

Sovereignty and Underdevelopment in China: The 1842 Treaty of Nanjing and the Unequal Treaties

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Abstract:

China's current position in global affairs as a fierce international competitor and growing trade and military superpower has raised many concerns in the West about Chinese government agencies and corporations playing by a different set of rules and gaining an unfair advantage. It has not always been this way. In fact, Anglo-Chinese negotiations at Nanjing in 1842 to conclude the first "Opium War" initiated a century of Western exploitation of China's land and population. The Treaty of Nanjing set several precedents for 100 years of Unequal Treaties with numerous European (and American) powers, which effectively stripped away China's sovereignty and forced its underdevelopment. While Chinese officials at the time were not fully aware of what the implications of the Treaty would be – due to unfair strategies used by their British counterparts – they did understand that their country was being wronged. As time went on, the devastating impacts became more apparent and Chinese authors and leaders began to resist. As Unequal Treaty discourse became ingrained in Chinese mentality, a sense of victimization and resentment developed against Western powers – to such an extent that such feelings may be residual today.

Since its inception, the Middle Kingdom towered above its neighbors, dominating economically and militarily, conducting relations strictly on Chinese terms. However, the arrival of Europeans to Asia posed a serious challenge to the long-established Tributary System. For several hundred years the Qing Empire was able to limit Western influence to one port city at Canton, but by the beginning of the nineteenth century the tables had started to turn.¹ Less than one hundred years later, China had been stripped of its sovereignty, national pride, and all-but subjected under imperial power. Forced to relinquish various concessions and rights to the Western powers, China fell painfully from the top of East Asian relations to the bottom of the global system. The Unequal Treaties, most importantly the Treaty of Nanjing of 1842, initiated an era of underdevelopment and quasi-imperialism in China, perpetuated by Western privilege-seeking, which manipulated and exploited a Chinese government ignorant of the ramifications of what they were accepting. A brief history of the events leading up to the drafting of the Treaty of Nanjing, a summary of the terms of the treaty, and its precedential role – considering several other Sino-Western treaties signed up to the Convention of Beijing, 1860 – provide an informative discussion of the treaty. Exploring in more detail the most important provisions of the Treaty of Nanjing and the subsequent

Unequal Treaties don insight as to their respective effects on China's sovereignty and development. Chinese perspectives on the treaties' implications both at the time of their drafting and signing, as well as the evolving perception of the treaties' consequences were especially revealing in regard to China's (under)development and sovereignty in the century after the Treaty of Nanjing.

The Treaty of Nanjing brought peace, concluding the 1839-1842 Anglo-Chinese War; understanding the causes, events and results of this "Opium War" shed some light on the composition of the treaty and its impacts. From the Chinese point of view, forced and illegal importation of foreign opium was poisoning the population, and as of 1829, the balance of payments reversed and China's silver surplus began to drain out of the country.^{2, 3, 4} The British, while appreciating the reversal of their trade deficit, denied that the war was fought for drug-related purposes. Rather, Britain perceived the war as one fought for recognition of national equality with China, for free trade and the abolition of the Cohong merchants' monopoly on trade at Canton, and for the application of "more civilized" British law over nationals living or trading in China.³ With tensions on both sides peaking in the late-1830s, the smallest of incidents could have incited conflict.

Such sparks were neither few nor far between. The 1833-1834 abolition of the

British East India Company's monopoly on the China trade flooded the port at Canton with new merchants and traders from England; the resultant competition overwhelmed the rigid Cohong system, increasing tensions while augmenting the influx of opium and dispersing its entry.⁵ Another strain on relations followed the murder of a Chinese man by drunken British sailors in Canton. Qing officials insisted that the sailors be tried in Chinese courts, but the British claimed the right to prosecute their own nationals – both sides refused to yield, stimulating the pressures of war.⁵ The breaking point came with the dispatch of Lin Zexu, the "incorruptible official," to Canton to oversee foreign trade in 1838.⁵ Commissioner Lin's mission was specifically concerned with controlling foreign trade, yet he took the initiative to put down opium sales and consumption as well, widely viewed as disastrous for China's finances.² As such, Lin confiscated 20,283 chests of opium from British storehouses in March 1839, completely destroyed the contents and offered no reimbursement to foreign merchants.³ With that act, Lin banned British merchants from the port of Canton. They retreated to Macao, a Portuguese possession at the time, where the British navy rendezvoused and began a series of naval assaults. The British dominated the war, due in large part to their superior military might and naval expertise; the Chinese were

forced to succumb to negotiations almost immediately. Fighting and negotiations continued simultaneously, but no substantive results were produced until the British capture of Nanjing, the southern capital, in the summer of 1842.^{1, 2, 3, 5}

On 29 August 1842, a Treaty of Perpetual Peace and Friendship, or the Treaty of Nanjing, was concluded between Britain and China at Nanjing. The Treaty was signed on board HMS *Cornwallis*, by British negotiator Sir Henry Pottinger and Chinese High Officials Ch'i-ying and I-li-poo, marking the end of China's relative inclusion as Britain used their victory in the Opium War as "leverage to pry it open".^{7, 8} Written in English and only crudely translated into Chinese, the Treaty ended the Anglo-Chinese hostilities with a peace between the two nations specified in Article I, the cession of Hong Kong Island to the British by Article III, payment for the destroyed opium as well as a twenty-one million dollar war indemnity to the order of the Queen as stated in Articles IV and VII. Also included in the terms of the treaty were Articles VIII and IX, which demanded all British subjects and Chinese collaborators to be released to the British authorities, Article V's abolition of the Cohong system at Canton, and the opening of four additional ports at Ningpo, Shanghai, Fuzhou, and Amoy, to British merchants for trade under fair and regular tariffs to be agreed upon by British authorities (Articles II, V, and X respectively). Collectively, these five access ports became known as "treaty ports." Finally, Article XI demanded that communication between China and Britain, regardless of the level of the official, take place on "footing of perfect equality." Should all of the above demands receive compliance, Article XII promised the withdrawal of British troops and the formal ending of the war.⁹ The treaty's true significance existed not in any of its thirteen articles; rather it was the precedential nature of the Treaty of Nanjing that marked the beginning of a century of unequal, "gunpoint treaties".^{3, 8} Such treaties were not only unfair, but also unethical – written and negotiated in English or other Western languages – creating a grave misunderstanding of the potential impacts among Chinese negotiators.

The supplementary Treaty of the Bogue between Britain and China followed the Treaty of Nanjing just over a year later on 8 October 1843. Signed by Pottinger for the British and Ki Ying on behalf of the Qing Emperor, the supplementary treaty extended and specified tariff of export and import duties, as well as the general regulations

on trade.¹⁰ Additionally, the Treaty of the Bogue reinforced Britain's exclusive access to the five treaty ports opened by the Treaty of Nanjing. Legal extension of extraterritoriality to foreigners also originates with this treaty. Paramount within the Treaty of the Bogue was the most-favoured-nation clause (MFN), which effectively helped pry the door to China ever-wider open.¹⁰

The United States (US) practiced "hitchhiking imperialism" in China, quickly following the British precedent with an unequal treaty of its own.⁸ Caleb Cushing was sent to China to negotiate terms of a trade agreement with a Qing government eager to play the Western powers against each other. On 3 July 1844 the Treaty of Wanghia was signed, largely regarding terms of trade and residence in the treaty ports opened by the British negotiations at Nanjing. It also built extensively on the foundations of extraterritoriality established by the Treaty of the Bogue. As with the British treaties, communications were to be on the basis of equality; unlike the British, however, the Treaty of Wanghia officially banned American merchants from selling opium and from trading outside of the treaty ports. The China-USA agreement also included a most-favoured-nation clause, automatically granting the Americans any rights ceded by China to another nation.¹¹ The French quickly followed suit later in July 1844, signing the Treaty of Whompao with China. The French treaty was very similar to the Anglo-American versions, further extending extraterritoriality and treaty port concessions, while also granting privileges to Roman Catholic missionaries to travel in China and preach Christianity. By way of the most-favoured-nation clauses in the British and American treaties, missionary privileges were further extended to Protestant and Baptist missions, as well as other Christian creeds.¹²

The 1856-1860 Anglo-French Arrow War against the Chinese was concluded officially at the Convention of Beijing, where the US, France, and Britain had forced the Chinese to accept the Treaties of Tianjin, written in June 1858. By this time, Belgium, Sweden, Norway, Prussia, Portugal, Italy, and Russia had signed similar Unequal Treaties. The Tianjin treaties were brought into force at the 1860 Convention of Beijing and reaffirmed the earlier treaties, adding or abrogating provisions of the previous agreements. The Treaties of Tianjin forced the opening of ten additional ports, including four along the Yangtze River deep into inland China. Treaty rights and concessions were extended to each of the

new ports, while also establishing permanent Western legations at Beijing. In addition, foreigners were granted permissions to travel throughout China; inland tariff dues were further decreased to 2.5% *ad valorem*; another large indemnity was demanded of the Qing government; and missionaries were guaranteed free movement and the right to own property outside of the treaty ports. Moreover, the British claimed the Kowloon Peninsula, opposite Hong Kong Island, as a colonial possession, on which to base their trade and military operations.⁵

Each subsequent unequal treaty effectively eroded the sovereignty of China, reduced reciprocity, restricted its economic autonomy, and forced the Qing to conduct Sino-Western relations according to foreign terms.¹³ The most-favoured-nation clause, the opening of China, extraterritoriality, settlement rights, and the equality of communications provisions were especially devastating to the traditional Chinese government and social structure.

Of all the articles and concessions granted in the Unequal Treaties, initiated at Nanjing, most-favoured-nation statuses had the most wide-ranging, detrimental effects on China's sovereignty. Captured in Article VIII of the Treaty of the Bogue:

The Emperor of China having been graciously pleased to grant, to all foreign Countries, whose Subjects, or Citizens, have hitherto traded at Canton the privilege of resorting for purposes of Trade to the other, four Ports of Fuchow, Amoy, Ningpo and Shanghai, on the same terms as the English, it is further agreed, that should the Emperor hereafter, from any cause whatever, be pleased to grant, additional privileges or immunities to any of the subjects or Citizens of such Foreign Countries, the same privileges and immunities will be extended to and enjoyed by British Subjects.¹⁰

Every subsequent treaty with a Western power included some imitation of this clause, thereby fostering an automatic, unconscious cooperation between the West to pry China open, and maintain equality of opportunity in the China trade.¹² Equality in China's relations was not an imposition of the West, however, as the Tributary System existed for millennia before the Opium Wars based on non-discrimination. What changed under the Western imposed the most-favoured-nation system was China's relative position in international relations – from the top of its Tribute System, where

all others were subordinate, to the bottom of the global system, exploited by all who pleased.¹² Though most-favoured-nation status was originally sought for commercial equality among the Western powers, it eventually “embodied a limitless doctrine of equality of opportunity capable of expansion in many directions,” effectively amplifying the perverse effects of the treaty port concessions, extraterritoriality, and the like.¹²

In addition to the MFN clauses, which stripped away Chinese sovereignty piece by piece, the opening of China and the foreign control over tariff rates and terms of trade effectively “deprived China of control over its own economy.”⁸ With the Treaty of Nanjing, British merchants broke free from the confines of the Canton system, which was wrought with corruption and the restrictions of the Cohong traders. Chinese officials granted access to trade and settle in Amoy, Fuzhou, Ningpo, and Shanghai in addition to Canton, mistakenly assuming this would dilute the foreign trade rather than intensify it. This ignorance of the economic functioning of the free market world emerging in Europe also led the Qing government to relinquish their tariff autonomy.^{2,3,5} Tariffs were fixed by British official consent, only to be modified with approval from the Crown. By 1860 ten additional ports were open to foreign trade, and foreign consuls and trade officers were firmly in control of the customs duties and tariffs levied on Western imports to the treaty ports.^{1,4,5} Foreign merchants and their Chinese counterparts were able to manipulate legal loopholes, ignoring China’s sovereign rights, and on some occasions, evading taxes altogether.⁸

It became difficult, if not impossible, for China to protect nascent industries and young Chinese companies against foreign trade, especially after the 1895 Treaty of Shimonoseki with Japan, which expanded foreign rights in treaty ports to include the construction of manufacturing companies. By virtue of most-favoured-nation status, such a privilege was granted to all foreign powers with that had signed an Unequal Treaty with China; foreign direct investment spiked, further endangering China’s domestic manufacturing economy.^{4,8} Conversely, the stimulus provided by foreign direct investment and the Western trade created tremendous growth in the treaty ports, suggesting that China’s integration into the capitalist world market was not entirely negative, and that its underdevelopment was only relative.^{4,14} While such arguments have some validity, the development in

treaty ports was grossly unbalanced with the underdevelopment of the rest of the country – siphoning capital away from local markets and domestic firms into the treaty ports significantly hindered modernization processes in China.⁴

Extraterritoriality, defined as “the right of jurisdiction by foreign consuls over their nationals,” proved devastating to China’s position as a sovereign state in the global system.⁵ Because of the Unequal Treaties, China was hardly sovereign in its own territory, as Western citizens were protected while in China, yet the lack of reciprocity gave China no such right to safeguard their own nationals.⁸ Extraterritoriality was a long process in the making for Europeans (and Americans) in Asia; various events occurred in the history of Sino-Western relations leading foreign powers in China to demand rights for their nationals to be tried under a consul and not in Chinese courts, which were considered cruel, clandestine, and repugnant.^{15,16} Jurisdiction over nationals in treaty ports also applied to those traveling through inland China once such movement was allowed; Chinese officials were often pressured by foreign governments to turn criminals of Western nationality over to foreign consuls, or even to let Christian missionaries deal with Chinese citizens who had converted to Western religions.¹⁷ Essentially, China had been deprived of sovereign legal jurisdiction within its own borders – any wrong move might lead to Western intervention, more conflict, or further unequal treaties.

As subsequent treaties were signed, extraterritorial rights were extended from peoples to concessions granted as neighborhoods in which foreigners could live. Entire districts of the treaty ports fell under the jurisdiction of Western powers – such settlements became self-governing, establishing independent police forces, municipal governments, and administrations.⁶ The concessions forced by the foreign powers, especially by the Treaties of Tianjin and beyond, provided Westerners rights to rent, and eventually own, properties in treaty ports. They erected buildings and churches on leased territories, with little regard for Chinese concern with *feng-shui*.⁵ Protected by extraterritoriality, foreign zones in the treaty ports became havens and places of refuge for foreign merchants, their Chinese counterparts, and their possessions – tax exemptions from their national governments and shelter from Chinese corporate and criminal laws made these regions very attractive. In reality, concessions and settlements, combined with

the automatic extension of extraterritoriality and Western legal traditions and systems of trade by most-favoured-nation clauses, embodied an exploitative quasi-colonialism, rendering the Qing government powerless to control their own territories.¹⁴

Related to the settlement rights granted under concessions to the West, was the permission of foreigners to learn Chinese, travel inland, and preach Christianity. All of China was opened to proselytizing missions and travel, producing significant cultural disruption to match the economic disruption resultant from foreign commerce penetrating the interior.⁵ Missionaries saw China as a vast, populous, and idolatrous territory, which provoked excitement among Christian sects seeking converts. The missionary drive reinforced economic expansion, while economic and legal expansion beginning at Nanjing, supplemented religious rights and privileges of Western missionaries.⁴ The impact of Christianity should not be overestimated, as the number of converts remained quite low; however, the disruptive effects of Catholic and Protestant missions, and foreign travel inland were readily observable.¹⁷

For as long as Britain had been in contact with China, and communications between officials were sent and received, the degrading language used by Chinese in reference to foreigners was not much appreciated.¹ By the 1830s, as the tides turned in Britain’s favour, they actively sought amelioration of the humiliating treatment practiced by the Chinese.¹² The term ‘P’ (barbarian), with which Chinese officials referred to all foreigners, regardless of status, was most despised. From Nanjing onwards, however, such derogatory terminology in the Qing vernacular was forcibly diluted and officially banished from official communications. The principle of diplomatic equality enshrined the worth of Western standards of diplomacy, shattering remnants of the old Tributary system, which saw China at its apex.⁸ Regrettably for China, equality was broadly interpreted by the foreign powers to mean Sino-inferiority and dominance of Western methods, traditions, and norms. More unfortunate was the utter lack of understanding on behalf of the Qing officials about exactly how Western diplomatic relations worked – this led to further exploitation. Treaties were most often written in Western languages and converted crudely into Chinese – meanings were regularly lost in translation, with the document in the Western language held as law.⁵ The advantage in diplomatic relations quickly swung from the Chinese imperial

court, to parity, then to the governments of the foreign powers who used such devious methods to manipulate Chinese negotiators further transgressing China's sovereignty and abetting its underdevelopment.

The detrimental effects of the most-favoured-nation statuses, treaty ports and trade exploitation, extraterritoriality, settlement and inland travel rights, and Western-imposed standards of international relations are clearly visible in hindsight as they continued to build with each successive treaty. Still, the original reception of the Treaty of Nanjing was that of relief. This was best represented by Chang Hsi's *Fu-i-jih-chi* (The Pacification of the Barbarians), in which Chang, an advisor to I-li-poo, recalls the negotiations and signing of the Treaty. Chang's diary reveals that while Chinese officials were primarily concerned with appeasing the superior English navy, they also had minimal knowledge of foreign affairs and international law, exacerbating the problems of their hasty submission.³ I and Ch'i hardly looked at the terms of the treaty, instead rejoicing at the prospect of the British withdrawing – even if they did read the proposed terms carefully, they had been given authority from the imperial court to act as the circumstances required and make whatever concessions necessary in the name of peace.^{3,7}

Moreover, the Qing did not fully understand the significance of the Treaty of Nanjing either intrinsically or as a precedent. To them it was simply an extension of concessions they had already made to the Kokland people of Central Asia to the maritime frontier, as a way of diluting Western influence and pressure.¹ The ramifications of such an important event were oversimplified and underestimated both in the Qing imperial court, and by Chinese high officials charged with negotiating its terms. The Treaty of Nanjing was seen as only a minor setback in the grand scheme of Chinese relations; Westerners had been subdued, held to the shores of China's great empire, and opium remained illegal.⁵ Additionally, the treaty failed to ease tensions in Canton and all self-respecting Chinese retained an "implacable hatred" of the British.²

It was only as subsequent treaties were signed, building from the legal foundation set by Nanjing that the Chinese began to realize the severity of their negative impact. By the 1870s it was increasingly common to find demands for *gongping* (China's treatment as an equal), *ziding* (autonomy), and *zhoquan* (sovereignty).¹³ *E'wai quanli* (extraterritoriality) – a term invented in 1883

– was gradually more refuted, especially because the Chinese argued that no such laws existed between European nations.¹³ China's humiliation and inferiority was resented more and more from the Convention of Beijing onwards. Hatred of the West was augmented by the growing economic strains of constantly paying indemnities and loans, without the tariff autonomy necessary to earn revenues. Although domestic factors also had a major impact on the underdevelopment of China, "imperialist-colonialist behavior of the West (including Japan) was, on balance, inimical to Chinese development".⁴

The weak Chinese economy and state was partially held together by self-strengthening reforms and a strong, centralized authority – which collapsed with the death of the Empress Dowager in 1908.¹⁴ Imperial Qing China destabilized and collapsed. From the ruins rose competing nationalist and communist movements, both seeking to exploit *bupingding tiaoyue* (Unequal Treaty) rhetoric to reap emotional and political support.¹⁵ First expressed by Sun-Yatsen, a founding father of Republican China, in 1924, he stated: "All Unequal Treaties ... foreign concessions, consular jurisdiction, foreign management of customs service, and all foreign political rights on China's soil, are detrimental to China's sovereignty. They all ought to be abolished so as to leave the way open for new treaties based on the spirit of bilateral equality and mutual respect for sovereignty".¹⁸ Unequal Treaty discourse in the early twentieth century followed three paths. The moral discourse was used in attempts to persuade foreign powers to recognize their unfairness and resultant injurious effects in China. Legalistic discourse also sought to reason with the West on the basis of the illegitimacy of the Unequal Treaties. Finally, rhetorical discourse was aimed at generating a strong emotional response from ordinary Chinese citizens against Western imperialism.¹³ Through Unequal Treaty discourse, national humiliation and China's victimization at the hands of the West became integrated into the Chinese-ness of the masses in the early-1900s.¹³

The Treaty of Nanjing, 1842, represented the beginning of the century long system of unequal treaties in East Asian history. The intentional vagueness in which it was written served to enable the West to extort more and more rights away from the Qing, contributing to the centuries-old dynasty's decline.¹³ In the process of events, the villainous intent of the West was apparent – imposing, by force if necessary, anything

and everything they could have wanted onto the Chinese. Ultimately, The Treaty of Nanjing set an important precedent of exploitation in East Asian international law, followed for nearly one hundred years as the basis for diplomatic relations between Asia and the West. The Treaty of Nanjing set an important precedent in international law for foreign dealings with the Chinese Empire. Followed for nearly a century as the basis for diplomatic relations between Asia and the West, the Unequal Treaty model served to exploit immense opportunities in China by ripping away Chinese sovereignty and ensuring underdevelopment in the Middle Kingdom.

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