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**ORIENTALISM AND YI-XIA DISTINCTION: TRACING THE INTERNAL CAUSE OF THE WESTERNIZATION OF CHINESE LAW\***

*Oryantalizm ve Yi-Xia Ayrımı: Çin Hukukunun Batılılaşmasının İçsel Nedeninin İzini Sürmek*

**Xiaobin HUO\*\***

**Abstract**

*One important theme of China from later 19th century till now is her westernization, including legal westernization, which is a fast and overwhelmingly process. Legal Orientalism may provide an external perspective to describe a National Pygmalion Effect, the combination of the Orientalization and self-Orientalization, but it is not sufficient to address some internal factors driving the progress of the westernization of Chinese law. Therefore, the main purpose of this article is to provide an internal perceptible to explain the westernization of Chinese law by investigating Chinese Yi-Xia distinction, the Chinese counterpart of Orientalism. By a comparative analysis between Orientalism and Yi-Xia distinction, it could be discovered that there is a dichotomy in both of the two epistemologies. On the other hand, Yi-Xia distinction was supported by a more conservative feature of “Yi-Xia Major Defense”, while the Orientalism was more expansive and promoted to tame the Orient by implementing the Orientalization. Consequently, the Sinicization under Yi-Xia distinction was limited due to the doctrine of “Yi-Di shall not be ruled”. The reverse Yi-Xia distinction in Qing dynasty further changed the substance of Yi-Xia distinction. Therefore, it’s more appropriate to explain the fast and thorough westernization of Chinese law as the outcome of the mixture of both external and internal factors. It’s a lost nationalism process implemented by westernization, rather than a monodirectional Orientalization process.*

**Keywords:** *Orientalism, Yi-Xia Distinction, Reverse Yi-Xia Distinction, National Pygmalion Effect.*

**Öz**

*19. yüzyılın sonlarından bugüne kadarki Çin’in önemli konularından biri, hızlı ve yoğun bir süreç olan, yasal Batılılaşma da dahil olmak üzere Batılılaşmasıdır. Yasal Oryantalizm, Oryantalleşme ve kendi kendine Oryantalizmin birleşimi olan Ulusal bir Pygmalion Etkisini tanımlamak için dışsal bir bakış açısı sağlayabilir, ancak Çin hukukunun Batılılaşmasının ilerlemesini yönlendiren bazı iç faktörleri ele almak yeterli değildir. Bu nedenle bu makalenin temel amacı, Oryantalizm’in Çin’deki karşılığı olan Çin Yi-Xia ayrımını inceleyerek Çin*

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\*\* PhD Candidate, City University of Hong Kong School of Law, [xiaobihuo3-c@my.cityu.edu.hk](mailto:xiaobihuo3-c@my.cityu.edu.hk), ORCID ID:<https://orcid.org/0000-0001-5953-5497>

*hukukunun Batılılaşmasını açıklamaya yönelik içsel bir algı sağlamaktır. Oryantalizm ile Yi-Xia ayrımı arasında karşılaştırmalı bir analiz yapıldığında, her iki epistemolojide de bir ikilik olduğu keşfedilebilir. Öte yandan, Yi-Xia ayrımı, “Yi-Xia Büyük Savunması”nın daha muhafazakar bir özelliği ile desteklenirken, Oryantalizm daha genişir ve Oryantalizasyonu uygulayarak Doğu’yu ehlileştirmeye teşvik etmiştir. Sonuç olarak, Yi-Xia ayrımı altındaki Çinleştirme, “Yi-Di yönetilmeyecek” doktrini nedeniyle sınırlandırıldı. Qing hanedanındaki ters Yi-Xia ayrımı, Yi-Xia ayrımının özünü daha da değiştirdi. Bu nedenle, Çin hukukunun hızlı ve kapsamlı bir şekilde Batılılaşmasını hem dış hem de iç faktörlerin karışımının bir sonucu olarak açıklamak daha uygundur. Tek yönlü bir Oryantalizasyon sürecinden ziyade Batılılaşmanın uyguladığı kayıp bir milliyetçilik sürecidir.*

**Anahtar Kelimeler:** Oryantalizm, Yi-Xia Ayrımı, Reverse Yi-Xia Ayrımı, Ulusal Pygmalion Etkisi.

## **Introduction**

One important theme of China from the later 19th century till now is her westernization, which nearly revamped the civilization of China, including her legal system. As a complex and lengthy historical evolution process, the westernization of Chinese law has been explained by scholars from different perspectives. Some scholars described it to be a process derived from legal imperialism. And some other scholars preferred to describe it as the modernization of Chinese law. In fact, the two perspectives are the two sides of one coin. A more theoretical epistemology of Legal Orientalism featured with Orientalization and self-Orientalization of Chinese law is able to consolidate the above two perspectives. Developed by Teemu Ruskola, Legal Orientalism was derived from Said's theory of Orientalism, which is "a political vision of reality" (Said, 1978: 43) and is "a Western style for dominating, restructuring, and having authority over the Orient" (Said, 1978: 3).

It's pointed out that the essential feature of Orientalism was "Eurocentrism" (Dirlik, 1996: 111). Therefore, the main argument of Legal Orientalism is not whether there is law in China, but whether there is Western-type law and also "from the law's point of view, Americans constitute legal subjects and the Chinese nonlegal nonsubjects" (Ruskola, 2013: 32). Unsurprisingly, under the theory of Legal Orientalism, the Orientalization and self-Orientalization in Said's context could also be observed in the history of Chinese legal westernization. In explaining the westernization of Chinese law, Legal Orientalism provides an external perspective to describe the National Pygmalion Effect, but it's still inadequate to sufficiently explain the cause of this phenomenon. Considering ancient China was a completely different civilization to the European world, this phenomenon seemed to be abnormal and anti-intuitive.

If Legal Orientalism is not able to address some internal factors driving the progress of the westernization of Chinese law, are there any other supplementary explanations to fill the gap? If under Legal Orientalism, western law is made to be the benchmark when commenting on Chinese law, then what is the voice of China itself? This is an inherent defect of Orientalism as a Eurocentric epistemology, and it did not consider whether there was another epistemology in China that also promoted such a process. In fact, the Chinese Yi-Xia distinction has played a similar role to Orientalism in the long Chinese history, therefore, it's a Chinese counterpart of Orientalism. This article is the first attempt to analyze the intellectual background of the westernization of Chinese law from a comparative study of Orientalism and Yi-Xia distinction (夷夏之辨), in order to provide an alternative explanation of how Yi-Xia distinction had played its indispensable role in the process of the westernization of Chinese law.

## **Literature Review and Methodology**

Regarding the westernization of Chinese law, modern literature is replete with discussions from two perspectives: the legal imperialism and the theory of modernization.

The theory of legal imperialism generally investigates the implementation of extraterritoriality in non-western countries and how the western legal system was expanded in non-western countries. Pär Cassel alleges that the western rulers wished to treat their extraterritoriality in China as "a laboratory for the reform of the Chinese system of justice" (Cassel, 2012: 145). Turan Kayaoglu also states that the prerequisite for western rulers' "recognition of non-western countries' claim of the Westphalian sovereignty" was the institutionalization of state law on non-western countries (Kayaoglu, 2005: 3). He further alleges that the institutionalization is a comprehensive revamp of the traditional national law from the "the clarification of rules, the spread of the state's court system, and the establishment of a legal hierarchy" (Kayaoglu, 2005: 5). This line of thought is mirrored by the investigation conducted by the commission to China after Washington Conference Resolution in 1922 to check whether the Chinese judicial system had conformed to western law and whether conditions have been met for western powers to relinquish their extraterritoriality (Li, 2006: 26). Unlike Kayaoglu, who choose to use the less emotional word 'institutionalization' to describe the motivation of western powers, Li Yang proposes a more nationalism tag 'legal imperialism' to describe western powers' attitudes on relinquishing their extraterritoriality in China. And the implementation of legal imperialism is a holistic and long process, ranging from the consular court to the establishment of separate court to exercise the extraterritoriality, like the United States court in China in early 20th century (Li, 2015: 161). Unlike the consular jurisdiction right and the United States court in China which exercised the western law within a limited

geographical scope, the precondition for relinquishing the extraterritoriality is to persuade China to replace traditional Chinese law with western legal system extensively across the country; this is the climax and ultimate purpose of the legal imperialism.

On the other hand, instead of examining the motivation of external western powers, the theory of modernization investigates the motivation of non-western countries when they managed to abolish western powers' extraterritoriality. Under this theory, China was entitled to abolish it under the principle of *rebus sic standibus* of the Vienna Convention on the Law of Treaties. But in order to achieve this goal, China needed to fix its weakness exposed by the western countries during the military conflicts in 19th and 20th centuries, and this effort to fix its own deficiencies initiated the modernization, and also the westernization movement of the Chinese legal system. Liang Tianhong further states that the reduction of the discrepancy between the legal system of China and that in western countries was an acceptable and practicable method to abolish the extraterritoriality of western powers (Liang, 2005: 111-112). He Qinhua also alleges that legal transplantation is necessary as it is a shortcut to the countries with unenlightened law to develop (He and Li, 2003: 635).

In view of the above scholarship, there are few more researches connecting the process of modern China with her past from a comparative perspective. The aim of this article is to trace back to the intellectual background of the westernization of Chinese law by conducting a comparative analysis of Yi-Xia distinction with the much better-known Orientalism and Legal Orientalism to provide an alternative perspective on the westernization of Chinese law. A detailed reconsideration of the cause of the westernization of Chinese law will be presented in this article. From the comparison it could be discovered that Yi-Xia distinction was more defensive and Orientalism was more expansive. Besides conspicuous difference, a concept of reverse Yi-Xia distinction will be further proposed to describe the transformation of Yi-Xia distinction under the Manchu rule in the Qing dynasty. It will be argued that the conservative feature of Yi-Xia distinction and the reverse Yi-Xia distinction jointly composed the internal deciding factors which promoted the fast legal Orientalization in China.

### Yi-Xia Distinction as the Counterpart of Orientalism

The first issue is what is the Yi-Xia distinction? Simply speaking, it's a Chinese version of Orientalism, which means how China looked at the rest of the world with her as the benchmark. From the Zhou (周, 1046 BC- 256 BC) dynasty, there has been a clear distinction between *Huaxia* (華夏, meaning China)<sup>1</sup> and Yi-Di (夷狄, meaning Barbarian regimes). Just as *Zhuxia* (諸夏, meaning all the Xias), another name of *Huaxia*, indicated, the hereditary fiefs (諸侯) under the lead of Zhou court constituted the bedrock of the Chinese civilization. Around the Central Plain (中原), the core region of *Huaxia*, were the non-Chinese people. In the Confucianism classic *Book of Rites* (禮記), people around the four directions of the Central Plain were assigned different names: Eastern Yi (東夷), Western Rong (西戎), Southern Man (南蠻) and Northern Di (北狄) and they were collectively called Yi-Di.

The geographic distinction lay the foundation of the Yi-Xia distinction, which was further supplemented with cultural and political justification. This applies to the Orientalism and Yi-Xia distinction both. In ancient Greece, The Orient was depicted as "servile, ugly, effeminate, weak and always defeated" by contrast with the superior "free, brave, strong and victorious" Greeks (Huang, 2007: 125). Similar to the negative comments on the Orient by the Occident under Orientalism, in the context of Yi-Xia distinction, "Yi-Di" people's character was consistently described by the Chinese with negative features and they were always equated with an animal not cherishing virtue of human being. Guan Zhong (管仲, 720 BC- 645 BC), the Chancellor of the Qi State (齊國) in the Spring and Autumn period, compared the Yi-Di and *Huaxia*: "Yi-Di is like jackals and wolves and are never be satisfied, *Huaxia* states are close to each other and cannot be abandoned 戎狄豺狼,不可厭也,諸夏親暱,不可棄也" (Yang, 2009: 256). Ban Gu (班固, 32-92) and Ban Chao (班超, 32-102) in the Han dynasty (漢, 202 BC- 220 AD) inherited this identification on Yi-di. Ban Gu said that: "the Yi-Di lives in separated regions with different customs, not born from the equilibrium, incapable to be educated by rules and justice 夷狄者,与中国绝域异俗,非中和气所生,非礼义所能化" (Chen, 1994: 318). Therefore, Yi-Di,

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<sup>1</sup> *Huaxia* is not the only ancient name of "China" and there are other references to "China" in the ancient period.

“inherently an animal ...is hard to cultivate and easy to rebel 蠻夷懷鳥獸之心，難養易敗”as Ban Chao described (Fan, 2000: 47). The judgements above on the nature of Yi-Di were firmly maintained as one important axiom of Confucianism until the end of China’s pre-modern history. In Ming scholar Wang Fuzhi(王夫之, 1619-1692)’s work, such descriptions of Yi-Di were frequently used, from dog and goat (“犬羊”) jackal and tiger (“豺虎”)、captive (“虜”) to beasts(“禽獸”) (Wang, 2011: 502). This long and consistent stereotype on Yi-Di justified the different attitudes against Yi-Di under Yi-Xia distinction from Orientalism, as discussed in the following sections.

Furthermore, similar to Orientalism, the discourse power of Yi-Xia distinction was also demonstrated by the mirroring of Chinese institution on its history of foreign countries. This is because our understanding of “Yi-Di” or “Barbarian” mostly come from record of the China or Occident, not from the other side. For example, about the Trojan War, “The Trojans had left no literary records about themselves or their adversaries” (Huang, 2007: 125). Then the understanding of the West about Trojans all came from the narratives of Greeks. A similar manner when judging and viewing other countries can be found in Chinese history. Taking legal institutions as an example, Chinese historians paid attention only to the criminal law of foreign countries, as in ancient China, the legislation was more focused on the criminal law. In the whole series of the *Twenty-Four Histories* (二十四史), among the 63 instances mentioning the domestic legal practice of barbarian or foreign countries, almost 43 of them are about criminal law records. In this sense, Yi-Xia distinction also became the boundary between the stage and audience, Yi-Di is made to play in this stage according to the understanding and expectation of China.

Due to the above reasons, both Orientalism and Yi-Xia distinction are anti-empirical, as Said interpreted Orientalism (Said, 1978: 70), and naturally contain multiple levels of domains.<sup>2</sup> Orientalism or the Yi-Xia distinction are not purely academic theories, instead, to some extent, they can be explained as a kind of national spirit backed by the civilization, military and political power of a specific country or region. As many modern scholars have discussed, they are more similar to the essence of the long-survived custom, a worldview, and a belief, meaning that they are not supported by rigid evidence and logic induction, but by their status as a crucial part of the national identification, and would transform with the change of macrolevel political, military and economic conditions. Therefore, their persuasiveness depends on the civilization, military and political power behind them. Put it in another word, they were the result of civilization, military and political conflict and competition, and existed as a sort of triumphal legacy of the power relationship.

The outcome of the above discourse power is a clear trend that one side triumphs over another side, which is demonstrated by two pairs of similar and comparable phenomena: Orientalization and derivative Self-orientalization, and Sinicization and derivative Self-Sinicization. In the context of Orientalism, Orientalization and self-Orientalization are the process in which the orient was forced or voluntarily replaced their institutions and cultures with that of the Occident, this was a process of Westernization. Similarly, in the history of China, there was also a similar process, an even longer Sinicization and Self-Sinicization process.

Then one interesting, also important point was that what will happen when the two epistemologies encountered with each other in 19th century? A conflict between each other was inevitable. It could be observed that since the 19th century, after the door of China was opened by the Western powers, Chinese

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<sup>2</sup> According to Said, “Orientalism... refers to several overlapping domains: first, the changing historical and cultural relationship between Europe and Asia, a relationship with a 4000-year-old history; second, the scientific discipline in the west according to which, beginning in the early nineteenth century, one specialized in the study of various Oriental cultures and traditions; and, third, the ideological suppositions, images and fantasies about a currently important and politically urgent region of the world called the Orient. The relatively common denominator between these three aspects of Orientalism is the line separating Occident from Orient and this, I have argued, is less a fact of nature than it is a fact of human production, which I have called imaginative geography. This is, however, neither to say that the division between Orient and Occident is unchanging nor is it to say that it is simply fictional” (Said 1986: 211). Michiaki Fujii (藤井倫明) with the Yamazaki Ansai School(山崎闇齋學派) as example, summarized three kinds of views about Yi-Xia distinction, “First is the position of cultural supremacy theory: they considered that the relationship of “Hua Yi” is determined by the merits and drawbacks of ethics, customs. Second is the position of “Ming Fen” theory: they considered that the relationship of “Hua Yi” is determined by the connections of subject and object, self and other. Third is the position of geographic destiny theory: they considered that the relationship of “Hua Yi” is determined by the geography and topography” (Michiaki, 2015: 195).

Yi-Xia distinction quickly became blurred, the Sinicization process also disappeared from the historical stage, at least temporarily. On the other hand, the more powerful Orientalism become popular, and a wind of westernization swept China, with little resistance. In a more specific view on legal history, a “Western Impact, Chinese Response” mode became a common view, which is criticized to be unjust to Chinese law (Alford, 1997: 404). To some extent, it is a myth, but was “gathered strength from retelling” (Toner, 2013: 157). But few epistemological explanations were proposed to discuss why such a mode was formed and why Chinese Yi-Xia distinction was not able to withstand the huge tide of Orientalism besides the strong military power of the Western countries. By analyzing the distinctive features of Yi-Xia distinction along with those of Orientalism may provide some tentative explanations.

### **The dichotomy of Occident-Orient and Yi-Xia**

A constructed dichotomy is a common feature of the two epistemologies. Under the Occident and Orient distinction in Said’s Orientalism, there is an “eternal, bristling frontier endures between East and West, almost unchanged since classical antiquity” (Said, 1978: 250). The Orient is not “the Orient as it is, but the Orient as it has been Orientalized” (Said, 1978: 104). In Homer there are signs of a distinction between “civilized” Greeks and “barbaric” peoples (Huang, 2007: 125). The Orient equates with nearly all the rest part of the world known by Greek and Roman, such as “Egyptian, the Indians, Arab, and all the host of Sheba” as depicted by Virgil (Huang, 2007: 125). The Oriental people become the Oriental people of Orientalist’s account and become the “monumentalized objects in his account of them” (Said, 1978: 250). The Orient is not only different from the Occident, but may also differ from the real Orient. But this bare dichotomy did not ban the communication between the two sides and this makes the Orientalism to be an inclusive and expansive epistemology.

On the other hand, besides the dichotomy between *Huaxia* and Yi-Di, “Yi-Xia Major Defense (夷夏之大防)” is a core principle under the Yi-Xia distinction. Wang Fuzhi provides a justification of Yi-Xia defense:

*“Three Sovereigns and Five Emperors worked with their spirit and knowledge and exhausted their wisdom and courage to split the gases for the Tian and split the regions for the Di, in order to insulate Yi from Xia, similar to insulating animals from human being. This principle shall be insisted forever and not to be changed. 五帝、三王，勞其神明，殫其智勇，為天分氣，為地分理，以絕夷於夏，即以絕禽於人，萬世守之而不可易，義之確乎不拔而無可徙”* (2020: 1993).

Yi-Xia defense, in Wang Fuzhi’s opinion, is a truth unchangeable, abandoning which equivalent to be animal. Gu Yanwu(顧炎武) further put Yi-Xia defense as the priority of Yi-Xia distinction by alleging that “the Sovereign-minister distinction is less important than Hua-Yi defense 夫以君臣之分猶不敵華裔之防” (2006: 412).

From abovementioned interpretations of Yi-Xia distinction in later Ming dynasty, the last Han ethnic dynasty of pre-modern China, it could be discovered that Yi-Xia distinction not only emphasized the difference between China and “Yi-Di”, but also the irreformable feature of the two sides, and this is the reason why *Huaxia* shall defend the “Yi-Di”, it would not change “Yi-Di”, but also would not allow *Huaxia* to be changed by “Yi-Di”, which happened in Qing dynasty (清, 1644-1912). The essence of the Dichotomy is Separation, while this feature could not be observed in Orientalism, under which the dichotomy is the premise to Orientalize the Orient. Therefore, compared with the later, the dichotomy under Yi-Xia distinction is more exclusive.

This slight difference between the two epistemologies gives rise to another more recognizable difference between them, as discussed in latter sections.

### **Yi-Di shall not be ruled(夷狄不可治) and self-Sinicization**

One suggestion of the “Yi-Xia Major Defense” is that non-Chinese people shall not be educated with Chinese civilization and Chinese institutions shall not be implemented in the Yi-Di regimes, as the famous saying of Confucius (孔子, 551 BC- 479 BC): “The rude tribes of the east and north have their

princes, and are not like the States of our great land which are without them (夷狄之有君,不如諸夏之亡也)” (Liu, 1954: 230).

In the Yi-Xia distinction tradition, Mencius (孟子, 372 BC-289 BC) was special as he proposed to change Yi-Di by *Huaxia*'s way: “I have heard of men using the doctrines of our great land to change barbarians, but I have never yet heard of any being changed by barbarians (吾聞用夏變夷者, 未聞變於夷者也)” (Jiao, 1954: 230). But the later several waves of barbarian invasions into China made China more hostile to the tribal people surrounding China and that made China to use the rigid dichotomy between itself and the tribal people to keep its culture and institutional superiority to offset its military disadvantage. That's the reason Zhao Rukuo (趙汝适, 1170-1231) sighed that Mencius' changing Yi-Di with Chinese ways has become the “lingering legacy(遺風)” in Song dynasty (Zhao, 1935: 61).

This conservative position was more conspicuous in Song (宋, 960-1279), a dynasty when a compresence phenomenon of two China, including Song China and northern China, existed (Jiang, 2017: 36-37). Su Shi(蘇軾, 1037年-1101), in his *The Majesty shall not rule Yi-Di* (王者不治夷狄論), claimed that “as Yi-Di is equal to animal, so to rule Yi-Di with Chinese institutions would result in Chaos 夷狄不可以中國之治治也。譬若禽獸然, 求其大治, 必至於大亂” (1986: 43).

According to Jiang, a feeling of civilization crisis was a reason why Song China refused the expansion of Chinese civilization to Yi-Di to prevent the arouse of their rapacity which may be harmful to China (Jiang, 2017: 25). It is observed that in the northern regimes of Liao (遼, 916-1125) and Jin (金, 1115-1234), the Yi-Di parodied institutions and culture of China but did not learn the essence, while at the same time, Han ethnic people residing in old Chinese central plain were influenced by the Yi-Di, therefore a new metamorphosed China began to be formed (Jiang, 2017: 36). This made Song realized that the Yi-Di was no longer the old Yi-Di but a new form of Yi-Di, causing, combined with military disadvantage of Song, both the feeling of deep national and culture crisis and this further nurtured the conservativeness with a strong national spirit in the culture of Song China (Fu, 1977: 380).

Song's conservative position on Yi-Xia distinction was inherited in Ming dynasty, which even made it to be the basic national policy of China not to initiate the wars with countries around China. In *the Ancestors' Precepts of Huang Ming* (皇明祖訓), Zhu Yuanzhang (朱元璋, 1328-1398), the founding emperor of the Ming dynasty (明, 1368-1644), stated that:

*“All the Yi of four corners [of the world] are separated by mountains and seas and located in lateral area; their land, if got, cannot be supplied, the people, if got, cannot be ruled. If they, beyond their ability, invade out frontier, and this is inauspicious. If we initiate wars imprudently even they are not China's pitfall, this is also inauspicious... Hu Rong and northwestern frontier are close with each other and wars happened for generations, it shall be defended by selecting commanders and training soldiers 四方諸夷, 皆限山隔, 僻在一隅; 得其地不足以供給, 得其民不足以使令。若其自不揣量, 來擾我邊, 則彼為不祥。彼既不為中國患, 而我興兵輕伐, 亦不祥也...胡戎與西北邊境, 互相密邇, 累世戰爭, 必選將練兵, 時謹備之”* (1996: 167).

Wang Fuzhi further developed Zhu Yuanzhang's idea and concluded that:

*“The Reign does not rule Yi-Di, which shall not be the ruled. The north of Dai, the south of Yue, the east of the sea, the west of the desert, shall not be ruled by China. Therefore Han's wade in the north, Sui's stride of east of the sea, which were to destroy China itself and importune outside, being against the doctrine of kingcraft and causing misfortune. To rule that shall not be ruled will cause self-destroying, not to rule that shall be ruled will cause self-collapse. 王者不治夷狄, 謂夫非所治者也。代之北, 粵之南, 海之東, 磧之西, 非所治也。故漢之涉幕北, 隋之越海東, 敝已以強求於外, 與王道舛而速禍。非所治而治之則自敝, 所治而不治則自潰”* (2011: 390).

He proposed different nations “settling down independently”, it's best that “China not invading them, and they not invading China 各安其所, 我不尔侵” (Wang, 2020: 956). Such position would not

provide theoretical basis and justification to implement Sinicization. However, this does not mean that there was no Sinicization process in Chinese history. Mainly because of overwhelming cultural and institutional gap between China and neighboring Yi-Di, there were mainly three phases of self-Sinicization in pre-modern Chinese history (Ge, 2004: 6), the first phase in the period of Northern and Southern dynasties(南北朝), the second one in the Song dynasty and the third one in the Qing dynasty.

Regarding three phases of Sinicization, the common feature is that “Yi-Di” established regimes in the land of China and implemented self-Sinicization by voluntary mimesis of Chinese culture and institutions. However, the extent of Sinicization and Yi-Di’s attitudes on themselves in the three phases were inherently different with each other.

The first phase happened in the Chaotic period of the Northern and Southern dynasties (南北朝, 420-589). This self-Sinicization process was demonstrated by the reform of the Emperor Xiaowen(孝文帝, 467-499) of Northern Wei(北魏, 386 to 535), including specific policies such as voluntarily adopting Chinese names (this is different from Manchu’s adopting Chinese names after Xinhai revolution to avert the revenge from Han people), speaking Chinese language (there was serious consequence if Xianbei aristocrats refused to speak Chinese<sup>3</sup>) and implementing Chinese institutions and culture. The Sinicization even influenced the history of the tribal regime. One extreme example of this historical Sinicization under the Yi-Xia distinction was the *Book of Wei* (魏書) written by Wei Shou(魏收, 506-572) in Northern Qi (北齊, 550-577), in which the original Xianbei(鮮卑) institutions and names were frequently replaced by Chinese institutions and names adopted later. This historical self-Sinicization indeed indicated how tribal people in this period viewed themselves in front of Chinese culture. During this period, they voluntarily accepted Chinese culture and institution without too much resistance. This self-Sinicization was extended to the period of the Five Dynasties. To some extent, the tribal people did not view themselves to be “Yi-Di”, and they “despite being Yi, declared themselves to be Xia 身雖為夷, 而自居為夏” (Fu, 1977: 226).

The second phase happened in the Song dynasty, when the contemporaneous competitors Liao and Jin in its north also adopted Chinese culture and institutions which they admired. In Medieval age Europe, the name of China was Cathay which was derived from Ch’i-tan(契丹), the dominating ethnic group of Liao. Different from the first phase, a duality in the acculturation process in the two dynasties and a third culture different from Chinese and Yi-Di culture was generated (Wittfogel & Feng, 1949: 20). These northern regimes not only maintained the duality between Chinese and Yi-Di in economy, administrative and military organization and policy (Wittfogel & Feng, 1949: 6-7), but also created their own writing systems based on Chinese characters. All these could show that Yi-Di’s consciousness of national identification became stronger in Liao and Jin during their self-Sinicization process. This conspicuous self-identification of Yi-Di during their self-Sinicization had incited the worry of Song Dynasty, as Fu Bi(富弼) reported to emperor Renzong (仁宗, 1010-1063) in 1044, which was recorded in *Extended Continuation to Zizhi Tongjian* (續資治通鑑長編):

*“What the two enemies are looking for is big. Since from Ch’i-tan seized the north of Yan and Ji, Tuoba conquered the west of Lin and Xia, all the talents in these places were recruited by them. They gained the land of China, dominated the people of China, named themselves with Chinese titles, imitated the bureaucracy of China, appointed the elites of China, learned the books of China, used the vehicles and cloths of China, implemented the law of China, so what the two enemies are doing is the same with China. But they are stronger than China in military force. They have all China has, while China does not have what make them in advantage. China can only defend them if treating them as strong rivals of China, instead of treating them as Yi-Di in the ancient times 二敵所圖, 又甚大矣。自契丹侵取燕、薊以北, 拓跋自得靈、夏以西, 其間所生豪英, 皆為其用。得中國土*

<sup>3</sup> It was recorded that “The north vulgar language was not permitted spoke at the imperial court, the violator would be dismissed 不得以北俗之語, 言於朝廷, 若有違者, 免所居官” (see “the Annal Emperor Xiaowen” Part 2 in *Book of Wei*) “If there was intention violation, the peerage shall be degraded and the government position shall be dismissed 若有故為, 當降爵黜官, 各宜深戒。” (see “the Biography of King Xi of Xianyang” in *Book of Wei*).



地，役中國人力，稱中國位號，仿中國官屬，任中國賢才，讀中國書籍，用中國車服，行中國法令，是二敵所為，皆與中國等。而又勁兵驍將長於中國，中國所有，彼盡得之，彼之所長，中國不及。當以中國勁敵待之，庶幾可御，豈可以上古之夷狄待二敵也？”(Li, 2004: 3640-3641).

The third phase happened in the Qing dynasty, when Manchu rulers, with stronger consciousness of self-identification, adopted a different policy from the previous two phases. Even though Manchu rulers adopted the political and economic institutions of Ming dynasty, most of them did not wish to let Manchu people to be assimilated and insisted to use some policies for maintaining the traditions of the Manchu people. Thus they continuously emphasized the Man-Han distinction. Different from Liao and Jin, Qing took a more hostile attitude to Chinese tradition and in order to maintain the Manchu privilege, it also “compelled Chinese men during the period of invasion to adopt Manchu dress, shave their heads, and grow the queue” (Wittfogel & Feng 1949: 12) and distorted Chinese history, especially that relevant to the concept of Yi-Di.<sup>4</sup> Therefore, the apparent self-Sinicization in Qing was actually co-existed with an animosity to Chinese tradition, and “conquest not only stimulated culture transfer, but in certain important areas retarded and frustrated it” (Wittfogel & Feng, 1949: 15). As would discussed in the next section, this reverse Yi-Xia distinction composed one important reason for the legal Orientalization of modern China.

### **Reverse Yi-Xia Distinction in Qing Dynasty**

The abovementioned issues indicates the alienation of Yi-Xia distinction under Manchu ruling, which was a milestone incident in pre-modern China. Even though the criticism of Yi-Xia distinction could be observed in later Ming dynasty<sup>5</sup>, it's the building of Manchu ruling in China after the fall of Ming dynasty that fundamentally changed the Yi-Xia order previously maintained by traditional Chinese dynasties. Responsive to this change, the concept of *Kai Hentai* (華夷變態) was raised by Japanese scholars Hayashi Gahō (林鷲峰, 1618-1680) and Hayashi Hōkō (林鳳岡, 1645-1732) in the Edo period (江戸時代, 1603-1867). The concept of *Kai Hentai*, initially used as the title of the book about the Chinese information in the Qing dynasty, was also to describe the upheaval of the “Yi-Di” (Manchu) invasion, which was no different from Wu Hu Upspring. But the concept of *Kai Hentai* indeed indicated the complexities of the Yi-Xia order due to the Manchu ruling and till now the confusion caused by it is still a frequently discussed topic by scholars. It was later used by some of other East Asia countries as the evidence that the Chinese Orthopraxy has been transferred to their countries, which became “little China(小中華)” (Wang, 2018: 5). “Sonnō Jōi”(Japanese pronunciation of “尊王攘夷 Revere the Emperor, Expel the barbarians”) was even used in Japanese rebelling samurai to fight against the Shogunate during the Meiji Restoration. Consequently, a difficult issue arose for modern Chinese scholars in explaining the status of Yi-Xia distinction in China during Manchu ruling period.

In order to solve this problem, a new concept of “reverse Yi-Xia distinction” is proposed here to describe the heterization of the traditional Yi-Xia distinction. The linchpin in such an abnormal period in the history of China is that the difference between Qing and other Chinese dynasties does not only rest on the geographic and anthropological factors, but also on the rulers' attitude towards the status of themselves. First, it has been pointed out that in the Qing dynasty, traditional China was replaced with a multi-ethnic Empire because of the unification of China proper and Inner Asia under Manchu rule (Rawski, 2004:15). This indicates that Yi-Xia distinction, a cultural concept, was no longer suitable to match such a geographic and political transformation in the Qing dynasty. Second, the transformation of Manchu rulers' psychology and their view about themselves under the new Yi-Xia order, a key to understand the transformation of the Yi-Xia distinction in the Qing dynasty, was seldom discussed.

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<sup>4</sup> The Qing destroyed writings that criticized the Liao, Jin and Yuan using the Yi-Xia distinction, especially in Emperor Qianlong (乾隆) period.

<sup>5</sup> Zhu Shunshui (朱舜水) used, in *Letter to Chen Zunzhi* (与陈遵之), to point that “the common idea that the ancients are superior than contemporary people, China is better than foreign countries”, this village parlance is due to narrow sights 世人必曰‘古人高于今人，中国胜于外国’，此是眼界逼窄，作此三家村语”(Zhu, 1981: 323). Wang Fuzhi also criticized the theory of Orthopraxy in his *Du Tongjian Lun* (Essays about Tongjian).

In recent years, there are some academic discussions to embellish the positive effect of Manchu ruling in the formation of modern China. The special ruling policy of “Imitating Ming and Prioritizing Manchu (法明崇滿)” (The “Ming” refers to Han institutions and elites) has been proposed by some scholars as the proof of Manchu rulers’ effort to achieve the “Grand Union(大一統)” of China (Diao, 2017: 83). It’s also alleged that there was a continuously followed tradition to erase the distinction between Manchu and Han people by emphasizing “the integration of Manchu and Han(滿漢一體)” (Han, 2017: 123). However, these opinions ingord the hieratical distinction between the two sides of “Imitating Ming and Prioritizing Manchu”: “Imitating Ming” was a ruling strategy to fix the institutional deficiency of Manchu regime and draw Han-Chinese elites’ to support of Manchu ruling, while “Prioritizing Manchu” was its basic and superior policy. So it’s not appropriate to deny the strict Man-Han distinction and privilege granted on Manchu people against Han people in the Qing dynasty. As demonstrated by the family law of Manchu rulers: “Under the rule upon the land of Han people in our dynasty, all Han people are servants, but they are not the same ethnic group with us. Currently even though there are Han ministers, the purpose was just to win their support and control them. My descendants shall remember this policy and do not grant real power to ethnical Han people, who shall be only recruited as servants to follow orders. 本朝君臨漢土，漢人雖悉為臣僕，而究非同族，今雖有漢人為大臣，然不過用以羈縻之而已，我子孫須時時省記此意，不可輕授漢人以大權，但可使供奔走之役而已” (Xu, 1984: 1899-1900), they did not admire Chinese civilization as Xianbei or Khitan people in the previous two phases of Sinicization, instead they viewed ethnical Han people as the different ethnic group. They even forbade the Manchu people to be influenced by Han people’s customs and habits (Xiaohengxiangshi Zhuren, 1997: 7). It’s not the first time that alien rulers claimed to erase the distinction between them and China, but this time, the psychology behind Manchu rulers’ policy was contrary to their claim and it’s this psychology, not the official propaganda, that facilitated the reverse Yi-Xia distinction demonstrated in practice.

Indeed, the only Manchu ruler who wished to erase the distinction of Manchu under Yi-Xia distinction was Emperor Yongzheng(雍正, 1678-1735). He, in *A Record of Rightness to Dispel Confusion (Dayi Juemilu 大義覺迷錄)*, explained the difference between Manchu and Han people as a mere geographical difference between native places (籍貫) within China (“Qing as Manchu dynasty like China has birth place 本朝之為滿洲，猶中國之有籍貫”) and similar to the Emperor Xiaowen of Northern Wei, he tried to fuse of the distinction between Han and Manchu from a Sinicization perspective. But except him, other Manchu rulers took opposite stance to distinguish Han and Manchu. They not only prevented Manchu to be fused with Han people but also forbade Han people to comment the status of Manchu and “Yi-Di”. This reverse Yi-Xia distinction fundamentally changed the substance of traditional Yi-Xia distinction. In the Yi-Xia distinction, China will not rule the Yi-Di and shall prevent Yi-Di from entering China. By contrast, under the reverse Yi-Xia distinction, even though the Manchus are different ethnicity from Han people, they are the rulers of Han-Chinese, therefore the distinction between Manchu and Han shall be maintained even though Manchu people relocated in China. Meanwhile, the discourse of sensitive Yi-Xia distinction by Han people was the “object of vigorous suppression” via the form of “literary inquisition” (Elliott, 2006: 17-18), which further intensified the reverse distinction. This twisted Yi-Xia distinction building upon the political and military conquest was different from the Xianbei rulers’ Sinicization in Northern Wei, as Xianbei rulers viewed themself not “Yi-Di” but Chinese, the same with Han people, and quickly accepted Chinese civilization by competing the self-Sinicization. It’s also different from Northern regimes of Liao and Jin, which, even though maintained a duality, were not hostile to Chinese civiliazation. In Qing dynasty, by the propaganda of “Imitating Ming”, Manchu ruler succeeded to bind Chinese institutions and elites with them to implement steady ruling in China, while at the same time strengthen the distinct status as colonizing group on Han Chinese. The distinction building upon the strict adherence of the dominating status of Manchu was the basic policy behind the deceptive imitating Ming institutions.

Consequently, under this reverse Yi-Xia distinction policy, the Sinicization in Qing dynasty, which has been commonly confirmed by most of modern scholars, was at least not sufficient or even was essentially against Sinicization, thus the traditional Yi-Xia distinction was inevitably terminated in Qing dynasty. On the other hand, a new epistemology on national indentification was not generated to fill up the blank left by the erasing of Yi-Xia distinction. To some extent, this was the purpose of Manchu

rulers' policy of reverse Yi-Xia distinction because the erasing of the national identification of Han people could make Manchu ruling of China easier. The whole Chinese society stayed in a slowly deflating stability until the invasion of the Occident, which was feverously keen to expand its political, legal and cultural influence following the Orientalism ideology, and promoted by it, the Occident achieved great global influence and expand its own institutions into many parts of the world. The Orientalism in turn also developed into maturity. Then it's easy to explain why China could not withheld the wave of Orientalization and further initiate the self-Orientalization movement, as exemplified in its legal reform from later Qing to Republic of China discussed in the next section.

### **To Tame the Orient and National Pygmalion Effect**

In contrast to the defensive Yi-Xia distinction, Orientalism had more "expansive" features. According to Said, the function of Orientalism was not only to understand the Oriental, but to make the Orient to "perform" and to enlist the Orient on the sides of the "values, civilization, interests, goals" of the Occident (Said, 1978: 238). Therefore, "the Orient is the stage on which the whole East is confined" (Said, 1978: 63). A "positive political message" of Orientalism was that "the gulf between East and West can be modulated...by superior Western knowledge and power" (Said, 1978:244). Therefore, as Said alleged, Orientalism was a human constructed entity by Europe in order to judge and rule it (Said, 1978: 92), and he reached a conclusion that it is "an aspect of both imperialism and colonialism" (Said, 1978: 123), supporting the European occupation of the Orient (Said, 1978: 99-100). English used to rely on the Greek and Roman classics to implement its colonial Orientalization (Toner, 2013: 157). Therefore, what is haunting around the Orient was a power relationship, between the Occident and Orient, "by which Europe suzerainty is extended effectively over Asia" (Said, 1978:256). Consequently, going back to the legal reform of China, it's the legal "colonialism without even colonizers" (Ruskola, 2013: 199) that constituted the essence of legal reform in China. But "the relationship between the Chinese legal tradition and modernity cannot be simply a one-sided affair" (Ruskola, 2013: 28 & 207). The Orient had also participated in the creation of Orientalism, a process of self-Orientalization (Dirlik, 1996: 114). It became harder and harder for the Orient to pursue freedom, political independence, and culture achievement "on their own term" (Said, 1978: 249).

This more expansive nature of Orientalism may be due to two factors. The first one is the religious factor which could be hardly found in Chinese Yi-Xia distinction. Western religions have strong power to transform the ethnic viscosity in a specific group of people in the same region to the belief viscosity transcending the ethnic and geographic limit, making everyone deemed transmission of their religion as their inherent mission. The second factor is economic explanation as the western countries, unlike China, are mostly ununited regional countries, unable to form a self-sufficient economy cycle, and need international trade for developing economy. Therefore, they had to promote and sell their goods in other countries using their own trading system. Orientalism has been used as a powerful tool to make other countries bow to the western rules.

Simply speaking, the combination of Orientalization and self-Orientalization generated the National Pygmalion Effect, which has also been observed by some Chinese scholar<sup>6</sup>. It is the process in which more advanced or powerful civilizations influenced the less advanced ones, and these countries in turn positively changed themselves according to the expectation of the more powerful side. During the process of the Occident conquering the Orient, including China, in modern times, a phenomenon of the mythicization of the Occident side would be fermented, more specifically speaking, the Orient would view the institutions of the Occident as omnipotent to address most of their problems. This is the intermediate stage from Orientalization to Self-Orientalization. In the eyes of the Orient, the institutions of the Occident were more advanced than their own institutions, and this belief became some form of worship, which further promoted the process of Self-Orientalization. This institutional self-abasement

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<sup>6</sup> See Bai Tongdong (白彤東)'s Lecture "How Has China Become a Despotic State?" "Starting with the argument that the idea of traditional Chinese regime being despotic was rooted in the ignorance and the arrogance of the West towards China. Prof Bai shows that this concept was spread to China via Japan. He will then discuss how Montesquieu first introduced and developed this idea, and why it was deeply problematic. Finally, he will show that because of the inadequacy of this understanding and the actions taken by the Chinese on the basis of this understanding, China has indeed become despotic since the collapse of the traditional Chinese regime, which, ironically, does corroborate Montesquieu's understanding of the nature of despotism" (<https://www.konfuzius-institut-frankfurt.de/21-01-2016-lecture-bai-tongdong>).

and alien worship may not be due to the problems of institutions, but originated from other factors, for example military defeat, economic underdevelopment, which may be even not relevant to the quality of the institutions. But the institutions are the most manipulatable ones, and then they became the object to be blamed and reformed.

The above-described National Pygmalion Effect defined the basic theme of the modernization process from pre-modern China to modern China, and was also demonstrated by the Orientalization process of Chinese law. In specific, the tool to tame China was to connect the abolishment of extraterritoriality established in China from middle 19<sup>th</sup> century with Chinese legal reform based on western legal system. Along with such legal Orientalization driven by Western powers, in that period, “Chinese state issues its own policy documents to promote rule of law ... (which) could serve as examples of such self-Orientalization” (Coendet, 2019: 798).

After the signing of Treaty of Nanking (南京條約) and other unequal treaties with major western powers after 1840, both Qing government and intellectuals deemed these treaties as a stigma of China and wished to abolish the privilege conferred to these powers, including the extraterritoriality. At the same time, Qing government and intellectuals also began to think about how to deal with western countries by fixing up the deficiency of the Chinese judicial institutions according to the legal systems of western countries in the “great-change period first appeared in thousands of years” observed by Li Hongzhang (李鴻章, 1823-1901) in 1875 (Liang, 2009: 63).

What’s worth to mentioning is that, similar to China, Japan had also been forced to cede the extraterritoriality jurisdiction to western powers under the military force of America in 1850s,<sup>7</sup> but, within a short period, the extraterritoriality in Japan was abolished in 1894 (Bishop, 1926: 297). It should be pointed that the law reform movement gained “added impetus from the success which had attended Japan’s efforts to reform, which had resulted in the abolition of extraterritoriality” (Keeton, 1937: 198). Notwithstanding, the western powers’ attitude to China was different from that to Japan, and they always bundled the relinquishment of their extraterritoriality together with the demand of legal reform. In 1902, during the renegotiation of the commercial treaties with the Great Britain, the two countries signed *the Commercial Treaty 1902* (Mackay Treaty) in which Qing government was promised by Great Britain to relinquish its extraterritoriality rights in China only if the legal system of China was satisfied with the general rule in western “civilization world” (Shao, 2016: 102-102). In the next year, the United States, by treaty with China, agreed to give China assistance in the reform of her judicial system, as the prerequisite for it to relinquish its extraterritorial right in China (Bishop, 1926: 281). This indicated that the Western powers treated the legal reform on the traditional Chinese law as condition to relinquish their extraterritoriality (Cassel, 2012: 143). Even though recently there is voice that the initiative of the law reform in later Qing did not embody the will of western powers because the article 12 of Mackay Treaty was proposed by China, not the Great Britain (Chen, 2004: 62), a different opinion argues that the acceptance of article 12 by Great Britain was influenced by Sir Robert Hart’s<sup>8</sup> theory to establish a common legal procedure which could help western powers to expand their right in China outside the treaty ports (Zhang, 2013: 132-133). The latter perspective was more plausible and it’s reasonable to infer that Chinese law reformers tended to believe western powers’ promise, despite the warning from conservative politicians like Zhang Zhidong (張之洞, 1837-1909).<sup>9</sup>

Simply speaking, the motivation of the West has been observed by Said: “If China organized itself (as it would be), it would be no laughing matter. Europe’s effort therefore was to maintain itself as what Valéry called ‘*une machine puissante*,’ absorbing what it could from outside Europe, converting everything to its use, intellectually and materially, keeping the Orient selectively organized (or disorganized)” (1978: 251).

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<sup>7</sup> Japan Tokugawa shogunate (德川幕府) was forced to end its national seclusion policy by United States Navy Commodore Matthew Perry and signed Kanagawa Treaty (神奈川條約) in 1854. Later in 1858, Japan, with United State and other four western countries, signed the unequal Ansei Treaties (安政條約) which provided extraterritoriality to these countries.

<sup>8</sup> He served as the second Inspector-General of China’s Imperial Maritime Custom Service (IMCS) from 1863 to 1911.

<sup>9</sup> Zhang Zhidong asserted that persuading western powers to relinquish their extraterritoriality was a impractical illusion in his *Memorial to the throne regarding the new Criminal and Civil Procedure Law* (遵旨核議新編刑事民事訴訟法折) (Zhang, 1998: 1773).

The external push from Western powers subtly accelerated the internal motivation of China to implement its self-legal-Orientalization. As stated by Shen Jiaben (沈家本, 1840-1913) in *Law Reform Minister's Memorial to the throne regarding Criminal and Civil Procedure Law* (修律大臣奏呈刑事民事訴訟法折), the initial motivation of the legal reform movement was to enhance the bargaining power of Qing government while persuading Western powers to relinquish their extraterritoriality in China (Jiabben, 1906: 199). Japan's success also reinforced this belief. Liang Qichao (梁啟超, 1873-1929)'s opinion could represent the popular social thought on the legal westernization in China. In *On China shall Emphasize Legal Science* (論中國宜講求法律之學), he clearly stated that:

*“China was China because of its Li and Yi, Yi-Di was Yi-Di because they had no Li and Yi. What is Li? It's the general principle. To interpret ritual with general principle was the Exegesis of the Confucianism scholars in Han dynasty...What is Yi? It's the power with limitation...In today's China, there are four hundred million people not clear about general principle and not care about limited power. The encounter with the West countries, even though with strong castle and sufficient supply, is just like a tiger was encountered against the hunter with no luck. With such a state, such a government, such social spirit and custom, we still arrogantly view ourself as China and others to be Yi-Di, then it's no strange that we are viewed as third class barbarians by the West...Therefore it's imperative to set the legal science, otherwise we would not be able to exist in the world. 有禮義者謂之中國，無禮義者謂之夷狄。禮者何？公理而已。以理釋禮，乃漢儒訓詁...義者何？權限而已...今吾中國聚四萬萬不明公理不講權限之人，以與西國相處，即使高城深池，堅革多粟，亦不過如猛虎之遇獵人，猶無幸焉矣。乃以如此之國勢，如此之政體，如此之人心風俗，猶囂囂然自居中國而夷狄人，無怪乎西人以我為三等野番之國...故今日非發明法律之學，不足以自存矣”* (Liang, 1941: 93-94).

It's clear that from Liang's passionate compliment on the western law, a mythicization of western legal system has been planted at least within the intelligentsia in his time, and also mixed with the feeling of national crisis. After the fall of the Qing Dynasty during Xinhai Revolution, the interrupted law reform in the Qing dynasty was soon resumed by Beiyang government of the newly established Republic of China. In the new era, a more urgent wish to abolish extraterritoriality through westernization of legal system was fermented with the rise of nationalism. It's observed that Beiyang government actively pursued the abolishment of extraterritoriality by demonstrating the outcome of its law reform to the western powers (Liang, 2009: 85), but the fast-track law reform was, as commented by Keeton, a 'too hasty reform', borrowing western law 'without regard for the question whether those forms were suitable for China or not' (Keeton, 1937: 283). In order to satisfy western powers before the investigation on extraterritoriality in 1926, Beiyang government carried out an intensive legislation movement from 1922, the year of Washington Resolution Conference, to 1926 and promulgated a set of laws including Criminal law, Commercial law, Civil law, Property law, Civil procedure and Criminal procedure (Liang, 2005: 96). Local governors were also urged to change the local judicial situation respectively in order to be fully prepared for the forthcoming investigation (Liang, 2005: 95). Great expectation that the commission would be satisfied that Chinese legal system already fulfilled the western standard was held both by government and many people (Liang, 2005: 97) because of the sincere and extensive westernization law reform conducted during the past several years. However, by contrast with the enthusiastic Chinese side, western powers showed little passion for the investigation and the commission had been disbanded without any substantial outcome, except a disappointing commission report (Qian, 1984: 77). The commission report made two important criticisms on the revamped Chinese legal system, the first was the 'lack of stable machinery for the enforcement of the codes' and the second was the assimilation of the new laws not keeping pace with legislation, meaning that some ancient laws were still applied and the application of some new laws were restricted (Keeton, 1937: 199-200). Therefore, the report made a long list of laws which were required for enforcement, ranging from civil code to banking law, and only after this further enforcement, western powers would consider relinquishing their extraterritoriality (Department of State, 1926: 107).

It was pointed out that "China's adoption of a Western legal system had symbolic value and represented real—albeit incremental—change in both form and practice" (Young, 2004: 115).

Considering the short time available for the law reform and Beiyang Government's decent effort on radical westernization of the legal system, it's a disappointing outcome of the investigation in 1926. This showed that the naïve wish and effort to persuade western powers to relinquish extraterritoriality in China was proved to be a failure. No matter how hard Chinese government strived to prove that Chinese law had matched the western powers' standards, they always had a new excuse to reject China's urgent need to abolish extraterritoriality, either the deficiency of legal system or the unstable political situation in China (Liang, 2006: 113).

Summarily speaking, Western powers used their extraterritoriality in China as an excuse to promote the westernization of Chinese legal institutions, or to "organize" China. This legal Orientalization process promoted by the Western powers was accompanied with the self-Orientalization effort of China herself. Even though western powers did not take their promise seriously, they did set up a "standard" for the law reform in China. Believing that implantation of the western legal system would be sufficient to persuade western powers to relinquish their extraterritoriality, Chinese government completed the westernization of Chinese law in a short period. However, western powers never fulfilled their promise. Therefore, the effort of China's adoption of a western legal system did not achieve its initial purpose of abolishing the extraterritoriality, but "successfully" caused the self-Orientalization of its legal system.

### **Conclusion**

As mentioned above, the conservative nature of Yi-Xia distinction and reverse Yi-Xia distinction jointly made Yi-Xia distinction powerless in front of the more expansive Orientalism. This provides an alternative explanation to the westernization of Chinese law. Following the logic of a commonly accepted perspective in modern days, westernizing Chinese law was thought to be a convenient way to make China stronger, to assimilate it into the modern world and to persuade western powers to give up their extraterritoriality in China. However, the deep cause may rest on the loss of national identity due to the reverse Yi-Xia distinction in the Qing dynasty.

Compared with Orientalism, Yi-Xia distinction overemphasized the dichotomy between Yi and Xia, while at the same time abandoned its early spirit to change "Yi-Di" by using Chinese culture. This made Yi-Xia distinction become conservative and more fragile in face of external invasion, especially after the comprehensive military and political interaction between China and the West. But this feature alone is not sufficient to explain the large-scale westernization of Chinese law, the reverse Yi-Xia distinction in the Qing dynasty maybe a more deciding factor.

A consequence of the reverse Yi-Xia distinction was that it blocked the opportunity of the revival of national identification of Han-Chinese after the fall of Manchu rule. The reverse Yi-Xia distinction not only distorted the Yi-Xia discussion, but also propagandized "one family of Hua-Yi". Between China and its past there lay an alien tribe regime claiming that it represented China by binding Manchu rulers and Chinese institutions and elites, which caused the illusion that the Qing dynasty was equivalent traditional China. This inevitably caused the confusion on Chinese national identity. Under this illusion, anti-Manchu sentiment ruling was equated with anti-old Chinese tradition.

In fact, in later Qing, the Yi-Xia distinction was shortly revived by the revolutionist as a weapon of anti-Manchu movement. But Qing government, in order to mollify the anti-Manchu trend initiated by revolutionists, promoted again the propaganda of the "One family composed by Hua and Yi". This policy was followed by the new Republic of China with a revised form of "Chinese Nation" proposed by Liang Qichao in order to obtain the support from other ethnic groups other than Han-Chinese, including Manchu. This idea about "Greater China" composed of different ethnic groups become a popular idea in the modern academic and political circles. The demise of Yi-Xia distinction<sup>10</sup> expedited the collapse of the national esteem of China, and smashed the last shield against the disastrous 'modernization by westernization' in China, featured with revamping China with western civilization. From this point, China has been smothered by the fabricated phantom of its past.

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<sup>10</sup> Yi-Xia distinction has little practical and real significance in modern China. Even the advocates of a "China-centered history" seem to have "lost touch with their own past, and are at a disadvantage, therefore, in providing a truly China-centered history" (Dirlik, 1996: 112) and therefore the "challenges to Eurocentrism (such as with the Confucian revival) have promoted rather than dislodged orientalism" (Dirlik, 1996: 118).

After Qing government was defeated by western powers in military level, the confusion of national identification further transformed into culture inferiority. Some government officials at that time even deemed China to be Yi-Di compared with western countries.<sup>11</sup> Consequently, the vacuum of the national spirit after the fall of Qing dynasty made it much easier for the implementation of Orientalization under Orientalism. At this stage, China has switched its role to be Yi-Di in front of western Orientalism. This promoted the law reform featured with westernization. The official description of the mission of modern China is often stated as “Anti-imperialism and Anti-feudalism.” Notwithstanding, China experienced a recolonization in the form of self-Orientalization after two phases of forced colonization, Manchus and Western powers. The political freedom was accompanied by institutional enslavement, which caused more imperceptibly lasting alternation to the institutions and national psychology of modern China.

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<sup>11</sup> Guo Songtao (郭嵩焘), the first Imperial commissioner in England, stated in his diary on Feb. 2<sup>nd</sup> of Guangxu Fourth year: “Before the three dynasties, civilization existed only in China...all people far from China was named Yi-Di. From Han, civilization of China declined continuously; while the European countries took the lead on the politics, civilization and social custom, they viewed China as China in the dynasties viewed Yi-Di. 三代以前，獨中國有教化耳...一皆遠之於中國而名曰夷狄。自漢以來，中國教化日益微滅；而政教風俗，歐洲各國乃獨擅其勝，其視中國亦猶三代盛時之視夷狄也” (Songtao, 1984: 491). Liang Qichao, in *On China shall Emphasize Legal Science* (論中國宜講求法律之學), also stated that: “Thinking about the West from the perspective of China today, China is definitely barbarian 以今日之中國視泰西，中國固為野蠻矣” (Liang, 1941: 94).

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