

Conceptualizing China Within the Kantian Peace

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Immanuel Kant's 1795 essay, "To Perpetual Peace: A Philosophical Sketch" (Zum ewigen Frieden), established a concept of cosmopolitan law as the nemesis of war, instilling in generations of thinkers and practitioners a vision of a world without conflict. Kant's paradigm posited that "republican constitutions, a commercial spirit of international trade, and a federation of interdependent republics" would provide the basis for a "perpetual peace" amongst states bound together under international law. Yet cultural relativists since the time of Kant have argued that only certain nations—namely those with a "Europeanized" culture—are capable of coming together to secure this lasting peace.

This Article seeks to challenge such claims and assess the contemporary relevance of Kant's "perpetual peace" under international law in light of one of the most important geopolitical developments of our time: the rise of China. It is clear today that efforts to secure an enduring world peace without China have limited prospects for success. Amidst this reality, the Article argues that historical and contemporary claims regarding the irreconcilability of the Kantian paradigm with Chinese thought are inaccurate and incomplete. It presents evidence to rebut these cultural relativist arguments by identifying sources of resonance with Kant in classical Chinese political philosophy; highlighting Chinese scholars' ongoing engagement with Kant's writings over the past century; and revealing trends in recent Chinese scholarship and foreign policy discourse that support Kantian liberal internationalism.

Finally, the Article demonstrates that modern China is increasingly committed to two pillars of the Kantian project, international institutions and commercial interdependence, but concludes that the rising power must develop a missing third pillar—liberal democracy—if it is to strengthen its normative commitment to international law and participate in a lasting peace amongst states. China's fate and the future of international law thus appear inextricably tied.

INTRODUCTION

Connecting Western and Eastern philosophy is only possible through the Kantian framework.

—Mou Zongsan¹

Immanuel Kant's 1795 essay, "To Perpetual Peace: A Philosophical Sketch" (*Zum ewigen Frieden*), established a concept of cosmopolitan law as the nemesis of war, instilling in generations of thinkers and practitioners a vision of a world without conflict.² Kant's paradigm posited that "republican constitutions, a commercial spirit of international trade, and a federation

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1. MOU ZONGSAN, *ZHONGXI ZHUXUE JI HUITONG SHI SHI JIANG* [FOURTEEN LECTURES ON THE COMMUNICATION BETWEEN CHINESE AND WESTERN PHILOSOPHY] 225 (1990).

2. IMMANUEL KANT, *Toward Perpetual Peace: A Philosophical Sketch*, in PRACTICAL PHILOSOPHY 107–09 (Mary J. Gregor trans., Cambridge University Press 1996) [hereinafter KANT, *Toward Perpetual Peace*]. Kant develops this theory of international relations further in other writings. See *Idea for a Universal History with a Cosmopolitan Intent* (1784), in PERPETUAL PEACE AND OTHER ESSAYS 29, 34–39 (Ted

of interdependent republics” would provide the basis for a “perpetual peace” among states.³ To adherents of this view, cooperation motivated by a shared normative commitment to the rule of law, rather than competition driven by self-interest, is the animating force that underlies world affairs.

More than a century later, Kant’s vision inspired the creation of the League of Nations following the Paris Peace Conference that ended World War I. Despite grave setbacks—including a devastating Second World War and ongoing conflicts across far-flung regions such as the Middle East, Southeast Asia, Africa, and the Balkans—the Kantian project has persisted into the twenty-first century. Some scholars have gone farther than Kant himself expected, envisioning a supranational organization like the United Nations as “an international organism, which can also judge and punish a state for a transgression of international treaties concerning peace, and can even use force against it.”⁴ While notions of “global governance”⁵ have gained limited traction, the emergence of multilateral legal bodies like the International Criminal Court (“ICC”) and World Trade Organization (“WTO”) and growing corpus of international accords ranging from the U.N. Convention on the Law of the Sea to the Outer Space Treaty underscore the resilience of Kant’s conception of “a federation of free states” bound together under the rule of law.⁶

Yet Kant’s critics remain influential as well. Scholars and practitioners who adhere to a *realpolitik* view of international relations follow Hegel in rejecting Kant’s *foedus pacificum* because it “presupposes an accord between states which would rest on moral or religious or other grounds or considerations, but in any case would always depend ultimately on a particular sovereign will and for that reason would remain infected with contingency.”⁷ These ostensibly hard-nosed realists view the liberal peace established under international law as a “chimera”⁸ whose stability is continually threatened by its constituent sovereigns—states driven by self-interest that exist in a state of nature in relation to each other—and could therefore at any time devolve into war. Many international legal skeptics adopt this approach.⁹ Hence, the Hegelian notion that “the nation whose institutions express a higher degree of freedom has the right to be the ultimate judge of the

Humphrey trans., 1983); *On the Proverb: That May be True in Theory, But Is of No Practical Use (1793)*, in PERPETUAL PEACE AND OTHER ESSAYS 85–89 (Ted Humphrey trans., 1983).

3. Gökhan Bacik, *The Kantian Project in International Relations: The (Earliest) Theory of Globalization* (Nov. 16, 2012, 8:30 PM), <http://asrudiancenter.wordpress.com/2011/02/22/the-kantian-project-in-international-relations-the-earliest-theory-of-globalisation>.

4. Maria de Lourdes Alves Borges, *War and Perpetual Peace: Hegel, Kant, and Contemporary Wars*, 5 ETHIC@ 81, 81 (2006).

5. See generally Peter Singer, ONE WORLD (2002).

6. KANT, *Toward Perpetual Peace*, *supra* note 2, at 115–17.

7. GEORG W. F. HEGEL, ELEMENTS OF THE PHILOSOPHY OF RIGHT § 333 (Allan E. Wood ed., 1991) [hereinafter HEGEL, ELEMENTS OF THE PHILOSOPHY].

8. OLIVER P. RICHMOND, THE TRANSFORMATION OF PEACE 205 (2005).

9. See, e.g., JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW (2005).

world” continues to find expression in the foreign policies of powerful state actors including the United States.¹⁰

Another line of criticism is advanced by cultural relativists, who since Kant’s time have argued that only nations with a “Europeanized” culture are capable of binding themselves under international law to form the federation of states necessary to secure a lasting peace. This Article seeks to critically examine this cultural relativist claim in light of a defining geopolitical phenomenon: the rise of China. When Kant penned his treatise in the late eighteenth century, China was intentionally excluded from the sphere of international society and law; indeed, Kant himself expressed strong criticism toward Chinese philosophy and culture.¹¹ Today, however, it is clear that international legal efforts that aim to realize Kant’s “perpetual peace” while excluding China are unlikely to succeed. Put another way, China’s commitment to international law is essential to the future of the Kantian project. This geopolitical reality raises a key question: can China be conceptualized within the liberal peace, and if so, what are the implications for the rising power’s relationship with international law?

Until recently, China’s emergence onto the world stage was far from a foregone conclusion. Less than a generation ago, observers readily dismissed the Middle Kingdom as an isolated and impoverished nation. Yet in the wake of Mao Zedong’s death, a succession of reform-minded leaders over the past three decades have propelled China from a period marked by economic stagnation, domestic turmoil, and international isolation onto a world stage increasingly defined by its emergence.¹² Despite legitimate concerns about a growing rural-urban divide, persistent (if regionalized) poverty, an aging population, and unmet demands for greater political liberalization,¹³ China’s global influence continues to increase rapidly. Tellingly, “China’s rise has been the most frequently used phrase in international relations [literature] over the past decade,”¹⁴ one increasingly accepted as a truism.

This realization has led scholars to observe that, “the great strategic issue of our times is not just China’s rising power but *whether its worldview and applied theory will reproduce, converge with, or take a separate path from the world order and ideas produced in the era of trans-Atlantic dominance.*”¹⁵ In attempting to answer this question, some commentators suggest that, “students of the

10. Borges, *supra* note 4, at 81.

11. See Gregory M. Reihman, *Categorically Denied: Kant’s Criticism of Chinese Philosophy*, 33 J. CHINESE PHIL. 51, 51–65 (2006).

12. For a good overview, see RICHARD MCGREGOR, *THE PARTY: THE SECRET WORLD OF CHINA’S COMMUNIST RULERS 194–228* (2010).

13. See, e.g., Angang Hu, *Equity and Efficiency*, ONE CHINA, MANY PATHS (Chaohua Wang ed., 2003); Elizabeth Economy & Kenneth Lieberthal, *Scorched Earth: Will Environmental Risks in China Overwhelm Its Opportunities?*, 85 HARV. BUS. REV. 88–96 (2007).

14. Tuosheng Zhang, *Peaceful Rise Good for World*, CHINA DAILY (Jan. 4, 2010), http://www.china-daily.com.cn/opinion/2010-01/04/content_9258934.htm.

15. PAUL EVANS, *CHINA AND INTERNATIONAL RELATIONS: THE CHINESE VIEW AND THE CONTRIBUTION OF WANG GUNGWU* 55 (Yongnian Zheng ed., 2010) (emphasis added); see also Jeffrey W. Legro,

liberal peace should examine [whether] . . . constitutive elements [of Kant's perpetual peace] exist in non-Western civilizations" such as China.¹⁶ Yet surprisingly limited Western scholarship has focused on Chinese engagement with Kantian philosophy. As one German scholar notes, "[i]t is remarkable that . . . the Chinese reception of Kant as such has only recently become a topic of inquiry."¹⁷ This Article seeks to address this lacuna in the existing literature by considering a central question: does Kant's "perpetual peace" find resonance within Chinese thought? Answering in the affirmative, this inquiry ultimately concludes that China's deepening commitment to international law will depend upon political liberalization at home.

This Article is divided into four Parts. Part I establishes the theoretical framework of Kant's treatise on "perpetual peace," which serves as a foundation for modern international law and continues to influence the debate between liberal internationalists and realists. Part II examines historical and contemporary cultural relativist claims that the Kantian paradigm is irreconcilable with Chinese thought. Part III presents evidence to rebut these cultural relativist arguments by identifying sources of resonance with Kant in classical Chinese political philosophy, highlighting Chinese scholars' ongoing engagement with Kant's writings over the past century, and revealing trends in recent Chinese scholarship and foreign policy discourse that support Kantian liberal internationalism. Finally, Part IV demonstrates that modern China is largely committed to two pillars of the Kantian project, international institutions and commercial interdependence, but concludes that the rising power must develop a missing third pillar—liberal democracy—if it is to strengthen its normative commitment to international law and participate in a lasting peace among states.

I. THEORETICAL BACKGROUND

A. *The Kantian Underpinnings of International Law*

Kant's "To Perpetual Peace" is considered a foundational work in international law.¹⁸ Kant developed one of the earliest liberal theories of interna-

What China Will Want: The Future Intentions of a Rising Power, 5 PERSPECTIVES ON POLITICS 515–34 (2007).

16. Victoria Tin-bor Hui, *Toward a Multicultural Approach to the Liberal Peace: A Comparison of Historical China and Historical Europe 2* (Aug. 31, 2006) (prepared for presentation at the 102nd Annual Meeting of the American Political Science Association, Philadelphia) [hereinafter Hui, *Toward a Multicultural Approach to the Liberal Peace*].

17. Martin Müller, *Aspects of the Chinese Reception of Kant*, 33 JOURNAL OF CHINESE PHILOSOPHY 141, 142 (2006).

18. The traditional definition of "international law" encompasses (1) treaties (express written agreements among nations), and (2) customary international law (general and consistent practices of nations that they follow from a sense of legal obligation). See, e.g., Curtis Bradley and Jack Goldsmith, FOREIGN RELATIONS LAW: CASES & MATERIALS, 4TH ED. XXV (2011). This "statist" conception of international law "focuses upon the rights and duties of states and rejects the contention that the rights of states are merely derivative of the rights and interests of the individuals who reside within them." Fernando Tesón,

tional law, premised upon a view of the individual, rather than the state, as the primary normative unit.¹⁹ His theory reflected a fundamental “concern[] about individual freedom . . . [rather than] claims about the state as a moral person.”²⁰ Kant’s core contributions to international law were twofold. First, he was arguably the most influential early visionary of an alliance of states created under international law for the maintenance of peace. Second, Kant posited that a strong link exists between international peace and individual freedom (what Kant refers to as “outer,” or juridical, freedom and “inner,” moral, freedom or autonomy²¹), as well as between liberal domestic government and pacifistic foreign policy. Expanding on Kant’s insight, some commentators suggest that he was the earliest proponent of an international legal order grounded in human rights.²²

Kant’s notion of a *foedus pacificum* was not the first theory of its kind: its intellectual antecedents trace back to C.I. Castel de Saint-Pierre, a French thinker who pioneered the idea and influenced renowned philosopher Jean-Jacques Rousseau.²³ In 1761, Rousseau edited and published the “Abstract of Monsieur the Abbé de Saint-Pierre’s Plan for Perpetual Peace,” describing it as a work on “an inaugural subject for you who love peace, and the writings that breathe it.”²⁴ Like Kant’s subsequent treatise, Saint-Pierre’s Plan began by recognizing the problem of international anarchy and sought to resolve it by proposing “a form of confederative government, which, uniting

The Kantian Theory of International Law, 92 COLUM. L. REV. 53, 53 (1992). Kant, however, advanced a broader view of international law that adopted an individual- rather than state-centric approach. See *infra* notes 19–22 and accompanying text.

19. Fernando Tesón elaborates on this point, arguing that under the Kantian theory of international law, “[t]he end of states and governments is to benefit, serve, and protect their components, human beings; and the end of international law must also be to benefit, serve, and protect human beings, and not its components, states and governments. Respect for states is merely derivative of respect for persons. In this way, the notion of state sovereignty is redefined: the sovereignty of the state is dependent upon the state’s domestic legitimacy; and therefore the principles of international justice must be congruent with the principles of internal justice.” Tesón, *supra* note 18, at 54.

20. Some scholars have argued that Kant foreshadowed the contemporary notion of a global human rights imperative. Two Kantian arguments might be identified in this vein: (1) “an international community of just, democratic states is the best guarantee for international peace because internal freedom at home is causally related to peaceful behavior abroad”; and (2) “international law requires respect for human rights because the just civic society is the ultimate goal of all political arrangements.” These claims link international law to individual autonomy instead of notions rooted in state sovereignty (such as the national interest or rights of government). *Id.* at 55.

21. Amanda Perreau-Saussine, *Immanuel Kant on International Law* 3 (2008), available at <http://www.law.cam.ac.uk/faculty-resources//summary/quotimmanuel-kant-on-international-lawquot/5695/pdf>.

22. See Tesón, *supra* note 18, at 54 n.7.

23. See C.I. CASTEL DE SAINT-PIERRE, SELECTIONS FROM THE SECOND EDITION OF THE ABREGE DU PROJET DE PAIX PERPETUELLE (H. Hale Bellot trans., 1927), reprinted in PEACE PROJECTS OF THE EIGHTEENTH CENTURY (Garland ed., 1974). Some scholars have suggested that Saint-Pierre was the first thinker to articulate the concept of a “European Union.” See ISTVAN HONT, JEALOUSY OF TRADE: INTERNATIONAL COMPETITION AND THE NATION-STATE IN HISTORICAL PERSPECTIVE 27–28 (2005).

24. JEAN-JACQUES ROUSSEAU, *On the Writings of the Abbé de Saint-Pierre*, in THE PLAN FOR PERPETUAL PEACE, ON THE GOVERNMENT OF POLAND, AND OTHER WRITINGS IN HISTORY AND POLITICS 25 (Christopher Kelly ed., 2005).

Peoples by bonds similar to those which unite individuals, equally subject both of them to the authority of Laws.”²⁵ Though Kant was influenced by the writings of Saint-Pierre and Rousseau, he rejected what he viewed as those thinkers’ utopianism²⁶ and sought to develop a more robust concept of international law.²⁷

Kant’s legal and political philosophy was frequently cited by internationalists during the nineteenth and twentieth centuries, and proved particularly influential in shaping efforts to secure a lasting peace after the First and Second World Wars. This culminated first in the creation of the League of Nations, and later, the United Nations. As one scholar in the 1930s put it, “it is noteworthy that several of his definite proposals run closely parallel to those of the present time,”²⁸ while another noted that, “the novelty of his proposals explains why Kant’s contribution has been regarded as *avant la lettre* political advocacy for the United Nations”²⁹ Kant’s influential vision of the international legal order was most clearly articulated in his short essay, “To Perpetual Peace,” briefly examined in the following section.

B. Kant’s “Perpetual Peace”

In his treatise on “perpetual peace,” Kant sought to establish the conditions for a stable peace based on the idea of a social contract among nation-states bound together under international law.³⁰ Under Kant’s view, as states more closely approximated this perpetual peace, their citizens’ juridi-

25. *Id.* at 28. As Professor Perreau-Saussine notes, “Kant’s ‘Toward Perpetual Peace,’ structured like Saint-Pierre’s essay as if itself a peace treaty, aims to show writing books really *could* challenge a Prince’s confidence in his own wisdom, thereby helping to transform a perpetual state of war into one of perpetual peace. Following both Rousseau and Saint-Pierre, Kant treats international insecurity and competition as the self-perpetuating results of bad counsel, the advice of ‘political moralists’ or ‘moralizing politicians’ who pretend that ‘human nature is not capable of good’ and whose advice can lead ultimately only to annihilation, the peace of the graveyard.” Perreau-Saussine, *supra* note 21, at 2 (citing KANT, *Toward Perpetual Peace*).

26. Ironically, this charge would later be leveled against Kant himself by Hegel. See HEGEL, *supra* note 7, at § 332.

27. For Kant, this was predicated upon his theory of human nature, which required knowledge of what humans *ought* to do. This “metaphysics of morals,” as Kant termed it, entailed a “reflective, reasoned understanding of moral judgment and the moral principles on which such judgment is based,” at the core of which “lies a recognition of human freedom: freedom must be presupposed or ‘postulated’ by practical reason.” Perreau-Saussine, *supra* note 21, at 2 (citing IMMANUEL KANT, *Critique of Practical Reason* [1788] in PRACTICAL PHILOSOPHY, THE CAMBRIDGE EDITION OF THE WORKS OF IMMANUEL KANT 246 (Mary Gregor, trans. 1996)).

28. A.C. Armstrong, *Kant’s Philosophy of Peace and War*, 28 J. PHIL. 197, 201 (1931).

29. Tesón, *supra* note 18, at 55. For an account comparing Kant’s proposals to the U.N. Charter, see CARL J. FRIEDRICH, *INEVITABLE PEACE* 33 (1948) (arguing that the Charter’s precepts largely mirror Kant’s conditions for lasting peace); Wolfgang Schwarz, *Kant’s Philosophy of Law and International Peace*, 23 PHIL. & PHENOMENOLOGICAL RES. 71, 76–78 (1962).

30. Perreau-Saussine claims that “at the core of Kant’s philosophy of international law lies a notion of an ever-expanding ethical community,” though she notes that contemporary Kantians such as John Rawls and Jürgen Habermas have re-conceptualized this ethical community in the form of political institutions. See Perreau-Saussine, *supra* note 21, at 2.

cal freedom would become increasingly secure.³¹ The only way for states to approach this peace, according to Kant, was to “give up their savage (lawless) freedom . . . accommodate[e] themselves to the constraints of common law, establish a *nation of peoples (civitas gentium)* that (continually growing) would finally include all the people of the earth.”³²

While Kant acknowledged that perpetual peace was itself unachievable, he posited the need for “the negative surrogate of an enduring, ever expanding federation that prevents war and curbs the tendency of that hostile inclination to defy the law, though there will always be constant danger of their breaking loose.”³³ Importantly, Kant posited that individual freedom “cannot be protected by domestic law alone, given the perpetual threat posed by international war to individual’s external freedom (including their property) and the need for cosmopolitan law if individuals are to be free to relate to and trade with foreigners.”³⁴ Kant claimed instead that domestic law, international law, and cosmopolitan law are mutually interdependent: injustice in any of these frameworks will ultimately undermine the others as well.³⁵

Crucially, Kant identified three key pillars (“definitive articles”) as the necessary conditions for achieving the “perpetual peace.”³⁶ The first pillar of this “Kantian tripod” held that the civil constitution of every state should be republican—a representative form of government based on the separation of executive and legislative powers.³⁷ Kant believed that republican states, in which the decision to declare war rests upon the consent of its citizens,

31. *Id.*

32. KANT, *Toward Perpetual Peace*, *supra* note 2, at 117.

33. *Id.* at 117–18.

34. Perreau-Saussine, *supra* note 21, at 5 (citing IMMANUEL KANT, *Metaphysics of Morals*, in PRACTICAL PHILOSOPHY 455 (Mary J. Gregor trans., 1996)). By “cosmopolitan law,” Kant envisioned “a third sphere of public law—in addition to constitutional law and international law—in which both states and individuals have rights, and where individuals have these rights as ‘citizens of the earth’ rather than as citizens of particular states.” Pauline Kleingeld & Eric Brown, *Cosmopolitanism*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://plato.stanford.edu/entries/cosmopolitanism> (last updated Nov. 28, 2006).

35. Perreau-Saussine, *supra* note 21 at 5, (citing IMMANUEL KANT *Metaphysics of Morals*, in PRACTICAL PHILOSOPHY 455 (Mary J. Gregor trans., 1996)).

36. KANT, *Toward Perpetual Peace*, *supra* note 2, at 112–19. Additionally, Kant also posited six laws or prohibitions (“preliminary articles”) that he believed should be realized (some immediately, others as soon as practicable). The six preliminary articles include: (1) “No Treaty of Peace Shall Be Held Valid in Which There Is Tacitly Reserved Matter for a Future War”; (2) “No Independent States, Large or Small, Shall Come under the Dominion of Another State by Inheritance, Exchange, Purchase, or Donation”; (3) “Standing Armies Shall in Time Be Totally Abolished”; (4) “National Debts Shall Not Be Contracted with a View to the External Friction of States”; (5) “No State Shall by Force Interfere with the Constitution or Government of Another State”; and (6) “No State Shall, During War, Permit Such Acts of Hostility Which Would Make Mutual Confidence in the Subsequent Peace Impossible.” *Id.* at 107–10.

37. Kant divides the forms of state according to the persons who have power within a state and according to the way a people is governed. The first is the form of sovereignty (*forma imperii*), which admits of three types: autocracy, aristocracy and democracy. The second is the form of government (*form regiminis*) and admits of two types: republican or despotic. *Id.* at 113–14.

would be very cautious in “consider[ing] all its calamities before committing themselves to so risky a game.”³⁸

Kant identified international institutions as the second key pillar necessary for realizing the “perpetual peace.” He believed that states, like individuals, exist in a state of nature, and claimed that the rule of law spoke to a moral aptitude in man “presently dormant . . . to master the evil principle in himself (a principle he cannot deny) and to hope that others will also overcome it.”³⁹ Kant envisioned them coming together to transcend this state of nature by constituting a “league of peace” (*foedus pacificum*) bound by the rule of law. This league would not exist as a supranational political entity above its constituent states (*civitas gentium*), yet it represented more than a “pact of peace” that could be broken at any time.⁴⁰ This *foedus pacificum* can be understood as the middle point between the idea of a world state and that of a mere peace pact that fails to guarantee a lasting peace—reflected today in the form of international institutions.⁴¹

Kant posited economic interdependence as the third key pillar underpinning the “perpetual peace.” He claimed that the law of world citizenship “shall be limited to conditions of universal hospitality”:

[H]ospitality means the right of an alien not to be treated as an enemy upon his arriving in another’s country He may request the right to be a permanent visitor . . . but the right to visit, to associate, belongs to all men by virtue of their common ownership of the earth’s surface.⁴²

This condition has persuasively been interpreted to invoke “commercial pacifism” or commercial interdependence, given that mutually beneficial economic ties promote peace, and hence, rational leaders should encourage trade to prevent war.⁴³ Along with the two conditions discussed above, these constituted Kant’s core requirements for establishing an enduring peace among states.

In interpreting Kant’s “To Perpetual Peace,” commentators have long debated whether the essay was intended to provide a programmatic formula for peace or merely a philosophical analysis of the nature of international law and relations.⁴⁴ Kant certainly had a normative objective—he explicitly

38. *Id.* at 113. Kant notes several of these, including “doing the fighting themselves, paying the costs of war from their own resources, having to repair at great sacrifice the war’s devastation, and, finally, the ultimate evil that would make peace itself better, never being able—because of new and constant wars—to expunge the burden of debt.” *Id.*

39. *Id.* at 116. Kant claimed that states, in order to advance their security, must leave the state of nature and enter into a “league of peace.” *Id.* at 117.

40. *Id.* at 117.

41. Borges, *supra* note 4, at 83.

42. KANT, *Toward Perpetual Peace*, *supra* note 2, at 118 (emphasis omitted).

43. Hui, *Toward a Multicultural Approach to the Liberal Peace*, *supra* note 16, at 5.

44. See, e.g., KARL JASPERS, *PHILOSOPHY AND THE WORLD* 113–17, (E.B. Ashton trans., 1963) (arguing that Kant merely sets forth principles underlying international law); but see Kenneth N. Waltz, *Kant*,

urged the “practical politician” to heed the advice of the “theoretical politician”⁴⁵—but he also laid out a carefully conceived theoretical framework for developing international law. Hence, his essay might best be understood as “both conceptual and normative; it attempts to draw applied international legal principles from an understanding of the underlying philosophical nature of international relations.”⁴⁶ Importantly, though Kant acknowledged that a lasting peace might itself be unattainable, he maintained that the “political principles directed toward perpetual peace, of entering into such alliances of states, which serve for continual *approximation* to it, are not unachievable.”⁴⁷ Pursuing this “continual approximation” has provided the impetus for a liberal international legal project that persists more than two centuries after Kant’s writing.

C. Kant’s Critics: The Ongoing Debate Between Liberal Legalism and Realism

Kant’s theory of international law and relations, though enduring, has long been challenged. One of his most influential critics, G.W.F. Hegel, rejected Kantian liberalism and inspired a competing school of thought that remains prominent today. Unlike Kant, who viewed the development of an international legal order as the constitutive framework for a lasting peace, Hegel was deeply skeptical of the possibility that such a peace could endure. At the core of his critique, Hegel challenged the fundamental premise underlying Kant’s conception of international law: he argued that it rested upon relations among states that existed in a state of nature—the very embodiment of contingency—and would therefore continually remain unstable because “their rights are actualized not in a universal will with constitutional powers over them, but in their own particular wills.”⁴⁸ Hegel therefore rejected the Kantian notion that international law might be sustained by an internalized normative commitment or sense of duty among its con-

Liberalism, and War, 56 AM. POL. SCI. REV. 331, 334 (1962) (positing that “Kant does set forth the ‘shoulds’ and ‘oughts’ of state behavior”).

45. KANT, *Toward Perpetual Peace*, *supra* note 2, at 317 (“[T]he practical politician takes the stance of looking down with great self-satisfaction on the theoretical politician as an academic who, with his ineffectual ideas, poses no danger to a state, which must proceed on principles derived from experience, and who can be allowed to fire off all his skittle balls at once, without the *worldly-wise* statesman needing to pay heed to it; hence the latter must also behave consistently in case of a conflict with the former, by not suspecting danger to the state behind the opinions ventured and expressed publicly by the theorist; by this *clausula salvatoria* the author of this treatise wants expressly to protect himself, in proper form, against any malicious interpretation.”).

46. Tesón, *supra* note 18, at 58.

47. Immanuel Kant, *The Metaphysics of Morals*, in PRACTICAL PHILOSOPHY 487 (Mary J. Gregor trans., 1996).

48. HEGEL, *supra* note 7, at 368 (emphasis omitted) (“The principle of *international law* [Völkerrecht], as that *universal* right which ought to have international validity in and for itself (as distinct from the particular content of positive treaties), is that *treaties*, on which the mutual obligations of states depend, *should be observed*. But since the sovereignty of states is the principle governing their mutual relations, they exist to that extent in a state of nature in relation to one another, and their rights are *actualized* not in a universal will with constitutional powers over them, but in their own particular wills.”).

stituents, and instead contended that agreements among states could be broken at any time.

In advancing this claim, Hegel drew a distinction between legal agreements among individuals, which were governed by a court sitting in judgment above, and agreements among states, above whom no such body existed. To Hegel, if states failed to reach a common understanding, their conflicts could only, and would inevitably, be resolved through war.⁴⁹ The supreme and sole judge of states' actions was not a tribunal, but rather *world history* itself, which was "not just the power of spirit . . . i.e. not the abstract and irrational necessity of a blind fate," but the "necessary development . . . of the moments of reason," "the exposition and actualization of the universal spirit."⁵⁰ Thus, Hegel concluded that war was both unavoidable and ultimately desirable for improving the internal ordering of states.⁵¹

Hegel's writings have influenced generations of scholars and practitioners, giving rise to contemporary *realism*, one of the leading schools of thought in international relations, which posits that each state is constrained by the violent and anarchic nature of the international system to act in order to advance its national interest within a zero-sum game environment.⁵² Though some scholars challenge the notion that Hegel was a "realist,"⁵³ or suggest that he was at most a "reluctant realist" with a more nuanced view of world affairs than the "realist" label suggests,⁵⁴ it is generally accepted that Hegel's writings have inspired modern-day realism.⁵⁵ As one account by noted historian and theorist E.H. Carr puts it: "The realist view that no ethical standards are applicable to relations between states . . . found its

49. *Id.* at 369.

50. *Id.* at 372 (emphasis omitted).

51. Borges, *supra* note 4, at 86.

52. Given the breadth and diversity of contemporary realist theories, this Article adopts an intentionally reductionist view of "realism" for the purpose of simplification. For an overview of various competing strains of realist thought, see, for example, MICHAEL W. DOYLE, *WAYS OF WAR AND PEACE: REALISM, LIBERALISM, AND SOCIALISM* 41–201 (1997). See generally HENRY KISSINGER, *DIPLOMACY* (1994) (classical realism); HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* (1948) (classical realism); KENNETH N. WALTZ, *THEORY OF INTERNATIONAL POLITICS* (1979) (neo- or structural realism).

53. See, e.g., SHLOMO AVINERI, *HEGEL'S THEORY OF THE MODERN STATE* (1972); DAVID BOUCHER, *Hegel's Theory of International Relations*, in *POLITICAL THEORIES OF INTERNATIONAL RELATIONS* 330 (1998); Adriaan T. Peperzak, *Hegel contra Hegel in His Philosophy of Right: The Contradictions of International Politics*, 32 *J. OF THE HIST. OF PHIL.* 241 (1994); Andrew Vincent, *The Hegelian State and International Politics*, 9 *REV. OF INT'L STUDIES* 191 (1983).

54. See Hans-Martin Jaeger, *Hegel's Reluctant Realism and the Transnationalisation of Civil Society*, 28 *REV. OF INT'L STUDIES* 497, 497 (2002) (arguing that scholarly attention has focused primarily on Hegel's theory of the state, while his theory of international relations "has featured less prominently in many commentaries. . . . To the extent that Hegel's account of international relations has been addressed, it has often been stereotyped as reflecting a staunchly realist view of international politics.").

55. *Id.* at 497 n.2 (noting that, "[m]ost theorists seem to accept Hegel's membership in the realist pantheon by default, even if they do not support a strictly realist reading of Hegel themselves."). See also CHRIS BROWN, *INTERNATIONAL RELATIONS THEORY: NEW NORMATIVE APPROACHES* 66 (1992); HEDLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* 25 (1977); FRED R. DALLMAYR, *G.W.F. HEGEL: MODERNITY AND POLITICS* 157 (1993).

most finished and thorough-going expression [in Hegel]. For Hegel, states are complete and morally self-sufficient entities; and relations between them express only the concordance or conflict of independent wills not united by any mutual obligation.”⁵⁶

This longstanding Kantian-Hegelian debate is reflected in contemporary discourse among liberal and realist scholars of international law. Though Kant’s vision of “perpetual peace” has never been realized, liberal thinkers maintain that international law can exert a normative force under certain conditions, thereby generating compliance among nations. Decades ago, legal scholar Louis Henkin famously stated that, “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time,”⁵⁷ an assertion that others have since supported empirically.⁵⁸ Building on the notion that “at the core of Kant’s philosophy of international law lies a notion of an ever-expanding ethical community,”⁵⁹ contemporary liberals have re-conceptualized this ethical community in the form of political institutions.⁶⁰ Modern liberals thus defend the rise of international legal bodies such as the United Nations, WTO, International Court of Justice (“ICJ”), and ICC.

Meanwhile, contemporary realists, drawing on the Hegelian tradition, remain deeply skeptical of international law and the institutions it engenders. Such realists disclaim international law’s normative force and view it solely in instrumental terms—as a rational self-binding mechanism or enabling constraint that a state will adopt to maximize its own interests.⁶¹ Because international law “does not pull states toward compliance contrary to their interests . . . the possibilities for what [it] can achieve are limited.”⁶² Hence, realists predict that international legal institutions like the United Nations, WTO, and ICJ will remain weak⁶³ and unable to manage superpower conflict.⁶⁴ Ultimately, those who challenge liberal legalism conclude that, “rejecting *realpolitik* is a dangerous indulgence in romantic idealism.”⁶⁵

56. EDWARD H. CARR, *THE TWENTY YEARS’ CRISIS 1919–1939: AN INTRODUCTION TO THE STUDY OF INTERNATIONAL RELATIONS* 153 (2d ed. 1946); see also Errol E. Harris, *Hegel’s Theory of Sovereignty, International Relations, and War*, in *HEGEL’S SOCIAL AND POLITICAL THOUGHT* 137, 142–45 (Donald P. Verene ed., 1980).

57. LOUIS HENKIN, *HOW NATIONS BEHAVE* 47 (2d ed. 1979) (emphasis omitted).

58. Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 *YALE L.J.* 2599, 2599 (1997).

59. Perreau-Saussine, *supra* note 21, at 2.

60. *Id.* at 3.

61. See, e.g., GOLDSMITH & POSNER, *THE LIMITS OF INTERNATIONAL LAW*, *supra* note 9 (advancing the view that states comply with international law not for normative reasons but only when the benefits of legal compliance in specific contexts outweigh the costs).

62. *Id.* at 13.

63. See, e.g., Joseph M. Grieco, *Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism*, 42 *INT’L ORG.* 485 (1988).

64. See Eric A. Posner & John C. Yoo, *International Law and the Rise of China*, 7 *CHI. J. INT’L L.* 1, 1–3 (2006).

65. Barrett L. McCormick, *Introduction*, in *WHAT IF CHINA DOESN’T DEMOCRATIZE? IMPLICATIONS FOR WAR AND PEACE* 6 (Edward Friedman & Barrett L. McCormick eds., 2000).

This ongoing international legal debate between liberals and realists has continued for decades. Recently, however, it has taken on renewed relevance in light of one of the major geopolitical developments of our time: the rise of China.⁶⁶ Scholarly interest is finally beginning to focus on the impact of China's emergence as a global power for the future of international law. The Middle Kingdom's rise provides an impetus for renewed conceptualization of the Kantian peace, as scholars and practitioners realize that international legal efforts to secure an enduring peace cannot ignore this central actor in world affairs. This Article seeks to undertake this task. Before doing so, however, it is necessary to consider a threshold question: is it even possible for China to be part of a liberal peace among states bound together by international law?

II. MUST CHINA REMAIN OUTSIDE THE "PERPETUAL PEACE"?

A. *Historical Claims*

Before assessing Kant's "perpetual peace" in light of China's rise, it is necessary to engage with longstanding claims by cultural relativists that the Kantian project cannot be reconciled with Chinese thought because only those nations with a "Europeanized culture" are capable of forming the federation of states necessary to secure a lasting peace.⁶⁷ In doing so, it is worthwhile to briefly consider Kant's understanding of international relations and law within the context of his time.

The notion of an exclusively "European" basis for an enduring peace among states predates Kant. Several decades before the publication of his "perpetual peace" treatise, Kant's intellectual predecessor, Jean-Jacques Rousseau, had raised the possibility of a uniquely European social and moral system within which a lasting peace might be established. Rousseau sought to further develop the "perpetual peace" plan initially articulated by Saint-Pierre (which envisioned a classical balance of forces among rival European powers), by suggesting a system "bound up with united interests, interconnected maxims and corresponding customs."⁶⁸ As Rousseau wrote, "[t]his is how all the Powers of Europe form a sort of system among themselves which unites them by one single religion, the same international law, morals, literature, commerce, and a sort of equilibrium that is the necessary effect of all this, and which, without anyone in fact thinking about preserving it, would nevertheless not be as simple to break up as many people think."⁶⁹ Rous-

66. See, e.g., Posner & Yoo, *supra* note 64, at 3.

67. See *infra* notes 68–99 and accompanying text.

68. Céline Spector, *The Plan for Perpetual Peace: From Saint-Pierre to Rousseau*, at 6, translated extract from JEAN-JACQUES ROUSSEAU: *Principes du droit de la guerre Écrits sur la paix perpétuelle* 229–94 (Blaise Bachofen & Céline Spector eds., 2008).

69. JEAN-JACQUES ROUSSEAU, *Abstract of Monsieur the Abbé de Saint-Pierre's Plan for Perpetual Peace*, in *THE COLLECTED WRITINGS OF ROUSSEAU* 29 (Christopher Kelly and Judith Bush trans., 2005).

seau's notion of a European civil sphere thus invoked "a 'closer society among the Nations of Europe' than in any other part of the world, where various scattered peoples would be unable to unite into a veritable association."⁷⁰

This predominantly European conception of international law and political economy reflected in Rousseau's writings might have been partly a reaction to the "discovery" of China by Western thinkers a century earlier, which had "challenged the cultural and political identity of European intellectuals."⁷¹ For the first time, Western thinkers encountered a civilization that "could be neither ignored nor destroyed. Nor could it be integrated in Europe's cultural identity China became a normative model in its own right."⁷² From the mid-seventeenth to mid-eighteenth century, European scholarship "transformed China into a political utopia and the ideal state of an enlightened absolutism."⁷³ However, this sense of "sinophile Enlightenment" was not to last: by the late eighteenth century, European perceptions of China began to sour, partly as a consequence of the failure of the Jesuit mission, which had been a primary source of information about the Far East and was considered largely receptive to Chinese modes of thinking.⁷⁴

This shifting perception of China may have influenced Kant. He criticized Chinese Buddhists and Daoists for their "other worldly" focus, and also appears not to have found common ground with the Confucians, despite their mutual concern for the ethical dimension of human life and society. Kant's central critique of Chinese ethics lay in its failure to encourage sustained reflection:

The Chinese may have passed what we might call the "inclination test"—their actions are not guided by their baser inclinations—but they have failed the "autonomy test," for they act as they do not because they are guided by rational reflection or respect for the moral law, but only out of obedience to the command of experience and custom.⁷⁵

To Kant, Confucian morality was "merely an empirical morality grounded in the historical actions of exemplary figures, aimed at teaching rulers how to rule," but failed to qualify as "genuine morality because it has not been raised to the level of conceptual reflection."⁷⁶ Hence, Kant claimed that "a

70. Spector, *supra* note 68, at 6.

71. Thomas Fuchs, *The European China-Receptions from Leibniz to Kant*, 33 J. CHINESE PHIL. 35, 36 (2006).

72. *Id.*

73. *Id.* at 43.

74. *Id.* at 37–38.

75. Reihman, *supra* note 11, at 57.

76. *Id.* at 58.

concept of virtue . . . never entered the heads of the Chinese,” and eventually concluded that, “[p]hilosophy is not to be found in the Orient.”⁷⁷

While Kant’s views on Chinese thought have not been extensively studied, the limited scholarship on this topic remains unsettled. Some scholars claim that his mostly negative and dismissive remarks are grounded less in serious consideration than in racial prejudice.⁷⁸ Others, however, maintain that Kant’s interpretation of Chinese thought reflects his broader views on religion, metaphysics, and ethics, and is therefore internally consistent with his larger *oeuvre*.⁷⁹ What remains clear is that, unlike many of his intellectual predecessors who tended toward idealization of Chinese philosophy, Kant took a much harsher view.

B. Cultural Relativism Today

Kant’s dismissive views of Chinese moral and political thought are not merely a historical artifact. Rather, they have found expression in the broader notion of an exclusively European “democratic peace” that persists in several contemporary strands of international relations scholarship. For instance, Hedley Bull and other leading scholars of the twentieth-century English (International Society) School adopted a standard European account of the emergence of contemporary international society, according to which “non-European states entered an originally European club of states as and when they measured up to criteria of admission laid down by the founder members.”⁸⁰ In the nineteenth century, these criteria were associated with the “standard of civilization,” and “uncivilized,” non-western nations such as China were effectively excluded from international society for failing to meet this bar.⁸¹ Bull acknowledges that there is an “element of absurdity in the claim that states such as China, Egypt, or Persia, which existed thousands of years before states came into being in Europe, achieved rights to full independence only when they came to pass a test devised by nineteenth-century Europeans.”⁸² Yet Bull also maintains that nations such as China, India, and Iran could not have been considered a part of nineteenth-century international society because there were no globally accepted interests, rules, or institutions at the time.⁸³

77. Reihman, *supra* note 11, at 58, 61 (citing Kant, *Physical Geography*, in KANT UND DIE RELIGIONEN DES OSTENS, BEIHEFTE ZUM JAHRBUCH DER ALBERTUS-UNIVERSITÄT KÖNIGSBERG (Helmuth von Glasenapp ed. 1954)).

78. See, e.g., ROBERT LOUDEN, KANT’S IMPURE ETHICS (2000); EMMANUEL EZE, RACE AND THE ENLIGHTENMENT 38–70 (1997).

79. See generally Reihman, *supra* note 11.

80. Hedley Bull, *The Emergence of a Universal International Society*, in THE EXPANSION OF INTERNATIONAL SOCIETY 123 (Hedley Bull & Adam Watson eds., 1984).

81. See generally GERRIT W. GONG, THE STANDARD OF ‘CIVILISATION’ IN INTERNATIONAL SOCIETY (1984).

82. Bull, *supra* note 80, at 123.

83. *Id.* at 118–19.

Other contemporary thinkers have advanced similar arguments about the present international order. In the mid-1990s, the late American political scientist Samuel P. Huntington articulated a version of this view in his classic work, *The Clash of Civilizations and the Remaking of World Order*, claiming that attempts to spread democracy to non-European civilizations were unrealistic ventures that would likely prove counterproductive.⁸⁴ The implication of Huntington's claim is that the "democratic peace" can only ever be a peace among Europeans (and their civilizational heirs), which led him to conclude that it was more realistic to accept conflict between civilizations as endemic rather than attempt to remake others in our own image.⁸⁵ Similarly, in an influential work that helped catalyze the emergence of the "China threat hypothesis" in the late 1990s, Richard Bernstein and Ross Munro contend that democracy was "contrary to the Chinese political culture."⁸⁶ Another contemporary expert on Asian geopolitics recently claimed, "[w]hile Western security thinking progressively embraced a neo-Kantian vision of world order resting on three primary pillars—economic interdependence, international institutions, and liberal democracy, the dominant Asian paradigm, with neo-Confucian underpinnings, posited a positive correlation between political stability (strong authoritarian state), state-directed economic growth, and balance of power dynamics."⁸⁷

Non-western commentators have also put forth such cultural relativist claims. Beginning in the 1980s, a number of prominent Asian scholars and practitioners adopted similar arguments against the perceived "wholesale import of democracy and human rights from the West."⁸⁸ One of the most vocal critics to espouse this view was former Singaporean Prime Minister Lee Kuan Yew, who insisted that western conceptions of government and indi-

84. SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER 192–98* (1996). Huntington's central contention is that "states belonging to different civilizations are more likely to fight each other, while those belonging to the same civilization are less likely to fight each other. According to Huntington, several factors have led to the emergence of this "clash of civilizations" in the post-Cold War era, including: (1) the increased interaction among peoples of different civilizations; (2) the de-Westernization and indigenization of elites in non-Western states; (3) increased economic regionalization, which heightens civilization consciousness; and (4) a global resurgence of religious identity, which is replacing diminishing local and state-based identities. In addition, demographic and economic changes have shifted the balance of power among civilizations as the capabilities of non-Western states—especially Asian and Islamic states—are rising to challenge Western hegemony. The interaction of these factors has resulted in the increased salience of civilization membership in global politics. Since civilizational characteristics are basic and essential, civilizational differences are increasingly likely to generate conflict. The result is that cultural factors have replaced ideological ones as the major source of conflict in world politics." Errol Henderson & Richard Tucker, *Clear and Present Strangers: The Clash of Civilizations and International Conflict*, 45 INT'L STUD. Q. 317, 318 (2001).

85. HUNTINGTON, *supra* note 84, at 311–18.

86. RICHARD BERNSTEIN & ROSS MUNRO, *THE COMING CONFLICT WITH CHINA* 15 (1997).

87. AMITAV ACHARYA, *ASIA RISING: WHO IS LEADING?* 143 (2008).

88. Jiunn-Rong Yeh & Wen-Chen Chang, *The Emergence of East Asia Constitutionalism: Features in Comparison* 6–7 (Asian Law Inst., Working Paper Series No. 006, 2009) available at <http://law.nus.sg/asli/pdf/WPS006.pdf>.

vidual rights were inapplicable to Asia.⁸⁹ In recent decades, a burgeoning academic literature has developed around this “Asian values” discourse, which centers on a dispute over whether Asia—and especially East Asia—reflects “a culture no different from any other cultures in terms of capacities to reflect upon universal human rights values” or instead is a *sui generis* analytical category whose culture is potentially incompatible with “western” political and philosophical ideals.⁹⁰

In the context of international law, such cultural relativist arguments have fueled a heated debate over “universal values,” centered on whether certain disputed legal norms are universally held or merely represent a particularized European understanding.⁹¹ This latter view has been advanced to justify non-compliance with various international legal norms.⁹² At their most extreme, cultural relativists reject all universal human rights “as Western imperialistic constructs inapt to communitarian cultures . . . in Asia.”⁹³ To take one example, some proponents of this view claim that, “the right to asylum reflects European values and is divorced from the experiences and interests of Southeast Asian states. From this perspective, Southeast Asian non-compliance with international refugee law is part of a broader pattern of non-compliance with international human rights law.”⁹⁴ Similar arguments have also been mustered to legitimate certain Asian states’ failure to comply with international environmental laws.⁹⁵

A more tempered strain within the “Asian values” discourse recognizes a measure of relative universality underpinning international legal norms, but maintains that these norms “are qualified in their practical application by culture and contingency.”⁹⁶ This latter view focuses on “the articulation of Confucian or other Asian *variants* of human rights and other hallmarks of

89. See Fared Zakaria, *Culture Is Destiny: A Conversation with Lee Kuan Yew*, 73 FOREIGN AFF. 109, 111 (1994).

90. Yeh & Chang, *supra* note 88, at 7. For a concise review of the debate over “Asian values,” see generally Karen Engle, *Culture And Human Rights: The Asian Values Debate In Context*, 32 N.Y.U. J. INT’L L. & POL. 291 (2000) (arguing that the so-called “culture” of Asia provides a vocabulary for contesting a certain type of hegemony, and that the concept of “Asian values” can be used both to advance and challenge human rights). See also Michael C. Davis, *Constitutionalism and Political Culture: The Debate over Human Rights and Asian Values*, 11 HARV. HUM. RTS. J. 109, 110 (1998) (arguing that cultural relativist theories are “tautological and overly deterministic because they fail to appreciate the roles of both human agency and institutions in the transformative processes of cultural discourse”).

91. See, e.g., J. DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE (2002); W. TALBOTT, WHICH RIGHTS SHOULD BE UNIVERSAL? (2005).

92. See *infra* notes 94–95 and accompanying text.

93. Andrew Wolman, *National Human Rights Commissions and Asian Human Rights Norms* 5 (Asian Soc’y of Int’l Law, Working Paper 2012/17, 2012).

94. SARA E. DAVIES, LEGITIMISING REJECTION: INTERNATIONAL REFUGEE LAW IN SOUTHEAST ASIA 14 (2008).

95. See, e.g., RODA MUSHKAT, INTERNATIONAL ENVIRONMENTAL LAW AND ASIAN VALUES: LEGAL NORMS AND CULTURAL INFLUENCES (2004).

96. Li-ann Thio, *Implementing Human Rights in ASEAN Countries: ‘Promises to keep and miles to go before I sleep’*, 2 YALE HUM. RTS. & DEV. L.J. 1, 22 (1999).

modernity, rather than radical alternatives to them.”⁹⁷ Thus, some scholars have shifted the focus toward classical Chinese thought in an effort to identify “comparable liberal elements in Confucianism that may provide for solid foundations for receiving institutions and principles of modern liberal constitutional democracy.”⁹⁸ Another set of recent scholarship emphasizes constitutional developments in East Asia, particularly within Japan, South Korea, and Taiwan, focusing on their respective constitutional experiences rather than drawing broad conclusions that require conceptualizing East Asia as an analytical or discursive category.⁹⁹

This Article seeks to build on these responses to cultural relativist arguments. Taking such claims as the point of departure, Part III of this Article will offer three rejoinders. First, it will suggest that classical Confucian political philosophy contains a common vision of “perpetual peace” among states—providing a basis within Chinese thought itself for pursuing the Kantian project of international law. Second, it will demonstrate that Chinese thinkers and practitioners over the past century have undertaken sustained and deepening engagement with Kant’s political philosophy. Third, it will highlight strains of Kantian liberalism in modern Chinese scholarship and foreign policy discourse.

III. KANTIAN RESONANCE IN CHINESE THOUGHT

A. “Perpetual Peace” in Classical Confucian Political Philosophy

At first blush, one might easily dismiss any attempt to compare Confucius with Kant. As one German historian notes, “they certainly cut opposite shapes: Confucius was the superior pagan preceptor of the old East, while Kant was a quasi-Christian critic of the modern West. Kant did not even like Confucianism. His verdict on the Chinese and their ‘Socrates’ is a scathing, thoroughgoing rejection.”¹⁰⁰ However, contemporary Chinese scholars

97. Wolman, *supra* note 93, at 6 (citing Randall Peerenboom, *Beyond Universalism and Relativism: The Evolving Debates about ‘Values in Asia’*, 14 *IND. INT’L & COMP. L. REV.* 1, 5 (2003)).

98. Yeh & Chang, *supra* note 88, at 7. *See, e.g.*, Hui, *supra* note 16, at 7 (arguing that “the existence of Kantian elements in historical China debunks claims to cultural relativism and provides the foundation for a multicultural peace agenda”); Tom Ginsburg, *Confucian Constitutionalism? The Emergence of Constitutional Review in Korea and Taiwan*, 27 *LAW & SOC. INQUIRY* 763 (2002) (claiming that “the institution of judicial review has some compatibilities with Confucian legal tradition”); Orville Schell, *China’s Hidden Democratic Legacy*, *FOREIGN AFF.* 83, 116–124 (2004) (identifying aspects of democratic thinking in China’s past that could provide useful lessons for the present day).

99. *See* Yeh & Chang, *supra* note 88, at 7–8 (noting, “For instance, legal scholarship concerning recent Japanese constitutional developments covers a wide range of issues including judicial reform and the rule of law, indigenous right and the peace clause. Similarly, the scholarship addressing constitutional issues of South Korea has explored issues such as constitutional revision, transitional justice, and freedom of expression, freedom of press, gender equality, and labor rights. With regard to Taiwanese constitutional developments, the body of scholarship examines constitutional reform, judicial review, abortion right and privacy.”) (citations omitted).

100. Martin Schönfeld, *From Confucius to Kant—The Question of Information Transfer*, 33 *J. OF CHINESE PHIL.* 67, 69 (2006).

and practitioners are indeed beginning to reconcile Kantian liberalism with classical Confucian political philosophy.¹⁰¹ These efforts have led one such scholar to suggest that, “if we restore China’s hidden liberal legacy, there may be a better chance for peaceful transformation in East Asia and even a multicultural approach to a new liberal world order.”¹⁰² Such claims about links between the Kantian and Confucian paradigms must be examined in context. In situating Kant’s “perpetual peace” within the discursive field of Confucian thought, I focus primarily on “classical Confucianism,” consisting of the Four Books (*The Analects*, the *Mencius*, the *Daxue*, and the *Zhongyong*), the teachings of *Xunzi*, and the *Yizhuan*.¹⁰³

Following centuries of endemic warfare among competing Chinese states whose rulers fought bloody struggles for territory and power, Confucius emerged as “a response to an apparent crisis of civilization.”¹⁰⁴ During the course of his lifetime, Confucius traveled across feudal states seeking audiences with various rulers, through which he advocated for moral force or virtue (*de*) as an alternative to violence and coercion.¹⁰⁵ He considered the use of force—and war more broadly—an aberrant phenomenon that should only be applied to restore a moral-political order.¹⁰⁶ Confucius espoused an egalitarian view of human nature,¹⁰⁷ maintaining that any individual could cultivate *de* or moral power. The key to doing so lay in upholding certain core principles of which the most important were filial devotion (*xiao*), humaneness (*ren*), and ritual decorum (*li*). These principles applied to individuals but extended as well to government, which was itself modeled on the family—considered by Confucius to be the key constitutive unit of society.¹⁰⁸

In the centuries following his death, a major schism developed between two schools of thought promulgated by Confucius’ most influential disciples, Mencius and Xunzi. Both thinkers adhered to certain Confucian teachings, including a commitment to social order, an emphasis on the family, and a view of state-society relations as an extension of familial bonds. Each,

101. See, e.g., Chung-Ying Cheng, *Justice and Peace in Kant and Confucius*, 34 J. OF CHINESE PHIL. 345, 351–57 (2007); see also Daniel A. Bell, *From Marx to Confucius: Changing Discourses on China’s Political Future*, DISSENT 20, 20–28 (2007).

102. Victoria Tin-bor Hui, *Toward a Confucian Multicultural Approach to a Liberal World Order: Insights from Historical East Asia*, 99 AM. SOC’Y INT’L L. PROC. 413, 416 (2005).

103. Cheng, *Theoretical Links Between Kant and Confucianism: Preliminary Remarks*, 33 J. OF CHINESE PHIL. 3, 9 (2006). Classical Confucian thought is considered to be distinct from later Confucian thought developed in the Song-Ming Period (960–1644 A.D.).

104. Irene Bloom, *Confucius and the Analects*, in SOURCES OF CHINESE TRADITION 42 (W. Theodore de Bary & Irene Bloom eds., 2d ed. 1999).

105. *Id.*

106. See YUAN-KANG WANG, HARMONY AND WAR: CONFUCIAN CULTURE AND CHINESE POWER POLITICS 1 (2010) (noting that “Confucianism denigrates the efficacy of military force as an instrument of statecraft, giving rise to a strategic culture that is pacifist, defensive, and non-expansionist”).

107. Some scholars go so far as to suggest that the Confucian conception of the relationship between human nature and the state was democratic. See Bell, *supra* note 101, at 24–26.

108. Bloom, *supra* note 104, at 42–44.

however, developed a radically different political philosophy, premised upon opposing conceptions of human nature.¹⁰⁹

Considered the “liberal” strain of classical Confucian thought, Mencius espoused an optimistic-idealistic vision of human nature as fundamentally good and filled with rich moral potential.¹¹⁰ Mencius also acknowledged the importance of moral education and socialization in developing this potential and the danger that negative influences might undermine it:

Human nature’s being good is like water’s tending downward. There is no human who does not tend toward goodness. There is no water that does not tend downward. Now, by striking water and making it leap up, you can cause it to go past your forehead. If you guide it by damming it, you can cause it to remain on a mountaintop. But is this the nature of water?! [No.] It is that way because of the circumstances. That humans can be caused to not be good is due to their natures also being like this.¹¹¹

Building upon existing Confucian principles, Mencius’ teachings established “humane” or “benevolent” rule as the essential feature of good governance. In his book, *On Humane Government*, Mencius writes, “States have been won by men without humanity, but the world, never.”¹¹² Furthermore, the Mencian view considered benevolent rule to be the key to global influence: a state with good government will simultaneously secure its own strength and enjoy the sympathy of other nations’ peoples, while “devoid of humanity, the emperor would be unable to safeguard the four seas.”¹¹³ Mencius’ doctrine thus finds direct resonance with the Kantian notion of a “perpetual peace” between states—it suggests that such an outcome is only possible if each state establishes a “benevolent” government.¹¹⁴

109. Though not precisely analogous, this dichotomy has been compared to the debate over human nature between Jean-Jacques Rousseau and Thomas Hobbes. One scholar suggests that the core question over which Mencius and Xunzi disagree is whether “morality [is] something *imposed* on people from outside (Xunzi) or something that arises in the normal process of human development if people are encouraged to reflect (Mencius)? In other words, is moral development a process more of indoctrination or self-discovery?” Eric Schwitzgebel, *Human Nature and Moral Education in Mencius, Xunzi, Hobbes, and Rousseau*, 24 *HIST. PHIL. Q.* 147, 152–53 (2007).

110. William T. de Bary & Irene Bloom, *The Evolution of the Confucian Tradition in Antiquity*, in *SOURCES OF CHINESE TRADITION*, *supra* note 104, at 150.

111. *Mengzi (Mencius)*, in *READINGS IN CLASSICAL CHINESE PHILOSOPHY* 115, 141 (P.J. Ivanhoe & B.W. Van Norden eds., 2001).

112. WILLIAM THEODORE DE BARY, WING-TSIT CHAN & BURTON WATSON, *SOURCES OF CHINESE TRADITION* 93 (1st ed. 1960).

113. *Id.* at 92.

114. A corollary can be drawn between Mencius’ notion of “benevolent rule” domestically as the basis for global hegemony, and Kant’s claim regarding the relationship between individual freedom and international peace (what Kant refers to as “inner,” moral, freedom and “outer,” juridical, freedom). Specifically, in seeking to establish the “perpetual peace,” Kant viewed domestic, international law, and cosmopolitan law as mutually dependent and stated that if any of these were unjust, “the framework of all the others is unavoidably undermined and must finally collapse.” Kant, *Doctrine of Right*, *supra* note 47, at § 43. See KANT, *Toward Perpetual Peace*, *supra* note 2, at 117.

Mencius' notion of benevolent government is infused with a deeply democratic ethos, manifested concretely in his doctrine regarding the "Mandate of Heaven," which insists on the ultimate sovereignty of the people. Mencius says: "Men are in the habit of speaking of the world, the state. As a matter of fact, the foundation of the world lies in the state, the foundation of the state lies in the family, and the foundation of the family lies in the individual."¹¹⁵ Hence, he maintains that, "[in the constitution of a state] the people rank the highest, the spirits of land and grain come next, and the ruler counts the least."¹¹⁶ On this Mencian view, it follows that rulers enjoy the Mandate only to the extent that they serve the people; they lose it should they fail to do so. Mencius thus famously replied to the question of whether a subject may slay his sovereign by stating: "He who outrages humanity is a scoundrel; he who outrages righteousness is a scourge. A scourge or a scoundrel is a despised creature [and no longer a king]."¹¹⁷ Taken to its logical conclusion, this principle appears to be radically democratic, for it invokes a "right of revolution,"¹¹⁸ which rests on the notion of political accountability: subjects are justified in overthrowing a leader when such an individual is no longer fit to rule. Nevertheless, Mencius was not a proponent of democratic governance: "His ideal ruler was the sage-king, such as the legendary Shun, on whose reign both divine sanction and popular approval conferred legitimacy."¹¹⁹

Xunzi, in stark contrast, developed a political philosophy predicated upon a much darker view of human nature. His teachings can be summed up in one of his most famous lines: "The nature of man is evil; his goodness is acquired."¹²⁰ Claiming to interpret Confucian thought authentically, Xunzi rejected Mencius' views and instead argued for a government predicated on hierarchy and rigid social control:

To give rein to man's original nature and to yield to man's emotions will assuredly lead to strife and disorderliness, and he will revert to a state of barbarism. Therefore, it is only under the influ-

115. DE BARY, *supra* note 112, at 96.

116. *Id.* Here, too, parallels are evident between Mencius' thought and Kant's political philosophy, which held that "the end of states and governments is to benefit, serve, and protect their components, human beings; and the end of international law must also be to benefit, serve, and protect human beings, and not its components, states and governments. Respect for states is merely derivative of respect for persons. In this way, the notion of state sovereignty is redefined: the sovereignty of the state is dependent upon the state's domestic legitimacy; and therefore the principles of international justice must be congruent with the principles of internal justice." Tesón, *supra* note 18, at 54.

117. *Id.* at 97.

118. Some scholars suggest that, "The right of revolution is an aspect of Mencian populism. The basic tenet of Mencian populism is that the people are the foundation of the state and that the test of a state is its ability to protect and provide for its people." E. Bruce Brooks & A. Taeko Brooks, *The Nature and Historical Context of the Mencius*, in MENCIOUS: CONTEXTS AND INTERPRETATIONS 242, 254 (Alan K. L. Chan ed., 2001).

119. Jeffrey Richey, *Mencius*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY, <http://www.iep.utm.edu/mencius> (last updated June 28, 2005).

120. DE BARY, *supra* note 112, at 104.

ence of teachers and laws . . . that courtesy will be observed, etiquette respected, and order restored.¹²¹

Xunzi extended this logic to advocate a realist approach to international affairs, advising rulers to resort to any means necessary to secure their ends, and eschewing notions of a lasting peace—other than one maintained by hegemonic force.¹²²

Following Xunzi's death, his adherents (and their intellectual heirs, including the influential Legalists) came to dominate Chinese political thought. Their views eventually undergirded the Chinese imperial-bureaucratic state, which lasted for nearly two millennia through the early twentieth century. As one Chinese historian put it, "Confucianism was used as a façade [to justify imperial rule] . . . the label 'Confucian state' would have puzzled Confucius himself and horrified Mencius."¹²³ Hence, the liberal ideals espoused by Mencius and others in classical Confucian thought, which have broad resonance with the Kantian paradigm for peace, were instead "overshadowed by Xunzi militarism and legalist authoritarianism."¹²⁴ Though imperial China over the millennia gradually came to predominantly embody one strain of Confucianism, this exegesis suggests that early foundations for liberalism, and related political ideals of accountable government centered on its individual constituents, had emerged and found expression within classical Chinese thought itself.¹²⁵ This historical background provides the context within which more recent Chinese engagement with western liberalism—and specifically Kantian thought—may be understood. Building on these classical foundations, the next section of this Article will consider contemporary Chinese engagement with Kant.

121. *Id.* at 104.

122. William T. de Bary & Irene Bloom, *The Evolution of the Confucian Tradition in Antiquity*, in SOURCES OF CHINESE TRADITION, *supra* note 104, at 160.

123. Kung-chuan Hsiao, *Legalism and Autocracy in Traditional China*, in SHANG YANG'S REFORMS AND STATE CONTROL IN CHINA 125, 137 (Li Yu-ning ed., 1977), *cited in* Hui, *supra* note 16, at 416.

124. *Id.* at 137.

125. The analysis in this section has focused somewhat narrowly on classical Confucian thinkers' resonance with Kantian political philosophy in particular. However, it is important to note that scholars have identified the existence, more generally, of various liberal traditions within China's thought. *See, e.g.,* Hui, *supra* note 16, at 5 (arguing "the accumulation of international law over time has provided a viable path toward the liberal peace . . . [and] also emerged in ancient China. However, in contrast to the European trend, treaties and customs [in China] were gradually weakened, rather than strengthened, over time. In the earlier Spring and Autumn period, states inherited from the previous feudal era a set of elaborate rites about the conduct of war and diplomacy. In the later Warring States period, the most powerful states relentlessly pursued opportunistic expansion with self-strengthening reforms, divide-and-conquer strategies, and ruthless stratagems. While states in the former era entered into extensive alliances, great powers in the latter era largely relied on their own coercive capabilities. As a result, wars became bilateral and peace settlements involved imposition of territorial concessions. In subsequent eras, successive [Chinese] dynasties continued to establish mostly bilateral agreements with Asian neighbors."); *see also* Schell, *supra* note 98.

B. Contemporary Chinese Engagement with Kant

Kant is the great glory and fame of Germany. Actually he is not a German but a citizen of the world, not a person of the eighteenth century but of many epochs.

—Liang Qichao¹²⁶

Contemporary Chinese engagement with Kant's writings since the early twentieth century can be understood within three phases, reflecting a deepening relationship with Kantian thought. The initial phase began around the turn of the century and lasted through the early 1920s, a period in which Chinese thinkers sought to engage with Western culture in an attempt to respond to repeated military defeat at the hands of European powers during the nineteenth century.¹²⁷ Between 1903 and 1904, reformist thinker Liang Qichao published a series of articles titled, "The teachings of the greatest philosopher of modern times: Kant," in the journal *Xinmin congbao*, which is considered to mark the beginning of an explicit Chinese reception of Kant.¹²⁸ In this period, other leading reformist thinkers such as Kang Youwei, Yan Fu, and Wang Guowei, also began engaging with Kant's writing.¹²⁹ For example, a key turn-of-the-century reformer, Cai Yuanpei, wrote his doctoral thesis on Kant while studying in Germany, before returning to serve as Minister of Education under China's founding fathers, Sun Yat-Sen and Shun Yukai. Kant's thinking influenced Yuanpei, inspiring his education reform efforts and later role in founding the Academia Sinica (at the time, China's highest national research institute, designed to advance science and technology, and eventually relocated to Taiwan after the Communist Revolution).¹³⁰

A second phase involving full-fledged Chinese engagement with Kant began in 1924 with a series of widely-read articles published on the bicentennial of Kant's birth and lasted until the Cultural Revolution.¹³¹ During the 1920s and 1930s, China's leading intellectual journals all published articles on Kant, and Mandarin translations of his key works became available for the first time.¹³² In the mid-1920s, German biologist and philosopher Hans Driesch completed a series of public lectures on Kant's philosophy in China that were influential in leading Chinese intellectual circles.¹³³ Around

126. A Chinese scholar-journalist during the late Qing Dynasty, considered one of the most influential turn-of-the-century Chinese reformers. *Jin shi di-yi da zhe Kangde zhi xueshuo*, in LIANG QICHAO ZHIXUE SIXIANG LUNWENXUAN 151, 153 (Ge Maochun & Jiang Jun eds., 1984), cited in Müller, *supra* note 17, at 141.

127. Müller, *supra* note 17, at 142.

128. *Id.* at 143.

129. *Id.*

130. See JONATHAN SPENCE, THE SEARCH FOR MODERN CHINA 314 (2d ed. 1999).

131. These articles were published in the journals, *Xueyi* and *Minduo*, and covered key aspects of Kant's philosophy. Müller, *supra* note 17, at 143.

132. *Id.*

133. *Id.*

the same time, the scholar Zhang Yi returned to China and took over as head of the philosophy department at Peking University, where he established a regular lecture series on Kant. Zhang laid the foundations for the institutionalization of classical German philosophy in Chinese academia, and trained a generation of Chinese philosophers who would later become renowned specialists on Kant and Hegel.¹³⁴

Between 1950 and the late 1970s, Chinese reception of Kant (and German idealist philosophy more broadly) continued to be widespread, but was increasingly mediated through Marxism-Leninism and Maoist thought. For example, during a conversation between Mao Zedong and German writer Gunter Weisenborn, Mao stated that he himself had “studied the materialist philosophers . . . Kant, Hegel, and Leibniz,” and insisted that, “there is a need to establish a teaching chair to study Kant and Hegel, so that students [in China] can become acquainted with idealist philosophy.”¹³⁵

During this period, Kant’s influence also emerged among heterodox thinkers across Greater China.¹³⁶ Most significantly, a group of philosophers based primarily in Hong Kong and Taiwan who came to call themselves the “New Confucians” attracted significant attention with their 1958 publication of a “Manifesto on the Reappraisal of Chinese Culture.”¹³⁷ This movement combined Confucian revivalism with resurgent nationalism, reinterpreting concepts often associated with Western thought, including democracy, humanism, and idealism, as Chinese ideas.¹³⁸ Kant served as a critical bridge in the New Confucian effort at syncretism, with its leading thinker, Mou Zongsan, stating that, “connecting Western and Eastern philosophy is only possible through the Kantian framework.”¹³⁹

The third and most recent phase of Chinese engagement with Kant emerged in the wake of the Cultural Revolution. Following Mao’s death and the beginning of the Open Door policy under Deng Xiaoping, Chinese academics and intellectuals once more turned their attention to the West. In 1979, one of China’s leading philosophers, Li Zehou, published a landmark work, *Critique of Critical Philosophy: A Study of Kant*,¹⁴⁰ which “induced a

134. *Id.*

135. Mao Zedong, *Conversation with Gunter Weisenborn*, in *THE WRITINGS OF MAO ZEDONG, 1949–1976: VOLUME II: JANUARY 1956–DECEMBER 1957* 152, 153 (Michael Y. M. Kau & John K. Leung eds., 1992).

136. The term “Greater China” is used here to refer to the region encompassing mainland China, Hong Kong, Macao, and Taiwan.

137. Zhang Junmai, Xie Youwei, Xu Fuguan, Mou Zongsan & Tang Junyi, *A Manifesto on the Reappraisal of Chinese Culture*, in *ESSAYS ON CHINESE PHILOSOPHY AND CULTURE* 492, 492 (T’ang Chun-i ed., 1988), cited in Müller, *supra* note 17, at 145 n.27.

138. *Id.*

139. Müller, *supra* note 17, at 143 n.44.

140. Li Zehou, *批判哲学的皮皮安康的书评* [CRITIQUE OF PRACTICAL PHILOSOPHY: A STUDY OF KANT] (1979). Following Li’s criticism of the government’s response to the 1989 Tiananmen Square protests, he was placed under house arrest and his work was banned in China. He was eventually invited to the United States to teach, where he was granted permanent resident status. *Li Zehou: Colorado College’s*

Kant Fever of no small scale in China's intellectual circles."¹⁴¹ Throughout the 1980s, articles examining German idealism became a staple of Chinese social science and philosophy publications.¹⁴² Over the next few decades, careful translations of Kant's writing began to provide a more robust textual foundation for Chinese engagement with his work.¹⁴³ These developments ensured that after more than a century of sustained engagement, Kantian thought would gain a firm place within contemporary Chinese intellectual discourse. Hence, Kant's works have today come to be considered part of the "canon of philosophy" in China.¹⁴⁴

C. Liberalism in Recent Chinese Scholarship and Foreign Policy Discourse

As a corollary to deepening academic engagement with Kant's thought over the past century, recent trends within Chinese international relations scholarship suggest a growing resonance with liberalism and the Kantian ideal of an enduring peace amongst states. Though still a relatively modern field, the study of international relations first began to become institutionalized in the People's Republic of China ("PRC") during the 1950s and 1960s. The PRC established a department of international politics at three major Chinese universities: Peking, Renmin, and Fudan. Across each of these departments, realism immediately emerged as the dominant theoretical paradigm and remained so for several decades, reflecting a broader global trend in the field.¹⁴⁵

However, more recent trends in Chinese international relations scholarship suggest a growing interest in and emphasis on liberal internationalist ideas closely aligned with the Kantian project. For instance, one study of ten leading Chinese international affairs journals between 1996 and 2001 found a steady increase in three research areas: (1) multilateralism and international legal institutions, (2) international society, and (3) non-state actors and global governance.¹⁴⁶ Another study tracked sixteen key terms associ-

125th Anniversary Symposium, <http://www2.coloradocollege.edu/Academics/Anniversary/Participants/Li.htm> (last visited Nov. 4, 2012).

141. Liu Kang, *Subjectivity, Marxism, and Cultural Theory in China*, in *POLITICS, IDEOLOGY, AND LITERARY DISCOURSE IN MODERN CHINA: THEORETICAL INTERVENTIONS AND CULTURAL CRITIQUES* 23, 32–33 (Liu Kang and Xiaobing Tang eds., 3d ed. 1993).

142. Müller, *supra* note 17, at 146.

143. *Id.* at 147.

144. Indeed, a recent study assessing Kant's relative significance in Chinese thought revealed that Kant, along with Hegel, is the most frequently referenced non-Marxist Western philosopher in China's leading academic journals. *Id.* at 141–42.

145. Interestingly, this was driven partly by the differential translation rate of leading western international relations texts. The first major work to be translated into Mandarin was Hans Morgenthau's classic realist treatise, *Politics Among Nations*, in 1990, which has been followed by over fifty additional international relations texts that canvass the field, covering realism, liberalism, constructivism, and the English School. Yaqing Qin, *Why is there no Chinese international relations theory?*, in *NON-WESTERN INTERNATIONAL RELATIONS THEORY* 26, 29 (Amitav Acharya & Barry Buzan eds., 2010).

146. Yaqing Qin, *IR Theory and Foreign Policy in China* (paper presented to the Sino-US Symposium on International Relations, Beijing 2002), *cited in* Qin, *supra* note 145, at 9.

ated with liberalism in major Chinese international affairs journals, finding that the frequency and attention paid to these terms increased notably in the early 2000s.¹⁴⁷ This shift in Chinese international relations scholarship—from a decades-long emphasis on realism toward greater engagement with liberalism—is another sign of China’s growing receptivity to the Kantian project.

Furthermore, the recent emergence of a distinctly Chinese foreign policy discourse, though grounded largely in classical Confucian concepts, also reveals a growing resonance with Kantian liberalism. Given China’s primarily defensive foreign policy over the past several decades, Western commentators often viewed it as a “free-rider” in the global order that lacked its own vision of international relations.¹⁴⁸ Since the mid-2000s, however, several important foreign policy discourses have emerged as “Chinese views of international relations in the official, semi-official, and intellectual circles are being developed at an accelerating pace and with growing originality.”¹⁴⁹ These include an initiative to reinvigorate pre-Qin Chinese theories of international relations;¹⁵⁰ a growing literature on the “China model” as an alternative to existing paradigms;¹⁵¹ and an effort to re-conceptualize the Confucian concept of *tianxia* (“all under heaven”) as the basis for international institutions that could provide an alternative to those developed under “western hegemony.”¹⁵²

In this context, some commentators suggest that China is developing an emerging foreign policy ideology characterized by three primary “exceptionalist” claims: (1) great power reformism, (2) benevolent pacifism, and (3) harmonious inclusion.¹⁵³ Collectively, these aspects of China’s evolving vision of international relations seem to resonate closely with the Kantian par-

147. The terms are: democratic peace, feminism, non-traditional security, global governance, multipolarity, interdependence, ethnic conflict, identity, crisis management, inter-governmental organizations, international political economy, peace research, international organization, multilateralism, and regional organization. Alastair I. Johnston, *The State of International Relations Research in China: Considerations for the Ford Foundation*, INTERNATIONAL RELATIONS STUDIES IN CHINA: A REVIEW OF FORD FOUNDATION PAST GRANT-MAKING AND FUTURE CHOICES 141–42 (2002).

148. See, e.g., Barry Buzan, *China in International Society: Is ‘Peaceful Rise’ Possible?*, 3 CHINESE J. OF INT’L POL. 5, 14–16 (2010).

149. Feng Zhang, *The Rise of Chinese Exceptionalism in International Relations*, EUR. J. OF INT’L REL. 1, 2 (Oct. 17, 2011), <http://ejt.sagepub.com/content/early/2011/10/26/1354066111421038.full.pdf+html>.

150. XUETONG YAN, ANCIENT CHINESE THOUGHT, MODERN CHINESE POWER (Daniel A. Bell & Sun Zhe eds., 2011); see also Xuetong Yan & J. Xu, ZHONGGUO XIANQIN GUOJIAJIAN ZHENGZHI SIXIANG XUANDU [PRE-QIN CHINESE THOUGHTS ON FOREIGN RELATIONS] (2008), cited in Zhang, *supra* note 149, at 2.

151. Wei Pan, ZHONGGUO MOSHI: JIEDU ZHONGHUA RENMIN GONGHEGUO DE 60 NIAN [CHINA MODEL: A NEW DEVELOPMENT MODEL FROM THE SIXTY YEARS OF THE PEOPLE’S REPUBLIC] (2009), cited in Zhang, *supra* note 149, at 2.

152. Zhao Tingyang, TIANXIA TIXI: SHIJIE ZHIDU ZHAXUE DAOLUN [THE TIANXIA SYSTEM: AN INTRODUCTION TO THE PHILOSOPHY OF A WORLD INSTITUTION] (2005), cited in Zhang, *supra* note 149, at 7.

153. Zhang defines exceptionalism to mean “the unique qualities—from the particular set of political and social values to the special historical trajectory and foreign relations experience—that differentiate one country from another.” Zhang, *supra* note 149, at 2.

adigm, for they suggest that China will support at least two key pillars of the liberal peace: international institutional linkages and commercial interdependence.

The first concept, great power reformism, emphasizes “the exceptionalist claim that China as a great power will challenge the historical trajectory of power rise, redefine the meaning of being a great power, and reform world politics through the development and practice of its unique international relations principles and ideals.”¹⁵⁴ By defining China in this reformist way, contemporary Chinese policymakers aim to demonstrate that they “will strive to build a peaceful and harmonious world rather than playing the zero-sum game of power politics, and that China will provide a new ideal for the common development of all countries in the world.”¹⁵⁵ Viewed from the Kantian perspective, this positive-sum approach toward international relations implies that Beijing will seek to strengthen economic ties and institutional linkages with other nations.

This resonance with Kantian liberalism is bolstered by a second feature of China’s emerging foreign policy ideology, benevolent pacificism, which draws upon historicist assertions that imperial China engaged only in defensive wars and rested upon a culture of “unique peacefulness” that “stabilized China’s internal and external relations through assimilation and integration of different peoples and cultures.”¹⁵⁶ Extrapolating from these historical claims, Chinese leaders maintain that contemporary China intends to pursue a “peaceful foreign policy, will never threaten anyone, and will help to maintain world peace through its own development.”¹⁵⁷ This influential view was famously articulated by leading scholar Zheng Bijian as “China’s peaceful rise,” and is reflected in official policy memoranda¹⁵⁸ as well as statements by senior officials.¹⁵⁹

Finally, the third claim that underpins China’s emerging foreign policy ideology—harmonious inclusionism—contains perhaps the most evident parallels with Kantian liberalism. It traces back to an inclusionary foreign

154. *Id.* at 7.

155. Z. Zhang, *Zai Jueqi Beijing xia Goujian Zhongguo Ziji de Waijiao Zhexue* [Constructing China’s diplomatic philosophy against the background of the rising of China], 9 INT’L AFF. 26, 29 (2007), cited in Zhang, *supra* note 149, at 7.

156. Zhang, *supra* note 149, at 7.

157. *Id.*

158. See, e.g., INFO. OFFICE OF THE STATE COUNCIL, CHINA’S PEACEFUL DEVELOPMENT ROAD (2005), available at <http://www.china.org.cn/english/2005/Dec/152669.htm>; INFO. OFFICE OF THE STATE COUNCIL, CHINA’S PEACEFUL DEVELOPMENT (2011), available at <http://us.china-embassy.org/eng/zt/zhongguodehepingfazhan/t856287.htm>.

159. For example, State Councilor Dai Bingguo’s essay, “Persisting with Taking the Path of Peaceful Development,” was initially published as *Zhonggongzhongyanguanyuzhidingguominjingjijieshebeifa-zhandedshiergeunianguibuade jianyi* [Suggestion from the central government to make the twelfth five-year plan on the national economic and social development], People’s Publishing House, October 1, 2010, cited in Zhang, *supra* note 149, at 8. It was then published on December 6, 2010, in *People’s Daily* and posted on the Ministry of Foreign Affairs website under the title, “Persisting with Taking the Path of Peaceful Development.” *Id.*

policy promulgated by imperial China that was grounded in a view of Chinese moral superiority, which allowed for “the magnanimous admission of other polities into the family of the Chinese civilization under the influence, leadership, or even perhaps domination of the Chinese empire.”¹⁶⁰ Importantly, in the present day, this sinocentric notion of China’s “virtuous rule” has been gradually eroded by a shift toward “accommodationism.”¹⁶¹ Hence, the contemporary Chinese idea of harmonious inclusionism

advocates international cooperation and accommodation by adopting an open, tolerant, and inclusive attitude toward the multiplicity and diversity of political and cultural traditions in the world . . . inclusionism refers not just to the acknowledgment of the legitimacy of different political and cultural traditions and the need to incorporate them into global governance, but also the position that all countries need to be included in a process of achieving common security, development, and prosperity based on open multilateralism and mutually beneficial cooperation.¹⁶²

These propositions share significant commonalities with the Kantian “perpetual peace” and are reflected in recent Chinese foreign policy discourse, including the reemergence of the classical Confucian idea of “harmony with difference” (*he er butong*);¹⁶³ prominent official statements advocating a “harmonious world” policy (*hexie shijie*);¹⁶⁴ and a rise of “neo-Tianxiaism” (*xin*

160. Zhang, *supra* note 149, at 8.

161. *Id.*

162. *Id.*

163. Initially found in a well-known passage in Confucius’ *Analects*, the phrase “harmony with difference” has been subject to a number of different interpretations. See Zhang, *supra* note 149, at 8–9. Some scholars posit that the phrase reflects “Chinese respect for mutual understanding, mutual tolerance, and symbiosis of cultural diversity.” Zhang, *supra* note 149, at 9 (citing Fei Xiaotong, *Creating a harmonious but different world community: A speech at a conference of the IUAES (2001)*). Others claim, “it is a philosophical pathway to perpetual peace, or in the indigenous Chinese locution, to ‘great harmony’ (*datong*).” *Id.* (citing Hu J., *He er Butong: Zouxiang Yongjiu Heping de Zhexue Tujing* [Harmony with difference: A philosophical pathway to perpetual peace], *XIN SHIYE* [NEW HORIZON] 3, 65–67). In recent years, the PRC government has utilized this phrase in its foreign policy discourse, conceptualizing *he* as “a state of non-confrontational relationships” and *tong* as viewpoint commonality. *Id.* at 8. On this view, China’s leaders should recognize that viewpoint diversity exists around the world, but “should actively seek the convergence of their interests, enlarge consensus, promote multilateralism, and strive for harmony and progress in international society.” *Id.* at 9.

164. The phrase “harmony with difference” was first mentioned in a 2002 speech by former President Jiang Zemin, and has since been frequently used in key speeches by Chinese leaders. In September 2005, President Hu Jintao issued a speech at the United Nations in which he transformed this phrase by articulating the broader concept of a “harmonious world,” which some observers took as a sign of a “new era in Chinese diplomacy.” Zhang, *supra* note 149, at 9. In April 2006, Hu spoke at Yale University and continued to elaborate on this theme, embodying elements of both pacifism and inclusionism. See *id.* In light of this official discourse, some commentators have argued that the “harmonious world” represents “a new Chinese paradigm for world order.” *Id.* (quoting Wang Gungwu, ‘Hexie Shijie’: *Guoji Zhexu de Xin Gouxiang he Xin Fanshi* [‘Harmonious world’: A new conception and new paradigm for international order], *XIANDAI GUOJI GUANXI* [CONTEMPORARY INTERNATIONAL RELATIONS] (2007) 3: 56–62).

tianxia zhuyi), which aims to maximize cooperation and minimize conflict given the acknowledged diversity of cultures around the world.¹⁶⁵

Some Chinese scholars in recent years have even gone a step further and drawn explicit links between Kantian and Confucian ideals as a basis for developing a new vision for China's role in world politics—with implications for its relationship with international law. One theorist, for instance, has sought to synthesize Confucian and Kantian approaches to justice by conceptualizing the Confucian notion of *ren-yi* (“benevolence-righteousness”) as a theory of humanity that complements the Kantian notion of justice as a theory of rights.¹⁶⁶ Another scholar argues that the Confucian ideal of *tianxi datong* (“peace under heaven”) could provide a theoretical basis for global peace predicated upon democracy.¹⁶⁷ The late Kim Dae Jung, former President of South Korea and winner of the 2000 Nobel Peace Prize, was also an adherent of this view. Over a career in government lasting four decades, Jung maintained that the Confucian ideal of *tianxi datong* could form the basis for an Asian “zone of peace.”¹⁶⁸ While such attempts at syncretism have primarily been developed outside the PRC (in Taiwan, other East Asia countries, and Western universities), efforts to bridge “New Confucian” theory and state practice are increasingly underway in mainland China as well.

IV. TOWARD A MULTICULTURAL KANTIAN PEACE?

A. *China's Commitment to Two Pillars of the Kantian Paradigm: International Institutional Linkages and Economic Interdependence*

More than two centuries after Kant articulated his vision for perpetual peace among states bound together under international law, the Kantian tripod—liberal democracy, international institutions, and economic interdependence—is central to today's globalized world. An increasing number of nation-states have constituted themselves as democracies,¹⁶⁹ are linked together by a deepening array of trade relationships, and regularly engage with one another through influential multilateral legal bodies. Nonetheless, some

165. Concurrently, there has been a resurgence of Tianxiaism, an effort to apply the classical Confucian concept of *tianxia* to contemporary world politics. For example, one influential Chinese political philosopher posits that, “the *tianxia* ideal has created the most peaceful and inclusive principle by seeking the maximization of cooperation and the minimization of conflict on the basis of acknowledging the world's diversity. The *tianxia* is inclusive of every cultural or spiritual system, acknowledges the independent role of every culture, rejects seeing any other culture as the enemy, and creates universal values on the basis of cultural inclusion.” Zhang, *supra* note 149, at 9–10 (quoting Zhao Tingyang, HUI SHIJIIE YANJIU: ZUOWEI DIYI ZHEXUE DE ZHENGZHI ZHEXUE [INVESTIGATIONS OF THE BAD WORLD: POLITICAL PHILOSOPHY AS THE FIRST PHILOSOPHY] (2009), at 320–21).

166. Cheng, *supra* note 101, at 355.

167. See generally Hui, *supra* note 102.

168. *Id.*

169. For a classic work on rising democratization in the modern era, see SAMUEL P. HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE 20TH CENTURY (1991).

states have challenged this Kantian liberal internationalist order. China appears to straddle this divide. In the post-Cold War era, Western policymakers appear increasingly worried about the potential “China threat,” despite Beijing’s repeated emphasis of its intention to pursue a peaceful rise. Chinese scholars have largely echoed the official position, highlighting the defensive, non-expansionary nature of the Middle Kingdom’s strategic culture. In the context of the Kantian paradigm, what can be said of China today?

China’s record in recent decades demonstrates that it has taken significant strides in committing to two pillars of the “Kantian tripod”: international institutional linkages and commercial interdependence. Indeed, deepening engagement with global legal and economic institutions has arguably been a central driver of China’s rise.¹⁷⁰ Some commentators, such as Chinese legal historian Philip Huang, suggest that China’s adoption of international norms and engagement with multilateral institutions should primarily be understood as a consequence of a series of domestic crises and external pressure.¹⁷¹ China’s traditional legal system suffered major blows throughout the twentieth century, as indigenous legal and philosophical traditions were repeatedly rejected and supplanted with modern-Western systems.¹⁷² As a result, “traditional Chinese law has, in effect, been completely severed from the present . . . under the current agenda of modernization and marketization.”¹⁷³

In the post-Mao era that commenced in the late 1970s, Deng Xiaoping and his fellow “pragmatists” within the Chinese Communist Party undertook a series of sweeping reforms known as the Four Modernizations, paving the way for China to reengage with international institutions.¹⁷⁴ As Maoist hostility toward the global community began to moderate, China gradually became an active participant in a plethora of multilateral bodies constituted under international law, including the U.N. Security Council¹⁷⁵ and the In-

170. One Chinese legal scholar argues that this was a response to a series of domestic crises that damaged the China’s traditional legal system, which suffered three major blows in the twentieth century—first during the waning years of the Qing Dynasty in the 1910s and 1920, again in the Communist revolutionary period of the 1940s and 1950s, and finally, in the post-Mao Reform period of the 1980s and 1990s—as indigenous legal and philosophical traditions were repeatedly rejected and gradually supplanted with modern-Western systems. See PHILIP C. C. HUANG, *CHINESE CIVIL JUSTICE, PAST AND PRESENT* xii (2009).

171. *Id.*

172. *Id.*

173. *Id.*

174. Clarke, *supra* note 13, at 569–71.

175. The People’s Republic of China (mainland China) replaced the Republic of China (Taiwan) as a member of the United Nations on October 25, 1971, following the passage of G.A. Resolution 2758, which withdrew recognition of the ROC as the legitimate government of China, and instead recognized the PRC as the sole legitimate government of China. As a result, the PRC gained both representation at the United Nations and a permanent seat on the Security Council. See G.A. Res. 2758 (XXVI), U.N. Doc. A/RES/2758 (Oct. 25, 1971).

ternational Monetary Fund.¹⁷⁶ More recently, it has also embraced regional partnerships, participating in a host of agreements such as the Shanghai Cooperation Organization (“SCO”),¹⁷⁷ the ASEAN Plus Three Forum,¹⁷⁸ the ASEAN Regional Forum,¹⁷⁹ and the East Asian Summit,¹⁸⁰ emerging as what one U.S. policymaker called a “born-again regional multilateralist.”¹⁸¹ Concurrently, over the last few decades, the PRC has also promulgated a dizzying array of bilateral treaties and legal agreements with nations across the globe on issues ranging from tax treatment and foreign investment,¹⁸² to judicial assistance¹⁸³ and arms sales.¹⁸⁴ As a consequence of these develop-

176. See *At a Glance—China and the IMF*, INTERNATIONAL MONETARY FUND (Sept. 1, 2004), <http://www.imf.org/external/country/chn/rr/glance.htm> (last visited Nov. 15, 2012) (noting that “the People’s Republic of China assumed responsibility for China’s relations with the IMF in April 1980”).

177. In 1996, China and Russia came together to found the SCO, originally called the “Shanghai Five” and whose members now include, along with these two powers, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. The SCO emerged out of longstanding efforts amongst the members to resolve border disputes. A primary goal was to enhance cooperation amongst these governments to mitigate the threat posed by Islamic extremists in China’s western provinces; hence, the organization’s Charter pledges that its members will cooperate to combat “terrorism, separatism, and extremism.” Susan L. Shirk, *China’s Multilateral Diplomacy in the Asia-Pacific*, Hearing on China as Emerging Regional and Technology Power: Implications for U.S. Economic and Security Interests Before the U.S. v. China Econ. and Sec. Review Comm’n, 108th Cong. 168–73 (2004) (written testimony), available at http://www.uscc.gov/hearings/2004hearings/written_testimonies/04_02_12wrts/shirk.htm.

178. Following China’s inclusion in the ASEAN Plus Three Forum, it undertook several measures to strengthen relations with the ASEAN countries, including signing the 2002 Declaration on Conduct in the South China Sea (officially ending many of the region’s territorial disputes), and acceding to the ASEAN Treaty of Amity and Cooperation in 2003, which commits it to “the principles of nonaggression and noninterference.” David Shambaugh, *China Engages Asia: Reshaping the Regional Order*, 29 INT’L SEC. 64, 75 (2004).

179. The ASEAN Regional Forum is a multilateral dialogue in Asia Pacific region, established in 1994 and currently consisting of 27 participants. Its primary objectives include fostering constructive dialogue and consultation on political and security issues of common interest and concern; and strengthening confidence-building and preventive diplomacy in the region. *About the ASEAN Regional Forum*, ASEAN REGIONAL FORUM, <http://aseanregionalforum.asean.org/about.html> (last visited Nov. 15, 2012).

180. Press Release, The White House, Fact Sheet: East Asia Summit (Nov. 19, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/11/19/fact-sheet-east-asia-summit>.

181. See Shirk, *supra* note 177, at 1 (arguing that “before 1994, China was highly skeptical about the value of participating in regional multilateral organizations” but between the mid-1990s and mid-2000s, “has moved from the sidelines to participate actively in all the various regional multilateral arenas; it has founded new regional organizations on its own; and it has given multilateral cooperation a prominent place in its national security doctrine”).

182. For an early study, see Takashi Shinobu, *China’s Bilateral Treaties, 1973-82: A Quantitative Study*, 31 INT’L STUD. Q. 439 (1987). See also Gordon Smith, *Chinese Bilateral Investment Treaties: Restrictions on International Arbitration*, 76 ARB. 1, 58–59 (2010) (noting that as of early 2010, “China has entered into more bilateral investment treaties than any other country, having signed a total of 115, of which 85 have come into force”).

183. Ministry of Foreign Affairs of the People’s Republic of China, *Table on Dates of Signing and Effective Dates of Bilateral Judicial Assistance Treaties*, updated on May 30, 2003, available at <http://www.fmprc.gov.cn/eng/wjbj/zjzg/tyfls/tyfl/2631/t39537.htm>; see generally Ministry of Foreign Affairs of the People’s Republic of China, *Bilateral Treaties and Agreements*, available at <http://www.fmprc.gov.cn/eng/wjbj/zjzg/tyfls/tyfl/2631/>.

184. See, e.g., Richard F. Grimmett, *Conventional Arms Transfers to Developing Nations, 2003-2010*, CONG. RES. SERV., Sept. 22, 2011, at 9–10, available at <http://www.fas.org/sgp/crs/weapons/R42017.pdf> (noting that since the 1980s, “China’s arms sales have been more regional and targeted in the developing world. From 2007 to 2010, the value of China’s arms transfer agreements with developing nations has averaged over \$1.9 billion annually Generally, China’s sales figures reflect several smaller valued

ments, Beijing has found itself increasingly enmeshed within the global institutional order—a trend reflected in the burgeoning number of, and demand for, international lawyers in mainland China today.¹⁸⁵

As a corollary to its deepening engagement with multilateral institutions established under international law, China has embedded itself firmly within the global economy, and thus bolstered its commitment to a second pillar of the Kantian tripod: commercial interdependence. Beijing's growing desire to engage with the global economy was perhaps most evident in its efforts during the 1990s to secure membership in the WTO. During the decade before its accession in 2001, China undertook a series of legal and political reforms in order to meet key WTO obligations, which included national treatment of foreign goods and services, non-discrimination across trading partners, and an effective domestic rule of law.¹⁸⁶ In an unprecedented effort, Beijing restructured and divested government ownership of numerous state-owned enterprises, eliminated hundreds of administrative regulations that created trade-distorting subsidies or tariffs, and passed major laws strengthening private property rights.¹⁸⁷

China even agreed to submit itself to the WTO's dispute settlement system, a unique enforcement mechanism that backstops its rules-based trading regime by requiring member states to submit to binding arbitration when trade disagreements arise.¹⁸⁸ Beijing's willingness to accept this supranational legal mechanism, despite its deep-seated historic concern over ceding any sovereign prerogatives, reflects just how keenly its leaders sought to achieve full integration within the global trading system.

These efforts paid off. In December 2011, the tenth anniversary of China's entry into the WTO, Director-General Pascal Lamy remarked:

It is difficult not to overstate the effects of this accession, certainly on China, but also on China's trading partners and on the global trading system itself. By integrating fully into the global economy, China has become the largest exporter of manufactured goods and the second largest economy in the world. This remark-

weapons deals in Asia, Africa, and the Near East, rather than one or two especially large agreements for major weapons systems.”)

185. See, e.g., Debra Mao, *China's 'Kid' Law Firms Lure Attorneys From U.S., U.K. Rivals*, BLOOMBERG, Sept. 27, 2010, available at <http://www.bloomberg.com/news/2010-09-27/china-s-kid-law-firms-lure-attorneys-from-london-new-york-competitors.html> (noting that “law firms from 21 foreign countries still see local opportunities from China's long-term growth and have opened 224 offices on mainland China and 69 in Hong Kong,” and citing recent data that “with 190,000 lawyers, China has one attorney for every 6,977 people, compared with one for every 303 in the U.S. and for each 393 in the U.K. as of 2008”).

186. Donald Clarke, *China's Legal System and the WTO: Prospects for Compliance*, 2 WASH. U. GLOB. STUD. L. REV. 97, 97–98 (2003).

187. Keliang Zhu & Roy Prosterman, *From Land Rights to Economic Boom*, CHINA BUS. REV. 44, 45 (Jul.–Aug. 2006).

188. World Trade Organization, “Settling Disputes: A Unique Contribution,” *Understanding the WTO*, Dec. 2011, available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm.

able trade expansion has contributed significantly to China's growth and development and has helped lift some 500 million people out of poverty.¹⁸⁹

Recent trade and investment statistics confirm China's significant presence within the global economy. China has emerged as the world's most popular investment destination, accounting for the greatest FDI flows in 2010.¹⁹⁰ In 2009, it surpassed Germany to become the world's largest exporter.¹⁹¹ A central driver of China's growth has been its burgeoning trade relationship with the United States, which expanded nearly twenty-fold from \$33 billion in 1992¹⁹² to \$539 billion in 2011.¹⁹³ China is the United States' largest source of imports, and one of its most important export destinations. Indeed, American exports to China have grown more rapidly than to any other market in the past.¹⁹⁴ As a result, China is now the world's second largest trading nation,¹⁹⁵ as well as the largest holder of outstanding U.S. debt, with combined foreign reserves of over \$3 trillion.¹⁹⁶

Notwithstanding these impressive figures, some skeptics point to ongoing concerns over Chinese trade distortions as evidence that Beijing's commitment to commercial interdependence remains partial and incomplete. While such legitimate concerns cannot be ignored, China's leaders recognize that continued access to global markets is critical to sustaining its booming economy. Rapid growth has in turn underpinned domestic political stability and served as a basis for the functional legitimacy that has supported Communist Party rule over the past three decades.¹⁹⁷ A key consequence is that China's leaders today have a growing incentive to maintain adherence to the legal rules of the international trade game.¹⁹⁸

189. Pascal Lamy, *China's accession to WTO worth celebrating*, CHINA DAILY, Dec. 11, 2011, http://www.chinadaily.com.cn/business/2011-12/12/content_14252836.htm.

190. *India Still Second Best FDI, Behind China*, ECON. TIMES, Apr. 11, 2011, http://articles.economic-times.indiatimes.com/2011-04-11/news/29403662_1_fdi-inflows-land-acquisition-law-skilled-labour-shortage.

191. David Barboza, *In Recession, China Solidifies Its Lead on Global Trade*, N.Y. TIMES, Oct. 13, 2009, <http://www.nytimes.com/2009/10/14/business/global/14chinatrade.html?pagewanted=all>.

192. *Trade in Goods with China*, U.S. CENSUS BUREAU, <http://www.census.gov/foreign-trade/balance/c5700.html#1992> (last visited Nov. 15, 2012).

193. These figures refer to trade in goods and services. The United States is now China's second-largest trading partner in goods (second to the European Union), and China is the second-largest trading partner for the United States in goods (after Canada). *US-China Bilateral Trade and Investment Statistics*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, available at <http://www.ustr.gov/countries-regions/china>.

194. Wayne Morrison, *China-U.S. Trade Issues*, CONG. RES. SERV., Aug. 4, 2011, available at <http://fpc.state.gov/documents/organization/170496.pdf>.

195. Shiro Armstrong, *Benchmarking China's performance: how large is large?*, EAST ASIA FORUM, Sept. 21, 2012, <http://www.eastasiaforum.org/2012/09/21/benchmarking-chinas-performance-how-large-is-large>.

196. *China cannot rescue Europe with foreign reserves*, XINHUA, Dec. 2, 2011, http://news.xinhuanet.com/english2010/china/2011-12/02/c_131285391.htm.

197. See, e.g., MCGREGOR, *supra* note 12, at 194–228.

198. Much has been written about the growing success and prominence of international trade law instruments in the context of China. See, e.g., Thomas J. Prusa & Susan Skeath, *Modern Commercial Policy: Managed Trade or Retaliation?*, in 2 HANDBOOK OF INTERNATIONAL TRADE 358, 359 (E. Kwan Choi &

For this reason, China's deepening engagement with the global economic order did not end with its accession to the WTO. Equally telling, Beijing has itself come to rely increasingly on dispute settlement: in the past decade, it has initiated a growing number of challenges at the multilateral body against key trade partners including the United States.¹⁹⁹ Similarly, China has emerged as the world's second most-frequent user of antidumping measures as an offensive legal weapon in global trade.²⁰⁰ These trends reveal a broader underlying point: China's commitment to the economic pillar of the Kantian paradigm is clearly expanding.

B. *China's Missing Kantian Pillar: Liberal Democracy*

Despite its growing engagement with international legal institutions and deepening commercial interdependence, a crucial pillar underpinning the liberal peace remains absent in contemporary China: the establishment of republican government. Often reinterpreted as "liberal democracy,"²⁰¹ Kant's first definitive article requires that each constitutive state in the liberal peace must maintain internal, domestic rule of law under which its citizens can realize juridical and moral freedom. This, however, is notably absent in the PRC.

China's prospects for democratization may be one of the most discussed topics in world affairs today.²⁰² Particularly heated debates have surrounded this issue in recent years, as scholars and practitioners have argued over whether the initial success of grassroots democratic movements across the Middle East would catalyze similar events in China.²⁰³ While commentators continue to weigh in with contrasting views, recent trends suggest that the future remains unpredictable. Rather than attempt to offer a conclusive statement on China's prospects for a democratic future, this section aims to briefly assess contemporary China in the context of the Kantian pillar of republican government, or liberal democracy.

Kant's conception of republicanism entailed a government predicated on legislative supremacy. Formally speaking, the PRC does seem to meet this definition of "republican" government: according to the 1982 Constitution

James C. Hartigan eds., 2005); Robert W. Staiger & Alan Sykes, *Currency Manipulation and World Trade*, 9 *WORLD TRADE REV.* 583 (2010); Claus D. Zimmerman, *Exchange Rate Misalignment and International Law*, 105 *AM. J. OF INT'L L.* 423 (2011).

199. Chad P. Brown, *U.S.-China Trade Conflicts and the Future of the WTO*, 33 *THE FLETCHER FORUM OF WORLD AFFAIRS* 27, 29 (2009).

200. Mark Wu, *Antidumping in Asia's Emerging Giants*, 53 *HARV. INT'L L.J.* 1, 4 (2011).

201. See, e.g., Hui, *supra* note 16, at 3 (noting that, "The first definitive article argues that republican governments are naturally inclined toward peace. The term republicanism is often translated as liberal democracy. But not even France and Britain qualified as liberal democracies in 1795. Thus, republicanism should be understood as limited government with individual freedom, the rule of law, and popular consent.")

202. See generally Yu Liu & Dingding Chen, *Will China Democratize?*, *WASH. Q.* (2012).

203. See, e.g., James Fallows, *Arab Spring, Chinese Winter*, *THE ATLANTIC*, Sept. 2011, <http://www.theatlantic.com/magazine/archive/2011/09/arab-spring-chinese-winter/308601>.

of the PRC (the most recently promulgated version), the National People's Congress is the highest organ of state power.²⁰⁴ Yet despite *de jure* legislative supremacy, it is widely recognized that the *de facto* locus of power in China resides in the executive branch, headed by the State Council. The single most important reason for the executive branch's dominance—and the authoritarian character of its rule—is the Chinese Communist Party (“CCP”), which effectively sits above the rule of law.²⁰⁵ As a result, some scholars even suggest that China today is best understood not as a socialist republic but rather as an “administrative state.”²⁰⁶

The CCP's “extra-constitutional” role within the Chinese state and its autocratic rule have led to ongoing calls for political reform of the one-party system, in the form of a “pro-democracy” movement both within and outside China.²⁰⁷ Following the Party leadership's heavy-handed suppression of the 1989 student-led demonstrations in Tiananmen Square, the pro-democracy movement proceeded cautiously and made only incremental progress in promoting domestic political and social reforms through the 1990s.²⁰⁸ In the last decade, however, growing access to the Internet has enabled tens of millions of Chinese to realize in significant measure two forms of freedom that remain unavailable to the society at large: the freedom of association and the freedom of speech. Mobilizing and communicating online, these “netizens” are increasingly engaging in critical discourse concerning the Party's authoritarian rule.²⁰⁹

Yet recent actions by the CCP serve as a reminder that such democratization efforts in China are still nascent. In the past year, the Chinese government has engaged in a widespread crackdown against dozens of dissidents, sparking international criticism over one of the most severe campaigns of political repression in the country's recent history.²¹⁰ Among the most prominent cases was the apprehension and secret detention of an internationally renowned artist and social critic, Ai Weiwei, who is also the visionary designer of the 2008 Beijing Olympic Stadium.²¹¹ Soon after his arrest, the *Global Times* (international subsidiary of the official government newspa-

204. XIANFA art. 57 (1982) (China).

205. Indeed, the government has recently even required Chinese lawyers to pledge allegiance to the Communist party. *China orders lawyers to pledge allegiance to Communist party*, THE GUARDIAN, Mar. 21, 2012, <http://www.guardian.co.uk/world/2012/mar/21/china-lawyers-communist-allegiance>.

206. Peter H. Corne, *Creation and Application of Law in the PRC*, 50 AM. J. OF COMP. L. 369, 369–82 (2002).

207. See Liu & Chen, *supra* note 202, at 41.

208. See RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW 513–57 (2002).

209. Liu & Chen, *supra* note 202, at 41. Indeed, official Chinese estimates claimed that there were nearly half a billion “netizens” as of 2011, though this figure may be inaccurate. See Li Yancheng, *Number of Chinese netizens reaches 457 million*, PEOPLE'S DAILY ONLINE, Mar. 30, 2011, <http://english.people.com.cn/90001/90776/90882/7335623.html>.

210. Nicholas Kristof, *Great Leap Backward*, N.Y. TIMES, Apr. 27, 2011, <http://www.nytimes.com/2011/04/28/opinion/28kristof.html>.

211. Jeremy Page, *International Calls Increase for China to Release Artist*, WALL ST. J., Apr. 5, 2011, <http://online.wsj.com/article/SB10001424052748703806304576242410124189404.html>.

per, the *People's Daily*) published an ominous editorial noting that, "Ai Weiwei likes to do something 'others dare not do.' He has been close to the red line of Chinese law . . . [He] will be judged by history, but he will pay a price for his special choice."²¹² Similarly, in June 2009, the CCP arrested prominent Chinese pro-democracy activist, Liu Xiaobo, head of Democratic China Magazine and the human-rights-focused Independent Chinese PEN Center, and charged him with "inciting subversion of state power," a severe crime for which he received an eleven-year prison sentence.²¹³ Despite Xiaobo's selection as the 2010 Nobel Peace Prize winner, the CCP even refused his request to send a representative to receive the award on his behalf. Such actions point to the Party's growing intolerance of pro-democracy dissidents, even among prominent and well-connected activists.

Despite prominent examples of pro-democracy activism, the movement has yet to receive widespread support in China. A key reason is that over the past three decades, the Chinese authorities have managed to deliver consistently remarkable economic growth and overseen a significant expansion of public infrastructure and social services. As one Chinese expert puts it, "They've shown themselves to be a whole lot more flexible than the Egyptians and Tunisians of the world . . . ten percent growth solves a lot of problems."²¹⁴ Thus, while an indigenous movement for democratization exists in China, it appears likely that debate over the rising power's democratic prospects will persist as support for political reform continues to ebb and flow.

C. *Implications for the Kantian Project and International Law*

The previous sections in Part IV have attempted to situate contemporary China within the context of the paradigmatic Kantian pillars: international institutions, economic interdependence, and liberal democracy. But this Article does not seek to draw simplistic conclusions about China's future. Rather, its primary purpose is narrower, namely, to critically engage with Kant's critics—both cultural relativists and realists—who remain skeptical of the prospects for China's participation in a liberal peace among states bound together under international law.

In this vein, the Article has two major implications. First, it challenges the longstanding cultural relativist claim that the Kantian paradigm is irreconcilable with Chinese thought by identifying sources of resonance with Kantian liberalism in classical Chinese political philosophy, by examining Chinese scholars' ongoing engagement with Kant's writings over the past

212. *Law will not concede before maverick*, GLOBAL TIMES, Apr. 6, 2011, <http://www.globaltimes.cn/opinion/editorial/2011-04/641187.html>.

213. *China: Liu Xiaobo*, PEN AMERICAN CENTER, <http://www.pen.org/viewmedia.php/prmMID/3029/prmID/172> (last visited Nov. 15, 2012).

214. Andrew Jacobs, *Where 'Jasmine' Means Tea, Not a Revolt*, N.Y. TIMES, Apr. 2, 2011, <http://www.nytimes.com/2011/04/03/weekinreview/03jacobs.html> (quoting Kevin O'Brien).

century, and by noting trends toward liberalism in contemporary Chinese scholarship and foreign policy discourse. This does not necessarily imply that China's full-fledged participation in a liberal international order is *inevitable*—but it suggests that it is at least *possible*. To this end, the Article highlights China's growing commitment to the Kantian paradigm, as evidenced by its deepening international institutional linkages and commercial interdependence, and posits that domestic reforms are needed to realize its missing Kantian pillar—liberal democracy. The Article therefore rejects deterministic claims by cultural relativists that the Kantian project necessarily cannot include China,²¹⁵ and instead recognizes the potential for a multicultural liberal peace among states bound together by international law.

Second, the Article has implications for Kant's realist critics, who reject the notion that international law exerts a binding normative force and remain deeply skeptical that it will sustain the liberal peace.²¹⁶ Instead, present day realists posit that China's rise will destabilize an already flimsy international legal order and could strain it to the breaking point. For example, in considering the impact of China's rise on the United States, two prominent legal realists, Eric Posner and John Yoo, assess the role that international law will likely play in a future U.S.-China confrontation.²¹⁷ Examining major international legal institutions including the U.N. Security Council, International Court of Justice, International Criminal Court, and the World Trade Organization, Posner and Yoo posit that none of these bodies will play a significant role in mediating future conflict between China and the United States.²¹⁸ Instead, they contend:

[T]he future that both seems most likely and so far has received least attention is the future in which the US and China engage in a cold war. The history of the first Cold War, the current American and Chinese attitudes toward international law, and the current state of international institutions all point to one outcome: the weakness of these institutions for managing a superpower conflict. For this reason, we reject the popular argument that the US should support international institutions today so that it can seek shelter in them tomorrow.²¹⁹

On this skeptical view, the fragile system of international law will give way under the weight of impending geopolitical pressures stemming from China's rise.

215. See *supra* notes 68–99 and accompanying text.

216. See *supra* notes 48–65 and accompanying text.

217. See generally Posner & Yoo, *supra* note 64.

218. *Id.* at 7, 9, 13 (arguing that “China will not feel itself bound by the U.N. Charter when considering the use of force” and “the U.N. Charter has not prevented the U.S. from using force”; “the ICJ has been a marginal institution from the beginning”; “it is unlikely that the ICC will have any deterrence effect”; and “the role of the WTO in any future superpower confrontation is likely to be minimal”).

219. *Id.* at 15.

Yet realists may present an exaggerated vision of reality. By conceptualizing China within the Kantian paradigm, this Article offers a more nuanced understanding of its evolving relationship with international law—as one of ambivalence rather than outright rejection.²²⁰ This ambivalence is reflected, for example, in Beijing’s wariness toward the international human rights regime, its cautious approach toward legally binding agreements on contentious issues such as climate change and nuclear non-proliferation, and its unwillingness to employ international legal mechanisms to resolve territorial disputes in the South China Sea.

Whereas realists’ outright dismissal of international law in mediating China’s rise seems tendentious, this Article explains China’s equivocation toward international law by highlighting its missing Kantian pillar—a lack of liberal democracy at home. Kant himself observed that in securing citizens’ freedom, “domestic law, international law and cosmopolitan law are mutually dependent,” and therefore if any of these remained unjust, “the framework of all the others is unavoidably undermined and must finally collapse.”²²¹ Despite China’s deepening linkages to multilateral institutions and global commerce, this missing pillar—democratization—is needed for Beijing to strengthen its commitment to international law. Rather than reject out of hand the possibility of Beijing’s commitment to international law, as realists would have it, a more fruitful approach is to focus on the basis for China’s ambivalence toward international law—its lack of liberal democracy.

In fact, Kantian political philosophy suggests that China’s deepening commitment to international law could also provide a mechanism for greater democratization at home, implying a two-way causality between the domestic and international sphere. For example, some commentators suggest that China’s engagement with global institutions abroad may serve this function:

[O]ne might as well begin this effort of building a multilateral union of peace-prone states with an authoritarian China, hoping that the fruits of that policy enhance the likelihood of changed attitudes and policies . . . taken as a long-term imperative of peace whoever or whatever rules in Beijing [T]rade-oriented nations which can accept abiding by international norms can help

220. See generally STANLEY LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO* (2000) (noting that China’s basic ambivalence toward law makes the Chinese commitment to legality incomplete); PEERENBOOM, *supra* note 208, 10–12 (noting the Communist Party’s ambivalent attitude toward legal reforms and the rule of law); Jacques deLisle, *Atypical Pneumonia and Ambivalent Law and Politics: SARS and the Response to SARS in China*, 77 *TEMP. L. REV.* 193, 103 (2004) (arguing that China’s response to the “atypical pneumonia” epidemic that spread through southeast China in late 2002 “exposed a familiar and worrisome ambivalence in the PRC’s engagement with the outside world and its approach to legal and political change at home”).

221. Perreau-Saussine, *supra* note 21, at 5.

construct these plus/plus unities even before governments have become constitutional republics.²²²

Strengthening international legal linkages with China could thus offer one mechanism for promoting democratization on the mainland.

Ultimately, however, China's democratization will require internal reforms; it cannot be brought into the Kantian project through external force. Kant himself considered this to be a necessary precondition for establishing the "perpetual peace."²²³ As one contemporary scholar explains,

The perpetual peace will be attained by the progressive reformation of the institutions of all countries, until they attain a republican form of government. However, this progress should not be imposed by war, nor can a republican nation impose a liberal constitution by force. To do so would be against the idea of right, which should guide our striving towards a perpetual peace among nations.²²⁴

What, then, might catalyze such change in China? One potential source of influence could be a resurgence of reformist Confucianism that converges with Kantian liberalism. Chinese reformers have often looked to the past to envision a better future. Indeed, Confucianism "venerated the past and extolled its emulation."²²⁵ Throughout the twentieth century, numerous Confucian reformers advocated for democratic reforms and constitutionalism. Hence, "[a]lthough Chinese democrats have repeatedly failed to bring 'Mr. Democracy' to China, the fact that China has an indigenous liberal tradition is ground for guarded optimism."²²⁶ One strategy may be "to facilitate the revival of China's indigenous liberal tradition, partly by riding on Beijing's own efforts at spreading Confucianism."²²⁷

Following in this tradition, Confucian reformers today are seeking to fill a perceived "moral vacuum" that exists in contemporary China.²²⁸ Can this resurgent New Confucian influence catalyze a democratic transformation in China—the crucial missing Kantian pillar—and thereby lay the foundation for a constructive Chinese role in securing the Kantian peace? Classical Confucian thought, particularly as interpreted in the teachings of Mencius, con-

222. Edward Friedman, *Immanuel Kant's Relevance to an Enduring Asia-Pacific Peace*, in *WHAT IF CHINA DOESN'T DEMOCRATIZE? IMPLICATIONS FOR WAR AND PEACE* 224, 252 (Edward Friedman & Barrett L. McCormick eds., 2000).

223. KANT, *Toward Perpetual Peace*, *supra* note 2, at 109 (stating "No nation shall forcibly interfere with the constitution and government of another.").

224. Borges, *supra* note 4, at 89.

225. *Impacts of Piracy and Counterfeiting of American Goods and Intellectual Property in China: Hearing Before the Subcommittee on Trade, Tourism, and Economic Development*, 109th Cong. 39 (2006) (Statement of William P. Alford).

226. Hui, *supra* note 16, at 4.

227. *Id.* at 7.

228. Bell, *supra* note 101, at 20–23.

tains sources of resonance with Kantian liberalism, and could provide the philosophical basis for Chinese commitment to the notion of peace between democratic states. And recent trends in Chinese international relations scholarship reveal a growing interest in liberalism, reflected at least in official rhetoric regarding China's foreign policy ideology. Amidst the global rebalancing of power currently underway, Chinese thinkers are attempting to build the intellectual foundations for China's growing role in the world. This has, in turn, fueled efforts to identify indigenous sources that can provide an alternative to Western approaches. Some Chinese scholars suggest that, "Confucianism is perhaps the most effective cultural resource that can be used to substantiate this claim, and it is only natural that the Chinese government and analysts have uniformly exploited it in promoting a new benevolent pacifism."²²⁹

In the future, however, a key challenge in pursuing this syncretism between Confucian pacifism and Kantian liberalism may arise from the evolving role of sinocentrism. Classical Confucianism envisioned a world order in which the Middle Kingdom, by virtue of its superior moral authority, sat at the apex of international relations. Yet current official Chinese rhetoric on "harmonious inclusionism," despite its clear Confucian underpinnings, "is completely silent on China's own position in a 'harmonious world' other than that it would work with other countries according to a set of accommodationist and inclusionist principles in creating such a world [C]ontemporary PRC professes no sinocentrism of either the imperial or the revolutionary kind, but it is well worth asking whether a new sort of sinocentrism might emerge when China is in a more privileged structural condition."²³⁰ Were this attitude to reemerge, it would be inconsistent with the egalitarian Kantian vision of perpetual peace among states and could prove destabilizing for international relations. Thus, there is reason to be cautious about adopting a sanguine view.

While the potential for homegrown democracy exists, the onus to draw upon indigenous Confucian sources to advance the Kantian project rests with the Chinese people themselves. To draw a literary allusion, the writer John Steinbeck famously stated in his masterpiece, *East of Eden*:

But the Hebrew word, the word *timsbel*—'Thou mayest'—that gives a choice. It might be the most important word in the world. That says the way is open. That throws it right back on a man. For if 'Thou mayest'—it is also true that 'Thou mayest not.'²³¹

This concept of agency is central to the Kantian project. Kant did not envision peace as a *necessary* consequence of the preconditions he identified. In-

229. Zhang, *supra* note 149, at 12–13.

230. *Id.* at 13.

231. JOHN STEINBECK, *EAST OF EDEN* 303 (1952).

stead, he insisted that “the state of peace must be *established*,”²³² implying an act of will by each nation-state—one that requires sustained effort and sacrifice by any people who aspire to realize the perpetual peace.

232. KANT, *Toward Perpetual Peace*, *supra* note 2, at 111.