the bar in 1866 and joined the High Court of Calcutta as an advocate in 1867.⁵⁸ He was the founder of the fortnightly *Indian Mirror* (1861), committed to the Indian National Congress, and supported Bethune College, the first women’s college in India, as well⁵⁹; this is why he also took part in the Age of Consent Controversy in 1891.⁶⁰ In various publications, he fought for reforms of the Indian Civil Service (ICS) and a competitive admission procedure equally open to Native candidates.⁶¹ In the same way, he argued for the separation of (executive and judicial) powers at the district level. He also entered the debate on the Ilbert Bill, as he supported Courtney Ilbert’s attempt to confer jurisdiction on Indian judges to try Europeans in criminal cases at the district level.⁶² As a delegate of the Indian Association, he travelled to Great Britain several times (1887, 1890, 1895) on the occasion of parliamentary elections to engage in lobbying activities.⁶³

54 Quotation: M. Sarkar, *Justice in a Gothic Edifice*, 48 (29).

55 See M. Galanter, *Indian Legal Profession*, 202 (53).

56 Ibid.

57 Cf. D. Lambert, *Reflection of the Concept of Imperial Biographies*, in: *Geschichte und Gesellschaft*, 40 (2014), 22–41, 30sq.

58 See Inner Temple Admission Data Base.

59 “The Effects of English Education upon a Bengalee Society”, 29 April 1869, printed in *Hindoo Patriot* 17 May 1869. In 1873, nominated as Member of the Committee of the Bethune College: *A Short Life of Manmohan Ghose, Barrister-at-Law, Calcutta 1896*.

60 An amendment to the Indian Penal Code sought to raise the age of consent for sexual intercourse for married and unmarried girls alike from 10 to 12 years. Introduced as a bill in the Governor’s Legislative Council in 1891, it was hotly debated for interference with an orthodox Hindu code. M. Sinha, *Colonial Masculinity: The “Manly Englishman” and the “Effeminate Bengali” in the Late Nineteenth Century*, Manchester 1995, 163sq.

61 M. Ghose, *The Open Competition for the Civil Service of India*, by MG: of the Calcutta University and Lincoln’s Inn, London 1866; *The Union of Judicial and Executive Functions in the Magistrates of British India outside the Presidency Towns. A Collection of Opinions of Eminent Executive and Judicial Authorities from 1793 to 1883*, Calcutta 1896.

62 M. Ghose, *Necessity of Maintaining the Independence of the Judiciary in India*, in: *The Imperial and Asiatic Quarterly Review, and Oriental and Colonial Record*, 31–40, answered by Sir Charles A. Elliott, *The Separation of Judicial from Executive Power in India*, in: *ibid.*, Oct. 1896, 233–253; *A Short Life of Manmohan Ghose*, 24 (59).

63 M. Cumpston, *Some Early Indian Nationalists and Their Allies in the British Parliament, 1851–1906*, in: *English Historical Review*, 76 (1961), 279–297, 291.

In her path-breaking study *“India in the Shadows of Empire”* (2010), which has influenced my own approach to the topic considerably, Mithi Mukherjee has recently underlined the importance of lawyers for the formation of Indian politics. Mukherjee considers lawyers virtually as “enunciative personae” of the political in India.⁶⁴ She argues that the idea of politics dominant in the Indian National Congress of trying to gain grounds and possibilities for political participation was largely determined by the logic and procedures of the law; even political petitions in the INC were submitted in the style of courtroom pleadings. If the language of the law created and legitimised the colonial state, it was also in the language of the law that Indian lawyers articulated demands for political participation. Referring to an analogy between the legal and the governmental systems, a delegate of the Second Indian National Congress in 1886 pointed out: “In every case before a court of justice both sides are heard and each side has the opportunity of proving to the judge the justice of his cause. Here it is a court of injustice. Government has all its own way, and we have no one to plead for us and to controvert the arbitrary claims of the government.”⁶⁵ In 1906, Madan Mohan Malaviya, another eminent member of the INC, argued for elected Indian representatives to be nominated to the Indian Legislative Council as part of the executive: “The sole privilege of selecting one’s own counsel is not denied even to the most abandoned of criminals under British rule. Why then should it be denied to the loyal and intelligent subjects of her Gracious Majesty?”⁶⁶

Lawyers sought to redefine the relation between government and the people by applying the judicial frame to political practice. It was in the language of the law that they articulated critiques, demands for participation, and political visions of the political order. And in the same way that Indian barristers, as elected representatives in executive bodies, now took care to ensure compliance with the “rule of law” in the Anglo-Indian courtroom, they would be vigilant about the Executive’s compliance with the “rule of law” by means of public proceedings, in full respect for the rules of procedure and the commitment to binding precedents, in order to put an end to what was perceived as arbitrary rule exercised by the colonial government.⁶⁷

Obviously, barristers reasoned in terms of the “rule of law” in the political sphere, but how did they deal with politics in their judicial practice? Of particular interest is understanding “the character of the legal imagination of those who consider themselves, and are considered by others, to be the spokespersons for the rule of law [...]. What is the legal imagination of those who are deeply committed in their professional and personal lives to the rule of law?”⁶⁸ It seems necessary to focus on the courtroom, the legal practice and lines of professional reasoning, and the way the barristers handled English law; after all, in their capacity as barristers, they were responsible for implementing the “rule of

64 M. Mukherjee, *Shadows of Empire*, xxv (5).

65 Report of the Second Indian National Congress held in Calcutta, 1886, quoted by M. Mukherjee, *Shadows of Empire*, 123 (5).

66 Malaviya, *Speeches and Writings of Pandit Madan Mohan Malaviya*, Madras s. d., 3.

67 M. Mukherjee, *Shadows of Empire*, 109 (5); J. McLane, *Indian Nationalism and the Early Congress*, 359 (51).

68 P.W. Khan, *Cultural Study of Law*, 164 (36).

law" and its promises and procedures, as well as for securing rational discourse within the courtroom. In fact, they had to find professional solutions in accordance with law and justice.

3.2 Barristers and their cases

The cases that barristers like Manmohan Ghose worked on in their professional lives can be subdivided roughly into two categories: firstly in cases of legal pluralism referring to personal laws and the social, cultural, and religious status of claimant and defendant, and secondly in cases dealing with the legal centralism of the colonial State.⁶⁹

Cases of legal pluralism dealt with "the presence in a social field of more than one legal order",⁷⁰ mainly in civil law cases concerning family law (marriage, divorce, inheritance, religious endowments). In contrast, Manmohan Ghose worked mainly as a criminal lawyer.⁷¹ To those reported criminal law cases referring to questions of legal pluralism on which Ghose worked belongs the Gonesh Sundari case. Here Ghose acted as legal representative of the influential Hindu reform organisation Brahmo Samaj in order to return a young Hindu woman, who had converted to Christianity and chosen to live on the compounds of the protestant Church Missionary Society in Calcutta, into the custody of her family.⁷²

What became most evident in a case like this was the fact that under the conditions of legal pluralism, the exclusiveness of the "rule of law" diminished, while the need for justification on the contrary grew.⁷³ In the imperial courtroom as a forum of justification, English common law encountered already existing law systems like, for instance, Hindu or Muslim law, with their own style of reasoning. Opposing claims of natural law and positive law, personal law and customary law, universalism and particularism were articulated in different "languages of claim-making and counter-claim making"⁷⁴ and led to various legal repertoires being mobilised against each other. Barristers had to deal with these diverging lines of reasoning and strategies of justification. In fact, (legal) reasoning could be interpreted as a translation between these different systems of recognition.⁷⁵ From a conceptual point of view, these cases of legal pluralism open up new perspectives

69 J. Griffith, What is Legal Pluralism? in: *Journal of Legal Pluralism*, 24 (1986), 1-56; M. Galanter, Justice in Many Rooms, in: *The Journal of Legal Pluralism and Unofficial Law*, 13 (1981) 19, 1-47; F. von Benda-Beckmann, Who's Afraid of Legal Pluralism? in: *Journal of Legal Pluralism*, 47 (2002), 37-82; P. Berman, The New Legal Pluralism, in: *Annual Review of Law and Social Science*, 5 (2002), 225-242.

70 Recently, Paul D. Halliday has commented on the classics of the debate and legal pluralism's turn to legal pluralities in the hands of historians: P. D. Halliday, *Laws' Histories: Pluralisms, Pluralities, Diversity*, in: R.J. Ross, L. Benton (eds.), *Legal Pluralism and Empires, 1500-1850*, New York 2013, 261-277.

71 A Short Life of Manmohan Ghose, 21sq. (59).

72 Bengal Law Reports, Vol. V, p. 418: The Queen versus Vaughn and another. In the matter of S.M. Ganesh Sundari Debi alias Mani (11 May 1870). Cf. A Short Life of Manomohan Ghose, 16 (59).

73 F. von Benda-Beckmann, Who's Afraid of Legal pluralism?, 69 (69).

74 F. Cooper, Introduction, *Colonial Questions, Historical Trajectories*, 30 (50).

75 For the translational turn, see: D. Bachmann-Medick, *Cultural Turns in den Kulturwissenschaften*, Reinbek bei Hamburg 2010; M. Fuchs, *Kampf um Differenz* (40).

on “patterns of competition, negotiation, [and] interaction”⁷⁶ between different legal orders and legal actors, including state/non-state actors and interest groups. That is why the transfer of English law to India usually serves as a classic example of the collision of norms and “legal pluralism”.

An equally important position in Manmohan Ghose’s list of cases and professional career seem to represent “state trials” dealing with “offences against the state, government and its institutions”, that is, political trials, which “aimed directly at defending the state’s integrity and security”⁷⁷. In these trials, innumerable battles over political rights such as personal freedom, freedom of expression, freedom of assembly, and the safeguard of individual liberty against arbitrary state intervention were fought in two fora of justification: firstly, in the arena of the courtroom of the Raj, and secondly, in the public sphere of the British Empire. Thus, state trials were “star trials” and oftentimes proved to be downright “Scandals of Empire”⁷⁸: great discursive events on the legal validity and legitimacy of law, and as such “interpretative moments of society”.⁷⁹

State trials in India referred to a long tradition of English state trials and the battle against the despotic sovereign, above all during the Glorious Revolution. Even in the 19th century they were not completely out of fashion, for the British working class and reform movement of the first half of the 19th century as well as Irish nationalists were still to be dealt with in state trials.

The most prominent charge in Indian state trials was “Waging War against the Queen”, considered as high treason, the “most heinous offence known in the English law”, and defined as “armed resistance, justified on [political] principles, to the established law of the land”,⁸⁰ the second being seditious libel as “usually preceding high treason”. In English law, high treason could mean, firstly, “encompassing or imagining the sovereign’s death”, secondly, “levying war against the sovereign” (including revolts, rebellions, riots, and sedition “with a general public and national dimension”), and, last but not least, “being adherent to the sovereign’s enemies in times of war, including the strategic support of the enemy”.⁸¹

76 J. Griffith, *What is Legal Pluralism?*, 39 (69).

77 K. Smith, *Securing the State*, 334 (4); A. Krischer, *Das Verfahren als Rollenspiel? Englische Hochverratsprozesse im 17. und 18. Jahrhundert*, in: *Zeitschrift für Historische Forschung* 44 (2010), 211–251.

78 Cf. N. Dirks, *Scandal of Empire. India and the Creation of Imperial Britain*, Cambridge, Mass. 2006; F. Bösch, *Öffentliche Geheimnisse: Skandale, Politik und Medien in Deutschland und Großbritannien 1880–1914*, München 2009, 5.

79 R. Christenson, *Political Trials. Gordian Knots in the Law*, New Brunswick 1991; J.R. Phifer, *Law, Politics and Violence: The Treason Trial Act of 1696*, in: *Albion: A Quarterly Journal Concerned with British Studies*, 12 (1980), 235–256, 238.

80 K. Smith, *Securing the State*, 340 (4).

81 J.H. Baker, *An Introduction to English Legal History*, Oxford 2000, 599.

In his first case as a barrister, Manmohan Ghose participated in one of the most famous of these state and "star trials",⁸² namely, "The Great Wahabi trial".⁸³ At the time, Ghose was an assistant to two of the most pugnacious lawyers of the Empire, Thomas Chisholm Anstey and Thomas Dunbar Ingram. Anstey was a converted Roman Catholic barrister of Middle Temple, who – now practicing at the Bombay Bar – had been Attorney-General of Hong Kong and lately been sacked for his controversy with the local Governor; he was also still a persistent contributor to debates on the validity of colonial law.⁸⁴ Ingram, an Irish barrister (Lincoln's Inn), was at the time professor of jurisprudence in Hindu and Islamic law at Presidency College, Calcutta.⁸⁵

Between 1864 and 1872, several processes concerning "Waging War against the Queen" were led in Patna against the leaders of the so-called "Wahabi" movement, which had led – after having declared "holy war" – several military campaigns against the British Army, partly during the Indian Rebellion.⁸⁶ The movement had tended to establish a parallel sovereign government and disposed of an elaborated organisational structure, including ministerial posts, a system of tax collection, itinerant preachers, and supporters in the British Army. The British military campaign against the Wahabi movement had caused 847 British casualties in 1863.⁸⁷ Since 1865, several British inquiries had led to severe charges of high treason, in which the leaders of the Wahabi movement had been sentenced to death, life-long imprisonment, or deportation.⁸⁸

In 1869, in the course of further investigations, Ameer Khan, a 75-year-old Muslim merchant, and the alleged banker of the Wahabi movement, had been arrested in his house in Calcutta and incarcerated outside the jurisdiction of the High Court in a provincial jail. Some days later he had been transferred to a jail in Calcutta, without any legal assistance and without being informed about what the accusation was. At the beginning of August 1870, the presiding judge of the Calcutta High Court, Justice Norman, received Ameer Khan's petition of habeas corpus, which was addressed to the Super Intendant of the Alipor Jail, "commanding him to bring before the Court the body of Ameer Khan."⁸⁹

82 The Great Wahabee Case, being a Full Report of the Proceedings in the Matter of Ameer Khan and Hashmadad Khan before the Honourable Mr. Justice Norman, in the High Court of Calcutta. Calcutta 1870.

83 The case is, for instance, in the recent compilation by A. G. Noorani, *Indian Political Trials, 1775–1947*, Oxford 2008, 93–114.

84 S. Lee, "Anstey, Thomas Chisholm (1816–1873)", rev. K.D. Reynolds, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [http://www.oxforddnb.com/view/article/581, accessed 4 April 2014].

85 D.J. O'Donoghue, "Ingram, Thomas Dunbar (1826–1901)", rev. M.-L. Legg, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [http://www.oxforddnb.com/view/article/34105, accessed 4 April 2014].

86 B. Metcalf, T.R. Metcalf, *A Concise History of Modern India*, Cambridge 2006², 128sq. See most recently: J. Stephens, *The Phantom Wahhabi: Liberalism and the Muslim Fanatic in mid-Victorian India*, in: *Modern Asian Studies*, 47 (2013) 1, 22–52, who stresses the British politics in suppressing an "imagined Wahhabi conspiracy, which it portrayed as a profound threat to imperial security".

87 Annual Report of the Administration of the British Presidency 1865–66 (IOR, V/10/25), 1868–69 (IOR, V/10/32), 1870–71 (IOR, V/10/37), 1871–72 (IOR, V/10/43).

88 The Record of the Bengal Government, No. XLII, Papers Connected with the Trial of Moulvie Ahmedooollah of Patna, and Others, for Conspiracy and Treason, Calcutta 1868, IOR, V/23/102/42.

89 B.L.R., Vol. VI., p. 392, In the Matter of Ameer Khan (Supplemental to the Weekly Reporter, II, 609–640 (writ of habeas corpus) + 6 B.L.R., VI, 456 (bail)).

During this first year of incarceration, Ameer Khan had repeatedly tried to submit a petition to the General Governor and the Vice-Governor of Bengal in order to be informed about the reasons of his imprisonment. All he received was the answer that he had been arrested according to the Bengal Regulation Act III of 1818, which enabled the Governor to arrest suspects in case of threat to public safety without the obligation to give reasons on the basis of a regulation updated in 1858.⁹⁰

The trial against one of the bankers of the movement, a merchant from Calcutta, would go down in the history of famous Indian trials, not least because of the fundamental constitutional questions on the validity of English legal principles in India, prerogatives, and the limits of colonial rule that were raised during the trial. In this case study, an Indian subject asserted his claim on habeas corpus and the “rule of law” in the Indian colony in the High Court of Calcutta. How did his legal representatives argue and appeal to the validity of the “rule of law”?

When, in August 1870, the High Court of Calcutta heard the case, the High Court and the public of the Empire debated intensely whether Ameer Khan’s arrest was legal.⁹¹ In contemporary constitutional literature, habeas corpus was considered a key element of the “rule of law” to the safeguarding of personal liberty. Habeas corpus⁹² has been praised as the most important legal instrument safeguarding individual freedom against arbitrary state action in the metropolis. In his “Introduction to the Study of the Law of the Constitution” (1885), Albert V. Dicey defined habeas corpus in the chapter on the “rule of law” as representing the adequate legal means to enforce the “right to personal liberty”, that is, “a person’s right not to be subjected to imprisonment, arrest, or physical coercion in any manner that does not admit of legal justification”.⁹³ Habeas corpus was a venerated principle of the “rule of law”, considered the “glory of the English law” and “worth a hundred constitutional articles guaranteeing individual liberty”.⁹⁴

The Court had to sort out whether this safeguard against arbitrary imprisonment was valid in India. The case raised fundamental questions: were Indian subjects entitled to the protection of habeas corpus? Did the Magna Charta also apply to India? On the one hand, there was the obligation of the Sovereign to protect its subjects – in short, the Sovereign’s obligation to protect. On the other hand, the subjects had a duty of allegiance vis-à-vis their Sovereign. In what way were these two sides to the medal interrelated: the Sovereign’s obligation to protect and the subject’s duty of allegiance? Was the Governor authorised to suspend political liberties such as habeas corpus if the public order was in danger? In other words, could habeas corpus be suspended in a state of emergency? Could a prisoner lawfully be transported to a territory outside the jurisdiction of the High Court where the protection of a writ of habeas corpus did not apply? These con-

90 34 Geo. III c.54.

91 Bengal Law Reports, VI, 392, In the Matter of Ameer Khan.

92 J. Farbey, R. Sharpe, S. Atwill, *The Law of Habeas Corpus*, Oxford 2011; P.D. Halliday, *Habeas Corpus: From England to Empire*, Harvard 2010.

93 A.V. Dicey, *Constitution*, 194 (19).

94 *Ibid.*, 187 (19).

siderations are why Ameer Khan’s habeas corpus petition gave rise to such detailed comments.

After nine days of hearing, 160 pages of verbatim minutes testifying of heated debates and about forty pages documenting the opinion of the court filled the *Bengal Law Reports*. It represented nothing less than a “Best of” – indeed, a most impressive panorama of British constitutional history. It is amazing how arguments of the English constitutional debates of the 16th and 17th centuries concerning “reciprocity”, “allegiance”, “trust”, the “rule of law”, fundamental rights, political liberties, and the democratic basis of political authority and legitimacy, which had once unsettled the metropolis, now resounded in the colonial context.⁹⁵ They recall the English struggle against the power of an absolute sovereign and hint at the potentially despotic character inherent to the English constitution. The Bill of Rights (1689) and the Petition of Right (1628) could be used in a tactical way *either* to plead for political liberties of the individual *or* to legitimise the use of arbitrary power by the king in cases of state of emergency. Quotations of famous English political trials now resounded in the colonial courtroom and could be employed *both* as a point of reference to invoke the “traditional”, “English liberties”, “justice and fairness” under the “rule of law” *and* to legitimise cultural difference and the use of force.

After a series of appeals, the Privy Council in London as the Highest Court of Appeal reviewed the case and decided to set it aside for further consideration. In fact, the case found a more pragmatic solution than principled decision: while a decision on the fundamental question of the validity of the Magna Carta and all common law principles in India was studiously avoided, Ameer Khan was released in January 1871 – just to be arrested again, this time with correct legal warrants.⁹⁶ Evidently, the form of colonial governance, the colonies’ share in the social contract, and the relation of colonial rule and the “rule of law” were subject to discussion. It was also in the courtroom arena of British India that debates about prerogatives and the limitations of colonial governance arose – topics of paramount importance for the constitution of the Empire.⁹⁷

In the “Case of the Manipur Princes” trialled for high treason by a Special Court in 1891, that is, almost twenty years later in one of the last trials of his long career, Manmohan Ghose referred to “traditional English liberties” to outline various violations of the “rule of law” during the process. As the British Government had denied Ghose’s application for appeal, he had only the opportunity to submit a written statement, widely published in India.⁹⁸ In this “Memorandum of Arguments” entitled “Did the Manipur Princes Obtain a Fair Trial?”, Ghose criticised the trial as a “mockery of justice”. Provided the Princes owed allegiance to the British Crown at all – given the semi-sovereign status (“small sovereignty”) of the Indian Princely States in international law, which seemed highly disputable to contemporaries⁹⁹ – according to English common law, a charge of

95 J.M. Kelly, *A Short History of Western Legal Theory*, Oxford 1992, 207.

96 See J. Stephens, Phantom Wahabi, in: *Modern Asian Studies*, 47 (2013) 1, 36.

97 N. Hussain, *Jurisprudence of Emergency*, 75, 79, 93sq. (6).

98 M. Ghose, *Did the Manipur Princes Obtain a Fair Trial?* (1).

99 W. Lee-Warner, *The Protected Princes of India*, London 1894; *The Collected Papers of John Westlake on Public*

high treason would have had to be judged by a High Court, not by a special tribunal. “The Manipur Princes were not, and could not have been tried under the Indian Penal Code or any other British law”, Ghose argued. “Nor was the Court which tried them constituted under any legal authority derivable from any act of Parliament, or any legislative enactment of the Governor-General in Council. I must, therefore, take it that in creating this special tribunal at Manipur, the Government of India was simply exercising the right of a conquering Sovereign Power [...]”.¹⁰⁰ Ghose decried a procedure repugnant to “civilised methods and principles”. During their process before the Special Court, the Manipur Princes were deprived of the right to be defended by Counsel, an advantage “which is enjoyed [...] by every subject of Her Majesty throughout her dominions” – that is, “that no man should be condemned unheard has always been of the cardinal principles of British justice”.¹⁰¹ Thus, “one of the cardinal principles of British justice” was violated. Even though Ghose accepted the possibility of providing a written statement, he nevertheless underlined, on insisting on the power of face-to-face interaction, “the vast difference between arguing a case *viva voce* and submitting a written defence”¹⁰²: “In the one case any objection that may be raised to a particular line of argument may be met and answered; any proposition, whether of fact or of law, the correctness of which may at first be doubted by the Court, may be supported and established by further discussion; and any points which might be erroneously weighing against the accused in the mind of the judges, but which could not have been anticipated by counsel, might be satisfactorily explained away.”¹⁰³ Only this interaction would give the opportunity to change preconceived minds: “after full discussion, and when all the apparent objections have been satisfactorily answered, those views are admitted to be just and sound”.¹⁰⁴

Ghose expected that the case of the appellants should “receive the same calm and judicial consideration which a properly constituted judicial tribunal in England would have accorded to it”.¹⁰⁵ Yet, with regard to the manner in which the trial had been conducted so far, he feared that these objects would probably not be attained. The Special Court was composed of two military officers and one political officer without any legal training – “and, judging from the methods of procedure adopted during the trials, it seems clear that the Court, as a whole, was far from being familiar with the procedure followed during criminal trials in British India or in any part of Her Majesty’s dominions”.¹⁰⁶ In addition, each of the accused persons had been subjected to an “inquisitorial examination”, “a procedure utterly repugnant to the humane traditions of British justice, and which, had

International law, edited by L. Oppenheim, Cambridge 1914, Ch. X: The Empire of India. L. Benton, *From International Law to Imperial Constitutions* (8).

100 Ibid., 3.

101 Ibid.

102 Ibid.

103 Ibid.

104 Ibid., 2.

105 Ibid., 4.

106 Ibid., 4.

it been adopted by a judge or magistrate in British India, would have called forth severe censure from the High Court to which he might be subject".¹⁰⁷

Neither "fairness" nor a public process following "civilised principles and methods" – in short, the "rule of law" – were guaranteed. In the end, Ghose expressed his hope "[...] that the Government of India will hold the scales of justice evenly; and its ultimate decision in the case of this unhappy Prince will be such as to proclaim to the Eastern World, that the British Government, although powerful enough to crush all its enemies, will not [...] follow Asiatic examples, and wreak indiscriminate vengeance; but that, no matter how grave the crisis, and how strongly national passions may have been aroused, British justice will always assert itself, and take care to distinguish the innocent from the guilty".¹⁰⁸

Ghose insisted on the rather literal interpretation of the Indian Penal Code and application of English legal principles of the "rule of law" – instead of paying too much attention to the local "necessities" and "circumstances" the British liked to refer to "with respect to local circumstances". If Ghose wanted to strengthen the claim of universalism of the English "rule of law" and its validity, he also cared to set bounds to the seemingly "trans-cultural" British argumentation that "Indian circumstances" might be too particular for the "rule of law" to acquit itself of its promises in the British Raj. And if the validity of the "rule of law" – and its chances of ever being attained in India – was threatened by so-called "Oriental despotism", Ghose seems to argue, with reference to the ubiquitous semantics of so-called Oriental despotism, that it was less to be expected from "Oriental" than from "despotism", in other words, on the part of colonial cultures of violence. The rule of law had to insist on drawing boundaries of interpretation: If it yielded to "necessities and circumstances", both the rule of law and its legal actors – that is, Native Indian and British barristers, judges, and vakils alike – would lose their supremacy to the predominance of the executive and to the logic of the state-of-emergency exception. "No one exists in one context [of debate, contestation, and interaction] only."

In fact, cases of high treason, like Ameer Khan's Great Wahabi Trial and the trial of the Manipur Princes, soon filled veritable compilations of "great Indian political trials".¹⁰⁹ They served as precedents and repertoires of argumentation and critiques of colonial rule. To the public in British India, they soon became a household word. They proved to be the basis of the self-empowerment of the courts against the executive, a process steadily fostered by the work of Native Indian barristers.

107 Ibid., 5.

108 Ibid., 58.

109 See e.g. S.R. Chowdhury, *Ten Celebrated Cases Tried by the Calcutta High Court*, in: *The High Court at Calcutta. Centenary Souvenir, 1862–1962*, Calcutta 1962, 187–203; A.G. Noorani, *Trials* (83).

4. Conclusion

This short glance at the rule of law in British India in the 19th century might have shown that debates on constitutional issues relevant to metropolis and colony, to the English constitution and the constitution of Empire, are best described as entangled histories – a perspective useful even for the “rule of law” in the 20th century.

After 1900, the tension between violent conflicts over the form of state/statehood, “good government” and reform movements would intensify. To name just a few examples: in the northwestern parts of India, the combat against the perceived threat of “religious fundamentalism” by the Wahabis would be replaced by ideological campaigns against communism. Mass protests against the Rowlatt Act of 1919 suspending habeas corpus permanently, even in times of peace after the state of emergency declared in the First World War had ended, led to the Amritsar Massacre, at which soldiers opened fire on a peaceful assembly. Gandhi, a barrister (Inner Temple), would intensify his passive resistance movement against colonial rule and search for effective alternatives of legitimate opposition. The way in which the British government would deal with political opposition, mass protests, and revolts and in which they would handle sedition and high treason in India was closely monitored by trade union movements in Britain in the 1920s. For metropolis and colony alike, it was crucial if a form of “dissent management” prevailed, if “sub-cultures of assent” and “sub-cultures of dissent” were acknowledged as contributors to a common third space of debate on the constitutional politics of the Empire.¹¹⁰

Without any doubt, the “rule of law” was one of the most contested concepts of political theory and judicial practice. However, in the end, it was much more than just “political rhetoric”. The rule of law was revealed to be part and parcel of the process of state formation. At the intersection of British and Indian history, the concept of the “rule of law” was of paramount importance for the constitution of the British Empire and the formation of the modern Indian democracy. Moreover, it represented decisive moments in which both the constitution of the Empire and the imaginary institution of India were renegotiated. Therefore, the “rule of law” is of paramount interest both to Empire history and to the history of modern India in the sense of a “shared history and entangled modernity”.

What, then, does transculturality mean? I have assumed, in my case study, that transculturality might best be defined as this “in-between moment” of self-reflexivity: as a moment in which the rule of law was put to the test.

110 M. Freeden, A. Vincent, *Comparative Political Thought* (38); M. Freeden, *Liberalism Divided: A Study in British Political Thought, 1914–1939*, Oxford 1986.

Loss of a Middle Ground? Intercultural Diplomacy in Dahomey and the Discourse of Despotism*

Christina Brauner

RESÜMEE

Der Beitrag setzt sich mit interkultureller Diplomatie im westafrikanischen Dahomey zwischen dem frühen 18. und frühen 19. Jahrhundert auseinander und verfolgt eine doppelte Stoßrichtung: Zum einen wird die diplomatische Praxis vor Ort, in erster Linie am Beispiel von Audienzreisen europäischer Vertreter in Dahomey, untersucht. Dabei frage ich, inwiefern sich ein transkulturelles Zeremoniell entwickelte, das sowohl europäische als auch afrikanische Elemente aufnahm und zu etwas Neuem verband. Zum anderen geht es um die (wechselseitige) Wahrnehmung und die Transformationen, die das europäische Bild Dahomeys seit dem späten 18. Jahrhundert durchlief. Anhand der immer stärkeren Verdichtung des Bildes von Dahomey als Despotie zeige ich exemplarisch auf, wie die europäische Wahrnehmung von außereuropäischen Herrschaftsformen immer stärker ‚alterisiert‘ wurde und zunehmend durch einen ‚exklusiven‘ Eurozentrismus dominiert wurde.

Stories about African rulers and European trading companies are not exactly what used to be expected when dealing with diplomatic history. That this essay can treat the very topic it does – intercultural diplomacy in West African Dahomey during the 18th and 19th centuries – is not least due to a recent change in diplomatic history itself, a change, for the most part, initiated by the adaptation of new methods and perspectives. The so-called “New Diplomatic History” is part of the general turn towards cultural history and, equally, of the turn towards historicizing “the state”.¹ In the following I argue that

* The following essay is based on the research for my PhD thesis submitted in 2014: C. Brauner, *Kompanien, Könige und caboceers. Europäisch-afrikanische Beziehungen und interkulturelle Diplomatie an Gold- und Sklavenküste, 17.-18. Jahrhundert*, Köln [i.a.] 2015 [forthcoming]. I thank A. Flüchter, R. Ng, B. Stollberg-Rilinger and the participants of the Heidelberg conference for their comments and questions.

¹ Cf., for instance, J. Watkins, *Toward a New Diplomatic History of Medieval and Early Modern Europe*, in: *Journal of Medieval and Early Modern Studies*, 38 (2008) 1, pp. 1-14; H. von Thiesen/C. Windler, *Einleitung: Außen-*

intercultural diplomacy promises to be an especially fruitful field of research to investigate perceptions of 'foreign' statehood, conceptualizations of statehood in general and processes of transculturation.

First, I will outline the basic features of the New Diplomatic History and sketch what this paper can contribute to the debate on state and state-building (1.). Then, after a short introduction to the historical context (2.), I analyze audiences as intercultural encounters (3.). Audiences were the very situations in which political entities could meet, through performative construction, in and by the encounter of actors. Audiences allow us enlightening insights into the *practice* of diplomacy and offer rich material in asking for mutual perceptions and processes of transculturation.² The second part of the analysis addresses the question of historical change (4.): How did European descriptions of non-European statehood change over time? Here, I trace the development that European narratives about Dahomian rule and ceremonial underwent during the 18th and early 19th centuries and try to illuminate the beginnings of an exclusively European notion of state.

1. The New Diplomatic History and the Debates on State and State-Building

In former times diplomacy was mainly understood as a game with unchanging rules whose participants were modelled according to the concept of the modern state. Nowadays, historians have turned away from the idea of such an exclusively inter-state game and are increasingly focusing on the people who *made* diplomacy happen, analyzing their conditions of living as well as their modes of thinking and acting as "diplomats".³ The notion of timeless rules is questioned, for example, by exposing the importance of ceremonial in early modern times.⁴ Other studies point to the importance of networks

beziehungen in akteurszentrierter Perspektive, in: id. (eds.), *Akteure der Außenbeziehungen. Netzwerke und Interkulturalität im historischen Wandel*, Köln [i.a.] 2010, pp. 1-12. See also the programmatic essay by P. Jackson, Pierre Bourdieu, the 'Cultural Turn' and the Practice of International History, in: *Review of International Studies*, 34 (2008) 1, pp. 155-181. The scholarly network "New Diplomatic History" is dominated by historians specializing in the 20th century: see <http://newdiplomatichistory.org/> [visited on 2 January 2015]. – Unfortunately, communication and exchange across the different periods is still underdeveloped: whereas discussions between medievalists and early-modernists are quite lively the gap towards modern or even contemporary history is huge. Besides, national specificities of historiographical discourses are also not to be underestimated.

- 2 Despite their indisputable importance in diplomatic practice, only a few studies have dealt with audiences so far, especially if compared to the extensive research done on negotiations or entries. Cp., however, e.g. P. Burschel/C. Vogel (eds.), *Die Audienz. Ritualisierter Kulturkontakt in der Frühen Neuzeit*, Köln [i.a.] 2014 and R. S. Love, *Rituals of Majesty: France, Siam, and Court Spectacle in Royal Image-Building at Versailles in 1685 and 1686*, in: *Canadian Journal of History*, 31 (1996) 2, pp. 171-198.
- 3 Cp. for example H. Kugeler et al. (eds.), *Internationale Beziehungen in der Frühen Neuzeit. Ansätze und Perspektiven*, Münster [i.a.] 2006; S. Andretta et al. (eds.), *Paroles de négociateurs. L'entretien dans la pratique diplomatique de la fin du Moyen Âge à la première Guerre mondiale*, Rome 2010; D. Frigo (ed.), *Politics and Diplomacy in Early Modern Italy: The Structure of Diplomatic Practice, 1450-1800*, Cambridge 2011; M. Häberlein/C. Jeggle (eds.), *Materielle Grundlagen der Diplomatie: Schenken, Sammeln und Verhandeln in Spätmittelalter und Früher Neuzeit*, Konstanz 2013.
- 4 This insight was gained by William Roosen in a pathbreaking essay: W. Roosen, *Early Modern Diplomatic Cer-*

and patronage in diplomacy, thus disproving elder assumptions about seemingly rational top-down organization.⁵ Furthermore, the traditional focus on Italy and Western Europe, taken to be the “cradle” of modern diplomacy,⁶ has been broadened. Diplomacy has been re-discovered as a field of intercultural interactions *par excellence*, within Europe as well as beyond its – scarcely fixed – borders.⁷ Scholars interpret diplomacy as a way of moving across cultural or religious borders, considering religious, national and cultural differences, and investigating strategies of translation. These approaches have a twofold impact: On the one hand, an understanding of intra-European diplomacy as a result of entanglements and cultural transfers has been outlined.⁸ On the other hand, diplomatic history has been taken beyond Europe, thereby providing comparative insights and questioning myths about assumed European “singularities”.⁹

emional: A Systems Approach, in: *Journal of Modern History*, 52 (1980) 3, pp. 452–476. See also B. Stollberg-Rilinger, *Die Wissenschaft der feinen Unterschiede. Das Präzedenzrecht und die europäischen Monarchien vom 16. bis zum 18. Jahrhundert*, in: *Majestas*, 10 (2002), pp. 125–150, esp. pp. 125ff.; ead., *Höfische Öffentlichkeit. Zur zeremoniellen Selbstdarstellung des brandenburgischen Hofes vor dem europäischen Publikum*, in: *Forschungen zur Brandenburgischen und Preußischen Geschichte N. F.*, 7 (1997), pp. 145–176; A. Krischer, *Souveränität als sozialer Status. Zur Funktion des diplomatischen Zeremoniells in der Frühen Neuzeit*, in: R. Kautz / J.-P. Niederkorn / G. Rota (eds.), *Diplomatisches Zeremoniell in Europa und im Mittleren Osten in der Frühen Neuzeit*, Wien 2009, pp. 1–32.

5 See H. von Thiesen, *Diplomatie vom type ancien. Überlegungen zu einem Idealtypus des frühneuzeitlichen Gesandtschaftswesens*, in: id. / C. Windler (eds.), *Akteure* (1), pp. 471–503 and id., *Switching Roles in Negotiation. Levels of Diplomatic Communication between Pope Paul V Borghese (1605–1621) and the Ambassadors of Philip III*, in: S. Andretta et al. (eds.), *Paroles* (3), pp. 151–172.

6 A ‘classic’ in this regard is G. Mattingly’s “Renaissance Diplomacy” (London 1955). The academic quest for the origins of diplomacy is summarized by S. Péquignot, *Europäische Diplomatie im Spätmittelalter. Ein historiographischer Überblick*, in: *Zeitschrift für Historische Forschung*, 39,1 (2012), pp. 65–95. – The notion of Renaissance Europe as the “cradle” of diplomacy can peacefully co-exist with descriptions or rather florilegia of “the beginnings of diplomacy”. These are, however, clearly set apart from ‘real’ diplomacy of the modern fashion. Cp., for example, K. Hamilton / R. Langhorne, *The Practice of Diplomacy, its Evolution, Theory and Administration*, London / New York 1995.

7 Cp. esp. C. Windler, *La diplomatie comme l’expérience de l’autre. Consuls français au Maghreb, 1700–1840*, Genf 2002; id., *Diplomatic History as a Field for Cultural Analysis: Muslim-Christian Relations in Tunis, 1700–1840*, in: *The Historical Journal*, 44 (2001) 1, pp. 79–106; P. Burschel, *Das Eigene und das Fremde. Zur anthropologischen Entzifferung diplomatischer Texte*, in: A. Koller (ed.), *Kurie und Politik. Stand und Perspektiven der Nuntiaturberichtsforschung*, Tübingen 1998, pp. 260–271, esp. pp. 264ff.; see also S. Schattenberg, *Diplomatie als interkulturelle Kommunikation*, in: *Zeithistorische Forschungen / Studies in Contemporary History*, online edition, 8 (2011) 3, URL: <http://www.zeithistorische-forschungen.de/16126041-Schattenberg-3-2011> [accessed 2 January 2015].

8 See, e.g., M. Rohrschneider / A. Strohmeier (eds.), *Wahrnehmungen des Fremden. Differenzenerfahrungen von Diplomaten im 16. und 17. Jahrhundert*, Münster 2007; H. Duchhardt / M. Espenhorst (eds.), *Frieden übersetzen in der Vormoderne. Translationsleistungen in Diplomatie, Medien und Wissenschaft*, Göttingen 2012; H. Droste, *Diplomacy as a Means of Cultural Transfer in Early Modern Times. The Swedish Evidence*, in: *Scandinavian Journal of History*, 31 (2006) 2, pp. 144–150. An ongoing project entitled “Translating cultures: Diplomacy between the early modern and modern worlds” is based at Durham University, see <https://www.dur.ac.uk/history/tdproject/> [accessed 2 January 2015].

9 Research on states situated on the European ‘periphery’, like Russia or the Ottoman Empire, demonstrates the necessity to historicize the notion of Europe itself, e.g., J. Hennings, *Russia and Courtly Europe: Ritual and Diplomatic Culture, 1648–1725*, Cambridge [in print] and id., *The Semiotics of Diplomatic Dialogue: Pomp and Circumstance in Tsar Peter I’s Visit to Vienna in 1698*, in: *International History Review*, 30 (2008), pp. 515–544, esp. pp. 524ff. (on Russia); P. Burschel, *Topkapı Sarayı. Oder Salomon Schweiggers Reise ans Ende der Zeit*, in: id. et al. (eds.), *Räume des Selbst. Selbstzeugnisforschung transkulturell*, Köln [i.a.] 2007, pp. 29–40 (on the Ottoman Empire); C. Windler, *La diplomatie* (7) (on North Africa). Cp. also L. Blussé, *Queen among Kings. Diplomatic Ritual at Batavia*, in: K. Grijns / P. J. M. Nas (eds.), *Jakarta – Batavia. Socio-cultural Essays*, Leiden 2000, pp. 25–41.

The New Diplomatic History participates in the general historiographical movement towards questioning the notion of “state” and traditional narratives about “state-building”. It draws on ongoing debates of networks and “empowering interactions” as part of state-building processes.¹⁰ As these debates mostly focus on relations within political groups studies on external relations can offer an important complementary perspective. However, one should use the dichotomy of ‘internal’ and ‘external’ relations with care, as doubts have been raised about its applicability in times before the 19th century. By taking the different levels of political agency in pre-modern times into account – instead of presupposing container-like political entities with clear defined borders or a state monopoly in diplomatic relations – diplomatic historians have added to the ongoing revision of the history of state-building.

The analysis of intercultural diplomacy, here of Afro-European diplomacy in Dahomey, can contribute to these debates in general and the present volume in particular, namely in three intertwined ways:

Firstly, this analysis has a methodological edge as it requires us to think about the very categories traditionally used.¹¹ Designations like “ambassador”, “sovereignty” or “international law” which (unfortunately still) go without saying in many intra-European case studies must be re-adjusted to the context in question by careful definition¹² or else substituted by more adequate, probably broader terms.¹³ This includes a certain need to revise nationalist historiographies that tried to reevaluate extra-European history exactly by employing elements and concepts derived from European master narratives. Since peoples formerly said to be “without history” started to claim their own memorable past, the categories and models used in this endeavour often were European imports, as these

10 Cp. W. Blockmans/A. Holenstein/J. Mathieu (eds.), *Empowering Interactions. Political Cultures and the Emergence of the State in Europe 1300–1900*, Farnham 2009; R. G. Asch/D. Freist (eds.), *Staatsbildung als kultureller Prozess. Strukturwandel und Legitimation von Herrschaft in der frühen Neuzeit*, Köln [i.a.] 2005; P. Eich/S. Schmidt-Hofner/C. Wieland (eds.), *Der wiederkehrende Leviathan. Staatlichkeit und Staatswerdung in Spätantike und Früher Neuzeit*, Heidelberg 2011. The link between the current debates on ‘internal’ state-building and diplomatic history is discussed by C. Windler, *Symbolische Kommunikation und diplomatische Praxis in der Frühen Neuzeit. Erträge neuer Forschungen*, in: B. Stollberg-Rilinger/T. Neu/C. Brauner (eds.), *Alles nur symbolisch? Bilanz und Perspektiven der Erforschung symbolischer Kommunikation*, Köln [i.a.] 2013, pp. 161–185.

11 A. Flüchter, *Structures on the Move. Appropriating Technologies of Governance in a Transcultural Encounter*, in: ead./S. Richter (eds.), *Structures on the Move. Technologies of Governance in Transcultural Encounter*, Berlin/Heidelberg 2012, pp. 1–27. The interdisciplinary working group “Transcultural Comparisons of Monarchies”, for example, avoids the term “state” and the problems connected with it by focusing on the broadly used concepts of “monarchy” and “dynasty”. Thereby, the group aims at criticizing the traditional master narrative of the rise of the Western state; see W. Drews/J. Oesterle (eds.), *Transkulturelle Komparatistik. Beiträge zu einer Globalgeschichte der Vormoderne* (Comparativ 18, Issue 3–4), Leipzig 2008; A. Flüchter, *Einleitung: Der transkulturelle Vergleich zwischen Komparatistik und Transkulturalität*, in: ead./W. Drews (eds.), *Eliten – Sakralität – Gedenken. Monarchische Herrschaftsformen im transkulturellen Vergleich*, Berlin 2015 [forthcoming].

12 A similar approach was realized by M. Pernau in her inspiring study of the Indian “Bürgertum”, M. Pernau, *Transkulturelle Geschichte und das Problem der universalen Begriffe. Muslimische Bürger im Delhi des 19. Jahrhunderts*, in: B. Schäbler (ed.), *Area Studies und die Welt. Weltregionen und neue Globalgeschichte*, Wien 2007, pp. 117–149.

13 This problem is, of course, central to all forms of comparisons; see, e.g., J. Osterhammel, *Transkulturell vergleichende Geschichtswissenschaft*, in: id., *Geschichtswissenschaft jenseits des Nationalstaats. Studien zu Beziehungsgeschichte und Zivilisationsvergleich*, Göttingen 2003, pp. 11–45.

seemed to define what “history” was.¹⁴ Historians from outside Europe now sought in their own past the mighty empires and great wars, the noble lords and valiant warriors, in short: the “great” and “serious” history as it had been exclusively claimed by Europe before. This “great” and “serious” history, however, tended to be a history of “great men” and, above all, of states. As diplomacy and international relations traditionally formed a core theme of ‘serious’ political history, it is not surprising that there are quite a few studies on these subjects dating back to the decolonization era.¹⁵ In his account of Asante diplomacy, Joseph Adjaye for example tried to show that the Weberian model of “bureaucratic rule” was also applicable to a West African state – a model gravely challenged in its validity for the interpretation of early modern European history itself.¹⁶

Secondly, this field of research also enables us to question deeply entrenched narratives of state and state-building. Popular opinion, but also certain academic studies, still regards the “state” as a European invention¹⁷ and projects European dominance and exceptionalism far back into history. To address the world view of contemporaries has been one fruitful strategy to tackle this “denial of coevalness”¹⁸ between ‘the West and the Rest’. Intercultural diplomacy provides a wealth of sources for such questions: How did early modern Europeans perceive rulers and rule beyond Europe? Did they apply a logic of diplomacy different from the one used at home? And, of course, the other way around: how did non-Europeans (in this case, West Africans) perceive European visitors? The answers resulting from such questions may often contradict modern assumptions about cultural differences and intercultural “misunderstandings”.¹⁹ For sure, they should not be taken for granted but need to be combined with a critical analysis of local power relations and resources. Thus, they can help us to bypass the asymmetries embedded in

14 For a general analysis of this problem see D. Chakrabarty, *Provincializing Europe. Postcolonial Thought and Historical Difference*, Princeton/Oxford 2000; for an insightful case study on African historiographies cp. C. C. Wrigley, *Historicism in Africa. Slavery and State Formation*, in: *African Affairs*, 70 (1971), pp. 113–124.

15 Cp., e.g., T. O. Elias, *Africa and the Development of International Law*, Leiden/Dobbs Ferry 1972; K. Ingham (ed.), *Foreign Relations of African States. Proceedings of the 25th Symposium of the Colston Research Group* 1973, London 1974; A. K. Mensah-Brown (ed.), *African International Legal History*, New York 1975.

16 J. K. Adjaye, *Diplomacy and Diplomats in Nineteenth Century Asante*, Lanham [i.a.] 1984. Adjaye is a pupil of Ivor Wilks who drew on Weber and Marx in his work on Asante and Akan history; see I. Wilks, *Ashanti Government*, in: D. Forde/P. M. Kaberry (eds.), *West African Kingdoms in the 19th Century*, Oxford 1967, pp. 206–238 and id., *Forests of Gold. Essays on the Akan and the Kingdom of Asante*, Athens, OH 1993. In a different way, European concepts of history were transferred to the history of West Africa by the work of R. A. Kea who mostly uses Marxist models in his studies of the social history of the Gold Coast; see R. A. Kea, *Settlements, Trade and Politics in the 17th Century Gold Coast*, Baltimore [i.a.] 1982.

17 See, for example, W. Reinhard, *Geschichte der Staatsgewalt. Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart*, München 32002, p. 15, who states: “Europa hat den Staat erfunden.” (“Europe invented the state.”).

18 See J. Fabian, *Time and Its Other. How Anthropology Makes Its Object*, New York 1983.

19 Cp. D. Carey, *Questioning Incommensurability in Early Modern Cultural Exchange*, in: *Common Knowledge*, 6 (1997), pp. 32–50, here esp. pp. 39f. and pp. 49f. See also S. Subrahmanyam, *Courtly Encounters. Translating Courtliness and Violence in Early Modern Eurasia*, Cambridge, MA/London 2012, Introduction: pp. 1–33, esp. pp. 1–7 and pp. 23–30. – It is all the same questionable whether the notion of ‘misunderstanding’ fits into the toolbox of a culturalist historian because it implies that there is one single correct ‘understanding’ or ‘interpretation’. This, however, is at odds with the constructive and even basic hermeneutical insights on which cultural history draws.

traditional narratives of historical development and to put intercultural diplomacy back into historical context.

Diplomacy is, so to speak, the space *par excellence* where “states” – in the broad sense outlined in the introduction²⁰ – and their representatives have to come to terms with each other, to find a common mode of negotiation as well as of everyday interaction. Thus, *thirdly and finally*, the study of intercultural diplomacy allows us to ask for processes of “transculturation”, for “hybrid” practices and “entangled” concepts in the very realm of statehood.²¹ The focus on the 18th and 19th centuries, and thus the transition from the early modern to the modern era according to usual European periodization – is of special importance in this regard and should be the starting point for comparisons: Did processes of transculturation continue over time or were they interrupted? How did their valuation change? Were they influenced by changing perceptions or do we rather observe a divergence between discourses in the imperial “centres” and localized practices on the spot?

2. The Setting: Dahomey and the Europeans

2.1. Trading Companies in West Africa

The case presented in the following requires us to broaden the traditional notion of diplomacy not only with regard to non-Europeans but also concerning the European actors involved.²² In early modern West Africa, those Europeans who negotiated with local rulers, concluded defensive alliances with political groups, and defended their sovereign’s honour, those men were neither officially appointed residents nor ambassadors in the strict sense of the term. They were mainly employees of trading companies, governors

20 A. Flüchter/C. Brauner, Introduction to this issue, p. 7-26.

21 In this paper, I use the term ‘intercultural’ to refer to all situations, phenomena (etc.) for which the actors’ or objects’ belonging (by self-identification and/or external classification) to different cultures are relevant. ‘Transcultural’, in contrast, is used in a narrower sense to denote all phenomena, practices and so forth that cannot, either by scholars or by contemporaries, be classified as belonging to one single culture but that in contrast evolved as ‘shared’ or ‘entangled’ phenomena. The term ‘transcultural’ borrows from the older concept of ‘transculturation’ coined by F. Ortiz, *Cuban Counterpoint. Tobacco and Sugar*, transl. by H. de Onís, Durham/London 1995 [first ed. 1940], esp. pp. 97-103. – It has been stated that every culture is hybrid, that is, every culture is transcultural. From a theoretical point of view I cannot but agree to this assumption. For pragmatic reasons and to enable us to use the term in scientific discourse, though, we have to narrow the term down, possibly by distinguishing ‘shades’ or ‘degrees’ of transculturality. See also the editors’ introduction to this issue (20).

22 Research on ‘non-official’ or even ‘private’ diplomacy has flowered both with regard to pre-modern as well as modern eras. It is, however, rather a parallel development than an on-going exchange between periods. Besides, it is surely more difficult (if not all together impossible) to draw a clear line between ‘official’ and ‘private’ diplomacy in early modern times – remember only, e.g., the importance of family networks in the politics of this time. See, however, M. Keblusek/B. V. Noldus (eds.), *Double agents. Cultural and Political Brokerage in early modern Europe*, Leiden 2011; M. Häberlein/M. Bayreuther, *Agent und Ambassador: Der Kaufmann Anton Meuting als Vermittler zwischen Bayern und Spanien im Zeitalter Philipps II.*, Augsburg 2013; with regard to contemporary history cp. Giles Scott-Smith, *Introduction: Private Diplomacy, Making the Citizen Visible*, in: *New Global Studies* 8 (2014) 1, pp. 1–7.

and factors of the chartered West Indian and African Companies. Trading companies cannot be classified as ‘informal’ diplomatic agents as they were endowed with certain privileges of sovereignty.²³ The extent of these privileges varied from company to company but it included more often than not the ability to make treaties with foreign princes and rights of jurisdiction. Thus, the companies were enabled to play a certain part in international law, a part, however, that allowed for a great deal of flexibility and situative interpretation. This role in diplomacy and international law assumed by the trading companies necessitates a revision of older hypotheses about diplomacy as state monopoly for the European context, too.²⁴

This paper – as well as the larger project it belongs to – focuses on the Gold and Slave Coasts, that is, broadly speaking, the coastal region stretching from Ghana in the west to Bénin and western Nigeria in the east: Here, Europeans and Africans entertained long-term relationships that were still far off the dawn of colonial influence. These long-standing traditions of intercultural interaction provide a sound basis to ask about processes of transculturation. Besides, the Europeans on the spot were extraordinarily diverse: Representatives of Portugal, France, the Netherlands and England were engaged in the local trade as were Prussians, Danes, Swedes und Courlanders. Frequently, they were also engaged in mutual competition and even fighting among themselves, partly provoked by intra-European wars and conflicts, partly the result of coast-grown disputes.

2.2. The “Kingdom” of Dahomey

The “Kingdom”²⁵ of Dahomey was situated on the so-called Slave Coast.²⁶ Today, its name has vanished from the maps as the region that Agaja and his successors governed now belongs to the Republic of Bénin. Nevertheless, Dahomey still occupies a prominent place in the imagery of historical West Africa – as a state of mighty kings exercising “despotic” rule,²⁷ as the homeland of the female “Amazon” warriors and the site of

23 So far, only the East Indian companies and their role international law have been studied in this regard; cf. J. A. Somers, *De VOC als volkenrechtelijke actor*, [Deventer] 2001; C. H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)*, Oxford 1967; H. Steiger, *Recht zwischen Asien und Europa im 16. und 17. Jahrhundert?*, in: K. Bußmann/E. A. Werner (eds.), *Europa im 17. Jahrhundert. Ein politischer Mythos und seine Bilder*, Stuttgart 2004, pp. 95–118 and P. J. Stern, *The Company-State. Corporate Sovereignty and the Early Modern Foundations of the British Empire in India*, Oxford [i.a.] 2011.

24 See C. Brauner, *Kompanien* (*).

25 The notion of “kingdom” as it is applied to several political entities in West Africa in early modern as well as modern academic discourse calls for a investigation on its own; see C. Brauner, *Kompanien* (*), chapter 1. In this paper, I only want to distinguish between those early modern authors operating with the (wide) concept of “kingdom”, that is, generally including Dahomey into patterns of description also applied to their own “states” back home in Europe, and those authors depicting Dahomey as something completely different from their own political background (see below, part 4).

26 For the history of Dahomey cp. A. Le Herissé, *L'Ancien Royaume du Dahomey. Mœurs, Religion, Histoire*, Paris 1911; I. A. Akinjogbin, *Dahomey and Its Neighbours, 1708–1818*, Cambridge 1967; P. Manning, *Slavery, Colonialism, and Economic Growth in Dahomey, 1640–1960*, Cambridge [i.a.] 1982; E. G. Bay, *Wives of the Leopard. Gender, Politics and Culture in the Kingdom of Dahomey*, Charlottesville, VA 1998; J. Cameron Monroe, *The Precolonial State in West Africa. Building Power in Dahomey*, Cambridge 2014..

27 This questionable ‘classification’ is, i.a., still used by the “Britannica Guide” volume on West African history pub-

bloody human sacrifices.²⁸ Its major coastal settlement, the town of Ouidah, is known as one of the most infamous ports of the Atlantic slave trade.²⁹

A multitude of European trading companies operated in Ouidah; the English, French and Portuguese all had forts in Ouidah whose remains are still visible today. The Dutch also participated in the regional trade but had no fortified trading post at Ouidah. For their share in the trade, the different companies competed against each other and against 'private' enterprises. This situation shifted the balance of power in favour of Dahomey – especially as the slave trade was under royal control (though not monopolized, as Karl Polanyi and his followers thought), as were the trade routes in the hinterland where many slaves originated.³⁰ Generally, as Robin Law has attested, African dominance on the Slave Coast was even more pronounced than on the nearby Gold Coast. This is especially manifest in the fact that local rulers successfully thwarted all European attempts to gain a trade monopoly.³¹ The situation of European settlements in Dahomey was especially precarious because they were not directly accessible from sea but located – as was the whole town of Ouidah – about 3.5 kilometres off the shore. Thus, all supplies and communication depended on the goodwill of the Dahomians who could easily close the roads to and fro.³²

lished in 2011: "Dahomey was a despotic and militaristic kingdom." A. McKenna (ed.), *The History of Western Africa* (The Britannica Guide to Africa), New York 2011, p. 82.

- 28 Cp. V. Campion-Vincent, *L'image du Dahomey dans la presse française (1890–1895): Les sacrifices humains*, in: *Cahiers d'Études Africaines*, 7 (1967), pp. 27–58 and A. Sonderegger, *Die Dämonisierung Afrikas. Zum Despotiebegriff und zur Geschichte der Afrikanischen Despotie*, Saarbrücken 2008. For the "Amazons" cf. R. Law, *The 'Amazons' of Dahomey*, in: *Paideuma*, 39 (1993), pp. 245–260. Insightful articles on human sacrifice are provided by id., 'My Head Belongs to the King': On the Political and Ritual Significance of Decapitation in Pre-Colonial Dahomey, in: *Journal of African History*, 30 (1989) 3, pp. 399–415 and id., *Human Sacrifice in Pre-Colonial West Africa*, in: *African Affairs*, 84 (1985), pp. 53–87, esp. pp. 54ff. and pp. 67ff.
- 29 Cp. R. Law, *Ouidah. The Social History of a West African Slaving 'Port', 1727–1892*, Athens, GA/Oxford 2004; P. Verger, *Flux et reflux de la traite des nègres entre le golfe de Bénin et Bahia de todos os santos du dix-septième au dix-neuvième siècle*, Paris / Den Haag 1968 and A. Sinou, *Le comptoir de Ouidah. Une ville africaine singulière*, Paris 1995; for the French fort at Ouidah cf. S. Berbain, *Le comptoir français de Juda (Ouidah) au XVIIIe siècle. Etudes sur la traite des noirs au golfe de Guinée*, Paris 1942.
- 30 See K. Polanyi, *Dahomey and the Slave Trade. An Analysis of an Archaic Economy*, Seattle [i.a.] 1966; R. Arnold, *A Port of Trade: Whydah on the Guinea Coast*, in: K. Polanyi / C. M. Arensberg / H. W. Pearson (eds.), *Trade and Market in the Early Empires. Economies in History and Theory*, London 1957, pp. 154–176 and the critique by R. Law, *Royal Monopoly and Private Enterprise in the Atlantic Trade: The Case of Dahomey*, in: *Journal of African History*, 18 (1977) 4, pp. 555–577.
- 31 R. Law, 'Here is No Resisting the Country': The Realities of Power in Afro-European Relations on the West African 'Slave Coast', in: *Itinerario*, 18 (1994), pp. 50–64, esp. pp. 52ff. and id., *The Slave Coast of West Africa (1550–1750). The Impact of the Atlantic Slave Trade on an African Society*, Oxford 1999 (reprint 2001). For the Gold Coast, the account of Kwame Daaku is still unreplaced; K. Y. Daaku, *Trade and Politics on the Gold Coast, 1600–1720. A Study of the African Reaction to European Trade*, Oxford 1970.
- 32 Contemporary comments on the situation can be found, i.a., in *A DESCRIPTION of the Castles Fort and Settlements Belonging to the Royal African Company of England, on the Gold Coast of AFRICA and at WHYDAH*, s. d. [ca. 1737], The National Archives, Kew (TNA), T 70/1470 and *Mémoire contenant des observations sur quelques points de la Côte de Guinée, visités en 1786, par la Corvette le Pandour, et sur la possibilité d'y faire des établissements*, par M. de Champagny, dd. 06.09.1786, Archives d'Outre-Mer, Aix-en-Provence (ANOM), C 6/27. Champagny holds the topographical situation to be the main reason for the "dependance presque servile des Nègres Dahomets" the European forts had fallen into. He, consequently, recommends abandoning the settlement at Ouidah and re-establishing it at Porto-Novo.

Dahomey's first encounter with Europeans resulted from its conquest of Allada and Hueda, two small kingdoms bordering the Atlantic shore and longstanding trading partners of the European companies, taking place in 1723 and 1727 respectively.³³ Therefore, the periodization of European-Dahomian relations is comparatively clear cut and offers the possibility to observe an evolution from a 'first contact' situation to more institutionalized forms of interaction.³⁴

In contrast to the earlier arrangements in Hueda or Allada, there was a considerable physical distance between the European trading posts and the royal court of Dahomey. In Hueda, the European lodges had been annexed to the royal palace at Savi, owing to the intertwined reasons of control and prestige, as Kenneth G. Kelly has argued.³⁵ The court of Dahomey, in contrast, was located in the interior, usually at Abomey. It took a three days' march through thick forest and swamps to reach Abomey if starting in coastal Ouidah as most European visitors did.

The governors of the Ouidah forts, acting as local representatives of their respective company and sovereign, as well as others entrusted with a mission to the Dahomian court never travelled alone: They were always accompanied by hammock-bearers and porters, occasionally by a Dahomian envoy. Newcomers sometimes enlisted the support of an Dahomey-experienced colleague: Jacobus Elet, on his 1733 mission on behalf of the Dutch West India Company (*Westindische Compagnie*, short WIC), for example was advised and accompanied by the governor of the Portuguese fort, João Basilio.³⁶ In the 1790s, the French governor Gourg enjoyed the company of his experienced English colleague, Lionel Abson, during his voyages to Abomey.³⁷

33 For the history of these states cp. R. Law, Ouidah (29) and id., *The Kingdom of Allada*, Leiden 1997.

34 According to contemporary reports, the first 'White' in Dahomey was Bulfinch Lambe. He was captured by Dahomian troops during the conquest of Allada; see W. Smith, *A New Voyage to Guinea*, London 1744, p. 170 and pp. 175f. Cp. M. Johnson, Bulfinch Lambe and the Emperor of Pawpaw: A Footnote to Agaja and the Slave Trade, in: *History in Africa*, 5 (1978), pp. 345-350; R. Law, King Agaja of Dahomey, the Slave Trade, and the Question of West African Plantations: The Embassy of Bulfinch Lambe and Adomo Tomo to England, 1726-32, in: *Journal of Imperial and Commonwealth History*, 19 (1991), pp. 137-163 and id., *An Alternative Text of King Agaja of Dahomey's Letter to King George I of England, 1726*, in: *History in Africa*, 29 (2002), pp. 257-271.

35 K. G. Kelly, *The Archaeology of African-European Interaction: Investigating the Social Roles of Trade, Traders, and the Use of Space in the 17th- and 18th-Century Hueda Kingdom*, Republic of Benin, in: *World Archaeology*, 28 (1997) 3, pp. 351-369. Kelly comments on the spatial arrangement in Savi: "The *Hueda* were clearly able to express their power over the European nations on the Slave Coast, but at the same time were dependent upon their presence of the elevated wealth and power the *Hueda* leadership possessed. This complex situation is most clearly expressed in the circumscription of the European lodges, placing them under the watchful eyes of the *Hueda* elite, yet at the same time, through their close association with the European traders, the *Hueda* were able to broadcast their privileged relationship to the sources of wealth and power." (365)

36 Elet asked Basilio, for example, to explain to him "ces maniere [sic] de cette pais, et leur nation"; Missive aan de Portugeesse directeur Jean de Basil [i.e. João Basilio], s.d., in: H. den Heijer (ed.), *Naar de koning van Dahomey. Het journaal van de gezantschapsreis van Jacobus Elet naar het West-Afrikaanse koninkrijk Dahomey in 1733*, s-Gravenhage 2000, pp. 169f. The English captain and slave trader Snelgrave, too, visited Agaja in the company of more experienced men, including an employee of the Dutch factory in Jakin, cf. W. Snelgrave, *A New Account Of Some Parts of Guinea and the Slave-Trade*, London 1734, p. 24.

37 Gourg recommended to his successor, Denyau de la Garenne, to maintain amicable relations with the two other gouvernours – unity between all three directors was, above all, necessary to successfully demand something of the king. He especially emphasized how much he was obliged to the English gouvernour, though, at the same

Apart from the immediate, face-to-face exchange with more experienced colleagues, knowledge about Dahomey in general and practices of interaction in particular was also transferred by other means. Memoranda and instructions left by departing officials for their successors explained routines and advised on the dos and don'ts in everyday interaction.³⁸

3. Intercultural Diplomacy and the Emergence of a Transcultural Ceremonial

3.1. First Routines and Ceremonial Duties

After the conquest of Ouidah, routines of interaction between the forts and their new 'landlord' quickly evolved. The everyday affairs were – as off 1733 – entrusted to an official resident in Ouidah.³⁹ However, two occasions regularly required an audience at the court of Dahomey and, thus, direct communication with the ruler of Dahomey. Both occasions were primarily imposed by Dahomian authority. First of all, the governors of the European forts were obligated to attend upon the King on their arrival in Ouidah and hand over the "usual presents". Gourg, the French governor quoted above, instructed his successor Denyau de la Garenne in 1791 that, on his arrival, he should wait on the King "to thank him for having nominated him [i.e. Denyau] in my stead..."⁴⁰ It seems likely that the Dahomians themselves viewed this audience as necessary approval of the respective company's choice and act of 'installation' – there are even a few cases in which the king himself deposed European governors he disliked and installed others in their stead. Law actually argues that the chiefs of the European forts were treated as Dahomian "captains".⁴¹

The second occasion that usually required European governors to embark on the journey to Abomey was the annual celebration of the so-called "Customs" (Fongbe: *hwetanu* or *hwenùwá*). As the most prominent event in Dahomian religious-political life this "state-ceremonial cycle" reconfirmed the bonds between the ruler and his subjects and renewed

warned his successor not to engage himself too much ("... j'aime à croire que sans ses avis je n'existerai pas. Il a par ses alentours les moyens de savoir tout ce qui se passe, et m'a été très utile : C'est un aimable garçon en société, tout coeur, et des plus serviables, mais cependant il est à propos de ne pas trop se livrer à lui?"). Mémoire pour servir d'instruction au Directeur qui me succédera au Comptoir de Juda, par M. Gourg, dd. September 1791, ANOM, C 6/27. – Concerning the question of knowledge transfer see also the essay by Ines Eben v. Racknitz in this issue.

38 This purpose is especially explicit in Gourg's instruction quoted above (37). Some authors, especially those of the 19th century, appear to have consulted published account of Dahomey before their sojourn. See, e.g., the journal of the British consul Louis Fraser; R. Law. (ed.), *Dahomey and the Ending of the Trans-Atlantic Slave Trade. The Journals and Correspondence of Vice-Consul Louis Fraser 1851–1852*, Oxford i. a. 2012, pp. 49f., p. 57 et pass.

39 This office was held by the so-called *tegan* till 1743, afterwards he was replaced by the *yovogan* (or *yavogan*); see R. Law, Ouidah (29), pp. 57ff. Before 1733, each fort had its own "captain", obviously an imitation of the earlier system operating under Huedan rule (ibid., p. 55).

40 [pour le remercier de l'avoir nommé à ma place...] Mémoire pour servir d'instruction au Directeur qui me succédera au Comptoir de Juda, par M. Gourg, dd. September 1791, ANOM, C 6/27.

41 R. Law, Ouidah (29), p. 107.

the ties between living Dahomians and their ancestors. The “Customs”, therefore, were essential in guaranteeing the welfare of the Dahomian commonwealth in general.⁴² They were also the setting of human sacrifices which increasingly dominated all European images of Dahomey.⁴³

The fact that the European governors were required to attend the “Customs” can be interpreted as another hint of their possible role as “Dahomian chiefs”. However, it obviously was not the only role attributed to them by the Dahomians as in other regards, they were treated as the subjects and envoys of a foreign ruler. This is illustrated by their exemption from the usual prostration before the king and by the salute they were honoured with (see below).

Apart from these two occasions – the inaugural visit and the “Customs” – that regularly required an audience European governors also travelled to the Dahomian capital and attended audiences on specific issues, such as negotiating the release of prisoners or the terms of trade. More often than not, these ‘extraordinary’ audiences, too, took place on the request of the Dahomian ruler. Thus, the audiences as ‘ceremonial duty’ reflect the Dahomian pre-dominance. This is also evidenced in the governors’ complaints, for example when the French governor Levet complained that King Agaja required him to attend an audience by “caprice” only:

*In the beginning of October, the King ordered me to come to him in Bomé [Abomey; C.B.], which is 50 lieues from here and the most unhealthy place of the whole Guinea Coast, on the pretext of certain palabres about trade. But actually he did so out of pure caprice because in the audience this prince granted me the subject of trade never came up...*⁴⁴

3.2. On the Way to the Audience: The ‘Ceremonial Look’ and the Signs of Honour

The sequence of events up to the audience itself is related by nearly all authors as comprising three stages: the reception outside Abomey, the entry into the city, the wait for

42 See C. Coquery-Vidrovitch, *La fête des coutumes au Dahomey: historique et essai d'interprétation*, in: *Annales. Histoire, Sciences Sociales*, 19 (1964) 4, pp. 696–716; E. G. Bay, *Wives* (26). As an annual event, the “Customs” probably were a Dahomian innovation; the preceding kingdoms in the region knew only of a comparable ritual on the occasion of a royal funeral. See R. Law, *Royal Ideologies: The Dissolution and Reconstruction of Political Authority on the ‘Slave Coast’, 1680–1750*, in: *Africa. The Journal of the International African Institute*, 57 (1987) 3, pp. 321–344, here: pp. 325f. and id., Endnote 1: *The Dahomian ‘Annual Customs’*, in: id. (ed.), *Dahomey* (38), pp. 262ff.

43 Actually, human sacrifices were almost exclusively performed at the “Customs” but this was the very event European visitors regularly attended. Thus, it is no surprise that they inferred a general and frequent occurrence of human sacrifices from their “Customs” experience. Cp. J. Cameron Monroe, *Continuity, Revolution or Evolution on the Slave Coast of West Africa? Royal Architecture and Political Order in Precolonial Dahomey*, in: *Journal of African History*, 48 (2007), pp. 349–373, esp. p. 351.

44 “Au Commencement d’octobre, le Roy me mandat pour l’aller trouver a Bomé [Abomey] distant de 50 lieües d’Icy, et l’endroit le plus mal sain de toutte la coste de Guinée sous prétexte de quelques Palabres touchant le commerce, et réellement par pur Caprice, car dans l’audiance que ce Prince me donna, il ne fût question d’aucun Commerce.” [my translation]; letter of Jacques Levet to the Compagnie des Indes, dd. 25.02.1744, ANOM, C 6/25.

the audience. Such a threefold procedure will strike every historian of European ceremonial and court life as utterly familiar. So, the very structure of interactions as perceived by the European visitors hints at their general understanding of Dahomey: They seemingly tried to interpret the interactions with its court, the king and his officials according to what they knew from the European courts and European diplomacy of their time. In their view, Dahomey as a political entity obviously functioned structurally in the same way as European monarchies back home.⁴⁵ In this regard one can apply Jürgen Osterhammel's phrase of "inclusive Eurocentrism" here which, according to Osterhammel, dominated Europeans' view on the world till 1800.⁴⁶

Against this background, it is not surprising that special attention was paid to ceremonies and symbolic acts as these features were central to European court life and especially to diplomatic interactions in early modern times.⁴⁷ Since the Middle Ages an increasingly differentiated system of signs and procedures had evolved that regulated every step and movement (at least in theory) of rulers, diplomats, and court officials. The ceremonial pointed, on the one hand, to the dignity and the status of the respective diplomat and referred, on the other, to the status of state relations in general. Early modern sources attest to the importance of ceremonial not least by the multitude of ceremonial quarrels they report on. Even the question of who was a sovereign prince was mainly decided in the medium of ceremonial until the 18th century – the most important signs here were, amongst others, the use of a six-horse carriage and the privilege of remaining covered (leaving one's hat on) in the presence of another sovereign.⁴⁸ To put it bluntly: An early modern envoy or ambassador had to pay strict attention to details – how he was greeted and by whom, how many steps he had to advance to meet his host, where the audience he was granted took place and so forth – if he didn't want to disgrace himself and his master and to risk loss of status and privileges. He also had to care about his own behaviour towards his colleagues as ceremonial quarrels could even lead to bloodshed and outright diplomatic crises.⁴⁹

Generally, the descriptions of audiences in Dahomey provided by early modern European visitors reflect what can correspondingly be termed the 'ceremonial look', which may be defined as a specific strategy of semiotizing the world by ascribing symbolic meaning to certain details. Speaking less abstractly, Early modern observers tried to read – as

45 A comparative perspective on courts is now outlined by J. Duindam/T. Artan/M. Kunt (eds.), *Royal Courts in Dynastic States and Empires. A Global Perspective*, Leiden 2011.

46 J. Osterhammel, *Die Entzauberung Asiens. Europa und die asiatischen Reiche im 18. Jahrhundert*, München 2010, pp. 380ff.

47 A 'classic' in this field is still N. Elias, *Die höfische Gesellschaft*, Frankfurt a. M. 1992. See also W. Roosen, *Ceremonial* (3); B. Stollberg-Rilinger, *Öffentlichkeit* (3); ead., *Wissenschaft* (3); A. Pečar, *Die Ökonomie der Ehre. Der höfische Adel am Kaiserhof Karls VI. (1711–1740)*, Darmstadt 2003, chapter 3; A. Krischer, *Souveränität* (3).

48 See B. Stollberg-Rilinger, *Honores regii. Die Königswürde im zeremoniellen Zeichensystem der Frühen Neuzeit*, in: J. Kunisch (ed.), *Dreihundert Jahre Preußische Königskrönung. Eine Tagungsdokumentation*, Berlin 2002, pp. 1–26 and id., *Öffentlichkeit* (3).

49 The most famous incident of this kind is surely the "Carriage War", a conflict of precedence between the French and the Spanish ambassador that took place in London in the year 1661 and even led to casualties; cf. W. J. Roosen, *The Age of Louis XIV. The Rise of Modern Diplomacy*, Cambridge, MA 1976, pp. 181f.

they were used to – foreign courts and the new spatial and temporal arrangements they encountered as conveying messages about honour, esteem and personal relations. Rather abstract categories allowed them to interpret unfamiliar situations in analogy to familiar court ceremonial – to be close to the ruler, for example, represented a special honour, whether established by a certain seating plan or by sharing a bowl of rice.⁵⁰ Against this background, it is only consequent that European representatives quarrelled about precedence and orders of rank in West Africa in the same way they did at home.⁵¹

How did the ‘ceremonial look’ function in practice? To answer this question we have to scrutinize visitors’ descriptions of their arrival more closely: First, the visitors were received in some distance from Abomey by a delegation on behalf of the king, including soldiers from the royal household. Despite the strange apparel of some delegates and their dancing with soaring swords even the first visitor to leave an account of his audience interpreted this reception as an act of honour. This visitor, an English slave-trader by the name of William Snelgrave, writes:

*The King, it seems, to do us the more honour, sent the principal person of his Court (whom the Negroes distinguish'd to us by the Title of the Great Captain) to receive us; which he did in a very extraordinary manner.*⁵²

Later envoys to Abomey emphasized the presence of high-ranking officials within the delegation, which was understood as a special honour. In 1733, the French governor Julian Dubellay was convinced that he not only enjoyed the “usual ceremonies” but was specially honoured because three of the principal captains of Dahomey arrived to receive him.⁵³ Another criterion, also adapted from European usage, was the time spent waiting for the delegation at a certain meeting place outside Abomey. The fact that the delegations waited at a fixed meeting place also points to the routine of an established interaction.⁵⁴

50 For the latter cp. O. Dapper, *Naukeurige Beschrijvinge der Afrikaensche Gewesten*, Amsterdam 1668, p. 411; seating plans as orders of rank are deciphered by B. Stollberg-Rilinger, *Ordnungsleistung und Konfliktträchtigkeit der höfischen Tafel*, in: Ulrich Schütte et al. (eds.), *Zeichen und Raum. Ausstattung und höfisches Zeremoniell in den deutschen Schlössern der Frühen Neuzeit*, München / Berlin 2006, pp. 103–122.

51 In Allada, later conquered by Dahomey, a French representative and his Dutch colleague almost resorted to arms when a conflict about precedence arose on the way to a royal audience; see C. Brauner, *Ein Schlüssel für zwei Truhen. Diplomatie als interkulturelle Praxis am Beispiel einer westafrikanischen Gesandtschaft nach Frankreich (1670/71)*, in: *Historische Anthropologie* 21 (2013) 2, pp. 199–226, a revised English version is to be found online: *To Be the Key for Two Coffers: A West African Embassy to France (1670/1)*, in: IFRA e-papers, 2013, URL: <http://www.ifra-nigeria.org/IMG/pdf/Key-for-Two-Coffers.pdf> [accessed 2 January 2015].

52 Snelgrave, *Account* (36), pp. 27f. [emphasis according to the original]. – This audience, as well as some others, did not take place in Abomey but in a field camp near the old capital of Allada. Another important, more enduring site for audiences outside Abomey was the town of Cana (or Calmina) where the king of Dahomey resided during certain annual ceremonies.

53 Julien Dubellay to the “Syndics” and Directors of the *Compagnie des Indes* (lettre de commerce), dd. 21.11.1733, ANOM, C 6/25.

54 *Ibid.*; see also A. R. Ridgway, *Journal of a Visit to Dahomey; or, The Snake Country*, in: *New Monthly Magazine*, 81 (1847), pp. 187–198, pp. 299–309 and pp. 406–414, here p. 301.

Accompanied by the delegation, the visitor and his entourage made their entry into Abomey, where a more or less huge crowd expected them and they were greeted with gun salutes and cannon shots that were registered carefully. Here, one can observe how ‘official’ visitors like the governors, consuls or envoys were set apart from ‘private’ ones: Only members of the first group were granted 21 salutes, the usual number of shots to honour a sovereign prince (or his representative) in European court ceremonial.⁵⁵ ‘Private’ visitors received either no gun salute at all or a reduced number of shots. This is illustrated by a comparison between the two visits John Duncan paid to Abomey: On his first trip, in 1845, Duncan journeyed to Dahomey as a mere private ‘explorer’ and received no gun salute at all⁵⁶ During his second visit in 1849, after his appointment as vice-consul, he was greeted by 21 gun shots “in honour of Her Britannic Majesty” and another nine shots “in honour of myself as British Vice-Consul”.⁵⁷ That such distinctions were made points to the fact that the court of Dahomey distinguished between different groups of visitors and used a somehow specified concept of ‘diplomat’ that mostly matched the European one.

The gun salutes can be interpreted as an element of a ‘transcultural’ ceremonial, as they necessarily required the import of guns and/or the looting of canons as well as the adoption of the European standard of 21 shots as a “royal salute”. Another element that points to the transcultural character of Dahomian ceremony is the use of flags used in the reception and entry ceremonies.⁵⁸ These elements also show that the early modern European visitors never – even apart from all epistemological problems – experienced a ‘pure’ African ceremonial, whatever that should have looked like. They rather encountered a court that flexibly integrated new commodities and practices into its everyday life and its ceremonial.⁵⁹

55 The earliest evidence for this symbolic number dates from 1733; “... je fus salué d’une quantité inombrable [sic] de Coups de fusils, et de 21 coups de Canon honneurs ordinaires en pareil cas, à tous les Gouverneurs, Directeurs, et chefs des nations,” letter of Dubellay, dd. 21.11.1733, ANOM, C 6/25 and from the same year (1733), the report of Elet in H. den Heijer (ed.), *Naar de koning* (36), p. 149. – On the diplomatic ‘standard’ of 21 salutes see J. Hartmann, *Staatszeremoniell*, Köln [i.a.] 1990, pp. 243–246 and pp. 280f.

56 See J. Duncan, *Travels in Western Africa in 1845 & 1846* (1847), vol. 1, repr. London 1968, pp. 216ff.

57 Letter by John Duncan to Viscount Palmerston, dd. 22.09.1849, in: House of Commons, *Parliamentary Papers*, 1849/50, Class B, no. 6, pp. 5–8, here p. 7. One could argue that Duncan also received a gun salute during his first voyage but simply did not report this. This is, however, quite implausible as the first report otherwise reveals a rather pronounced attention for ceremonial details (see, e.g., J. Duncan, *Travels* (56), vol. 1, pp. 216f. and pp. 220ff.).

58 Already in the 1730s, Dahomian ceremonial of reception involved the presentation of European flags, obviously in full awareness of questions of precedence etc. Later on, ‘own’ flags with Dahomian symbols were created after the adaptation of European models and used in receptions, entries, and other solemn occasions. See, e.g., for the use of European flags Heijer (ed.), *Naar de koning* (36), pp. 147f. and letter of Dubellay, dd. 21.11.1733, ANOM, C 6/25; for the use of Dahomian flags cp., i.a., Répin, *Voyage au Dahomey par M. le Dr Répin, ex-chirurgien de la Marine Impériale* (1860), in: *Le Tour du Monde. Nouveau Journal des Voyages*, 1863, pp. 65–112, here p. 82, and A. R. Ridgway, *Journal* (54), p. 301 who compares the symbols of the Dahomian flags to Egyptian paintings. – The development of Dahomian flags is analyzed by M. Adams, *Fon Appliqued Cloths*, in: *African Arts*, 13 (1980) 2, pp. 28–41 und 87f. Both European representatives and the Dahomian court seem to have used flags as presents, cf. P. Verger, *Echanges de cadeaux entre rois d’Abomey et souverains européens aux xviii et xix siècles*, in: *Bulletin de l’Institut Fondamental d’Afrique Noire, série B*, 32 (1970) 3, pp. 741–754, here pp. 745–748.

59 The transformation of Dahomian local customs through the import of foreign goods was recently empha-

Early modern Europeans did not perceive the court of Dahomey as something set completely apart from the political life they knew from home. In contrast, they tried to apply notions of diplomatic practice they were familiar with – this is especially demonstrated by the ‘ceremonial look’. This not only testifies to the fact that contemporaries saw the relation between Europe and Africa not (yet) in terms of a great divergence and essential alterity, but also demonstrates the reach of concepts historians long thought referred to Europe exclusively. Against certain postcolonial narratives it should be emphasized that the attention to ceremonial detail was not only a European obsession or projection but also something structurally shared by Europeans and Dahomians. Certain common standards developed over time that allowed for evaluation of specific positions. Furthermore, the definition of diplomatic actors was not least negotiated in the medium of ceremonial, as the question of the gun salutes demonstrates. Here, shared criteria to differentiate between ‘official’ and ‘private’ visitors evolved.

3.3. Finally, the Audience, or: How to Greet the King of Dahomey

The next step was to wait for the audience with the king. The time of waiting was again closely watched as an indication of the relationship’s current status – the shorter it was, of course, the more honoured European visitors felt. With their protagonists finally entering into the royal court many reports take on a downright visual modus of description, opening up a tableau, setting out a scene revolving around the sight of the king in the centre. Listen to Snelgrave in 1727:

*His Majesty was in a large Court palisadoed round, sitting (contrary to the Custom of the Country) on a fine gilt Chair, which he had taken from the King of Whidaw [i.e. Ouidah; C.B.]. There were held over his Head, by Women, three large Umbrellas, to shade him from the Sun: And four other Women stood behind the Chair of State, with Fusils on their Shoulders. [...] The King had a Gown on, flowered with Gold, which reached as low as his Ancles; an European embroidered Hat on his Head; with Sandals on his Feet.*⁶⁰

Or hear Norris in 1789:

...the king was seated, on a handsome chair of crimson velvet, ornamented with gold fringe, placed on a carpet, in a spacious cool piazza, which occupied one side of the court. He was smoking tobacco, and had on a gold laced hat, with a plume of ostrich feather; he wore a rich crimson damask robe, wrapped loosely round him, yellow slippers, and no

sized by A. L. Araujo, Dahomey, Portugal, and Bahia: King Adandozan and the Atlantic Slave Trade, in: *Slavery & Abolition*, 33 (2012) 1, pp. 1-19, here p. 4, also using the example of firearms. Suzanne Preston Blier has even coined the term ‘culture of assemblage’ with regard to Dahomey and its receptivity towards foreign things and practices; see S. P. Blier, *Assemblage: Dahomey Arts and the Politics of Dynasty*, in: *Res. Anthropology and Aesthetics*, 45 (2004), pp. 187-210 and ead. *Europia Mania: Contextualizing the European Other in Eighteenth- and Nineteenth-Century Dahomey Art*, in: K. Chatterjee/C. Hawes (eds.), *Europe Observed. Multiple Gazes in Early Modern Encounters*, Lewisburg 2008, pp. 237-270.

⁶⁰ W. Snelgrave, *Account* (36), p. 35 [emphasis according to the original].

*stockings: several women were employed fanning him, and others with whisks, to chase [sic] away the flies: one woman, on her knees before him, held a gold cup, for him to spit in.*⁶¹

One could once more point to the elements that appear to be adaptations of ‘new’ customs (sitting on a chair), clothes⁶² (hat, damask robe) and other objects (tobacco, guns). Another important aspect is the coexistence of elements of strangeness (above all, the dominant presence of women) and of familiar dignity (e.g., the throne and the umbrellas as sign of authority). These two aspects can be found side by side in earlier 18th century reports. In later times, in contrast, some authors saw themselves in need of explicitly justifying the king being ‘kingly’ and dignified *in spite* of being a “black barbarian”.⁶³ This development is analyzed below (4.).

Right from the beginning, the European governors set their behaviour towards the ruler apart from the behaviour of the Dahomian subjects, including the two highest “ministers”, the *mehu* and the *migan*.⁶⁴ Whereas the latter had to throw themselves on the floor and cover their heads with dust as everyone else, Europeans were not subjected to this procedure which they regarded as utterly humiliating. Different explanations for this exemption have been suggested over time: First of all, it was interpreted as a special privilege for (all) “white men”. This explanation can already be found in a letter supposedly dictated by Agaja to King George III (1726) and was further elaborated in the 19th century.⁶⁵ A French missionary saw the main reason for this privilege in Dahomian acknowledgment of the Christian religion,⁶⁶ a rather dubious inference as there is some evidence of Muslims also being exempted from prostration.⁶⁷ A second interpretation,

61 R. Norris, *Memoirs of the Reign of Bossa Ahadee, King of Dahomy, an Inland Country of Guiney*, London 1789, p. 95. Very similar in many aspects is [A. E. Pruneau de Pommegorge], *Description de la Nigritie*, Amsterdam 1789, p. 176. Probably Pruneau knew Norris’ text.

62 That the king used garments of European or “Moorish” (that is, North African) production was a feature noted frequently by early modern visitors. Seemingly, these imported textiles were integrated into Dahomian systems of distinction. There were even requests for certain European articles of clothing to be donated as gifts to the king. For example, Agaja’s “wish list” Dubellay noted down in 1733 included i.a. helmets and a “veste a la romaine [...] pour un homme un peu plus gros et plus large de carrure que M. De Moliere”; letter of Dubellay, dd. 21.11.1733, ANOM, C 6/25.

63 Répin, *Voyage* (58), p. 82; J. Duncan, *Travels* (56), vol. 1, p. 224 etc.

64 Cp. E. G. Bay, *Wives* (26), pp. 69f., pp. 99ff. et pass.

65 R. Law, *Alternative Text* (34), p. 267: “But this only, as to my own People and Subjects; for as to the white Man, he always sat in a Chair in my Presence, as I did, and I always shewed him the same Compliments as he shewed me, and shall continue to all white Men the same, according to their Stations.” F. E. Forbes, *Dahomey and Dahomans: Being the Journals of Two Missions to the King of Dahomey, and Residence at his Capital in the Years 1849 and 1850*, London 1851, vol. 1, p. 24.

66 He even puts that argument into the mouth of a local “Cabéchère”: “Vous le [le roi; C. B.] saluerez de la main. Nous noirs, nous nous prosternons le front dans la poussière devant Sa Majesté; vous Blancs, vous pouvez rester debout, car vous ne vous mettez à genoux que devant Dieu. Se tenir debout est là-bas, comme ici, le privilège des enfants de Dieu et de la sainte Église!”; [A.] Dorgère (acc.), *Prisonniers au Dahomey!*, in: *Les Missions Catholiques. Bulletin Hebdomadaire illustré de l’œuvre de la Propagation de la Foi*, 23 (1891), pp. 421–426, here p. 425.

67 This evidence, however, refers only to Muslims from neighbouring states not Muslim subjects of Dahomey; cp. R. Law, *Islam in Dahomey*, in: *Scottish Journal of Religious Studies*, 7 (1986) 2, pp. 95–122, here pp. 110f.

however, did not explain it as a specific European-Christian privilege but as part of the Dahomian habit of generally accepting foreign customs.⁶⁸

The manner of *how* to greet the king changed over time: Snelgrave's party, in 1727, was instructed to bow very low and pay the king "the respect of our hats"; six years later Elet, the representative of the Dutch company, was granted a handshake by the king and provided a chair to sit on as it was, from this time on, a 'standard' procedure in audiences.⁶⁹ Here, one may indeed assume a certain adaptation of European customs of greeting which would match the second hypothesis mentioned above.

Afterwards, a more or less ceremonialized conversation took place, that involved, at least virtually, the 'monarchs' the governors or envoys were thought to represent: the king of Dahomey brought out a toast to the sovereign of the visitor and inquired about his health. This question involved, ultimately, a construction of an analogous "royal brother" in far away Europe (a sister was sometimes acceptable, too). This construction manifested itself also in the Dahomian choice of presents for European rulers.⁷⁰

This 'Dahomey-centric' construction of a "royal brother" constituted, however, a certain difficulty for those European envoys who simply had no single, monocratic ruler at home. The Dutch envoy Elet had no king to represent and, to make things even worse, not even a *stadhouder* because he unfortunately visited Agaja in the middle of the Second Stadtholderless Period (1702–1747). In whose name then to greet the king of? Elet obviously thought the Estates-General (*Staten Generaal*) a body too difficult to explain to an African king, probably not matching his world view at all. Therefore, he greeted the king in the name of "the Dutch admiral and his Grands".⁷¹ Similiar 'tricks' were used by French envoys to Abomey in times of revolutionary changes in the mid-19th century. In 1848, Blanchely commented on the question of how to explain the introduction of a republican constitution in France to the king of Dahomey by saying that it was "inconvenient to speak thereof in the presence of a despotic and absolute king".⁷² These instances of 'dissimulation' point to the fact that Europeans, too, had to adapt themselves to the necessities of intercultural interaction, even in the very question of statehood and representation.

To sum up the findings so far, I want to draw the attention to three major points: *Firstly*, the world view of the different actors and their mutual perceptions of each other have been addressed. During the 18th century, the basis for diplomatic interaction in Dahomey was the contemporary actors' belief in a shared political framework. Both,

68 A. Dalzel, *The History of Dahomy. An Inland Kingdom of Africa*, London 1793, Introduction, p. viii and p. ix; J. A. Skertchly, *Dahomey as It is: Being a Narrative of Eight Month's Residence in that Country*, London 1874, p. 200.

69 W. Snelgrave, *Account* (36), p. 35; H. den Heijer (ed.), *Naar de koning* (36), p. 148.

70 See C. Brauner, *Kompanien* (*), chapter 3.

71 "de Hollandse admiraal beneevens zijn grooten" [my translation]; H. den Heijer (ed.), *Naar de koning* (36), pp. 148f.

72 "inconvenant [...] d'en parler en présence d'un roi despote et absolu" [my translation]; Blanchely, *Au Dahomey. Voyages en 1848 et 1850 de M. Blanchely, de Whydah à Abomey*, in: *Les Missions Catholiques*, 23 (1891), pp. 534–537, 545–548, 562–564, 575f. and 587f., here p. 545: "Je lui [le roi Gezo; C.B.] transmis beaucoup de compliments de la France, du chef de l'Etat, passant sous silence les événements de la République. Il eut été inconvenant d'en parler en présence d'un roi despote et absolu."

Europeans and Dahomians, envisioned the political entity of the respective other and its functioning according to the basic lines their own institutions worked along. In the diplomatic interactions the logic they applied did not differ fundamentally from that which they were used to at home and the usual relations to neighbours.

Secondly, the diplomatic practices themselves have been analyzed. The general set-up of Euro-Dahomian relations was defined by a decisive Dahomian dominance that was not least expressed in the 'ceremonial duties' the king levied on the European governors. Europeans in Dahomey, in the first place, had to adapt to Dahomian requirements and customs. It was, however, no one-sided process of adaptation and transfer: On the material level, the court ceremonial in Dahomey was transcultural right from the beginning. It proved to be very receptive for new commodities and procedures such as the use of chairs or flags. Such receptions and transfers existed not only with regard to European objects and practices but also in relation to Dahomey's neighbouring states and group, especially the "Kingdom" of Oyo and the Yoruba. Transfers occurred not only on the material level; there also evolved shared concepts and standards of ceremonial as the example of the gun salutes showed.

And *thirdly*, the analysis has also demonstrated the necessity of a broad notion of diplomacy. Only such a definition allows us, inter alia, to take the ambivalent status of actors into account, a phenomenon also not uncommon in intra-European diplomacy. Here, the forts' governors were obviously perceived as representatives of foreign "royal brothers" and "Dahomian captains" at the same time. Such a 'double role' should not be interpreted as an obstacle to diplomatic functions or an abnormal contradiction. Exclusive ties to loyalty and belonging as claimed by the modern nation-state were rarely to be found in early modern times. Early modern people rather had to live up to the political as a difficult network of relations on different levels where personal ties were of essential importance but seldomly exclusive.

4. The Meaning of Crossed Legs, or: The Impact of the Discourse of Despotism

The notion of despotism is an important strand of interpretation in the European discourse on extra-European rule, especially from the 17th century onwards. It was, neatly fitting to the Aristotelian model,⁷³ first applied to the Near East, especially to the Ottoman Empire.⁷⁴ With regard to Africa, it appears comparatively late. In the accounts of

73 Arist., *Pol.*, III, 1285a, 20-25 and 1295b, 20ff. Cp. M. Richter, *Aristoteles und der klassische griechische Begriff der Despotie*, in: H. Maier et al. (eds.), *Politik, Philosophie, Praxis. Festschrift für Wilhelm Hennis zum 65. Geburtstag*, Stuttgart 1988, pp. 21-37.

74 R. Koebner, *Despot and Despotism: Vicissitudes of a Political Term*, in: *Journal of the Warburg and Courtauld Institutes*, 14 (1951), pp. 275-302; L. Valensi, *The Making of a Political Paradigm: The Ottoman State and Oriental Despotism*, in: A. Grafton/A. Blair (eds.), *The Transmission of Culture in Early Modern Europe*, Philadelphia 1990, pp. 173-203; M. Grothaus, *Vorbildlicher Monarch, Tyrann oder Despot? Europäische Vorstellungen vom Osmanischen Reich zwischen Renaissance und Aufklärung*, in: *Frühneuzeit-Info*, 6 (1995) 2, pp. 181-203 J.-P. Rubiés,

the 16th and 17th centuries it is still mainly the king of Spain or the Spaniards in general who are depicted as despotic or tyrannical.⁷⁵ During the 18th century, however, the notion of 'despotism' increasingly came to dominate the European discourse on African rule and African rulers. The interpretations in question borrow, on the one hand, from earlier descriptions of Oriental despotism, often using explicit comparisons with the "Orient" and transferring terms like "seraglio" or "Vizir" to the African context.⁷⁶ On the other hand, there evolved specific features ascribed to 'African despotism' that differed from the typical image of Oriental despotism. Most important, amongst them, was the intimate connection made between slavery, the slave trade and human sacrifices. In the following, I analyse what impact the notion of despotism had on European representations of Dahomian ceremonial and governance.

Let us start with the arrival of visitors in Abomey again: Above, I outlined how European visitors read the ceremonies of reception and entry as 'signs' of honour. In his 1789 account, Antoine Edme Pruneau de Pommegorge, a former gouverneur of the French fort and now convinced abolitionist, did not care so much about attributes of rank and status. In contrast, he 'read' the whole ceremony of reception outside Abomey as an allegory of reversed order, royal caprice and vanity, in short, of Dahomian despotism. He concludes his description of the reception committee as follows:

*The view of these troupes has something imposing in it and even frightful for those who see them for the first time. They give a first impression of the despot who entertains them.*⁷⁷

Pruneau's gaze on these ceremonies is no longer dominated by the 'ceremonial look' but rather by a different strategy of semiotization one can correspondingly call the 'ethnographic look'. This look aimed at the "African character" as an all-explaining feature and scrutinized interactions and arrangements rather for elements of strangeness than for analogies.⁷⁸

Oriental Despotism and European Orientalism: Botero to Montesquieu, in: *Journal of Early Modern History*, 9 (2005), pp. 109-180.

75 Cp., e.g., S. Brun, *Schiffahrten* (1624), facsimile edition, Basel s.d., p. 65; N. Villault de Bellefond, *Relation des Costes d'Afrique appellées Guinée*, Paris 1669, pp. 440f. and E. Tilleman, *En kort og enfoldig Beretning om det Landskab Guinea og dets Beskaffenhed*/A Short and Simple Account of the Country Guinea and its Nature (1697), transl. and ed. by S. A. Winsnes, Madison 1994, pp. 21f.

76 For the transfer of the term "seraglio" to Dahomey see i.a. R. Norris, *Memoirs* (61), p. 18. In 1786, Champagny explicitly referred to the "Oriental despotism" in Dahomey; see *Mémoire contenant des observations sur quelques points de la Côte de Guinée, visités en 1786, par la Corvette le Pandour, et sur la possibilité d'y faire des établissemens*, par M. de Champagny, dd. 06.09.1786, ANOM, C 6/27.

77 "L'aspect de ces troupes a quelque chose d'imposant, & même d'affrayant pour ceux qui la voient la première fois. Ils donnent la première idée du despote qui les entretient." [my translation]; [Pruneau de Pommegorge], *Description* (61), pp. 171-174, here: p. 174.— On the early modern notion of "Oriental ceremonial" as it was developed in enlightened discourse and its use in contemporary critique of European rulers cp. M. Vec, *Zeremonialwissenschaft im Fürstenstaat. Studien zur juristischen und politischen Theorie absolutistischer Herrschaftsrepräsentation*, Frankfurt a. M. 1998, pp. 289ff. and pp. 393ff.

78 This shift is vividly illustrated by the changing valuation of time in the context of audiences. In earlier times, periods of waiting and the 'speed' of one's reception by the ruler were understood as markers of esteem like in European court ceremonial. In the late 18th and 19th centuries, in contrast, authors like Richard Francis Burton

The point in question is not the critical attitude Pruneau de Pommegorge shows towards the ruler of Dahomey – such criticism was present in European descriptions right from the beginning of European-Dahomian relations. Within the paradigm of despotism, the criticism is no longer addressed to a single ruler and his possible misbehaviour or his cruel character. Now, the criticized way of governance is part of a system, a specific African type of rulership that is no longer equated to European forms. Governor Gourg, for example, remarked in 1792 that the King of Dahomey “like all Negro kings is a despot and decides on the life of his subjects who all are his slaves”.⁷⁹ A few years later, Jean-Baptiste-Léonard Durand was convinced that nearly all rulers in Africa reigned more or less despotically and with a “volonté arbitraire”.⁸⁰ This basic alterization of African rule, thus, is an essential step towards the formation of an exclusively European notion of “state”. The increasing presence of the despotism paradigm during the second half of the 18th century is thus linked to a change in attitudes towards Africans in general and African rulers in particular. Whereas earlier visitors mainly expected an African ruler to be ‘kingly’ according to familiar standards later visitors expected an African ruler to be, above all, African, which was to them a strange, rather typified kind of human being.⁸¹ The statement of an entomologist, who visited King Glélé in 1871, illustrates such expectations of a European audience:

*My introduction to the far-famed King of Dahomey was disappointing. I had expected to have seen a half-naked savage, with a grim blood-thirsty mien. Instead of this sanguinary monster, I beheld a tall athletic, broad-shouldered person, several shades lighter in colour than his people, with a truly kingly dignity about him by which alone he could be recognised as the ruler of the country. His features were not by any means of the repulsive full-blooded negro type...*⁸²

What impact did the despotism paradigm have on the description of ceremonial? An illustrative example is provided by juxtaposing two accounts of the same scene: When the English slave trader Snelgrave was received by King Agaja in 1727 he noted that the King was sitting with his legs crossed. Snelgrave did not further comment on this, probably

took periods of waiting as evidence for “the African”’s different attitude towards time in general; R. F. Burton, *A Mission to Gelele, King of Dahome*, London 1864, vol. 1, pp. 203f., see also R. Law (ed.), *Dahomey* (38), p. 72.

79 “... comme tous les Rois nègres est despote et dispose de la vie de ses sujets qui sont tous esclaves” [my translation]; *Mémoire pour servir d’instruction au Directeur qui me succédera au Comptoir de Juda*, par M. Gourg, 1791, ANOM, C 6/27.

80 J.-B.-L. Durand, *Voyage au Sénégal ou Mémoires historiques, philosophiques et politiques sur les découvertes, les établissemens et le commerce des Européens dans les mers de l’Océan atlantique*, Paris 1802, pp. 370f.

81 About the earlier importance of social rank also in the judgment of Africans or “Moors” see the illuminating analysis by M. Häberlein, “Mohren”, *ständische Gesellschaft und atlantische Welt. Minderheiten und Kulturkontakte in der frühen Neuzeit*, in: C. Schnurmann/H. Lehmann (eds.), *Atlantic Understandings. Essays on European and American History in Honor of Hermann Wellenreuther*, Hamburg/Münster 2006, pp. 77–102. – Not to be misunderstood, I do not say that there was no ‘ceremonial look’ at African courts in later times, say in the 19th century, nor that there was only a ‘ceremonial look’ in the earlier period – it is rather a question of dominating features.

82 J. A. Skertchly, *Dahomey* (68), p. 141.

taking it as another strange custom of Dahomey.⁸³ In 1793, the anti-abolitionist writer Archibald Dalzel revised Snelgrave's account for his own *History of Dahomy*: Now, Agaja's posture of sitting could serve as proof of the "Oriental" character of Dahomian rule. Dalzel writes: "His manner of sitting at that time, viz. on a chair, was not his custom, nor that of the country; but seemingly intended for more than usual state: for, on a future audience, he was cross-legged on a carpet, after the Asiatic manner, though he always preserved a proper majesty and decorum."⁸⁴ Dalzel refers to the topos of the Ottoman Emperor or the Ottoman *vizir* in cross-legged posture, a prominent subject in contemporary visual arts. The prominence of imaginations of the Ottoman Empire in the description of Dahomey is due to the despotism paradigm. By its ascent, the Ottoman Empire and the "Orient" in general became the most prominent objects of comparison in European discourse about Dahomey and other African states. The transfer of features was, as the issue of sitting cross-legged shows, not limited to the political structure but resulted in a more general 'Orientalization'. Interestingly, the examples observers drew on began to change in the early 19th century – whereas the Ottoman Empire was the most prominent object of comparison in the late 18th century, 19th century authors increasingly refer to "despotical" China and India. Richard Francis Burton, for example, likened the prostration before the ruler of Dahomey to the Chinese *kotau* and the "shashtanga" of the Hindus.⁸⁵

Not only the royal posture of sitting but the ceremonial in general was subjected to re-interpretation in the context of the despotism paradigm. A very important element in all descriptions of 'despotical' Dahomey was the prostration that all subjects were required to make before the king. It was regarded as unambiguous evidence of all Dahomians being slaves to the king. There existed, however, a slight ambivalence of interpretation with regard to the two highest officials, the *mehu* and the *migan*, who were, as mentioned above, also required to prostrate before the ruler:⁸⁶ On the one hand, their prostration was interpreted as indicating their slave status as well and, therefore, as indicating a grave deficiency – the court of Dahomey was said to have no or at least no 'real' nobility.⁸⁷ The existence of a nobility was perceived as an essential feature of the European (pre-modern) state, a reading especially enforced by the anti-absolutist edge the discourse of despotism

83 "... the King was sitting cross-legg'd on a Carpet of Silk, spread on the Ground"; W. Snelgrave, Account (36), p. 60. Snelgrave further dwells on the fussiness with which his party had been asked to take the same posture as their host.

84 A. Dalzel, History (68), p. 33.

85 R. F. Burton, Mission (78), vol. 1, pp. 258f. Further examples include F. E. Forbes, Dahomey (65), vol. 1, pp. 30-33, p. 50 and p. 64 (China) and J. A. Skertchly, Dahomey (68), p. 142.

86 Mémoire contenant des observations sur quelques points de la Côte de Guinée, visités en 1786, par la Corvette le Pandour, et sur la possibilité d'y faire des établissements, par M. de Champagny, dd. 06.09.1786, ANOM, C 6/27. The "Mémoire" takes this gesture to be, apart from the arbitrariness of rule, the most important element of the "despotisme oriental" the King of Dahomey rules with.

87 Cp., e.g., A. Dalzel, History (68), Introduction, p. vii and X. Béraud, Note sur le Dahomé, in: Bulletin de la société de géographie (Paris), 5^e série, 12 (1866), pp. 371-386, here: p. 376. Béraud explains the prostration as evidence of the king's status as a demigod: "En un mot, il est comme un demi-dieu devant qui tous, plébéiens ou dignitaires du royaume, se prosternent et se couvrent de poussière."

always bore. The absence of a nobility implied, according to this view, the absence of monarchy – in short, it was the very criterion by which a monarchy was degraded into sheer despotism.⁸⁸ On the other hand, another interpretation attributed to the two officials greater power; in fact, it took them to be the true, though hidden, rulers of Dahomey. This kind of rule was also illegitimate. Though it did not necessarily imply the lack of a nobility, it certainly implied a lack of control and of rule of law which was increasingly viewed as the essential criterion for legitimate governance. Both interpretations, however, could draw on the very authority in the field, that is namely Montesquieu, who sustained this very ambivalence towards the power of the *vizir* and the *seraglio* in his own work.⁸⁹ Corroborative evidence for such a link is provided by Forbes who directly compared the *mehu* to the “Grand Vizier”.⁹⁰

Why did the despotism paradigm have such a great impact on European depictions of Dahomey? Firstly, the turn towards ‘alterizing’ extra-European states was surely a trend of the time. A shift towards the discourse of despotism may be observed not only with regard to Dahomey and other African states, but also in the case of other extra-European regions. Secondly, the usage of topoi pointing to despotic rule could also serve individual interests. One of their earliest appearances, for example, can be found in a letter by the French governor Dubellay dating from 1733. In Dubellay’s letter all important elements of despotic rule (though not yet full-fledged despotism, in my opinion) are assembled: arbitrary and cruel rule, enslavement of all subjects, the ruler enclosed in his court. The final end of his frightening description is, however, the request, or rather the claim, for an increase of his wages as a ‘danger bonus’ so to speak.⁹¹ The construction of ‘despotic Dahomey’ was no single enterprise pre-planned by a single master-mind or something for which “the European discourse” is to be blamed. It was rather the result of the – often non-deliberate – collaboration of different actors and their respective narrative strategies in a specific historical context.

That the image of Dahomey was increasingly influenced by the discourse of despotism was, thirdly, also due to the current debate on abolition of the transatlantic slave trade. The advocates of the slave trade used the example of “despotic Dahomey” to argue against abolition, presenting the condition of slavery in the Americas as the lesser of two evils. Remaining in Dahomey, they insinuated, meant for the majority of slaves nothing less than certain death as human sacrifice. The bleaker the conditions appeared to be within Africa, the friendlier the fate of slavery in the Americas seemed to look.⁹² With “despotic rule” and “slavery” as presumed natural conditions of the lives of Africans, the

88 Cp., e.g., Montesquieu, *L’Esprit des lois*, ed. by R. Derathé, vol. 1, Paris 2011, vol. 1, I. II, c. IV, p. 198. Montesquieu explains that there is no honour and no rank in a despotic state as everybody is a slave, *ibid.*, I. III, c. VIII, p. 202.

89 Montesquieu, *Esprit* (88), vol. 1, I. III, c. 9, pp. 33f.; and in contrast: *ibid.*, I. V, c. 14, pp. 67f. and c. 16, pp. 73f.

90 F. E. Forbes, *Dahomey* (65), vol. 1, p. 22.

91 Letter of Dubellay, dd. 21.11.1733, ANOM, C 6/25.

92 Cp., i.a., R. Law, *Dahomey and the Slave Trade: Reflections on the Historiography of the Rise of Dahomey*, in: *Journal of African History*, 27 (1986) 2, pp. 237-267; A. Sonderegger, *Dämonisierung* (28), pp. 398-434.

transatlantic slave trade could even be depicted as a sort of educating or civilizing mission – a strand of thought prominently followed by Hegel in his philosophy of history.⁹³ Anti-abolitionists, however, were not the only ones to describe Dahomey as “despotic” – their abolitionist opponents (like Pruneau de Pommegorge quoted above) basically agreed with them. But the abolitionists had a different explanation for Dahomian despotism: For the most part, they did not construct an essentially despotic “African character” but regarded European slave-trading as the main cause for Dahomian despotism.⁹⁴ With regard to diplomatic practice European actors proved to be less and less willing to adapt to local customs during the first half of the 19th century – yet slowly, as circumstances still forced European actors on the spot into some degree of adaptation. Discursive constructions of European dominance here surely preceded the ability to enforce these self-imaginings in practice. One important factor for this change can be found in the changed attitude towards African rule and ‘statehood’ described above. At the same time, a process of forgetting shared history set in: Even the time-valued gift-exchange during the inaugural visit in Abomey was refused by one of the more stubborn British officials as a mere “African custom”. Dahomian officials, however, had an appropriate answer ready: “it was not their custom, it was white man make it so.”⁹⁵ They certainly had a point – as we have seen, the diplomatic practices at the court of Dahomey had evolved through more than a century of Euro-African interactions.

5. Concluding Remarks

First of all, I hope to have demonstrated that it is worthwhile to investigate Euro-African relations from the perspective of transcultural history and to integrate a look at the West African ‘periphery’ into European histories of diplomacy. By closely scrutinizing the practices of interactions and their representations, it is possible to cut across traditional teleologies pointing to the colonial era and to characterize the “pre-colonial” era of Euro-African relations as an era with its own, with own asymmetries and with a shared political framework right in the very hub of the transatlantic slave trade.⁹⁶ The transcultural

93 Cf. G. W. F. Hegel, *Vorlesungen über die Philosophie der Weltgeschichte*. Berlin 1822/1823. Nachschriften von Karl Gustav von Griesheim, Heinrich Gustav Hotho und Friedrich Carl Hermann Victor von Kehler, ed. by K. H. Ilting, K. Brehmer and H. N. Seelmann (Georg Wilhelm Friedrich Hegel, *Vorlesungen. Ausgewählte Nachschriften und Manuskripte*, vol. 12), Hamburg 1996, p. 100; id., *Vorlesungen über die Philosophie der Geschichte* (Werke 12), Frankfurt a.M. 1986, pp. 124f. and pp. 128f.

94 See, e.g., B.-S. Frossard, *La cause des esclaves nègres et des habitants de la Guinée*, vol. 1, Lyon 1789, p. 232: “Le troisième moyen que les Européens mettent en usage, pour se procurer des esclaves, consiste à exciter plusieurs Souverains de la Guinée à étendre un joug despotique sur leurs Sujets.” Cp. also [A. E. Pruneau de Pommegorge], *Description* (61), pp. 207f., pp. 214ff. and pp. 262ff.

95 It is the British Vice-Consul Fraser (resident in Dahomey in 1851/2) who is especially distinguished by his stubbornness and undiplomatic behaviour. In many regards he refused to adapt to the local “custom of the coast” and proudly declared his intention to teach the Africans “British mores”. R. Law (ed.), *Dahomey* (38), p. 67 (et pass.).

96 Also the term “pre-colonial” itself should be questioned though it is still widely used for periodization of African his-

perspective can also contribute to the changing look of diplomatic history mentioned in the beginning as several traditional assumptions are called into question, especially those about putatively specific European phenomena.

In this regard, *secondly*, the analysis of contemporaries' perceptions is very important: Encounters between Europeans and Dahomians were, to put it bluntly, not encounters between "states" and "tribes", nor between "civilized" and "primitive cultures"; they were, in the first place, encounters between different people living in the same era.⁹⁷ Early modern observers – on both sides – attributed to the respective other the same structures of political organization, the same features of statehood they knew from home. Especially the construction of the "kingdom" of Dahomey by the Europeans corresponded to the construction of an analogous "brother king" by the Dahomian ruler. Until the late 18th century both sides featured an inclusive Euro- (respectively Dahomey-) centism. This correspondence was, however, increasingly destabilized by the rise of an exclusive Eurocentrism as expressed, amongst others, in the discourse of despotism. The exchange between "royal brothers" dwindled away and made room for the civilizing missions with their clear cut asymmetries (which still took nearly a century to realize, at least in West Africa).

Thirdly, the corresponding perceptions of shared characteristics did, at least partly, result in the development of shared practices. For example, Dahomian and European actors tacitly agreed on the importance of ceremonial and its relation, inter alia, to the status of political relations and the distinction between 'private' and 'official' visitors. Right from the beginning of documentation, the ceremonial in Dahomey integrated and adapted 'new' elements, commodities and practices. The norms and rules governing the ceremonial that structured diplomatic encounters also reflected mutual adaptation. The diplomatic practices on the Gold and Slave Coast were, as I have argued in my dissertation, transcultural in character not only with regard to their 'material elements' but also and importantly in relation to their 'usage' – it was a world that Africans and Europeans made together.⁹⁸

Fourthly, I addressed the aspect of historiographical narratives and tried to outline the beginnings of an exclusively European notion of "state". The discourse of despotism and its great impact on the description of ceremonial and political life in general, the shift from a 'ceremonial' to an 'ethnographic look' at the Dahomian court all contributed to the

tory. A sound critique was advanced by C. Marx, *Geschichte Afrikas. Von 1800 bis zur Gegenwart*, Paderborn [i.a.] 2004, pp. 12f. About the status of "pre-colonial" African history in general cp. R. Reid, Past and Presentism. The 'Precolonial' and the Foreshortening of African History, in: *Journal of African History*, 52 (2011) 2, pp. 135-155.

97 This wording borrows from Johannes Fabian's dictum: "To put it bluntly, cultures are neither entities nor agents. They cannot clash or be at war, nor can they encounter each other; only people can, singly and collectively."; J. Fabian, *You Meet and You Talk. Anthropological Reflections on Encounters and Discourses*, in: S. Jüterczenska/G. Mackenthun (eds.), *The Fuzzy Logic of Encounter. New Perspectives on Cultural Contact*, Münster 2009, pp. 23-34, here: p. 26.

98 C. Brauner, *Kompanien* (*)

formation of an *essential* alterity of African rule. Finally, the long history of this “middle ground” fell into oblivion,⁹⁹ and the European “state” achieved its incomparability.

99 This term was coined by Richard White in his *The Middle Ground. Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (first edition, Cambridge [i.a.] 1991) and has since enjoyed a formidable career in academic vocabulary dealing with processes of transculturation and intercultural exchange; see the essays in *Forum: The Middle Ground Revisited*, in: *William & Mary Quarterly*, 23 (2006) 1, pp. 3–96 and White’s own preface to the 20th anniversary edition (Cambridge [i.a.] 2011, pp. xi–xxiv). Beyond this generalized usage, there are, in my opinion, structural parallels between cross-cultural interactions in White’s North America and the West African coast which would be worthwhile exploring.

FORUM

The Political Uses of History of the Franco Regime and the Park Regime

Yeong-Jo Hwangbo*

RESÜMEE

Dieser Aufsatz beschäftigt sich mit dem politischen Gebrauch historischer Bildung unter Diktaturen, wobei das spanische Franco-Regime und das südkoreanische Park-Regime vergleichend betrachtet werden.

Während der Fokus auf der Herrschaftszeit beider Diktatoren liegt, beleuchten wir auch knapp die jeweils davor liegende Periode, um die allgemeine Bildungspolitik beider Regimes besser einordnen zu können. Unser Ziel ist ein Vergleich der mit der Geschichtsbildung verfolgten politischen Ziele und der darin reflektierten Ideologie sowie der narrativen Strukturen in den Geschichtslehrbüchern, weshalb wir neben Bildungsgesetzen und politischen Erklärungen auch die Curricula und die Lehrbücher in die Betrachtung einbeziehen.

We now live in “a time when memory has entered public discourse”, as Antze and Lambek have asserted in their book *Tense Past*.¹

Why is memory so important to societies? There are basically two reasons. First of all, it is because the memory may provide a matrix for individual or collective identities, to shape and sustain them. Secondly, it is because it may justify or legitimate ruling order. Here is the reason why a governing power endeavours to create and maintain it. It goes without saying that dictatorships also do this. The Franco regime of Spain and the Park regime of the Republic of Korea made no exception to this rule.

* The author would like to thank Matthias Middell and two anonymous referees for valuable comments. The present work was carried out with the support of the overseas faculty research fellowship program of the LG Yonam Foundation.

1 Paul Antze / Michael Lambek (eds.), *Tense Past. Cultural Essays in Trauma and Memory*, New York / London 1996, vii.

History teaching and textbooks may be used in legitimating the existing political order and providing a sense of (national) identity. Actually, in Spain, state control of history teaching and textbooks reached its highest levels under the Franco regime.² And the same was true under the Park regime in the Republic of Korea. The Park government pushed ahead with the Reinforcement Policy of Korean History Education, which had a great influence on Korean society during and even after his reign.³

Here, we are going to examine how the Franco regime and the Park regime politically used history as a school subject.

I. Background

In the nation-building process, some European countries have exploited their national history in hope of gaining the effect of “integrative function”. National history provides a shared understanding of the past and instils a collective sense of history and identity.⁴ This has been demonstrated for both France and Germany at the end of the 19th century. The liberal revolution in Spain made an effort to follow this pattern, but failed to convert history teaching into an effective instrument of national integration at that time.⁵

In Spain, by and large, authoritarian rightists (Catholic conservatives, Catholic traditionalists, and Catholic integralists) and democratic leftists (including liberals, progressives, and republicans) were competing for control over national history and identity. At the beginning of the 19th century, Spanish liberals already considered history education as an essential element in building a sense of national identity and introduced national history as a required subject in the school curriculum in 1836. However, there were no state guidelines concerning the content or structure of history textbooks, and all textbooks were much more influenced by the political opinions of the authors themselves. Liberal and progressive authors placed an emphasis on human agency and scientific foundations, while Catholic authors showed a providentialist and authoritarian orientation. Taking into consideration that 23 different history textbooks were used in the 58 secondary schools nationwide in 1894,⁶ one can measure that history education had only limited influence on national integration in the 19th century.

Catholic traditionalists proclaimed Catholicism to be intrinsic to the Spanish people and maintained that the origins of the Spanish nation traced back to the Visigothic king Reccared, who converted to Catholicism. They argued that both the Catholic unity of the nation and the alliance of throne and altar were initiated by this conversion with

2 Carolyn P. Boyd, *The Politics of History and Memory in Democratic Spain*, in: *The Annals of the American Academy of Political and Social Science*, 617 (2008) 1, p. 138.

3 Chang, Young-Min, *A Study on the Reinforcement Policy of the Korean History Education of the Park Jeong Hui Regime*, in: *The Journal of Humanities*, Daejeon, 34 (2007) 2, p. 447.

4 Carolyn P. Boyd, *Historia Patria. Politics, History, and National Identity in Spain, 1875–1975*, New Jersey 1997, p. xiii–xiv.

5 *Ibid.*, p. 72.

6 *Ibid.*, p. 75.

the national culture reaching its peak in the Middle Ages.⁷ This kind of interpretation of the past was reinforced by Marcelino Menéndez y Pelayo. He places emphasis on the consubstantiality of the Spanish nation and the Catholic faith in his essay *Historia de los heterodoxos españoles*. It was in this respect that Catholic traditionalists accused modern history of Spain of getting off the right track and strived to return it by restoring the traditional Catholic interpretation of the past.⁸

In the Primo de Rivera dictatorship, its official party, the Patriotic Union – which was dominated by Catholic conservatives – considered the nation as the supreme political value. The various groups that constituted the party formed a unique programme of political and cultural nationalism that reflected their values, symbols, and rhetorical conventions. This became known later as National Catholicism, which mixed traditional Spanish Catholicism and authoritarian nationalism.⁹

On the other hand, progressives, including Rafael Altamira, developed a characteristic historical discourse. He emphasised that history had an important role in forming civic consciousness and national unity.¹⁰ Considering this point, progressive educators demanded the renovation of content and methods of history education. They tried to search in history for evidence confirming that the Spanish people had contributed to the forward march of humanity.

In 1931, the republicans formulated their mission in terms of cultivating a national aptitude for democracy and progress. The Institución Libre de Enseñanza (Free Educational Institution) had a significant effect on republican educational policy together with Altamira's ideas. The republicans aimed at the moral and intellectual emancipation of individuals and hoped to establish a basis for a collective national project. They accentuated “human agency, the brotherhood of peoples, and nationhood as a collective projection toward the future”. But the Catholic right continued to emphasise “providentialism, Spanish ‘difference’, and filio piety”, as Boyd has pointed out.¹¹ They attempted to restore traditional Catholic prerogatives over education. However, contrary to their efforts, obligatory religious instruction in the primary schools was prohibited in 1931. And Article 26 of the constitution stated that the government will dissolve the Jesuits and ban Catholic education, thereby prohibiting the remaining religious orders from teaching. As was the case with Spain, two views of history also vied for in hope of dominance in Korea: a national one and a colonial one. It was in the 1880s that a group of the governing elite called the Enlightenment Party began to give attention to national history. However, they did not reach the classroom.¹² Modern education in Korea origi-

7 Ángel Luis Abós Santabárbara, *La Historia que nos enseñaron (1937–1975)*, Madrid 2003, p. 110.

8 Carolyn P. Boyd, *Historia Patria*, pp. 99–107.

9 See Alfonso Botti, *Cielo y dinero: El nacional-catolicismo en España (1881–1975)*, Madrid 1992, and Juan Álvarez Bolado, *El experimento de nacional-catolicismo, 1939–1975*, Madrid 1976.

10 Rafael Altamira, *La enseñanza de la historia*. 2d ed. Madrid 1895, p. 6.

11 Carolyn P. Boyd, *Historia Patria*, p. 214. See also Ángel Luis Abós Santabárbara, *La Historia*, p. 55.

12 The national history of Korea was compiled before that, but Chinese history made up the bulk of the national history of Korea because teaching and learning history was just a means or way of applying for the state exami-

nated from the Royal Decree on the Establishment of a State on the Basis of Education issued by King Gojong in 1895. Immediately after proclaiming the royal decree, Hakbu, a kind of education department of the government, was established and many public and private schools were founded. Hakbu soon launched a project of compiling textbooks, but they were forced to follow the precedents of Japan or seek Japanese cooperation because they had little experience in publishing.¹³ From this moment on, Japan seized the opportunity and began to interfere in this matter. However, the media and social organizations in Korea rose up in major opposition to this Japanese interference.

The Japanese Government General of Korea intended to make the Korean people compliant with the colonial rule of the Korean peninsula through teaching and disseminating the Japanese language. The colonial administration was convinced that teaching the Japanese language and history of Japan was a shortcut for making the Korean people subjects of the Japanese Empire. The Japanese Government General of Korea looked upon elementary schools as being very important in implementing this policy.¹⁴ The Japanese authorities were shocked by the March First Independence Movement in 1919 and revised the Educational Ordinance in order to control and subdue a deep-rooted anti-Japanese sentiment of the Korean people. As a consequence, they started teaching history but only that of Japan.¹⁵ This was introduced as a part of “cultural policies” of the Japanese Government General of Korea for building up a “collaborative mechanism” in Korean society. Furthermore, the Japanese Government General of Korea carried forward the colonial policy of subjecting the Korean people to Japan in earnest following the outbreak of the Second Sino-Japanese War in 1937. As part of this policy, they established the “Pledge of the Subjects of Japanese Empire” in October 1937 and forced the Korean students to recite it in elementary school.¹⁶ In the late period of colonial rule, they tried to instill the “Japanese spirit” into the hearts of the Korean people through history education.¹⁷

In 1945, Japan’s empire collapsed. Douglas MacArthur, who officially accepted Japan’s surrender on 2 September 1945, declared that US military rule would be imposed in the Korean Peninsula below the 38th parallel. The US Military Government in South Korea revised the education system of Korea and modelled it on the American system. They announced the Educational Policy for Koreans of New Korea in September of 1945, allowed for the use of the Korean language in schools as a medium of instruction, and

nation; see Park, Gul-Sun, The education of national history and the compilation of the history textbook in the Empire of Korea, in: *Journal of Humanities, Chungjoo*, (2000), pp. 169–170.

13 Ibid., pp. 187–188.

14 Moon, Dong Seok On the transition of history textbooks and curricula of history education under the Japanese colonial rule of Korea, in: *Social Studies Education*. Seoul 2004, p. 140.

15 Moon, Dong Seok, On the transition of history textbooks and curricula—143.

16 The contents of the Pledge are as follows: ry textbooks and curricula of history education under the Japanese rule with all our heart, and we are disciplined to be a good and strong subject.”

17 Koo, Hee-Jin, Educational Theory of ‘Subjects of Japanese Empire’ in the late Japanese Colonial Era, in: *Nation Problem and New State Building in the Modern and Contemporary Korea*, Seoul JAHK, p. 429.

replaced Japanese history with Korean history. These were just temporary expedients.¹⁸ The US Military Government thought it necessary to clear away the Japanese method of education and introduce the American model of liberal democracy. However, the liquidation of the colonial view of history that justified the colonial rule of Japan was implemented at a snail's pace.¹⁹

The educational policy of the Syngman Rhee government that was inaugurated in 1948 was greatly influenced by the progressive ideas of the US educational system. The purpose of education of his government was training human resources for nation-state building. In 1949, his government introduced an official authorization system for textbooks, which meant that the state began to regulate the contents of textbooks.²⁰ It was in 1955 that the Syngman Rhee government established its own school curriculum, which resulted in the rewriting of textbooks. Lee Byung-do, professor of Seoul National University, began to give prominence not to the independence movement but to the anti-communist struggle in the contemporary history of Korea in his history textbook.²¹

II. Main Currents

Now let us examine the main currents of history education that the two regimes – the Franco regime and the Park regime – carried forward in their time.

Since the educational policies of the Franco regime in its first decade were changed during the 1950s, it is appropriate to divide the long dictatorship of Franco into two periods. While in the first the church took the lead in drawing up and carrying forward educational policies, in the second the state regained the initiative gradually.²²

The privileged classes of Spain struggled to resist the process of socioeconomic modernization unfolding since the proclamation of the Second Republic. Their struggle against the left-wing republicans and socialists eventually led to the Civil War in 1936. In August 1936, the Junta of National Defense ordered the opening of primary schools at the beginning of September as usual. This administrative order was the first measure that the Junta took concerning education. Its purpose was to hispanicize the youth of the future.²³ This shows that the rebel forces placed great emphasis on education even in wartime.

It seems that the rebel forces intended to change the liberal system of education into a conservative and authoritarian one. They abolished coeducation while making religion

18 Lee, Myung-Hee, *The Character of Social Studies' Curriculum in the Era of Korea's State Building*, in: *History Education*. Seoul 2003, vol. 88, p. 6.

19 This work was not finished under the Park regime. Therefore, liquidating the colonial view of history has been a subject of controversy up to recently.

20 Lee, Sin-Cheol, *History of Using Korean History Textbooks as Political Means*, in: *History Education* (2006), vol. 97, p. 181.

21 Lee, Byung-do, *Middle School Social Studies-Middle School National History*, Seoul 1960.

22 Manuel Fernández Soria, *Estado y educación en la España del siglo XX*, in: J. Ruiz/A. Bernat/M. R. Domínguez/V. M. Juan (eds.), *La Educación en España a examen (1898–1998)*, vol. I, Zaragoza 1999, pp. 229–232.

23 Orden de 19-08-1936, *Boletín Oficial de la Junta de Defensa Nacional de España (B.O.J.D.N.E.)*, 21-08-1936.

and sacred history obligatory in primary and secondary schools.²⁴ They began to censor teaching materials and textbooks and extended this censorship to public as well as school libraries. For this purpose, the Junta of National Defense formed the Censorship Committee in September 1936,²⁵ which made a list of books to abolish, collected those books, and burned them.²⁶ The books that were listed were chosen for dealing with separatism, liberalism, Marxism, Black Legend and pessimism, etc.²⁷

In addition, the rebel forces purged teaching personnel in order to remove the “infectors of the popular soul”.²⁸ The Junta Técnica del Estado established purge committees in November 1936 to remove teachers and arranged the rules of punishment the following month. These rules were aimed not only at the members of the social organizations or political parties that were affiliated with the Popular Front but also at their sympathizers.²⁹ As a matter of fact, if there were any conditions for a teacher to escape any punishment, they were to be Catholic and patriotic with a good work ethic.³⁰ In other words, they should be one that “loves not only God and Spain but also children as he or she loves God”.³¹ In the end about 30 percent of the teaching corps had been dismissed by the end of the Civil War.³²

These measures were something like a levelling of ground work that was needed to establish the educational policy of the Franco regime. It can be said that the educational ideology of the Franco regime in its first decade was completed with the law of 1945,³³ which defined the purpose and structure of primary education. The law placed an emphasis on the educational mission of schools³⁴ while considering the Catholic religion as its base. According to the law, the role of the state was to protect and nourish the function of the church.³⁵ That was the so-called principle of subsidiarity of the state.³⁶ In short, Catholic churches and organizations came to take the lead in education. This was accomplished by the victory the Catholic right gained in the struggle for control over the school system with the Falange.³⁷ This in fact, was a continuation of the reform introduced by

24 Orden de 4-09-1936, B.O.J.D.N.E., 8-09-1936.

25 Orden de 16-09-1936, B.O.J.D.N.E., 19-09-1936.

26 El Alcázar, Toledo, 26-08-1938; Arriba, 2-05-1939, and Ya, 2-05-1939.

27 Arriba, 2-05-1939.

28 Orden de 4-09-1936, B.O.J.D.N.E., 8-09-1936. See Francisco Morente Valero, *La escuela y el Estado Nuevo. La depuración del magisterio nacional (1936–1943)*, Valladolid 1997.

29 Orden de 7-12-1936, Boletín Oficial del Estado (B.O.E.), 10-12-1936.

30 V. Saez, *Los maestros en la España Nacional*, in: *Atenas*, (1939) 95–96, pp. 265–270.

31 Ibid.

32 Ramón Navarro Sandalinas, *La enseñanza primaria durante el franquismo (1936–1975)*. Barcelona 1990, p. 73.

33 B.O.E., 18-07-1945.

34 One of the objectives of primary education was “to infuse the spirit of the student with the love and the idea of service to the Patria.” Quoted in Carolyn P. Boyd, *Historia patria*, p. 257.

35 Alejandro Mayordomo, *Iglesia y Estado en la política educativa del franquismo*, in: Javier Vergara Ciordia (coord.), *Estudios Sobre la secularización docente en España*, Madrid 1997, p. 188.

36 Manuel de Puelles Benítez, *Oscilaciones de la política educativa en los últimos cincuenta años: Reflexiones sobre la orientación política de la educación*, in: *Revista Española de Pedagogía* 192 (1992), p. 314.

37 Concerning this struggle, see Gregorio Cámara Villar, *Nacional-catolicismo y escuela: La socialización política del franquismo, 1936–1951*, Jaén 1983.

Sainz Rodríguez in September 1938, based on the Catholic conception of education.³⁸ The Franco regime established this policy and tried to impose ideological uniformity on course content and textbooks. The regime prepared the syllabi for the *bachillerato* (baccalaureate) in May 1939. These syllabi specified not only the topics but also their correct interpretation.³⁹ The Franco regime also reviewed textbooks. The textbook review committee that was appointed in July 1938 announced the list of approved history books after monitoring existing textbooks. As a result of this review, the history textbooks that were found to be flagrantly “defective” against the standards of the regime were banished from use in schools. According to Boyd, “censorship was exercised in primarily negative ways, to eliminate unorthodox views”.⁴⁰

On the other hand, a little while later some professors began to write new textbooks complying with the teaching guidelines. Consequently, during the 1940s and 1950s there appeared many textbooks that were similar in content and style.⁴¹

Around the 1950s, there were some changes not only in the educational policies but also in the meaning and importance of history education. Joaquín Ruiz Giménez, minister of national education, reformed the *bachillerato* in 1953. The law of 1953 replaced the law of 1938 and affirmed “the state’s responsibility to make secondary schooling useful and accessible to all Spaniards”.⁴² Ruiz Giménez also strengthened the state’s supervisory and inspectorate role as Boyd pointed out.⁴³ This indicates that the initiative in the educational policies began to move gradually from the church to the state. It was the ministry that launched a project to expand the number of secondary schools and tried to transform the quality of primary education especially after the First Development Plan in 1964.

These educational reforms were motivated by several factors. Firstly, during this period Spain ended its diplomatic isolation and began to rejoin the international community. Secondly, there was a necessity for a skilled labour force in Spanish society as a result of an economic policy for modernization. Lastly, the extreme political tensions of the post-war era were reduced due to social and political change in Spain and abroad during the 1950s and 1960s. The Spanish technocrats who carried forward the Stabilization Plan of 1959 began to show more and more interest in promoting democracy.⁴⁴

These elements contributed not only to change in the existing educational policies but also to a transformation of the role and meaning of history education. History was now demoted from the privileged place it had enjoyed in the early period of the Franco

38 Carolyn P. Boyd, *Historia Patria*, p. 240.

39 *Ibid.*, p. 243.

40 *Ibid.*, p. 252. On the other hand, books used in primary schools were reviewed by an ad hoc ministerial review commission until 1941 and by the Council of National Education thereafter. However, not all books required state review and approval (*ibid.*, p. 262).

41 *Ibid.*, pp. 245–248.

42 Manuel de Puellas Benítez, *Educación e ideología en la España contemporánea*. Barcelona 1986, p. 387; Carolyn P. Boyd, *Historia Patria*, p. 274.

43 *Ibid.*, pp. 274–275.

44 Paloma Aguilar Fernández, *Políticas de la memoria y memorias de la política*, Madrid 2008, pp. 106–107.

regime, lost partly its legitimizing function, and had its importance decreased in the curriculum of secondary schools. History came to be just one of the natural and social sciences.⁴⁵ Why did the Franco regime allow these changes to occur? The reason is likely to be that the regime had gained confidence in their political stability and that they accordingly needed less support of history than before.

In short, the Franco regime used history education for the legitimization of the dictatorship in its first decade, but diminished its importance as a tool of political socialization since the 1960s. The main current in Korea unfolded in a different way. The Park regime strengthened national history education not in its first but in its second period.

Park Chung-hee staged a military coup on 16 May 1961, came to power, and was inaugurated as president in 1963.⁴⁶ In the same year, the Ministry of Education introduced a new curriculum officially confirming anti-communism as an important objective of education.⁴⁷ This was the most important difference to the preceding curriculum. It seems that the Park regime showed no great interest in educational policies or history education at this point.

However, some changes began to appear in the late 1960s. The Park regime proclaimed a Charter of National Education in December 1968. Here, it emphasised the importance of tradition, the social utility of education, and the education of the people.⁴⁸ Some historians maintain this Charter originated with certain political changes.⁴⁹ On the one hand, tensions between South and North Korea were building up especially since the January 21st attack by North Korean armed guerrillas on the Blue House (the South Korean presidential residence). On the other hand, President Park gave impetus to economic development through the Second Five-Year Economic Development Plan with the intention of running for a third presidential term. In this situation, the regime tried to realize the idea of the charter. They published *Basic Guidelines for Improvement of National History Education for Secondary Schools* in 1969 and worked out the Strengthening Plan of National History Education.⁵⁰

In May 1972, the Committee for Reinforcement of National History Education was launched by an order of President Park. Here, it is worth taking note of the members of the committee. The committee was composed of 14 scholars, one special assistant to the president, and two presidential secretaries.⁵¹ It shows that President Park took special

45 Carolyn P. Boyd, *Historia Patria*, pp. 287–288.

46 The Park regime continued in power until 1979 when Park Chung-hee was assassinated.

47 In the Second Curriculum they confirmed one of the guidance objectives of National History (Korean History) for high schools as follows: "... to contribute to the construction of World Peace by strengthening ideological education of anticommunism." (Ministry of Education, *The Second Curriculum*. Cited in Lee, Sin-Cheol).

48 National Education Council, *Historical-philosophical background of the Charter of National Education*, in: *General Survey of Materials of the Charter of National Education*, Seoul 1972, pp. 27–39.

49 Chung, Sunyoung, et.als., *Understanding of History Education*, Samjiwon 2001, pp. 286–287.

50 Park, Jin-dong, *National Standards of the Selection of the Content of Contemporary Korean History*, in: *The Korean Historical Review*, Seoul 2010, no. 205, pp. 42–44.

51 Yoon, Jong-young, *Study of the Publishing System of National History Textbooks*, in: *The Civilization Journal*, Seoul, Vol. 1 (2000) 2, p. 74.

interest in reinforcing education of Korean history. Therefore, it is highly probable that he wielded strong influence over the policy through his special assistant and secretaries. The committee submitted Recommendations for the Reinforcement of National History twice to the Ministry of Education and the ministry reformed the curriculum of secondary schools as well as of primary schools in 1973. As a result, Korean history, which had been integrated into social studies, became a separate subject for the first time in middle school and high school. Separately, the process for the homogenization of Korean history textbooks for middle school was under way in 1973. Furthermore, the textbook publication system was changed the same year. The existing system that the government-endorsed textbook replaced was by one that the government compiled. The ministry maintained they had changed the system for the purpose of rejecting subjective theories and unifying a variety of national views of history, but this intention was no more than teaching “official history” to the students and not allowing other interpretations of what should become the collective memory. Actually, a textbook of Korean history designed by the government was used in secondary schools from 1974 onwards.

III. Basic ideologies

What was the basic ideology of educational policy of both regimes? In short, in the Franco regime it was Catholicism based on nationalism, which was called National Catholicism, while in the Park regime it was just nationalism.

López Marcos studied ideological phenomena that was manifested in the textbooks of primary schools and identified two pillars that supported the Franco regime and its educational system: nationalism and Catholicism.⁵² As mentioned earlier, with the Catholic integralists in power in the educational sector, National Catholicism began to flourish in the 1920s. We may find a formal statement of National Catholic ideology in *¿Qué es 'lo Nuevo'?*, written by José Pemartín in 1938. According to this book, Spanish nationality had been definitely brought to perfection by the fusion of the Catholic ideal with the military monarchy in the 16th century.⁵³ The National Catholic ideologues defined Spanish nationality in terms of religion and history.⁵⁴

However, there was an internal struggle between Catholics and Falangists within the Francoist coalition. While the Catholic right considered a strong state as a necessary evil, the Falangists valued it as an end in itself. The Falangists made an effort to subordinate education not to the church but to the state.⁵⁵ As a result, the Catholic right and the

52 Manuela López Marcos, *El fenómeno ideológico del franquismo en los manuales escolares de enseñanza primaria (1936–1945)*, Madrid 2001, pp. 131–157.

53 José Pemartín Sanjuán, *¿Qué es 'lo nuevo'?: Consideraciones sobre el momento español presente*, Sevilla 1938, pp. 46–48.

54 See Stanley G. Payne, *Spanish Catholicism*, Madison 1984, pp. 171–191.

55 Benjamín Oltra y Amando de Miguel, *Bonapartismo y catolicismo: Una hipótesis sobre los orígenes ideológicos del franquismo*, in: *Papers: Revista de sociología* (1978) 8, p. 94; *Falange Española, Fundamentos del Nuevo Estado*, Madrid 1937, pp. 12–16; Joaquín Azpiázu, *El estado católico: Líneas de un ideal*, Burgos 1939, pp. 160–

Falange competed for control over education. Catholic integralists won the first round of this struggle and, consequently, National Catholicism came to be the ruling ideology in education. This was reflected in the law of 1945. Although it came to lose its hyperbolic rhetoric because of social and economic transformation of the 1950s and 1960s, this ideology never lost its official standing until the end of Franco regime.⁵⁶

In contrast with the National Catholicism of Spain, the main ideology that had emerged in the educational policy and in the writing of history textbooks in South Korea was simply nationalism. In the first period after the war, the colonial view of history was still predominant in history textbooks. It was in the 1960s that nationalism began to be promoted in Korean society. Some Korean historians exerted efforts to remove the colonial view of history and build up new images of Korea based upon a nationalistic perspective on history.⁵⁷

Park Chung-hee and his regime claimed to stand for education of Korean nationality, which was translated into the “Third Curriculum”. In 1972, Park Chung-hee said “we should establish an independent and nationalistic view of history for the education suitable to our country’s circumstances and deter the North Korean plot to invade the South by realizing that we, South Korean people, have the legitimacy of Korean people”.⁵⁸ He threw himself into reinforcing Korean history education in order to establish national identity. But the hidden intention was, of course, maintaining his regime, that is to say, his Revitalizing Reforms system.⁵⁹

At that time, there was strong military hostility between South and North Korea. It was under these circumstances that he emphasised national identity by referring to the North Korean plot to invade the South. He made full use of the military tension to justify his regime.

IV. Narratives of History Textbooks

Although both the Franco regime and the Park regime actually did impose their main ideology through regulation of textbooks and course content, the Park regime did so with a more rigorous approach. The Park regime adopted a government-designated system in 1974, while the Franco regime adopted a state-mandated system, which had come down theoretically since the passage of the Law of Moyano in 1857. The former system allowed just one textbook, while the latter system acknowledged a variety of textbooks.

161, 163–164; Gregorio Cámara Villar, *Nacional-Catolicismo y Escuela: la socialización política del franquismo, 1936–1951*, Jaén 1983, pp. 132–133; Laureano Pérez Mier, *Iglesia y Estado Nuevo*, Madrid 1940, p. 537.

56 Carolyn P. Boyd, *Historia Patria*, p. 283.

57 Park, Chanseung, *Korean History in time of division*, in: *Historians and History in Korea*, Vol. II, Seoul 1994, pp. 332–333.

58 *Ibid.*, p. 339.

59 Cha, Mi-hee, *The Background and Content Characteristics of the Independence of the Korean History for the Middle and High School in the Third National Curriculum Period (1974–1981)*, in: *Hankuhsahakbo*, Seoul 2006, pp. 408–409; Lee, Sin-Cheol, *History of Using Korean History*, p. 200; Kim, Han-jong, *Transition of National History Textbooks and Ruling Ideology after Liberation*, in: *Yuksabipyeong*, Seoul 1991, p. 76.

In Spain, the textbook review committee appointed in 1938 examined existing textbooks. But the textbooks that were judged to be inappropriate in the light of the principles of the National Movement were not many. Most textbooks passed the review.⁶⁰ The content of the textbooks approved during the 1940s and 1950s were similar. There were allusions to the national character, references to Columbus' voyage, and emphasis on national unity.⁶¹ Especially, Feliciano Cereceda delivered a triumphalist version of the national past. He traced "Spain's vigorous defense of the true faith against foreign heresy, materialism, and atheism".⁶² He praised the glorious past and at the same time wanted to recover it in the immediate future, as follows:

*The future of Spain united, after three centuries, to the destiny of the past! Because our current desires coincide with past realities, we proclaim the historical continuity of today's imperialism with that which filled the glorious days of Philip II. ... The ancient procession has not ceased; on the contrary it is once again in full flood. Along its path advance the dead and the living. As banners they carry the national glories, laden with universalism, bursting with Christianity, in which a world disoriented and in catastrophic convulsions centers and anchors itself. ... This is the grand task that God has saved for the Spain of today.*⁶³

This narration gives the reader a hint of how the Franco regime undertook the important task of recovering the glorious past.

The primary school books also extolled the salvation of Spain by General Franco. For example, José María Pemán wrote a *Manual de historia de España*,⁶⁴ in which he dealt with "the providential emergence of caudillos in times of danger or disorder, the continuous struggle to repulse alien ideas and invaders, the national mission to universalize the true faith, the repeated treachery of bad Spaniards and foreigners".⁶⁵ He tried to show that all the best in the history of Spain came together in Franco and the Nationalist zone. This kind of history writing represented the ideal narrative of the textbooks of those days.

However, in the late 1960s and early 1970s there arose some changes in the narrative. Around this time the subject of history lost its utility as a legitimizing tool to the Franco regime because of changes in the social, economic, and political environment of Spain as mentioned earlier. In this phase, national identity was obviously no longer a priority. Factual accounts of events were becoming more important as reflected in the curricu-

60 The eventually approved history books were 50.

61 Paloma Aguilar Fernández, *Políticas de la memoria*, pp. 107, 131.

62 Carolyn P. Boyd, *Historia Patria*, p. 252.

63 Feliciano Cereceda, *Historia del imperio español y de la hispanidad*, 2d ed., Madrid 1943, 273–274. Cited in Carolyn P. Boyd, *Historia patria*, p. 252. See also L. Ortiz Muñoz, *Glorias Imperiales*, Madrid 1954, pp. 216–217, 282; Manuela López Marcos, *El fenómeno ideológico*, pp. 136–140.

64 José María Pemán, *Manual de historia de España*. Segundo grado, Santander 1939.

65 Carolyn P. Boyd, *Historia Patria*, p. 265. A textbook called *El libro de España* tells the same story (*El libro de España*, Zaragoza 1957, pp. 217–218. See also Manuela López Marcos, *El fenómeno ideológico*, pp. 207–210.

lum.⁶⁶ It is in this respect that some textbooks intended to place emphasis on the values such as peace, order, tolerance, harmony, and coexistence.⁶⁷

There was no such change in the Park regime. The narrative remained unchanged. The textbook under the Park regime, especially in the “Third Curriculum”, praised the glorious past and justified and extolled the regime as they did in the earlier phase of the Franco regime.

Firstly, there was a tendency to reject the existing colonial view of history and rewrite the past from a national view of history. For example, in dealing with the invasion of the Mongols that had occurred in the 13th century, the textbook now emphasised the independence of the Goryeo dynasty.⁶⁸

Secondly, new heroes of the past were rediscovered, such as King Sejong for the cultural sphere and Admiral Yi Sun-shin for the military.

Lastly, contemporary history of Korea in the textbook justified Park’s coming to power by using nationalistic discourses such as “national restoration” and “modernization of the fatherland”. The May Revolution, through which Park held power, was described not as a military coup but as a revolution to “build up a sound democratic state rescuing the Republic of Korea from communist invasions and liberating the people from corruption and insecurity”. In the paragraph dealing with development of the Republic of Korea, the history textbook also praised “economic growth”, “Saemaeul (new village) Movement”, and “October Revitalizing Reforms” as follows:

*The Third Republic succeeded in accomplishing the first and second Five-Year Economic Development Plan placing an emphasis on the economic development and modernization of the fatherland. ... The government carried out the October Revitalizing Reforms in October, 1972, in order to provide for rapid changes of the international situation and achieve its historical mission of national restoration.*⁶⁹

To sum up, both regimes have something in common. They were established by military coup and in need for new sources of legitimation. They saw the chance to mobilize a collective sense of history and identity for their particular projects of nation-(state)building.

They therefore used history education actively. But while the Franco regime accepted a certain plurality of voices within the limits of its basic ideology and had to manage the tensions between the Catholic integralists and the Falangists, the Park regime insisted on a much more consequent homogenization of the historical narrative. While the Franco regime needed less history education in the later period, the Park regime strengthened it in the later period in order to preserve and consolidate his Revitalizing Reforms system.

66 Carolyn P. Boyd, *Historia Patria*, pp. 283–300.

67 Paloma Aguilar Fernández, *Políticas de la memoria*, pp. 135–136.

68 Ministry of Education, *Korean History for Academic High School*, 1974, pp. 85–90.

69 Ministry of Education, *Korean History for Academic High School*, pp. 230–231. Also see Park, Jin-dong, *National Standards for the Selection of the Content of Contemporary Korean History and Korean History Textbook Accounts*, in: *The Korean Historical Review*, Seoul 2010, no. 205, pp. 51–67.

Autorinnen und Autoren

Christina Brauner

Dr. phil., Universität Bielefeld, Abt. Geschichtswissenschaft
E-Mail: christina.brauner@uni-bielefeld.de

Antje Flüchter

Prof. Dr. phil., Universität Bielefeld, Abt. Geschichtswissenschaft
E-Mail: antje.fluechter@uni-bielefeld.de

Yeong-Jo Hwangbo

Kyungpook National University, Daegu, Department of History, Republic of Korea
E-Mail: hbvision@knu.ac.kr

Gauri Parasher

M.A., Universität Heidelberg, Exzellenzcluster „Asia and Europe in a Global Context“
E-Mail: parasher@asia-europe.uni-heidelberg.de

Ines Eben v. Racknitz

Dr. phil., Nanjing University, Department of History, PR China
E-Mail: ines.v.racknitz@gmx.de

Verena Steller

Dr. phil., Goethe-Universität Frankfurt / Main, Historisches Seminar
E-Mail: steller@em.uni-frankfurt.de