

The Chinese Dream, Neoliberalism, and International Legal Ideology

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Abstract

The present study analyses a key contemporary transformation in international law: the ascent of China and the decline of the hegemony of the United States. I shall here construct a two-stage theoretical picture of China's mission to establish a regional order with Beijing at the centre. First, I present the argument that international law is a vehicle for hegemonic ideology and practice, taking my orientation from Gramscian theories of hegemony. Second, I shall unfold the Chinese Dream—a Confucian variant of neoliberalism—and the One Belt One Road Initiative, to demonstrate that China's evolution into a core production zone in the neoliberal world economy may be achieved through international legal structures.

Keywords

Critical legal theory – international law – political theory

The world under heaven, after a long period of division, tends to unite; after a long period of union, tends to divide. This has been so since antiquity.¹

¹ 话说天下大势，分久必合，合久必分。罗贯中，三国演义（人民文学出版社 2007）。[Luo Guanzhong, *Romance of The Three Kingdoms* (Renmin Wenxue Publishing Press 2007)].

1 Introduction

The present study examines a key contemporary transformation in international law: the rise of China and the decline of the hegemony of the United States. I shall construct a two-stage theoretical picture of China's mission to establish a regional order with Beijing at the centre. First, I articulate how international law's universal ideological structure services hegemonic interests and practice, and explore whether established ideology could be unsettled and rearticulated to reform the hegemony of the United States in China's periphery. Second, I enunciate that international law formalises diplomatic initiatives, designed to heighten economic, cultural, and political ties between China and its periphery ('the Beijing cosmology'). China's historical centrality produces an ambition at odds with its normative subordination under the U.S. led ensemble of social relations. China, for now, suppresses that ambition and operates within neoliberal structures.²

Neoliberalism is the common thread that links U.S. and Chinese approaches to international law. I unfold China's adoption of neoliberal relations of production, in light of Gramscian theories of hegemony as applied to international law. There is little meaningful treatment of the Sino-Western dichotomy in international legal scholarship, which is replete instead with superficial analysis of perceived Chinese ascendancy coloured by Western anxiety.³ Through the broad lens of international legal theory, it becomes apparent that frequently invoked Western anxiety—stereotyping China as an existential 'other'—is unfounded. From the perspective of Gramscian hegemony, China remains a secondary state, normatively. I shall demonstrate that Sino-U.S. relations are congenial: China's Dream of state recovery is conservative and neoliberal. China's material interests are realised not by counter-hegemony, but by perpetuating neoliberalism as the international public order's social logic. For international legal theory to properly assess the Sino-U.S. relationship, Chinese aspirations must be considered with China's own historical conditions in mind, not simply in terms of the U.S.'s *telos*. That is what the present study offers.

Section 2 explains international law's ideological capacity to procure state obedience and how hegemonic ideologies inform China's engagement with

2 Max Weber and Max Rheinstein, *Max Weber on Law in Economy and Society* (1970) 11–33.

3 Language is an implied mode of thinking and behaviour. The present study is compiled in English, meaning that Anglo-centric intuitions of the world, shared by a specified social grouping, inhere in the arguments advanced. Concerning language as an instrument of power backed by authority, see Pierre Bourdieu, John B Thompson and Gino Raymond, *Language and Symbolic Power* (Reprinted, Harvard University Press 2003).

international law. International law exists, in part, as a social consciousness of a policy elite for interstate coordination. I consider why subordinates acquiesce to the *senso commune* established by liberal democratic capitalism ('neoliberalism').⁴ I take my orientation from Antonio Gramsci and argue that international legal ideology both mystifies and persuades, but retains a residual emancipatory potential. Despite this potential, China does not appear to prioritise emancipatory politics.

Let me broadly define 'neoliberalism' for the present historical epoch. Since totalitarian Communism disintegrated, liberal democratic capitalism has had no genuine institutional rival. Neoliberalism is the political logic of total subservience to market values; it deregulates, digitalises, and privatises the world-economy. The present world-system prioritises perpetual capital accumulation, integrating otherwise heterogeneous political structures and cultural verities. Narratives of global governance, drenched in capitalist interests, cultivate worldwide neoliberal reproduction.⁵

In Section 3, I demonstrate that international law mediates capitalist integration through the Chinese Dream (a Confucian variant of neoliberalism) and the One Belt One Road Initiative ('OBOR'). China's evolution into a core production zone in the neoliberal world-economy can be achieved through international legal structures. I trace the historical development of ethnicism, instituted by the Chinese Communist Party ('CCP'), alongside China's forced encounter with capitalist modernity, to clarify China's socio-political trajectory in the region. China relies upon the structuring of international law—defined by sovereign units engaged in commodity exchange—to assume regional

4 I adopt Gramsci's original Italian term, the *senso commune*. The English 'common sense' is laden with moral and ethical connotations. In Hannah Arendt's romanticised concept of human commonality, reality, taken for granted by the populace, is produced by some rational consensus to which 'common sense' truth attaches. For Gramsci, the *senso commune* aggregates the subordinate's complicity in, and allegiance to, the hegemonic project. The hegemonic core portrays a fixed, self-evident 'reality' against which subaltern classes structure their social existence. Over time, this reality appears to the subaltern as unchangeable and futile to oppose. See Kate AF Crehan, *Gramsci's Common Sense: Inequality and Its Narratives* (Duke University Press 2016) 51.

5 I do not agitate for an all-encompassing definition of neoliberalism. People experience different instantiations of neoliberalism according to their particularised temporal and spatial conditions. U.S. hegemony, and its universalisation of neoliberalism, ignores the cultural particularities of different sovereigns, the plurality of the human condition, and, incites reactive antagonism from the subaltern. All institutions are mere products of their constitutive social and economic relations; power is at the core of every order. See Section 3. See also Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (2nd ed, Verso 2001).

economic leadership. But the post-Cold War architecture—U.S. guaranteed bilateral security treaties⁶—precludes regional subscription to President Xi Jinping ('Xi's') 'community of shared destiny'.⁷ OBOR implements conservative neoliberalism and accords with Washington's hegemonic leadership in 'Asia'. (I retain 'Asia', as no neutral English term exists to capture China and its peripheral states. 'Asia' remains a Western anachronism superimposed onto that geographical region.) Let me present, first, the theoretical apparatus necessary to analyse China's ambition.

2 International Legal Ideology: Neoliberal Hegemony, Collective Will, and Emancipatory Potential

International law is a vehicle for hegemonic ideology and practice. Political imperialism is embedded in international law's juridical equality.⁸ U.S. hegemonic leadership, embedded within the norms, principles, and institutions of international law, constitutes a recognisable cognitive map which assists the subordinate to self-affirm their socio-political concerns.⁹ This section focusses on the effect of international law as a vehicle of hegemonic ideology, rather than the rules, principles and norms of international law itself. In this analysis, international legal ideology functions as: (1) a component of hegemony which

6 Linda Jakobson, 'Reflections From China on Xi Jinping's "Asia for Asians"' (2016) 8 *Asian Politics & Policy* 219.

7 王义桅, 一带一路: 机遇与挑战 (人民出版社 2015) [Wang Yiwei, *One Belt One Road: Opportunity and Challenges* (Renmin Publishing Press 2015)]. 郑永年, 未来三十年: 改革新常态下的关键问题 (中信出版集团股份有限公司 2016) [Zheng Yongnian, *The Future 30 Years: Key Issues under the New Normality of Reform* (Citic Publishing Company 2016)].

8 Hardt and Negri's famous argument remains useful here:

The position of the newly sovereign nation-state cannot be understood when it is viewed in terms of the rosy UN imaginary of a harmonious concert of equal and autonomous national subjects. The postcolonial nation-state functions as an essential and subordinated element in the global organisation of the capitalist market ... national sovereignty [is] not just powerless against this global capitalist hierarchy but themselves contribute to its organisation and functioning. Michael Hardt and Antonio Negri, *Empire* (Harvard University Press 2003) 133–135.

9 I dispute the Leninist revolution rhetoric, which holds that counter-hegemonic efforts must first overturn material conditions as is, before international legal ideology is reconfigured.

horizontally socialises the transnational elite of secondary states¹⁰; and (2) a terrain on which ideological conflict manifests.

The aim of this section is two-fold: first, I explain how international legal ideology legitimates the essential subordination of secondary states under the global capitalist hierarchy; and second, I analyse the hegemonic class's capacity to coercively determine and enforce the political and legal structures that bind all, using international legal ideology.

The concept of ideology springs from the French Revolution: it comprises lived ideas and beliefs, coextensive with unified political conclusions.¹¹ International legal ideology asserts universal expectations to evaluate the unique socio-economic practices of each state. The U.S. politically and economically reconstructed allies after WWII, with the UN Charter's enshrined juridical equality operating as an instrument of Anglo-American political violence.¹² Since then, it continues to designate which issues warrant the technical resources and political energy of the international system.¹³ International legal ideology substitutes the systemic, institutionalised inequality between states, for abstract, formal equality. After 1945, international law's organisational structure—consisting of multilateral arrangements advancing themes of indivisibility and formal reciprocity—have gradually transposed the U.S.'s parochial interests onto the world.¹⁴ International law has been used to

10 In the present study, 'transnationalism' refers to the interactions, regulations, and events that transcend national geopolitical boundaries. It is a multidirectional phenomenon that stems from the interpenetration of capital, resources, and labour.

11 See also Andrew Halpin, 'Ideology and Law' (2006) 11 *Journal of Political Ideologies* 153. Halpin's takes ideology as a tool to understand politics. Its existence presupposes a continuing controversy over the political and a need to justify a particular political arrangement over a competing view. This reading dovetails with the agnostic pluralism of Mouffe, which holds that political opposition is incapable of final reconciliation.

12 The U.S.'s role as the global creditor of the capitalist world-economy secured its hegemonic status. Wilson compellingly argues that it is tempting to interpret the development of multilateralism and international organisations as a collective effort—by the U.K. and the U.S.—to secure a successful transatlantic hegemonic succession, post-1945. Eric Michael Wilson, *The Savage Republic: De Indis of Hugo Grotius, Republicanism, and Dutch Hegemony within the Early Modern World System (c. 1600–1619)* (Martinus Nijhoff Publishers 2008) 43. José E Alvarez, 'Hegemonic International Law Revisited' (2003) 97 *The American Journal of International Law* 873, 887.

13 Hilary Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65 *The Modern Law Review* 377.

14 Anne-Marie Burley-Slaughter, 'Regulating the World: Multilateralism, International Law, and the Projection of the New Deal Regulatory State', in John Gerard Ruggie (ed), *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (Columbia University Press 1993).

justify export of (low intensity) neoliberal structures for democratic transition. Purveyors of the 'rule of law' assumed an imperialist duty to 'help' those abroad attain prosperity through romanticised doctrine, imposing foreign 'law' to further subjugate a conquered people.¹⁵ China's normative rise occurs in this context.

My argument progresses in three stages. First, I challenge international legal ideology's legitimacy. International legal ideology mystifies the structural inequalities of a given historical moment to condition a *senso commune*. A popular consciousness universalised in social and economic life, the *senso commune* allows the hegemon to express a singular conception of law and politics for all.¹⁶ This argument requires that I elucidate the hegemon-subordinate relationship. By the *subordinate*, I mean the transnational leaders of secondary states, co-opted into an internationalised, hierarchical division of labour. Such elites, tantamount to an interstate bourgeoisie, calibrate their substantive beliefs, value orientations, and political interests to correspond with those of hegemonic control. This occurs through: (1) frequent participation in transnational institutions designed by the hegemon;¹⁷ (2) normative persuasion from hegemonic narratives prevalent in diplomacy, cultural exchange, and international study; and (3) a desire to justify policy decisions within the normative orientation of the hegemonic system for domestic legitimacy and material interest.¹⁸ For normative claims about the international public order to affect state behaviour, they must bind the elite community (not necessarily the masses) into a single class with a common socio-economic worldview. The elites's acceptance of hegemonic normativity corresponds to their integrated position in the world-economy. They tacitly support the 'legality' of U.S. hegemony, inextricably linked with the U.S.'s dominant political violence, latent within all sovereign claims.¹⁹ Material incentives (political expediency, foreign investments) render the subordinate susceptible to hegemonic socialisation. The subordinate externalises their political and economic beliefs into domestic institutions that reproduce coherent neoliberal agendas. Hegemonic

15 Stephen Humphreys, *Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice* (Cambridge University Press 2010) 8–10.

16 Antonio Gramsci, Quintin Hoare and Geoffrey Nowell-Smith, *Selections from the Prison Notebooks of Antonio Gramsci* (Lawrence & Wishart 1971) 328.

17 For example, upholding the U.S. dollar as the world's reserve currency in international trade protects the U.S.'s dominance in guaranteeing capital liquidity.

18 For a lucid account of hegemonic socialisation processes, see G John Ikenberry and Charles A Kupchan, 'Socialization and Hegemonic Power' (1990) 44 *International Organization* 283.

19 Wilson (n 12) 44–45.

socialisation, embedded in state behaviour, grounds the domestic legitimacy of the subordinate in the faithful implementation of the neoliberal program. Hegemonic rule, based on right, enhances rule, based on might. The neoliberal model is internationalised through conquering the hearts and minds of the subordinate, implicitly backed by the hegemon's superior political capacity to uphold legal claims.²⁰

Ideologies are not unilateralist: rather, they genuinely reward subordinate interests. Ideology indicates the effectiveness of hegemonic influence.²¹ The hegemon institutes intellectual and 'moral' reform to elicit subordinate 'consent', legitimate its leadership, and forge an ideological unity by containing disparate wills. The hegemon fashions a plausible account of social reality acceptable to the subordinate, by which the subordinate internalises the international public order's hierarchical regime as norm. An international rule of law constitutes an eminent hegemonic socialisation strategy: it takes root in elite politics, allowing subordinates to legally structure coalitions for expedient self-interest. The subordinate acquiesces to the 'consensual' normative order when it repeatedly: (1) implements policy goals which correspond to hegemonic values, derived from 'cooperation' with legitimated leadership; and (2) accepts the foreign vocabulary of international law as the instrument through which the hegemon pronounces the prevailing account of contemporary reality.

The second stage of my argument posits that regardless of its illegitimacy, international legal ideology is efficacious. It articulates a clear blueprint of the normative order for the observance of secondary states.²² In a two-stage process, first coercion and then discipline transform state behaviour. The hegemon deploys force, initially, to intervene directly in a secondary state's domestic political institutions, and adapt the masses to a radical change in economic structures.²³ International legal ideology then intervenes, as the repressive aspect of the primary moment. It assists the subordinate to rationalise the erasure of previous social and economic behaviour. And, to 'freely' accept new economic structures functional to hegemonic continuation, as their own.²⁴ Ideology secures the hegemon's material and intellectual leadership. International law stands as a secondary moment of self-regulation

20 Ikenberry and Kupchan (n 18) 284–286.

21 Gramsci, Hoare and Nowell-Smith (n 16) 349.

22 Max Weber and Guenther Roth, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press 1978) 213.

23 See generally Wilson (n 12).

24 Jacques Texier, *Gramsci, theoretician of the superstructures*, in Chantal Mouffe, *Gramsci and Marxist Theory* (Taylor & Francis Ltd 2014) 68–73.

and self-discipline structured according to the singular universal of the hegemon.

Third, I explore whether international legal ideology could nevertheless be a vehicle for emancipatory change, beyond mere defensive resistance. The views of opposing political regimes are irremediable; power and resistance are perpetually interlinked.²⁵ International law is precisely a terrain for battles of ideological attrition, not of violent revolution. A constant disarticulation and rearticulation of the hegemonic principle sees multiple political forms attempting to unsettle hegemony.

Organicist populism accentuates the contradiction between ideals of justice, equality, and freedom on one side, and the disappointments of neo-liberalism, on the other.²⁶ International rules appear as lifeless abstraction in the face of political motivations (backed by coercion) that determine international law's normative content. Before I address these issues, let me outline the normative order in China's periphery.

2.1 *China's Imperialist Encirclement*

I begin with Marx, who first channelled ideology to analyse social relations. For Marx, the ruling class conceives of a suite of beliefs, expedient to its social and economic interests, as the true belief for the common interest of all society.²⁷ Legal and political institutions—the dominant violence in society—represent epiphenomena that secure class domination by masking inequality in labour market exploitation. International legal ideology is reduced to false consciousness that elicits the subordinate's countenance of class domination. Ideology has no history of its own. And, a fortiori, its reality is manufactured.

Ideology does not simply cloak manipulation of material conditions. A hegemonic order encompasses a level of subordinate independence: the hegemon secures subordinate compliance through ideological persuasion.²⁸ International legal ideology, the juridical structure that embodies normative principles of the international public order, socialises elites into a transnational community. These elites enact state policies that correspond with

25 Weber and Rheinstein (n 2); Michel Foucault, 'The Subject and Power' (1982) 8 *Critical Inquiry* 777.

26 I take the term 'organicist populism' from Slavoj Žižek. See Slavoj Žižek (ed), *Mapping Ideology* (Verso 2012) 3.

27 Karl Marx and others, *The German Ideology* (Lawrence & Wishart 1970) 64–66.

28 Ikenberry and Kupchan (n 18) 292.

hegemonic norms and institutions: in the context of neoliberalism, those that liberalise trade.²⁹

The U.S., post-1945, exported liberal multilateralism as the universally legitimate political framework. The Marshall Plan catalysed Western Europe's economic revival and political realignment to a liberalised order founded on capitalist principles.³⁰ The U.S. initiated currency reform, trade liberalisation, and instilled a belief in the European policy elite that instead of imperialist empire, U.S. loans paved a most effective path to world stability. A large-scale injection of resources and capital integrated the region (beginning with the elite) into a common, U.S.-designed socio-economic order.³¹ The U.S. also directly intervened to internally reconstruct Japanese political structures, leading to changes in Japanese foreign policy congenial to neoliberalism.³² Economic growth from U.S. intervention ensured the increasing appeal of a neoliberal normative consensus. Put differently, the U.S.'s post-war strategy inspired subjective aspirations towards liberal multilateralism in European and Japanese elites. This validated the objective social circumstances of economic restoration and conferred legitimacy on U.S. hegemony. The elites's subjective allegiances, and society's objective structures, mutually reinforced one another,³³ transmitting the social logic of U.S. hegemony into state behaviour and denying other possibilities.

Since the 1960s, the U.S. has practiced interventionist unification, in a world of divergent political structures and heterogeneous cultural roots.³⁴

29 Robert W Cox and Timothy J Sinclair, *Approaches to World Order* (Cambridge University Press 1996) 136–137.

30 Ikenberry and Kupchan (n 18) 301. The authors remind us that U.S. officials, through the Marshall Plan, targeted the political reconstruction of Europe: 'their immediate political objective was to use Marshall Plan assistance in a way that would promote European integration. A more united Europe built of a common social and economic foundation would help prevent the re-emergence of political antagonisms and economic failure ... But U.S. officers were also convinced that European unity would facilitate the construction of a larger system of liberal multilateral order.'

31 *ibid* 306.

32 Daniele Archibugi and David Held (eds), *Cosmopolitan Democracy: An Agenda for a New World Order* (Polity Press 1995) 7.

33 Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge University Press 2010).

34 China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill 2005) 289. Miéville throws light on the mutual constitutive relationship between sovereignty and intervention: Absolute state sovereignty and the constant intervention that undermines it mutually constitute each other, and the fabric of international law.... Understanding that the force, coercion, intervention of sovereign states is thus a structuring part of the contestation implied by law, brings us to the brink of understanding imperialism in a world of juridically equal states—a world of universal international law.

To maintain capital penetration, subordinates must become allies of capital: structuring fiscal and labour policy according to the appetites of multinational corporations. Capitalists transcend statehood to cement transnational commodity exchange as the world-system's defining feature.³⁵ The capitalist world-system requires a hegemon to oversee a single division of labour between core and periphery states and to underwrite the flow of investment capital crucial to the international economic system.³⁶ International legal norms confer juridical legitimacy to hegemonic processes. Its rules arise from the hegemon's exercise of leadership, initially in economic maintenance, but gradually in political and cultural dominance. Washington has constructed a world-system that makes it difficult for China to mount counter-hegemony. It is more conceivable for China to overtake the U.S. as the economic core, than it is for China to successfully implement the Beijing cosmology.

China, while unprepared to challenge the U.S. as the underwriter of global security, is uncomfortable with its status as a rule taker. The CCP perceives its socio-political lineage as superior to tolerated U.S. hegemony.³⁷ China seeks to federate its People's cultural identity before ascending to the regional nucleus of capital accumulation and cultural leadership.

China wants to eradicate the hegemonic narrative that portrays the universal intervention of neoliberal democracy as legitimate. China disputes the assumption that participatory democracy has universal currency, abstracted from national peculiarities. It is a political system, not a political panacea, with minimal pertinence for China's present epoch (and its non-Westphalian history). China cannot afford the political inertia characteristic of 'established'

35 See Evgenii Bronislavovich Pashukanis, Piers Beirne and Robert S Sharlet, *Pashukanis, Selected Writings on Marxism and Law* (Academic Press 1980) 169; Mathew Horsman and Andrew Marshall, *After the Nation-State: Citizens, Tribalism, and the New World Disorder* (HarperCollins 1994).

36 Charles P Kindleberger, *The World in Depression, 1929–1939* (University of California Press 1986) 291–296. Kindleberger delineates five economic responsibilities of a single hegemon in the international economy:

- (1) maintaining a relatively open market for distressed goods—or, financing free trade by adapting domestic resources to changes in productive capacities abroad;
- (2) upholding a stable system of floating exchange rates;
- (3) guaranteeing counter-cyclical (long-term) lending to stabilise domestic investment and stimulate exports;
- (4) coordinating domestic macroeconomic policies by conferring strategic and financial opportunities to reward openness to the world market; and
- (5) act as a lender of last resort to underwrite the flow of investment capital and imports.

37 As Section 2.1 described, agrarian practices generated social camaraderie and corresponding expectations unlike those of a mechanised Westphalian state.

electoral democracies.³⁸ There is thus an impasse between China's political lineage and intensifying themes of democratic governance in international law.

It is difficult to overcome neoliberal control and implement the Beijing cosmology, given China's imperialist encirclement.³⁹ Washington's regional alliance system extends not only the U.S.'s economic and military capabilities, but equally, its social, political, and intellectual leadership.⁴⁰ To the East: Japan, South Korea, and Taiwan, stalwarts of the U.S.'s pivot to install neoliberalism in 'Asia', all harbour U.S. military installations. China, Japan, and Taiwan are also in territorial disputes over the Diaoyu/Senkaku islands. To the South: China's political relationship with India is precarious. Relations await recovery from the Sino-Indian Border Conflict of 1962; extant border disputes undermine cooperation.⁴¹ (China's relationship with Pakistan, typified by OBOR's China-Pakistan Corridor, further animates India's distrust of Chinese geopolitics.) South East Asian states, including Vietnam, the Philippines, Malaysia, Brunei, and Indonesia, claim Exclusive Economic Zones and Continental Shelves in the South China Sea which compete with China's maritime boundary claim.⁴² Australia and New Zealand, semi-peripheral states with a common colonial heritage, are also long-time allies of Washington. To the North: China and Russia form politically expedient partnerships, notably the Shanghai Cooperation Organisation,⁴³ predicated only on a common geopolitical contestation with Washington.⁴⁴ Competing for dominance in Central Asia, often

38 Beyond the present study's remit, I would argue that China's dynastic autocracy demands that state authorities practice meritorious rule, subject to continuous validation by the citizenry: the central goal of electoral democracies. See 梁漱溟, *中国文化要义* (学林出版社 1987) [Liang Shuming, *The Elements of Chinese Culture* (Xuelin Publishing Press 1987)].

39 Ingo Venzke, *How Interpretation Makes International Law: On Semantic Change and Normative Twists* (First ed, Oxford University Press 2012) 61.

40 Cf Steven W Mosher, *Hegemon: China's Plan to Dominate Asia and the World* (Encounter Books 2000) 94–95.

41 Sonja Buckel and Andreas Fischer-Lescano, 'Gramsci Reconsidered: Hegemony in Global Law' (2009) 22 *Leiden Journal of International Law* 437, 443.

42 Formally, the Tribunal in the South China Sea Arbitration rejected China's nine-dash line as 'contrary to [UNCLOS] and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention'. South China Sea Arbitration, *Philippines v China* (2016) ICGJ 495 [1203(B)(2)].

43 Zhenis Kembayev, 'Towards a Silk Road Union?' (2016) 15 *Chinese Journal of International Law* 691.

44 The Ministry of Foreign Affairs of the Russian Federation and The Ministry of Foreign Affairs of the People's Republic of China, 'The Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law' (25 June 2016).

overlooked is the imperialist history that colours Sino-Russian relations: China ceded 'Outer Manchuria' to Soviet control in the 19th century. For China, these external geopolitical challenges coincide with pressing separatist movements in Mongolia, Xizang, Xinjiang, and most recently, Hong Kong.⁴⁵

I shall proceed to elucidate the first strand of my analysis: international legal ideology's compatibility with U.S. hegemony. China's increased willingness to contest U.S. hegemony correlates with reclaiming Sino-centrality. But a new balance in international law cannot be achieved merely by China's engagement in hegemonic contestation. Drawing upon Gramsci and his interlocutors, I explain that international law institutes ideological control and justifies a leadership class's normative authority over subordinates.⁴⁶ Gramscian hegemony was initially sketched as a national phenomenon to explain relations between the bourgeoisie and subaltern. It informs, however, a richer understanding of international legal ideology, as a means: (1) to mask the material advantages of the dominant class; (2) to produce social subjectivity; and (3) as a relational instrument for the subordinate to define its interstate existence.

International legal ideology may ultimately constrain Chinese political ambition. Its rhetoric normalises hegemonic leadership of the interstate social system.⁴⁷ But, as the following subsections argue, international legal ideology organises effective social action and encourages both leaders and subordinates to subjectively identify with a contingent hierarchical order.

2.1.1 International Legal Ideology: A Mystifying Force for Hegemony
Juridical equality demands that sovereigns, as subjects in political relations, exert coercive violence to determine the content of international legal relationships. Under an epoch of capitalism, it is impossible to evenly distribute benefits and losses; the abundance of some disenfranchises others.⁴⁸ Normatively subordinated states are unable to substantively challenge the hegemon.

The orthodox Marxist contends that the bourgeoisie wield coercive bureaucratic apparatuses, including law, to manipulate the working class. This contention reduces ideology into malleable epiphonema (not dissimilar

45 These movements seek to redraw political boundaries according to areas dominated by ethnic and cultural minorities, who object to Han national unification.

46 David Chandler, 'New Rights for Old? Cosmopolitan Citizenship and the Critique of State Sovereignty' (2003) 51 *Political Studies* 332, 339–343.

47 Cox and Sinclair (n 29) 126–133; Koskenniemi, *The Politics of International Law* (n 156) 266–267.

48 Karl Marx, Ben Fowkes and David Fernbach, *Capital: A Critique of Political Economy* (Penguin Books in association with New Left Review 1981) 799.

to realist interpretations of international law). Under orthodox Marxism, ideology is superstructure that simply reflects coercive authority, upholding self-interested commodity exchanges generated by dominant modes of production.⁴⁹ The hegemonic class, through the punitive function of the state, suppresses the interests of the base. But this class domination brews passive revolution and is exceedingly resource intensive. It inevitably triggers the coercion of law when interests that reflect popular will can no longer be absorbed by a monolithic hegemonic class. The law's consensual function—to cement social conformism under the hegemonic class's leadership—ruptures. The hegemon must then use coercion to repress the masses.⁵⁰ Therefore, hegemony based on fraud is unsustainable. Orthodox Marxism fails to recognise that effectual law must be more than coercive—it must have an ideological function.

International legal ideology provides ordering principles for hegemony in two ways. First, it propagates a common culture complementary to objectified social structures, and homogenises the expectations and behaviours of subordinates.⁵¹ Hegemony endows an outcome of human endeavour, international law, with independent, institutional life for the subordinate's worship.⁵²

Second, international legal ideology normalises the interstate imbalance of power and feigns neutrality and active consensus in doctrines actually cultivated by hegemonic leadership. In fact, international legal regimes, such as 'universal' human rights, pursue cosmopolitan regulation at the expense of sovereign autonomy, emphasising the 'correctness' of democratic principles, rather than ensuring their consistent observance.

Hegemony is not a one-way process. Rather, international legal ideology gives rise to shared consciousness, subjecting all states to the control of a single, generalised system. It is an epistemological imperialism that assimilates all nation-states into one political cosmology. International law's very existence, as a juridical structure equally applicable to all states, disguises the inequality central to hegemonic function: it impels all to demonstrate that their political and economic decisions have a legalist justification, however strained it may be.⁵³ And, alongside capitalist globalisation, it undermines political difference to perpetuate hegemonic leadership (note: by 'leadership', I mean

49 Evgenii Bronislavovich Pashukanis and CJ Arthur, *Law and Marxism: A General Theory* (Ink Links 1978) 151.

50 Gramsci, Hoare and Nowell-Smith (n 16) 246, 260.

51 Richard Schmitt, *Introduction to Marx and Engels: A Critical Reconstruction* (Second ed, Westview Press 1997) 177–182.

52 Marx, Fowkes and Fernbach (n 47) 178–187.

53 Wilson (n 12) 50; Miéville (n 34) 81.

persuasive authority, not imposed domination or naked material power).⁵⁴ For international law becomes inscribed into the very subjectivities (or, the unconscious impulses) that drive subordinates to obey globalising processes.

Reified labels of international law underscore its impartiality and procedural morality. But they neglect to register international law as a contingent, social structure suitable to hegemonic interests. International law cloaks oppressive socio-economic relations founded on capitalist logic, etched into subordinate existence, so that discontented rebellion is felt as self-transgression.⁵⁵ International law's civilising force has been rendered customary by six centuries of European imperialist expansion (the U.S. itself is a post-colonial state). International law's ideological authority becomes tradition-bound, an automation, residing in senseless habitual and customary submission:

habit provides the strongest proofs and those that are most believed. It inclines the automation, which leads the mind unconsciously along with it ... custom is the whole of equity for the sole reason that it is accepted. That is the mystic basis of its authority ...⁵⁶ (emphasis added)

Political imperialism, enacted presently through internationalised capital relations, is itself embedded within sovereign equality. International law, a juridical regime of formal equality and material inequality, sees only select international institutions and politically relevant states involved in its adjudication and administration. Its social rules regulate commodity production and distribution in service of the capitalist world-system.⁵⁷ The most basic issue is that

54 See generally Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford University Press 2000).

55 Sigmund Freud and James Strachey, *Civilization and Its Discontents* (WW Norton & Company 2010).

56 Blaise Pascal and AJ Krailsheimer, *Pensées* (Penguin Books 1995) 46, 216.

57 Nye uses the United Kingdom's preponderance in the nineteenth century to articulate three responsibilities which the hegemon is obliged to meet: (1) maintaining the balance of power among the major states in Europe; (2) promoting an open international economic system (most notably, coordinating exchange rates and macroeconomic policy through fixing the gold standard); and (3) maintaining international commons such as the freedom of the high seas and the suppression of piracy. The U.S. presently fulfils these functions. The U.S. underwrites free trade, guarantees floating exchange rates, and operates a global reserve currency to sustain the capitalist world-economy. But Nye's vantage point is itself hegemonic and liberalist. It expresses that the U.S. role stabilises the social order against aggression by aspiring hegemons in key regions, and, is a desirable 'public good'. Joseph S Nye, *The Paradox of American Power: Why the World's Only Superpower Can't Go It Alone* (Oxford University Press 2002) 144.

capitalist globalisation allows Western states to mobilise the market's coercive violence to constitute legal relations and secure favourable allocation of collective resources. Subordinates direct national economic activity by responding to external interest rates and catering to multinational corporations. Otherwise, they risk the flight of capital and competence.⁵⁸ Transnational institutions harmonise subordinate economic and regulatory policies to replicate neoliberalism across national borders. Corporate practices can only acquire legitimacy by furthering the goals of a privately-owned market economy.⁵⁹ Public conviction, marshalled by the West's political energy, lauds subordinates who tacitly submit to international law's 'democratic governance', the ultimate determinant of development.⁶⁰

Ideology materialises when the subject undertakes social activity not because of external obedience, but as an expression of its unconscious, inner belief. Hegemony succeeds when subordinates cease to recognise the order's arbitrariness. The order instead validates the subordinate's inherent desire for inclusion. Ruling ideology is 'anthropomorphic': it refers the subject back to itself, encouraging the subordinate to aspire to a reconstructed social life according to a 'universally legitimate' framework (the *senso commune*), coextensive with material inducements to their 'best interests'.⁶¹

Gramsci traces the organic development of hegemony through multifaceted, interclass relations. Hegemony, for Gramsci, constitutes the pinnacle of collective political consciousness. Recalibrating Machiavelli's Prince, Gramsci sketches three levels of ascending unification in social and economic formations.

- (1) He begins with an intra-group interest: members of a professional group—linked via trade or craft—realise the homogeneity of, and the need to coordinate, their interests.
- (2) This evolves into an inter-group interest, generated from a 'solidarity of [economic] interests among all members of a social class'⁶² but not outside the class.

58 Marks (n 53).

59 Ian Shapiro and Casiano Hacker-Cordón (eds), *Democracy's Edges* (Cambridge University Press 1999) 32–33.

60 Robert W. Cox, *Structural Issues of Global Governance*, in Stephen Gill (ed), *Gramsci, Historical Materialism and International Relations* (Cambridge University Press 1993) 269.

61 Terry Eagleton, *Ideology and its Vicissitudes*, in Žižek (n 26) 214–215; Philip Allott, 'Language, Method and the Nature of International Law' (1971) 45 *British Yearbook of International Law* 79, 100.

62 Mouffe (n 24) 180.

- (3) The final moment of hegemony is realised when ‘one becomes aware that one’s own corporate interests, in their present and future development, transcend the corporate limits of [their] class, and [must] become the interests of other subordinate groups too.’⁶³ A collective political will is then formed; the hegemonic class assumes the definitive role in society.

Put differently, hegemony is established when the hegemonic class’s package of economic, political, intellectual, and moral interests unifies society through an ideological intermediary. The hegemonic class manufactures common cultural policies, embedded into multifarious institutions including political parties, universities, ‘the rule of law’, families, media platforms, and religious institutions (‘**social apparatuses**’). Social apparatuses materialise a coherent ideology convenient to hegemonic interests for the entire social bloc’s subscription.⁶⁴ The ideology provides the yardstick by which the heterogeneous interests of subordinates are assessed; a unified benchmark for national action, marshalled by the hegemonic class.⁶⁵

The bourgeoisie rallies the support of the proletariat in civil society. Hegemonic leadership, latently guaranteed by the coercion of adversarial classes, gradually coalesces into the expression of public opinion, or, the *senso commune*.⁶⁶ This is the cathartic moment of hegemony. The social strata then process their lived experience through criterion established by the hegemonic class, without conscious intention: fused are their interests, on a universal plane.⁶⁷

There is one important qualification, however. To bind and articulate the full spectrum of identities and maintain dominant relations of production, the hegemonic class must make concessions for the interests and beliefs of its followers. It ought to forfeit certain privileges and uphold a juridical equilibrium, satisfying the normative considerations of subordinate classes. This calls our attention to a preeminent component of Gramscian hegemony. A synthesised collective will requires compromise: the tendencies of subordinates linger in hegemonic strategy. To universalise a ‘common interest’ for international society, U.S. hegemony relinquishes sole pursuit of narrowly

63 Gramsci, Hoare and Nowell-Smith (n 16) 405–406.

64 *ibid* 328.

65 This partly explains why graduates of elite North American or British universities are not let close to political authority in China. The CCP worry that their worldview would be infected with a liberal universalism unbeknownst to those who underwent meritocratic training in the CCP Youth Leagues.

66 Peter D Thomas, *The Gramscian Moment: Philosophy, Hegemony and Marxism* (Brill 2009) 165–167.

67 Mouffe (n 24) 180–182.

constituted corporate interests. It instead audits the social processes of subordinates to ensure that its ideological credibility finds allegiance. (I depart from Pashukanis, for whom juridical equality is a tool to mediate commodity exchange between self-interested owners, absent political intervention. This characterisation, left unqualified, risks denying the educative force of ideology, or, its finesse in normalising social structures and discouraging alternatives.)

Multilateral forums conceive international law. The diversity of political cleavages, ethnicity, language, religious attachments, inter alia, leave its substance contestable. But wanting is political equality in the contestation process: inequality between states's coercive capacities to exploit juridical relations renders the one state one vote system formalistic. Essential to their socialisation, subordinates expect the hegemonic class to drive economic development, assume leadership in interstate political activity, and anticipate subordinate interests when formulating policy. Established hierarchies of influence pervade negotiations; core states present appealing solutions to materially incentivise peripheries, before they abdicate responsibility for decision-making and fall into line.⁶⁸ It is a liberating submission; responsibility is delegated to those charged with directing world affairs.

Legal formalism obscures the asymmetrical power relations which underline international law. Bereft of intrinsic rationality, international law is a contingent expression of constitutive political relationships, a medium on which the rules are decided, by coercion. It systematically distracts from hegemonic privilege: an endlessly precarious social unity, established at the imaginary level, subject to constant political struggle.⁶⁹ I have intimated that there is, however, a subtler psychological validity embodied in state actions commensurate with international legal ideology. An ideological intermediary is the element in which both the hegemonic class and the subordinate come to apprehend the political, social, and cultural authority of neoliberalism.⁷⁰

2.1.2 An Efficacious Existence: Persuasive Influence to Organise Consent

Stripped of its mystifying function, international legal ideology is efficacious, at least within bounds. Marxist legal nihilists incorrectly hold that international law's juridical equality, independence, and freedom are illusory. For them, it constitutes a flawed consciousness which cloaks and legitimates

68 Shapiro and Hacker-Cordón (n 58) 24.

69 Terry Eagleton, *Ideology: An Introduction* (Verso 1991) 222.

70 Gramsci, Hoare and Nowell-Smith (n 16) 376–377.

substantive inequality in interstate social and economic relations.⁷¹ But international law provides a platform to remedy injustice, mediate differences in sovereign egoism, and confer procedural guarantees to the dominated.⁷² The hegemonic class seeks to preserve social relations which cultivate its interests and limit contestation to social structures by casting alternatives to outside the bounds of imagination. But its ideology is not automatically internalised by a powerless subordinate, unconscious of its social reality. The subordinate gradually self-subordinates and rationalises that its complicity in perpetuating hegemonic leadership is sensible. Capitalism produces social apparatuses that organically demand a stabilising hegemonic power to regulate distribution of economic and cultural capital.

I partially agree with the liberal interpretation that international law constitutes a social power, alienated from dominant economic forces; a terrain to regulate competing interests between the hegemon and the subordinate.⁷³ Positivists stress that international law emerges from consensus-based institutional practices; its existence is a matter of historical fact. But this view is exceedingly simplistic, and reduces the identification of law to one of neutral procedure. It defends international law as a universally accepted legal discourse, ignoring the coercive political relations that condition law's existence.⁷⁴ Miéville's thesis shatters the argument that international law is a discrete, impartial discipline.

International law assumes the juridical equality and unequal violence between sovereign states. Sovereigns face each other, as equals, with sole proprietary ownership of their territories. In modern international capitalism, unequal violence [to determine the legal relation] is imperialism **itself**. The necessity of this unequal violence derives precisely **from**

71 Christine Synowich, *The Concept of Socialist Law* (Clarendon Press; Oxford University Press 1990) 1–23.

72 See adjudications of the International Court of Justice and the Permanent Court of Arbitration: Questions relating to the Seizure and Detention of Certain Documents and Data (Timor Leste v. Australia) (2014) ICJ Reports 136 (the International Court of Justice ordered Australia to cease intelligence operations that interfered with East Timor's conduct of legal proceedings); *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)* (2015) ICGJ 486 (the Tribunal ruled that the UK's attempt to create a Marine Protected Area in the British Indian Ocean Territory contravened its obligations under the United Nations Convention on the Law of the Sea).

73 Synowich (n 70) 9.

74 Anthony Carty, 'Critical International Law: Recent Trends in the Theory of International Law' (1991) 2 *European Journal of International Law* 66, 66.

juridical equality: one of the legal subjects makes law out of the legal relation by means of their coercive power—their imperialist domination.⁷⁵

International legal ideology is, however, as much a reality of interstate organisation as the capitalistic market relations that it sustains. To take Žižek's expression: the capitalist frame itself is part of the framed content. A habitual behaviour socialised into the subordinate, international legal ideology projects social reality as dependent on the systemic stability that hegemony underwrites. A lived *zeitgeist*, it stamps the human need for self-assurance that material conditions are justified and unquestionable, even if one is constructively aware of the fractured inequality which defines one's social reality.⁷⁶ It objectifies international law's juridical categories—rules, treaties, and custom—as a venerable phenomenon derived from consent, rather than a historically specific constituent of neoliberal political projects which achieve a worldwide convergence of subordinate expectations.

International legal ideology is a product of intellectual labour. Elite advocates disseminate utterances, images, and structures, concordant with the hegemonic public order, for the subordinate to subconsciously consume.⁷⁷ It offers the subordinate a pleasing, legitimated authority, worthy of its 'voluntary' obedience.⁷⁸ The subordinate internalises international legal norms to integrate into the hegemon's 'family of nations'—the international public order's caucus of politically 'legitimate' states.

Not merely functional to hegemony, China's political identity evidences the efficaciousness of international legal ideology. First, the CCP invests in the People's belief that their normative subordination is *en route* to being rectified; presenting deference to neoliberalism as a progressive step before China

75 Miéville (n 34) 291–293. Compare Miéville's thesis with Koskenniemi's argument for recognising political claims behind international law. Hegemony, itself contingent and particularistic, only fashions a reproducible version of its normative order for the subordinate: "behind every notion of universal international law there is always some particular view, expressed by some particular actor in some particular situation ... However universal the terms in which international law is invoked, it never appears as an autonomous and stable set of demands over a political reality. Instead, it always appears through the positions of actors, as a way of dressing political claims in a specialised technical idiom in the conditions of hegemonic contestation." (emphasis added) Martti Koskenniemi, 'International Law and Hegemony: A Reconfiguration' (2004) 17 *Cambridge Review of International Affairs* 197, 198–199.

76 Louis Althusser, *For Marx* (Verso 2005) 233; 王小波, 沉默的大多数 (中国青年出版社 1997) [Wang Xiaobo, *Silent Majority* (China Youth Publishing Press 1997)].

77 Althusser (n 75) 233–235; Eagleton (n 68) 35–40.

78 Sypnowich (n 70) 42–43.

realises its 'destined' social order. This establishes the difference between China's political lineage and those of oppositional regimes.⁷⁹ A political union of 'we' demands the existence of a 'they' opposition: harmony can only be realised by division. Transatlantic overreactions to the Chinese Dream and China's 'appropriation' of Western structures (including law, economic relations, and culture), produce a political effect constitutive of the CCP's identity.⁸⁰ International law affirms neoliberal structures that inculcate outcome-driven beliefs in Chinese foreign policy. China submits to the leadership, legitimacy, and authority of neoliberalism: effective tools of global governance in the absence of supranational coercion. The Chinese policy elite, while resenting Western slights to its historical narrative, reproduce the exploitative logic of neoliberalism, legitimated by international legal ideology, for expediency.

Ideology is unconsciously lived and perpetuated, through the subordinate's adoption of prevailing social structures of production. International legal ideology offers a real and inspirational version of social relations for the subordinate. It affirms a genuine lived belief that international law attempts to replicate ideals of justice, equality, and freedom in social reality. And, it forms a benchmark for the subordinate to forge its identity in relation to 'other' conditions of existence. The CCP's refute of eurocentrality unveils their obedience to an internal authority of belief: a subjective conviction that the hegemonic narrative presented is offensive to China's historical centrality.⁸¹ Every substantive move in Chinese foreign policy reacts to U.S. hegemonic ascendancy, the protagonist in the global architecture. International legal ideology is a formalised social structure for collective organisation, supplementary to capitalist relations and hegemonic politics. It is not simply manipulative consciousness.

China measures modern progress against its ancient history and considers its modernisation part of a recovery process that began with the Qing's collapse.⁸² Its domestic longevity is reified with narratives beginning from the Qin and Han dynasties, to the intermediate Tang Dynasty (the pinnacle of Chinese philosophy, poetry, and the arts), and the Ming Dynasty. But exploiting the capitalist world-economy is the way to realise the Chinese Dream. That belief has been actively taught to China since the Opium War. China's internal

79 *ibid* 27.

80 Eagleton (n 68) 1–21.

81 Žižek (n 26) 319–321.

82 曹雪芹, *红楼梦* (人民文学出版社 2008) [Cao Xueqin, *Dream of the Red Chamber* (Renmin Wenxue Publishing Press 2008)]. Arguably the *magnum opus* of Chinese literature, *Dream of the Red Chamber* chronicles the Qing dynasty's collapse through the ebbs and flows of two adjacent family compounds, the Ning and the Rong.

strife has assisted it to *learn to bide its time*, before a historical moment ripe for its regeneration eventuates.

For the U.S., international law is permanently ready-made: its institutions materially induce the subordinate to translate a liberal system of world trade into domestic arenas. The U.S., however, also constructs its political complexion through the presence of China, its preeminent counterparty.⁸³ Boundaries of social division craft an adversary, an outside unit, to define Chinese and U.S. identity, in opposition.⁸⁴ When Western professional intellectuals remind their Anglophone audience that China's 'authoritarian' regime flouts international law, implicit in the broadcast is that 'our' democratic system personifies political legitimacy. When CCP funded academies posit that international law is an institutional disguise for Western imperialism, they intimate that the constitution of the Chinese party-state personifies political legitimacy. Immanent within both positions is that the other's ideology is partly constitutive of its own regime: conjoined are the two, metaphysically.

Sino-U.S. relations typify the function of international legal ideology. International legal ideology offers a recognisable set of normative justifications to support neoliberal relations of production, materially constituting the subordinate's social practices. It distorts the present epoch as ahistorical, unalterable, and progressive towards a political utopia. It fails to recognise neoliberalism as a conditional product of historically and socially specific practices. But international law serves as a credible expression of political arrangements, as the persuasive influence that takes hold in the subordinate after the initial moment of civilising force.⁸⁵

International legal ideology is an amorphous, uneven formation. It determines the social objectivity of both rulers and subjects: the identity of each class is inherent in its opposite.⁸⁶ In advancing its prerogatives, the hegemonic class has already excluded conceptions incompatible with its leadership. It then negotiates with the subordinate to form a *senso commune*. International politics is rooted in recurrent ideological struggle, appropriation, and transformation. The political identity of hegemonic leadership can only be constructed through the presence of non-hegemonic states and subordinates. Rendering interstate relations intelligible, international legal ideology cements capitalist logic in the hegemon and subordinate alike.

83 Chantal Mouffe, Elke Wagner and Chantal Mouffe, *Agonistics: Thinking the World Politically* (Verso 2013) 5–16.

84 Chantal Mouffe, *On the Political* (Routledge 2005).

85 Marks (n 53) 17.

86 Žižek (n 26) 3.

2.1.3 Emancipatory Potential: Intellectual and Moral Reform

International legal ideology inverts material inequality and exploitation into formal equality and consent. But does it have emancipatory potential? Hegemonic alternatives always exist, internally within the *senso commune*, which aggregates disparate conceptions, and externally in the subordinate's fluctuating allegiance to hegemony. International legal ideology is a relational, rather than a self-referential, phenomenon: it must be continuously renewed, redefended, and modified as hegemony's trusty accompaniment.⁸⁷ Otherwise, the proletariat may: (1) increasingly develop self-awareness of its autonomy vis-à-vis the hegemonic class; (2) disarticulate the ideology characteristic of the prevailing social formation; and (3) cement its own *senso commune* to represent the interests of social groups disgruntled with the present hegemony. The hegemonic class's negotiation with the subordinate reveals that international legal ideology is internally heterogeneous: its self-identity is continually reconstituted and exists in relation to the subordinate's consciousness.⁸⁸ An internalised, but open-ended social system, international legal ideology lives in the subordinate's response; its existence presupposes ceaseless innovation, not static formula.⁸⁹ The CCP partly lives its political experience by adapting the blueprints of neoliberalism for its own advantage.⁹⁰ But no natural boundary distinguishes the Beijing cosmology from neoliberalism; the two not only compete and coexist, they affect and contaminate one another.⁹¹

Ruling ideology never completely mystifies the subordinate. Always implicit is a conceptual distance between hegemony and the subordinate's particularised existence. U.S. hegemonic neoliberalism will be replicated differently in each secondary state.⁹² This internal contradiction means that hegemonic change is permanently possible: alternatives reside as a disruptive element within the hegemonic ideology itself. The subordinate may awaken to challenge the hegemonic class's rule, when they no longer have confidence in the dominant ideology, constituted by compromises and divisive interests. There is no single principle to constitute the whole field of differences in society. Hegemony features, inevitably, the particularised conditions of one state and

87 Raymond Williams, *Marxism and Literature* (Reprint ed, Oxford University Press 2009) 112.

88 Eagleton (n 68) 46.

89 Terry Eagleton, *Ideology and its Vicissitudes*, in Žižek (n 26) 223.

90 Note: I speak only of political (not human) emancipation. Orthodox socialism would hold that the present system of capitalist ownership is antithetical to human emancipation.

91 Göran Therborn, *The Ideology of Power and the Power of Ideology* (Verso 1999) 79.

92 Perry Anderson, 'Force and Consent' (2002) 17 *New Left Review* 5, 21.

only (temporarily) attempts to stitch together a permanently open body politic; a completely 'sutured' society is impossible.⁹³

While emancipation is endlessly possible, China has no interest in overturning neoliberalism. If we interpret Chinese emancipation to be its transformation into a core production zone, international law is indispensable. If Sino-centrality is conversely the endgame, the present international legal ideology runs contrary to China's interests. It does not confer normative authority to a rising power that largely conforms to the global political economy. China would need to weaken the prevailing social logic of the U.S., of which international legal ideology forms a crucial part.⁹⁴ It would expose the inequalities on which the ruling ideology predicates and emphasise internal points of strain to increase its peripheries's critical distance towards U.S. hegemony.⁹⁵ First, China would need to free itself from itself: social apparatuses that shape everyday consciousness have proliferated Western prestige, and captured the allegiance of China's civil society. Obsession with U.S. education, military power, sports, wealth, corporations, products, fashion, music, and most importantly, its market economy, has diffused U.S. mass consumption into the texture of China's self-identity. The People validate social practice, in part, by the criteria of neoliberalism; the U.S. has demarcated the 'appropriate' boundaries of the People's social reality. This nonviolent social control yields conduct and standards that correspond with hegemony's intellectual governance. It is not in China's political interests to liberate itself; China's manoeuvres normalise capitalist architecture and reflect enthusiastic appropriation of core production status.⁹⁶ Memories of attempted revolutionary breaks from neoliberalism weigh on the living elite, avoiding the potential for history to be repeated.⁹⁷ Suspicions of Western motives besides, China, in character, participates in the agreed, symbolic space of ideological conflict that is international law.

Political conflict is a constitutive element of international law. A cosmopolitan covenant can never be truly universal because political consensus

93 Laclau and Mouffe (n 7) 88, 111. "Suture"—surgical nomenclature—refers to a healed wound that leaves a scar, marking difference, or the absence of a former identity. It reflects Derrida's notion that buried traces of tradition remain, permanently, as sedimentary deposits and weigh on the existence of present hegemony. See Michèle Barrett, *Ideology, Politics, Hegemony: From Gramsci to Laclau and Mouffe*, in Žižek (n 26) 249.

94 William I Robinson, *A Theory of Global Capitalism: Production, Class, and State in a Transnational World* (Johns Hopkins University Press 2004) 161.

95 Marks (n 53) 27–28.

96 Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (Vintage Books 1994).

97 Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte* (Wildside Press 2012).

is illusory. Interstate relations are the product of power asymmetry. Every order, including international law, 'is predicated on the exclusion of other possibilities';⁹⁸ International legal ideology operates precisely to eternalise historically specific, social and political arrangements as predetermined and self-evident, defining alternative possibilities as 'unlawful'. Neither autonomous nor fixed, international legal ideology is parasitic: an intersubjectivity, constituted by the response of 'others' and endless power negotiation. Hegemony itself is fissured: it internalises ever-changing subordinate interests and adjusts social formations to ensure its continuous reproducibility. Together, the hegemon and subordinate set the limits of social imagination.⁹⁹ Condemned to perpetual conflict, hegemonic adversaries engage in constant ideological warfare. They compete to define arbitrary social and political structures as the objective common interest.

Gramsci perceives emancipation to be intellectual and 'moral' reform, through which a social class diffuses its interests throughout society. This is a cultural battle to displace a present hegemonic class, often waged by a provisional alliance of secondary states—a *heterodoxy*—which attempts to weld together heterogeneous aims and formulate a new, *orthodox*, cultural-social unity.¹⁰⁰ A coalition of states may become enriched with spiritual, technical, and economic resources that allow them to deviate from the habits, customs, and social practices naturalised as unquestionable fact. Rearticulating existing ideological elements could challenge the hegemonic class's credibility. Hypothetically, China could engage in a disarticulation-rearticulation struggle with the U.S. to appropriate the hegemonic principle. That is, the ability to aggregate and pronounce a *senso commune* on behalf of hegemonic and secondary states.¹⁰¹ In doing so, China might repudiate the present construction of sovereign equality and institute a Confucian interpretation, specific to its social practices. This would strip existing international legal ideology into its constitutive principles, taking compatible elements to express an alternative possibility for interstate relations.¹⁰²

Hegemonic contest transpires as an ideological war of position. Successful conquest of a preponderant ideological structure simply rearticulates the existing worldview. The determinative factor in contestation is the prospective hegemon's capacity to sublimate its personal standard into the subjectivity

98 Mouffe (n 83) 18, 106.

99 Karl Marx, Joseph J O'Malley and Richard A Davis, *Marx: Early Political Writings* (Cambridge University Press 1994) 146.

100 Gramsci, Hoare and Nowell-Smith (n 16) 349.

101 Mouffe (n 24) 191–196.

102 Laclau and Mouffe (n 7) 68.

of all. Some contestants have greater capacity to universalise preferences by socialising subordinates, allowing them to confer or withdraw secondary states's legitimacy.¹⁰³ A new hegemon unifies a collective will and adjust social and economic forces to amalgamate subordinate interests. The hegemon, armed previously with military and economic might, and now, intellectual unification, can express their will under the guise of legal doctrines, such as the responsibility to protect (legalised intervention), self-defence, and aggression.¹⁰⁴ Axiomatic is that any interpretation taken under international law would relegate social classes to silence.

Ideology can only guarantee emancipation to the extent that alternatives are always possible. To depart from the hypothetical, China's foreign policy is, in practice, a normal continuation of the economic dimension of neoliberalism. China is disinterested, within the present epoch, in capturing its periphery's dissatisfaction with neoliberalism, especially given that it perceives its internal constitution to be unexportable. It has no desire to psychologically fashion a renewed conception of international law, a structure that China views as a Western-designed encumbrance. Fractions of its periphery—especially those with the greatest political and economic influence—harbour strategic distrust towards its dynastic autocracy, increasing the difficulty for China to attract support for the Beijing cosmology.

Presently, China attempts to intermesh the material interests of its periphery with the future of regional affairs under China's economic leadership. But to seize the emancipatory force of ideology and capture the subordinates's allegiance, China ought to engage in an ideological struggle with U.S. hegemony and supplant the present *senso commune*. China must continue to raise a Sino-centric consciousness in the subordinate to reduce the conceptual distance that separates the Beijing cosmology from preponderant neoliberalism. The emancipatory potential of international legal ideology remains, for China, unrealised.

In Section 2, I have examined the broader theoretical challenges to China's implementing a normative regional order. The hegemon-subordinate hierarchy remains embedded within international legal ideology; Beijing cannot gain ascendancy in the international public order merely by transforming itself into a core production zone. But as Section 3 shall demonstrate, China may succeed in using international law to its economic advantage.

103 Miéville (n 34) 292–293.

104 Koskenniemi, 'International Law and Hegemony' (n 74) 199.

3 The Chinese Dream and International Law

3.1 *The Chinese Dream's Socio-Political Background*

China—through the party-state's official pronouncements—has contrived a Confucian variant of neoliberalism, coloured by its history of scattered social organisation and its calamitous encounter with European capitalism. China's socio-historical background is unlike any other nation-state: modern China is a party-state, constituted by the CCP's unification of provincial, and multiracial, factions. Since the late 19th century, China's policy elite have been doubtful of Chinese cultural superiority, historically accepted as normative fact within the scholar-bureaucrat class. Alongside a perceived need to internalise Western ideas and technology,¹⁰⁵ this doubt has informed China's drive both to enter modernity and restore its central position as the Middle Kingdom.¹⁰⁶

China's sovereign hypersensitivity today is no coincidence. The collapse of the Qing dynasty saw China capitulate under imperialism: it ceded Outer Manchuria, Hong Kong, and Macau, and was coerced into extraterritorial jurisdiction and imperial tariffs.¹⁰⁷ Presently, Beijing still straddles both separatist uprisings from cultural minorities within and encirclement by imperialist powers without.

To fortify existing political boundaries, Chinese modernity (the Chinese Dream) is premised on establishing the regional centrality of its dynastic autocracy and exporting benevolent governance—not by direct intervention.¹⁰⁸

The Chinese Dream's overarching objective of recreating the heights that China scaled for two millennia is embodied in two projects championed by Xi:¹⁰⁹

- (1) a moderately prosperous Chinese society by 2021 (the CCP's centenary); and
- (2) the Chinese nation's revival by 2049 (the PRC's centenary).

105 Stefan Kroll, *Indirect Hegemonies in International Legal Relations: The Debate of Religious Tolerance in Early Republican China*, INT. LAW EMP. HIST. EXPLOR. 39, 45 (2017); Lin Yutang, *My Country And My People*. (Read Books Ltd 2013).

106 I draw here on Westad's lucid summation: that the Americans and Chinese 'share a theological purpose for entering modernity and a firm belief that only their country can fully possess it.' Odd Arne Westad, *Restless Empire: China and the World since 1750* (Basic Books 2015) 171; 365–366.

107 Affluent areas of China's Eastern seaboard became European, Japanese, and U.S. foreign concessions in the late 19th and early 20th centuries.

108 Thomas J Christensen, *The China Challenge: Shaping the Choices of a Rising Power* (First ed, WW Norton & Company 2015) 159; Martti Koskeniemi, 'The Fate of Public International Law: Between Technique and Politics' (2007) 70 *Modern Law Review* 1, 27–28.

109 My timespan begins from the Qin's unification of China, in 221 BC, to Europe's Industrial Revolution of the 1800s.

The Chinese Dream continues four-decades of domestic restructuring to support capitalist globalisation. Socialist economic planning has been repealed, replaced by mass privatisation, liberalised global trade, and mechanised industry. These policies concretise the capitalist market constitutive of international legal relations.¹¹⁰ But the CCP has not forsaken domestic protectionism—especially in politico-cultural policies.

China is unlike all Westphalian sovereign states, in terms of both its modern structure and its socio-cultural history. Modern China is a densely populated, multiethnic, cultural-Civilisational community. Merging distinctive tribes, languages, and customs in a Confucian common bond, China's makeup is incomparable to a culturally continuous Westphalian state with a smaller landmass and homogenous national identity.¹¹¹ The stability of China's political structure, rooted in rural solidarity, empirically shatters the position that Rousseau's democratic social contract, a monument of the European Enlightenment, personifies the universally legitimate political framework. Rousseau envisaged that the citizenry renounce individual differences and collectively participate in civil society under a single government. This engenders political and 'moral' obedience to the will of a unified people, manifest in representative governance and law enforcement.¹¹²

In contrast, Sino-civilisation has always venerated the territorial autonomy of isolated agrarian communities. Subsistence farming directly connects livelihood with agrarian land, and sees minimal movement of people, competence, and capital. Beginning from the Qin unification of 221 BC, the ruling Empire's bureaucracy could not regulate social outcomes outside of the imperial core. Thus, no centrally administered 'law' existed. Powers were forfeited and duties assumed on a hierarchical basis. For example, the community chief would typically be expected to scale mountainous terrain for medical assistance if any of her constituency fell ill. Communities were also self-sufficient and reliant on each member to pursue collective interests—for example, by garrisoning wheat supplies from nearby pockets of agrarian existence. This mutually acknowledged arrangement constructed authoritative procedures for conflict resolution and economic management, adapted to a community's

110 Edward Kwakwa, "Regulating the International Economy: What Role for the State" in Michael Byers (ed), *The Role of Law in International Politics: Essays in International Relations and International Law* (Reprint, Oxford University Press 2009) 227.

111 Lin Yutang (n 104); Gill (n 59) 194.

112 Jean-Jacques Rousseau and others, *The Social Contract; And, Discourses* (JM Dent; CE Tuttle Company 1986).

peculiarities.¹¹³ Confucian hierarchies (centralised imperial power → local gentry → agrarian communities), while not coercively enforced, subsumed all into a Confucian order. The imperial ruler would rewrite history for political purposes and determine the rank of different peoples. China's imperial government employed Confucian kinship as its authoritarian political order.

Mao transposed agrarian isolationism to the party-state level during the late-1950s to the mid-1970s. The present CCP elite suffered through Chinese society's extreme self-centredness during the 'Great Leap Forward' and the 'Great Proletarian Cultural Revolution'.¹¹⁴ The resulting isolation, internationally, and the anarchy caused, domestically, animate the Chinese elite's rejection of inward looking economic policy today.¹¹⁵ Thus, paradoxical to Sino-civilisation's disaggregated power structure, the People presently demand that the central polity transnationalise China's capital and resources.

While China's internal power structure is transitioning to a party-state identity, the CCP has devised a *sui generis* concept to encompass vast cultural, ethnic, and geographical divergences. An imaginary unity, ethnicism, stretches 'the short, tight, skin of the nation over the gigantic body of the empire'.¹¹⁶ Transcending juristic citizenship, ethnicism formulates a cultural citizenry that links the sixty million members of the Chinese diaspora to their ancestral homeland. Designed to dilute the threat of multiracial separatism to China's social cohesion, this political unity discounts ethnic divisions and represses social conflict.¹¹⁷

113 费孝通, 乡土中国 (中华书局 2013) [Xiaotong Fei, *Agrarian China* (Chinese Book Bureau 2013)]; 苏力, 法制及其本土资源 (北京大学出版社 2015) [Su Li, *Legal Apparatuses and its Local Resources* (Third ed, Peking University Press 2015)].

114 An alternative interpretation of the Cultural Revolution is that it symbolised the resistance of traditional custom against imported European institutions. This is an equally valid reading: Chinese agrarian practices, apt for social stability and moderate economic development, confronted coercively imposed political structures. China's self-generated customs—a rules based system validated over time—became largely ignored. The focus shifted instead to developing centralised state apparatuses, including a formal legal system. See Su (n 112).

115 储百亮, '从文革浩劫中走出来的习近平' (纽约时报, 二零一五年九月二十四日) [Chris Buckley, 'Cultural Revolution Shaped China's Leader, From Schoolboy to Survivor' (New York Times, 24 September 2015)] <<https://www.nytimes.com/2015/09/25/world/asia/xi-jinping-china-cultural-revolution.html?mcubz=0>> accessed 10 March 2017. See also 方方, 软埋 (人民文学出版社 2016) [Fang Fang, *Soft Burial* (Renmin Wenxue Publishing Press 2016)].

116 Benedict R O'G Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 1983) 86.

117 At the PRC's founding ceremony of 1949 in Tiananmen Square, Mao famously stated that 'the Chinese people have risen again'. This summarises domestic sentiment: China fell

The CCP celebrates ethnicism, predicated on Confucianism, as the enduring political lifeblood from which the Chinese state flows. Filial principles of Confucianism engender social camaraderie, linking the Chinese People's ('the People') interests with the policy elite's rejuvenation of the Chinese empire.¹¹⁸ The CCP sets contemporary progress in the context of regrettable history, legitimating China's achievements under its meritocratic governance. Importantly, ethnicism develops a habit of 'backward looking reification' in the People.¹¹⁹ The CCP deploys ethnicism to retrieve China's archaic hegemonic authority in East Asia, mobilising the People's commitment to the Chinese Dream: the unification of both domestic and periphery into a Confucian normative order.

The CCP's organisational structure permeates Chinese society: central political decisions elicit concerted action from provincial and local governments.¹²⁰ Like all policy elites, the CCP constitutes the People's interests: it prevents external interference, bestows citizenship, and allocates resources to maximise living standards.¹²¹ But the narrative of China's longevity directly informs the People's present view of the party-state's legitimacy. Outlasting cyclical chaos and torturous uprisings, the CCP then fulfils their Confucian mandate to exclusively implement policies that improve the People's welfare. The Party's political leadership is all-encompassing: nothing, not even corporate capitalism, overrides the CCP.¹²²

The Chinese Dream draws upon the unique socio-historical structures that bound a scattered, but formally unified China from the Qin dynasty onwards. I also undertake my following two-tiered analysis of OBOR in the context of China's socio-political particularities. First, OBOR's 'win-win' investments enrich capitalist production; they do not herald hegemonic transition from

to the West's industrial revolution, but the power disparity would now be rectified. See Slavoj Žižek, *Introduction: The Spectre of Ideology*, in Žižek (n 26).

118 玛雅, 中国未来 30 年的愿景与挑战—专访潘维, 23 红旗文稿 4 (2013) [Ma Ya, *China's Vision and its Challenges in the next 30 years—an interview with Pan Wei*, 23 Red Flag Journal 4 (2013)].

119 Gill (n 59) 199–200.

120 One in fifteen Chinese citizens are CCP members; 'CCP' departments, comprised of senior employees, are mandated in all major private and public enterprises.

121 Patrick Emerton and Toby Handfield, *Humanitarian Intervention and the modern state system*, in OXFORD HANDBOOK OF ETHICS AND WAR, 3, 4, 8 (Seth Lazar and Helen Frowe eds, 2015).

122 潘维, 比较政治学理论与方法 (北京大学出版社 2014) [Pan Wei, *Comparative Political Theory and Methodology* (Beijing University Press 2014)]. This is the substance of China's "market economy with socialist characteristics". Since 1949, the CCP has centralised power to undertake political reform, economic planning, and judicial development, against the backdrop of capitalistic market relations. This process is intensifying, as Xi increasingly personifies power.

Washington to Beijing. China is attempting to beat the U.S. at its own game: economic neoliberalism. Second, China endeavours to replicate the same Confucian narrative in its periphery as that enshrined in China's domestic political tradition: installing a regional belief system that legitimates the central polity's rule.

3.2 *The Case Study: One Belt One Road*

3.2.1 OBOR's Neoliberal Function

OBOR is Xi's signature strategy to effect the Chinese Dream.¹²³ Presently, it comprises two routes: the overland Economic Belt and the oceanic Maritime Road.¹²⁴ Official sources approximate that its investment portfolio totals US\$21 trillion, diversified into sixty states.¹²⁵ Not wishing to entangle itself in European and Middle Eastern tensions, China garners the political goodwill of developing states: OBOR's primary recipients are in Central and West Asia.¹²⁶

OBOR's economic motives are no different from any other neoliberal economic 'assistance' package. Beijing, the legal subject, enters into legal relations with other sovereigns to enhance its control of peripheral capital, markets, and raw materials. OBOR may promise financial empowerment to China's peripheries. But its purpose is to elevate capitalist values to a political consensus, by coordinating peripheries's economic policies, oriented around Beijing.¹²⁷ OBOR's aggressive neoliberalism reduces all formal foreign relations to modified relations of production and exchange.¹²⁸ Put simply, OBOR is a

123 See Theresa Fallon, 'The New Silk Road: Xi Jinping's Grand Strategy for Eurasia' (2015) 37 *American Foreign Policy Interests* 140, 143.

124 (1) The Belt converts otherwise landlocked Central and Western Asia into a transit region for trade to the Middle East and Europe; (2) the Road develops ports, maritime facilities, and trade hubs in recipient states located in the South China Sea, across the Indian Ocean, Europe, and East Africa.

See Tim Summers, 'China's "New Silk Roads": Sub-National Regions and Networks of Global Political Economy' (2016) 37 *Third World Quarterly* 1628, 1630; Zeng Lingliang, 'Conceptual Analysis of China's Belt and Road Initiative: A Road towards a Regional Community of Common Destiny' (2016) 15 *Chinese Journal of International Law* 517.

125 Michael D Swaine, 'Chinese Views and Commentary on the "One Belt, One Road" initiative' (2015) 47 *China Leadership Monitor* 1, 3.

126 G John Ikenberry, Jisi Wang and Feng Zhu (eds), *America, China, and the Struggle for World Order: Ideas, Traditions, Historical Legacies, and Global Visions* (Palgrave Macmillan 2015) 163.

127 A Claire Cutler, *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy* (Cambridge University Press 2003) 141.

128 Robinson (n 93) 132.

CCP-backed chain of commodity production across political boundaries, with a thematic overlay of ‘regional win-win’.¹²⁹

OBOR offers a Confucian variant of neoliberalism. Eschewing conquest, hegemony, and zero-sum struggle,¹³⁰ China instead narrativises harmonious regional integration as historically proven, (temporarily) overshadowing interstate heterogeneity. States and their relationships are imagined communities formulated by the stories we tell about them.¹³¹ OBOR supposedly retrieves the ‘spirit’ immanent within the ancient Silk Road: ‘mutual trust, reciprocity, and shared destiny’ (‘OBOR model’),¹³² while remaining aloof from universalist beliefs in neoliberalism.¹³³ Alienation and objectification of all formal relations are conflated with collective filial ties, reified through a backwards looking process to China’s Civilisational centrality.

Predictions that Sino-centric interdependence will precipitate the demise of U.S. leadership mistake a continuation of capitalism for a radical break.¹³⁴ China engages in the existing framework of international law to implement

129 National Development and Reform Commission, *Promoting the Mutual Establishment of the Silk Road Economic Belt and 21st Century Maritime Silk Road: Vision and Action, in One Belt One Road Leads China* (Caixin Media Editorial Department ed, China Wenshi Publishing House 2015); See also Huaxia, ‘Chinese Dream seeks no hegemony, promotes all-win results’ (Xinhua, 29 November 2016) <http://news.xinhuanet.com/english/2016-11/29/c_135867567.htm> accessed 15 February 2017; Huaxia, ‘Xinhua Insight: Chinese dream is a dream for all’ (Xinhua, 3 December 2016) <http://news.xinhuanet.com/english/2016-12/03/c_135878166.htm> accessed 15 February 2017.

130 邹磊, ‘一带一路: 合作共赢的中国方案’ (上海人民出版社 2016) 21 [Zou Lei, *The Belt and Road: China’s Global Initiative for Win-Win Cooperation* (Shanghai Renmin Publishing House 2016)].

131 China, a post-semicolonial state, wishes to self-generate its identity as a responsible regional power to lead the developing world. I use the ‘post-semicolonial state’ classification loosely, as China’s Eastern seaboard cities were the only regions subject to colonial structures. Provincial agrarian communities, the vast majority of pre-urbanised China, were unaffected. See Robert C Tucker, Karl Marx and Friedrich Engels (eds), *The Marx-Engels Reader* (2d ed, Norton 1978) 323–324. Koskenniemi, ‘The Fate of Public International Law’ (n 107) 1.

132 Ikenberry, Wang and Zhu (n 125) 58.

133 *ibid*; 李鸣, ‘国际法与一带一路研究’, 1 《法学杂志》 11–17 (2016) [Li Ming, ‘International Law and One Belt One Road’ 1 *Journal of Legal Studies* 11–17 (2016)]; Lingliang, *supra* note 19 at 518.

Fallon suggests that Chinese academics ‘have been recruited to celebrate Xi Jinping as the “designer of China’s road to being a great power.”’ See Fallon (n 122). But such criticism can be equally levelled at media corporations that diffuse neoliberal logic, controlled by select Western corporations.

134 See WA Callahan, ‘China’s “Asia Dream”: The Belt Road Initiative and the New Regional Order’ (2016) 1 *Asian Journal of Comparative Politics* 226. Fallon, *supra* note 24; Stanley Toops, *Reflections on China’s Belt and Road Initiative*, 1 *AREA DEV. POLICY* 352–360 (2016);

capitalist integration. A redistribution of economic capabilities, in favour of China, does not alter its peripheries's value orientation; it reinforces neoliberalism's prestige and normative leadership (irrespective of relative declines in the U.S.'s economic and military dominance). China assists to socialise all to a fundamental correspondence in values and interests. OBOR instantiates the U.S.'s neoliberal vision of 'empowering' new core zones to perpetuate hegemony through new core-peripheral relations.¹³⁵

China is evolving from a peripheral production node to a core production zone; from the exploited to the exploiter.¹³⁶ First, state machinery augments Chinese ownership of core production processes, including high-technology manufacturing, military production, electronic commerce (Baidu, Alibaba, Tencent), scientific research, higher education, and speculative trading.¹³⁷ China's increased competitive advantage vis-à-vis other states in capital-reliant processes increases quasi-monopolised channels of capital accumulation. Second, OBOR's loans patronise infrastructural development and stimulate productive activities in recipient states. CCP organs then fashion China-friendly peripheral markets to guarantee purchase of Chinese products. In many recipient states, the state itself is the main accumulator of capital with privately-owned productive processes unable to generate effective value.¹³⁸ Chinese commodities and loans are injected into recipient states, whose proletariat classes enact the core-periphery division of labour.¹³⁹ Peripheral states produce raw materials, extract resources, and engage in low-skilled manufacturing *en masse* for Chinese consumption. Peripheral economic processes are integrated into the Chinese economy, guaranteeing consistent flow of surplus value.¹⁴⁰

John J Mearsheimer, 'The Gathering Storm: China's Challenge to US Power in Asia' (2010) 3 *The Chinese Journal of International Politics* 381.

135 Ikenberry and Kupchan (n 18) 286.

136 Sasha Breger Bush, *Derivatives and Development: A Political Economy of Global Finance, Farming, and Poverty* (Palgrave Macmillan 2012) 106–108.

137 Core production processes: technology and capital-intensive production, rather than labour-intensive primary industry. Projects such as 'Made in China 2025' increase China's output of advanced scientific technology, and thus, signify ownership of core production processes.

138 Immanuel Maurice Wallerstein, *World-Systems Analysis: An Introduction* (Duke University Press 2004) 53.

139 Peripheral production processes are less profitable and highly competitive. They include lower-skilled industries, such as manufacturing and resource-extraction, where proletarians transform natural materials for objective social use, giving ideas and purposes a physical existence. See Christine Sypnowich, *The Concept of Socialist Law* (Clarendon Press; Oxford University Press 1990) 41–42.

140 Wallerstein (n 137) 23–41.

China's economic transformation is realised through the existing framework of neoliberalism, indirectly affirming the present normative world system.

3.2.2 A Confucian Variant of Neoliberalism

OBOR's multifarious aims accord with Confucian structures. OBOR contains two constitutive elements: (1) a continuation of economic neoliberalism, led by U.S. hegemony (elaborated in the previous subsection); and (2) a Confucian narrative of China's evolution from a peripheral node to a core production zone.

China became the peripheral producer, *par excellence*: it committed to marketisation, liberalised trade, and economic interdependence. Chinese domestic markets welcomed foreign capital, and China's population undertook peripheral production, securing consistent surplus value output for foreign capitalists. In consequence, internationalised capitalist production instituted the economic leadership and cultural eminency of generalised neoliberalism in China.¹⁴¹

Correlative to its economic subordination, China conceded to the U.S.'s political direction of international affairs post-WWII. China's policies internalised capitalist concerns, deferring to neoliberal control of markets, capital, and raw materials.¹⁴² Liberal mythology—constructed through private international regimes—isolates commercial relations from state authority. Western private authority controls mass media,¹⁴³ maritime transport, arbitral dispute settlement, the minerals industry, the internet, capital markets, and transnational financial regulations.¹⁴⁴ Political shifts towards capitalist economics depended on U.S. hegemony: specifically, its material and cultural leadership.¹⁴⁵ China now seeks to deploy its increased political and economic capacity to evolve beyond peripheral status in internationalised capitalist production.

141 Surplus Value: the difference between wages paid to labour (to reproduce the source of labour power) and the value produced in the commodity. Robert Knox, *Marxist Theory of International Law*, in Anne Orford, Florian Hoffmann and Martin Clark (eds), *The Oxford Handbook of the Theory of International Law* (First ed, Oxford University Press 2016).

142 Teemu Ruskola, *China in the Age of the World Picture* in *ibid* 154–155; Gill (n 59) 204.

143 This includes traditional powerhouses in print media, amongst others, the New York Times, Reuters, The Guardian, BBC, and the Washington Post; and new social media platforms that increasingly shape sentiment in the popular strata.

144 Cutler (n 126) 170–179.

145 Ulrich Brand, 'Order and Regulation: Global Governance as a Hegemonic Discourse of International Politics?' (2005) 12 *Review of International Political Economy* 155, 160–165.

OBOR's strategy is rooted in Confucian theory. First, the OBOR model resonates distinctively with China's Five Principles of Peaceful Coexistence.¹⁴⁶ These principles interpret sovereign equality as an obligation to 'live and let live', anchoring China's stance on international law. The Principles affirm Confucian coexistence between equal subjects, absent a superordinate authority. As subsection 3.2.3 demonstrates, China wishes to deploy international legal structures to impose its economic and social logic in its periphery.

Second, OBOR characterises China's peripheral relations in terms of Confucian kinship, to present Chinese centrality as historically predetermined. The CCP, as the central polity, retains absolute sovereign power only in China, but administers ruling policy through sovereign peripheral governments (tantamount to a localised gentry). China's putatively harmonious order allows a family of nations to coexist by incorporating peripheral states, while upholding each state's self-government.¹⁴⁷ OBOR is an extended version of the Confucian kinship that bound China's scattered agrarian communities, articulated in subsection 3.1.

The Confucian kinship model of political relations is not founded on a division of labour in production, but on China's paternalistic view of its periphery.¹⁴⁸ A central apparatus, legitimated through virtuous rule, allies with the local gentry to administer policies throughout sparse territories. The gentry tailors central policy to the specific needs of particular provincial groups, each with disparate customs, traditions, privileges, and belief systems. These groups, collectively, constitute the principals of the body politic and determine the statesmen's social legitimacy. A duty to inspire the public spirit of its People inheres in the central polity's mandate of meritorious governance.¹⁴⁹ The Confucian kinship model characterises China domestically, and now, its vision for regional Sino-centrality.

Chinese 'modernity' deliberately recognises two seemingly incongruous forces: market centrality, on one side, and the revival of tribalistic identity-politics, on the other. In the West, capitalist globalisation has realigned basic

146 (1) Mutual respect for territorial integrity and sovereignty; (2) Mutual non-aggression; (3) Mutual non-interference in internal affairs; (4) Equality and Cooperation for mutual benefit; (5) Peaceful Co-existence.

147 *ibid* 168; Alex Callinicos, *Against Postmodernism: A Marxist Critique* (Reprinted ed, Polity Press 1994) 85.

148 Indeed, the dialogic teachings of *The Analects of Confucius* symbolise the pupil-master mentality attributed to 'China's' constituency. See also Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005).

149 Qiyun Zhang, *Confucianism: A Modern Interpretation* (World Scientific; Zhejiang University Press 2013) 139–169.

social standards (namely: values, rights, and status) to cultivate individualism. Collective identities have decayed: one-off economic transactions prioritise expedient self-interest over emotional bonds, identity, and unification.¹⁵⁰ The CCP: (1) internalises neoliberal capitalist expansion to realise China's material interests; and (2) aggregates personal ties into the collective interest of the Chinese Dream.¹⁵¹ It retrieves Confucian theory—disconnected with the market—to produce identities based on ethnicism.¹⁵² China leverages ethnicism to instrumentalise OBOR, fusing the transactional values of capitalist globalisation with China's historical primacy. The CCP's strategy masks the unevenness of China's social complexion, overwhelms minority voices, and represents its values as the common interest of all.

Confucianism, ill-equipped to challenge the status quo, safeguards the continuity of a political regime. For example, even at the zenith of its dynastic ascendancy, the Ming Empire's homogenising discourse did not find genuine purchase in Japan and Korea. They superficially assumed a tributary role to foster economic exchange, rather than reproducing the autocracy's social order.¹⁵³ This generated a transitory consensus: the Chinese rulers economically integrated the social base of Confucian Civilisation, absent ideological unity. Self-restraint and contentment, Confucian pillars of moral integrity, educate the People to value stability and differentiate virtue from evil.¹⁵⁴ Even when successful, Confucianism will not interfere with the peripheries's internal political forms. As with China's internal rule, there exists no Western analogy for its regional approach. OBOR has no imperial intentions; it accords greater respect to sovereign equality than U.S. hegemony. China has only ever wielded regional power with a distinctive Confucian slant: China has effected neoliberalism, wholly consonant with the U.S.'s normative order.

3.2.3 International Law Expedites Chinese State Rejuvenation

Superficial arguments citing China's defiance of international law decay on examination of OBOR: like other core production zones, China exploits the inequality inherent in international law to fulfil its economic ends. International law normalises the material and nonmaterial inequality

150 Mouffe (n 83) 37–40.

151 Gill (n 59) 199–200.

152 赛珍珠, 赛珍珠序, in 林语堂, 吾国与吾民 (万卷出版公司 2013) 1–5 [Pearl Buck, 'Introduction', in Lin Yutang, *My Country and My People* (Wanjuan Publishing Company 2013)].

153 Gill (n 59) 196.

154 Yutang (n 104) 4.

functional to neoliberal hegemony.¹⁵⁵ Political relations between abstract sovereign equals *are* social relations of exchange, which contain coercive violence immanently.¹⁵⁶ International law converts social relations of production into a formal legal relationship. In the modern context of global capitalism, unequal political struggles between states—the juridical form of the international system—*actualise* the content of international law.¹⁵⁷ International legal relations represent the imperialist triumph of one state agent, over another, with capitalist logic as its constant backdrop.¹⁵⁸

International law expedites China's proliferation of socio-economic relations subservient to its core processes. Capitalist relations between juridically equal sovereigns, abstracted of social context, sees the distinction between political and legal wither away.¹⁵⁹ China's political decisions bring about economic division in the region, executed through capitalist rules governing commodity exchange and wage-labour exploitation.¹⁶⁰ When participating in (formally equal) politico-economic relations, states have unequal access to the means of coercion. Regulatory violence is exerted by (or implicit within) states themselves as juridical subjects, upholding the 'legality' of these interactions. China's bargaining power over recipients determines the content of OBOR's treaties and contracts.¹⁶¹ Political and economic might translates into an internationally 'legal' exploitation of resources to generate capital. China's peripheries, as mere *objects* of OBOR policy, can only passively resist or concede: the discrepancy in coercive violence sees China determining the particular content of their (formally equal) legal relationship.¹⁶² OBOR amplifies the People's private managerial control of economic sectors in recipient states, employing rules of financial governance to decentralise political authority from state bureaucracies.¹⁶³ Despite political differences, China has committed

155 See Section 3.

156 Miéville (n 34) 136–139.

157 Martti Koskenniemi, *The Politics of International Law* (Hart 2011) 266.

158 Miéville (n 34) 316.

159 *ibid* 318.

160 Carlo Focarelli, *International Law as Social Construct: The Struggle for Global Justice* (First ed, Oxford University Press 2012) 496.

161 Pashukanis is more forthright: the development of the law of war [a major aspect of international legal norms] is nothing other than the gradual consolidation of the principle of the inviolability of bourgeois property. International legal norms recognise the legal subject's control of political violence. Evgeniï Bronislavovich Pashukanis, *The General Theory of Law & Marxism* (Transaction Publishers 2002).

162 Miéville (n 34) 138–141.

163 Gill (n 59) 204.

to the U.S. designed global economic system: it is now the preeminent political entity instrumentalising international law in its region.¹⁶⁴

OBOR deploys the market rationality of neoliberalism in five ways.¹⁶⁵ It:

- (1) establishes six corridors to distribute Chinese capital and technology;¹⁶⁶
- (2) invests in transport projects to strengthen infrastructural interconnectivity;¹⁶⁷
- (3) safeguards energy trade across the South China Sea and Indian Ocean;
- (4) coordinates intergovernmental policies to amalgamate political interests; and
- (5) elevates cultural exchange to extend Chinese soft-power.

International law provides the necessary common language and legal infrastructure to actualise propositions (1), (2), and (3).¹⁶⁸

International law guarantees genuine abstract equality between subjects, but its state-based system demands that the strong coerce the weak. Peripheries must cede absolute sovereignty to facilitate the intervention of Chinese capital in their national economies.¹⁶⁹ Let us consider two illustrations:

- (I) **International law provides a ruled framework for China to centralise peripheral economic planning.** International law legitimates commodity exchanges executed on Chinese terms: states, as juridical units, resolve political disagreements using legal interpretation, with the use or threat of force as the constant backdrop and constituent of such legal relations.¹⁷⁰ China's state organs, the apex of the hierarchy: (1) devise power-maximising projects that regionalise trade by opening recipients to its enterprises, commodities, and debts; and in turn (2) finance recipient centres of capital accumulation to execute China's plans.¹⁷¹ Negotiations

164 Cf Mouffe, Wagner and Mouffe (n 82).

165 Ikenberry, Wang and Zhu (n 125) 62.

166 Edward Kwakwa, "Regulating the International Economy" in *THE ROLE OF LAW IN INTERNATIONAL POLITICS*, *supra* note 13 at 231; Hong Yu, 'Motivation behind China's "One Belt, One Road" Initiatives and Establishment of the Asian Infrastructure Investment Bank' [2016] *Journal of Contemporary China* 1; Xiao Ren, 'China as an Institution-Builder: The Case of the AIIB' (2016) 29 *The Pacific Review* 435.

167 Critique which reduces OBOR to a geopolitical and diplomatic offensive often invoke this pillar. *See generally* François Godement, Agatha Kratz, 'One Belt, One Road: China's great leap outward' (European Council on Foreign Relations, 10 June 2015).

168 Sir Arthur Watts, *The Importance of International Law*, in Byers (n 109) 7. Koskenniemi, 'International Law and Hegemony' (n 74) 213–214; N Krisch, 'International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order' (2005) 16 *European Journal of International Law* 369, 377.

169 Wilson (n 12) 49.

170 Koskenniemi, *The Politics of International Law* (n 156) 258.

171 Gill (n 59) 189–192.

are exclusively between state entities, preventing distributive coalitions's interference with coordinated government policy.¹⁷² OBOR vertically integrates recipient states and socialises policy elites to maximise surplus value output.¹⁷³ The recipient's 'consensual' integration into multinational capitalism grants it cosmopolitan finance. This loosely replicates China's domestic central planning: acquiescence to the CCP's political leadership is sought from peripheries and provincial governments alike. International law allows leaders in the world-system, including the CCP, to do regionally what they do at home.¹⁷⁴

- (II) **OBOR methodology strikes a balance between a *laissez-faire* market and state intervention.** OBOR's transport initiatives typify intensified state involvement in a decentralised capitalist world-system.¹⁷⁵ Chinese state organs (banks, state-owned enterprises) intervene in peripheries's bureaucracies to effect market capitalism. A flagship example is China's plan to transform Turkmenistan, Uzbekistan, and Kazakhstan into an economic corridor for rail, road, and energy connections to Europe.¹⁷⁶ A pipeline carrying Turkmen gas to Chinese markets is contingent on Chinese loans, sourced from state revenue and taxes. China's loans guarantee Turkmenistan's capital security, which in turn increase Turkmen welfare and standard of living. Peripheries 'cooperate' with China to achieve what they could not achieve alone.¹⁷⁷ Economically annexing greater labour power, Chinese investments are converted into the transboundary pipeline: a resource.¹⁷⁸ The pipeline valorises itself:

172 I take the term 'distributive coalitions' from Francis Fukuyama, to articulate the effect of political stagnation caused by different interest groups in society. See Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (Farrar, Straus and Giroux 2015).

173 See Patrick Emerton and Toby Handfield, *Humanitarian Intervention and the modern state system*, in Seth Lazar and Helen Frowe, *The Oxford handbook of Ethics and War* (Oxford University Press 2015) 3.

174 Marx, Fowkes and Fernbach (n 47) 259–260; Gill (n 59) 274–275.

175 Wallerstein explains that state interference is fundamental to the capitalist system of accumulation. State machinery enforces an oligopoly that constitutes capitalists's interests for high profits, by: (1) restricting imports and exports to determine the conditions in which labour, capital, and commodities may enter or leave their territory; (2) subsidise and levy taxes to protect favoured industries; (3) preventing counter-protectionist measures in smaller states; (4) monopolising certain economic processes; and (5) limiting property rights—the ability to hold onto capital after its accumulation—within its political borders. See Wallerstein (n 137) 24–25, 46.

176 Fallon (n 122) 141–143.

177 Phillip Allott, *The Concept of International Law*, in Byers (n 109).

178 Pashukanis (n 160) 122.

the energy it transports stimulates further transactions, yielding new commodity exchanges to perpetuate the market.¹⁷⁹

The People's interests grow to transcend political borders, increasing their stake in the capitalist world-system's stability. China's investments integrate peripheral centres of accumulation and augment capital productivity for the People, emboldening transnational capitalism.¹⁸⁰ For example, a Chinese venture capitalist engages peripheral producers to undertake textile manufacturing. Resultant products regenerate the means of production: the flow of surplus value from sales grows the venturer's capital. Her investments also reproduce the source of labour power, restoring the material means of survival—wages—to the proletariat.¹⁸¹ This chain is endless: newly empowered capitalists ascend to the heights of the economic formation they once constituted, and replicate the relations of production that once exploited them.¹⁸²

Energy security, OBOR's third aim (enumerated above), is vital to capitalist expansion. China remains the world's largest consumer of energy.¹⁸³ The Maritime Silk Road secures unimpeded transit across the Indian Ocean and South China Sea for energy imports from the Middle East, South East Asia, and Australia.¹⁸⁴ OBOR also funds energy infrastructure (ports, hubs, overland pipelines), circumventing transoceanic chokepoints and obviating maritime incidents that cause supply shortages and price volatility.¹⁸⁵

China strives for political leadership through OBOR's fourth and fifth aims: coordinated government policies and cultural exchange. But international legal ideology encourages replication of generalised U.S. neoliberalism, not

179 The Chinese state does not wither away in capitalist globalisation. OBOR's complexion, compared to the TPP's failure and the WTO's decline suggests that *increased* state involvement could guarantee effective capitalist growth. I cannot sufficiently develop this argument within this study's remit. See Wallerstein (n 137) 48–49; Marx, Fowkes and Fernbach (n 47) 746, 800, 809.

180 I employ 'transnational' to signify the unidirectional nature of Chinese capital flow to its periphery.

181 Marx, Fowkes and Fernbach (n 47) 799–800.

182 Susan Marks (ed), *International Law on the Left: Re-Examining Marxist Legacies* (Cambridge University Press 2008) 172–173.

183 British Petroleum, 'BP Statistical Review 2016: China's energy market in 2015' (*British Petroleum*, 2016) <<http://www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-china-insights.pdf>> accessed April 22, 2017.

184 Christopher Len, 'China's 21st Century Maritime Silk Road Initiative, Energy Security and SLOC Access' (2015) 11 *Maritime Affairs: Journal of the National Maritime Foundation of India* 1.

185 Most importantly, in the Malacca Strait.

the innovation of the Beijing cosmology.¹⁸⁶ A majority of the world's policy mainstream either subscribe to, or are drawn from, layers within the Western establishment. Socialised to accept the hegemon's normative order, they diffuse the ruling philosophy in social life and secure a united criterion for popular mentality.¹⁸⁷ The West, accordingly, controls the dominant intellectual power to articulate the 'acceptable' criteria around which social orders are constructed. It is not 'acceptable', within neoliberal hegemony, for China to trespass onto the territory of ideological leadership.

International law is the medium by which the rules are decided, not the rules themselves. China employs international law to formalise OBOR's projects and decide the rules of engagement with its peripheries. International law coherently organises relations of production to mediate political-capitalist objectives.¹⁸⁸ China packages these relations in a Confucian narrative to facilitate OBOR.

4 Conclusions and Ideological Horizons

China and international law make a curious pair. The Middle Kingdom's secluded governance created a fertile soil for the world's oldest continuing civilisation, with unbroken lineages in the arts, literature, and philosophy—the basis of an ongoing narrative of self-assured cultural superiority. Since the Qin's imperial ascendancy, China has largely maintained the character of its dynastic autocracy, defined by cyclical, imperial vicissitudes. On the other side, international law's complexion reflects the extent to which Western powers have, in Marx's words, stitched up the whole world into an all-encompassing system of neoliberalism. For the CCP, troubling is international law's universalising practice, which disguises demonstrable inequality with abstract equality and liberalist self-rule: ideals rooted in Enlightenment Europe. Chinese statism, in consequence, structurally confines Western democracy to the theoretical, domestically, but yields to market forces, externally. This is the policy around which all CCP initiatives revolve.

The present study has put the argument that these different political regimes are bound in an interrelationship by the capitalist world-economy. The CCP's insistence on the Chinese Dream does not forsake neoliberalism. Rather, it

186 Cf. James Crawford, 'International Law as Discipline and Profession' (2012) 106 *Proceedings of the Annual Meeting (American Society of International Law)* 471, 473.

187 Marks (n 53) 13.

188 Brigitte Stern, *How to Regulate Globalization?*, in Byers (n 109) 252; Miéville (n 34) 140.

perpetuates the structural inequalities between core production zones and peripheral states. OBOR's communal solidarity bends the hegemonic narrative of interstate relations to suit China's policy of materially satisfying the People. International legal ideology sustains oppression and economic inequality, endemic to capitalist relations of production. Its apparatuses present a familiar, coherent set of 'rules' by which proponents of neoliberalism can standardise political legitimacy, in a capitalist world-economy otherwise disconnected from identity and morality. That said, socially useful is that international law renders interstate relations and political authority intelligible.

To remain attractive to genuine subordinate interests, international legal ideology ought to be subject to constant review, deconstruction, and recontextualisation. The perpetual contingency of hegemony exemplifies how alternative possibilities are immanent within any social order. I hope to have articulated the immutable social division, and, paradoxically, the mutual dependency between China and neoliberalism. The People need international law to regularise relations of production which better their material environment. Chinese identity, simultaneously, needs adversarial neoliberalism and international legal ideology for its very operability.

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