

# Japanese Neutrality in the Nineteenth Century: International Law and Transcultural Process

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What could be less relevant to world history than Japan's Proclamation of Neutrality during the Franco-Prussian War in 1870? Indeed, the event is typically absent from histories of Japan's modern diplomacy and international relations.<sup>1</sup> However, if we consider Japan's Proclamation of Neutrality in the context of the history of international law and its translation into East Asia in the nineteenth century, then Japan's Neutrality Proclamation becomes a significant set of events. In fact, as the first act of international diplomacy undertaken by the revolutionary Meiji government—the regime of 1868 that successfully westernized Japan within four decades—Japan's effort at neutrality in the Franco-Prussian War was a defining experience in Japan's international development. Because the European powers refused to recognize Japanese sovereignty in its territorial waters and its foreign relations, Japanese leaders of the new state came to realize the extent to which their participation in the international law of the Family of Nations enforced their submission to the western powers.

Fifteen years later, Japan's experience during the Sino-French dispute deepened its understanding of neutrality. The dispute, in which neither side ever formally declared war, nonetheless involved belligerent acts of war, such as the French blockade of Taiwan. The Japanese government was faced with a conundrum: to declare official neutrality or to follow the examples of Britain and the United States and remain friendly with both belligerents. The dispute produced much confusion, annoyed members of the international community, and provoked a number of proposals to reform the laws of war. International jurists started recommending the requirement of formal declarations of war on the part of belligerents and proclamations of neutrality on the part of neutrals.

This essay examines Japanese neutrality in the context of the history of neutrality during the nineteenth century. As an international and transcultural process, this history is marked, on the one hand, by changing ideas of international laws of war and the rights of neutrals among the

Western powers and, on the other hand, by three points at which Japan's international history intersected with these developments in the meaning and practice of neutrality: Japan's mistakes during the Franco-Prussian War; Japan's informal neutrality during the Sino-French conflict of 1884; and Japan's successful declaration of neutrality during the Spanish-American War in 1898. We begin with an examination of the concept of neutrality in Europe and in Chinese and Japanese translations of international law in the 1860s. We then turn to the connection between shifts in translation words and shifts in the practice of neutrality in the nineteenth century; that is to say, shifts in the practice and meaning of neutrality among the Family of Nations. For neutrality evolved during the nineteenth century, and Japan's own effort to enact neutrality was but one piece of that evolution.

### **1. Chinese and Japanese Translations of "Neutrality"**

Any discussion of the translation of a concept such as neutrality faces two problems of linguistic methodology at the outset. First, a concept must be located in the material of words, the meanings of which are determined by their context in some text or argument or discourse. To imagine concepts apart from their manifestation in words, or to ascribe to concepts some universal identity that can be traced through history, would be to commit an error of "semantic transparency." There is, for example, no universal and fixed idea of "neutrality." The meanings or ideas contained by the words "neutral" and "neutrality"—and their cognates in Latin, French, German, and so on—changed in the course of European history. As I recount below, the meaning of neutrality in nineteenth-century Europe vacillated between abstention from conflict and impartiality during conflict, before officially fixing on the latter at the 1907 Hague Peace Conference. Hence, we do well to remember that meaning is not transparent. A word's meaning in one text has a problematic relationship to prior and subsequent iterations or translations; and such a series of words must be questioned for the meaning they may hold. Rather than think about meaning in an ideal or "transparent" sense, apart from words, I urge us instead to locate meaning in the material context of words.<sup>2</sup> When we turn to the problem of translation words for neutrality in Chinese and Japanese, we face two trajectories of meaning that intersect with each other: European words and those represented by Chinese characters used in China and Japan. The problem of understanding the translation of neutrality becomes an effort to mark these intersections in developments of meaning. To complicate matters, as we will see, the translation of neutrality into Japanese is troubled by the presence of compound words and abbreviations.

But there is a second problem of methodology, one which has been central in the shift of translation studies from linguistics to semiotics and discourse analysis in the past three decades. To theorize about translation in this abstract manner is to imagine translation in the same way that a translator pursues his or her craft, as a mediation between two languages. Beginning with Roman Jakobson's work decades ago, linguists have repeatedly critiqued such a version of translation. The fact that words pass readily among languages demonstrates the porous boundaries of any given language. Accordingly, a language is not so much a thing as a pattern of behavior, and words are transcultural material, available to language users independent of such idealized unitary languages. Moreover, acts of translation are directed to target audiences at the level of performance or *parole*, which is not at all the focus of linguistics with its idealized languages or *langues*. So, in addition to the material context of words in texts, we should examine the social setting in which meaning is generated and discourse is constructed. For the meanings of concepts and words in translation are best understood in those historical settings that give rise to their efficacy.<sup>3</sup> Accordingly, this essay examines how neutrality and its translation words engaged those diplomatic institutions and international events in which neutrality was politically meaningful.

In the 1860s, at least two sources were available to Japanese leaders as they considered taking a neutral position in the Franco-Prussian War. One source came from China, the other from Japanese students of the Dutch, but both of these provided Chinese-character translation words. For those unfamiliar with the languages of East Asia, suffice it to say that throughout the nineteenth century educated Japanese were fluent in the written form of Chinese known as "literary Chinese"; in fact, Japanese culture incorporated literary Chinese or *kanbun* as a form of Japanese language. This situation facilitated the immediate introduction of Chinese texts to Japan. When W.A.P. Martin translated Henry Wheaton's *Elements of International Law* into literary Chinese in 1864, it was promptly reprinted in Japan, where, between 1868 and 1876, it underwent several syntactic transformations and accrued a number of commentaries to better domesticate the text.<sup>4</sup> Martin had undertaken his translation for the benefit of the Chinese imperial government, in his capacity as an official employed by the Tongwenguan or Language Institute. His Japanese commentators similarly sought to better inform the Japanese government as it pursued diplomacy with the western powers.<sup>5</sup>

Because Wheaton's work described international law on the basis of an empirical observation of existing practice, Martin believed that Wheaton

offered the Chinese an excellent introduction to international law. Martin consistently translated neutrality as *juwai*—read in Japanese as *kyokugai* (局外). This was a Chinese word most at home in poetry or belles-lettres, where it referred to one's remaining outside a situation or apart from some development. That is, the term emphasized the outsider status of the person in question.<sup>6</sup> As a translation word for neutrality, Martin used *juwai* to indicate the non-involvement of those third parties who were not belligerents to a conflict, and the term proved successful. Martin's translators at the Tongwenguan continued to use *juwai* to translate neutrality, as did others who translated international legal texts into Chinese during the following decades.<sup>7</sup> Martin's Japanese interpreters consistently followed his translation.

The second source for Japan's leaders as they considered a formal neutrality in the Franco-Prussian War came from the Japanese discipline of Dutch studies, which had developed in the eighteenth century and taken a dramatic turn in the 1860s, when a group of students were sent to Holland to study law, politics, and economics. One of them, Nishi Amane, produced a book that was based on lectures by Simon Vissering, which he had attended in Leiden between 1863 and 1865.<sup>8</sup> Published on the eve of the Meiji revolution in 1868, Nishi's book was called *Vissering's International Law (Fisuserinku-shi bankoku kōhō)*. Compared to Martin's translation of Wheaton, Nishi's vocabulary drew from an alternative set of Japanese translations for neutrality. These included, first, the verb expression *katayoranu* (倚ラヌ), the negative form of *katayoru*, which quite literally means to not take sides or to not be biased, and second, the translation word *chūritsu*, which is read in Chinese as *zhongli* (中立). *Zhongli*, or *chūritsu*, is an ancient Chinese word from the Confucian classic, *Doctrine of the Mean*, and refers to the noble leader standing firmly in the middle without inclining to either side. It refers not to the behavior of a state but to the attitude assumed by the noble individual in undertaking the work of government, as he centers his energy for action.<sup>9</sup> As a translation word for neutrality, *chūritsu* shares with *katayoranu* and the concept of neutrality the sense of avoiding bias or behaving impartially. In the 1860s, Dutch studies scholars combined *chūritsu* with *kyokugai* to produce the compound translation word *kyokugai chūritsu*, a practice that Nishi encouraged when he equated *chūritsu* and *kyokugai* as translations for neutrality. It is this compound word which appears in all of Japan's Proclamations of Neutrality during the nineteenth century, so we can be confident that both Martin's and Nishi's works served as points of reference for the Japanese government and its advisors in 1870 and thereafter.<sup>10</sup>

## 2. The Practice of Neutrality in the Nineteenth Century

As it happens, these two translation words for neutrality, *kyokugai* and *chūritsu*, correspond to the debate over the practice of neutrality as it developed within the international community in the nineteenth century. Like *kyokugai*, did neutrality mean abstention—that a neutral shunned all contact with belligerents? Or, like *chūritsu*, did it mean impartiality—that a neutral sided with none of the belligerents but treated them all in the same manner? It is curious that in using Wheaton as a point of departure, Chinese and Japanese readers had access to both understandings of neutrality. Nonetheless they were exposed to Wheaton's preference for impartiality, which he gleaned from the work of Emeric Vattel and which was typical of Anglo-American legal scholars in the nineteenth century.<sup>11</sup>

In his survey of meanings of the concept of neutrality, Ernest Nys observed that “non-participation” was a common understanding among the ancient cultures of Egypt, India, and Greece regarding matters of war. (Rome disallowed such a position—a third party was either with or against Rome.) In Europe during the middle-ages, particularly at the time of the Great Schism within the Catholic Church, the idea of neutrality began to develop as a position of rest or tranquility, of taking no side. Neutrality in religious matters, however, differed from neutrality in war on land. Because the feudal systems of the middle ages imposed obligations on vassal landholders, the most important of which was a right of free passage granted to one's superiors and sometimes the enemies of those superiors, collective recognition of neutral territory was slow to develop. It achieved a degree of acceptability only with the permanent neutrality of Malta and Switzerland in the wake of the Treaty of Vienna (1815). In the nineteenth century, belligerents came to have an interest in agreeing to the neutral status of certain states, for neutral territory assured an absence of enemy forces and thus helped define the battleground and belligerent strategies.<sup>12</sup>

Neutrality on the high seas during war, however, developed even more slowly. Unlike the perhaps straightforward task of neutralizing a bounded territory, the high seas involved the neutrality of persons, especially owners of ships and cargo. As several historians of law have remarked, neutrality did not exist at the start of the modern era in Europe, when mercantilism was a dominant economic form and the capture of ships was a legitimate economic practice. When two states were at war, a third party was either an ally or enemy; it could not rest neutrally. The gradual development of neutral status depended on bilateral treaties and the slow

development of customary practice, as the arrogance and privileges of belligerents were transformed into the rights of belligerents and neutrals. Nonetheless, the powers were committed to the belligerent customs of declaring contraband and exercising a right to board, search, and seize ships carrying contraband. The language of the day spoke not of neutrals but of friends and enemies; enemy ships and goods were always prone to capture, and those of friends were uncertainly free.<sup>13</sup> If, as Nys argues, some international strategists proposed a concept of neutrality as a state's and her subjects' immunity from war as early as the 1600s, it did not get a prominent hearing until Vattel's treatise on the law of nations in 1759.<sup>14</sup> Even so, the dominance of belligerent rights in nineteenth-century debates foreclosed the idea of neutrality as immunity from war, and emphasized instead the duties which neutrals owed belligerents.<sup>15</sup>

The terrible destruction wreaked by the Crimean War is often credited as a harbinger of change. The Declaration of Paris in 1856 began to protect the private property of neutrals at sea, while the Geneva Convention of 1864 began to protect the neutrality of medical and rescue personnel on land and sea. Rather than submit to the established custom of war, such that belligerents gave orders and intimidated neutrals into submission, reformers strove to make neutrality a position of principle. Beginning in the 1860s, in coordination with a belligerent's rights of war, international lawyers often represented neutrality as two related duties: (1) the duty of abstention, by which states insisted that its subjects or citizens not take part in a conflict nor offer any form of support to either of the belligerents, and (2) the duty of impartiality, by which states argued that a neutral state should make no restriction against one belligerent that it did not also impose against the other(s).<sup>16</sup> To be sure, these duties of neutrals corresponded to related rights; if a neutral asserted its right to prevent belligerent warships from visiting its ports, then the belligerent was bound by a corresponding duty to respect the neutral right.

But international respect for neutral rights was slow in coming. Like the 1856 Paris Declaration and the 1864 Geneva Convention, neutrality was usually a matter corollary to some other, arguably more pressing issue. In the nineteenth century, the context was most often declarations of war and the belligerent right to declare contraband. The failure of belligerents to declare war prior to the opening of hostilities created hardships for neutral merchants. When belligerents decreed one or another commodity contraband, then neutral shipping suffered directly from the rights of belligerents to seize contraband goods and the ships carrying them. In fact, one prominent call for reform—that a declaration of war must precede the

opening of hostilities—was made in 1885, following the peculiar situation produced by the Sino-French conflict of 1884, in which neither belligerent ever declared war but in which France decreed a blockade of Taiwan, designated rice as contraband, and in general, produced much confusion for Japan, Germany, the United States, and Britain as their ships traversed the China coast.<sup>17</sup> Indirect discussion of neutrality at the first Hague Peace Conference in 1899 produced no results. However, at the second Hague Conference in 1907, which followed the very problematic Russo-Japanese War, the international community settled on a number of neutral rights. Most relevant to our purposes in this essay, delegates to The Hague determined that neutrality as the duty of impartiality alone pertained to international law. As it was then articulated, any prohibition imposed by a neutral power against a belligerent must be impartially applied against all belligerents, in war on land and sea.<sup>18</sup> Abstention—the shunning of contact with belligerents—was not a duty in international law but a matter left to each state’s own national law.

The Japanese compound term for neutrality, *kyokugai chūritsu*, nicely captures these two understandings of neutrality. *Kyokugai*, or the non-involvement of the outsider, corresponds to the duty of abstention. A neutral does not take part in a conflict and does not offer aid to either belligerent. *Chūritsu*, by comparison, corresponds to the duty of impartiality: one stands in the middle and takes no side. It is clear that Japan’s experience of neutrality in the Franco-Prussian War was a struggle over not abstention but impartiality or *chūritsu*. Japan found itself so inextricably bound to both belligerents that abstention seemed an erroneous description of neutrality. Japan did not actively assist either France or Prussia, but its territory was used for military purposes against its will. In the same way that the international community decided in 1907 that abstention was a matter for each state to determine according to its municipal law, and that impartiality was the only duty of neutrality under international law, so too the Japanese came to emphasize neutrality as impartiality—the middle position of taking no side.

At the same time, the Franco-Prussian War of 1870 marks that moment at which the practice of neutrality among the western powers began to shift. Prior to 1870, the leading naval powers—Great Britain, France, the United States, and Spain—typically issued neutrality proclamations that prohibited their own respective subjects or citizens from becoming involved in a conflict that did not include the motherland. They focused on abstention. While, for example, the first such act in 1794 on the part of the United States was called a “neutrality proclamation,” the British

counterpart of 1819 was a “foreign enlistment” act; analogous to its American precedent, it prohibited British subjects from enlisting in foreign armies or navies or in giving aid to any belligerent in a conflict toward which Britain remained neutral.

But in the 1860s, practices began to change. This was largely a result of both the American civil war, which produced great acrimony between Britain and the United States over British subjects aiding the Confederate navy as it attacked United States shipping, and the War of the Triple Alliance (or Paraguayan War), in which Paraguay’s effort to expand to the sea was combated by Brazil, Argentina, and Uruguay.<sup>19</sup> In 1866, in response to the South American war, the Dutch issued a new style of neutrality proclamation, which shifted the primary target of prohibitions from Dutch subjects to foreign belligerents. The Dutch proclamation concerned the behavior of belligerent ships in Dutch harbors; it prescribed what they could and could not do and limited the stay of belligerent ships to twenty-four hours. Four years later, with the Franco-Prussian War, Spain, the United States, and Japan issued similar declarations of neutrality that asserted neutrality in this new manner, as a set of restrictions imposed impartially upon all belligerents. These declarations prohibited belligerents from a range of activities, which included engaging in hostilities in neutral territorial waters; arming, furnishing or equipping warships in neutral territory; requesting provisions or coal in neutral harbors more often than every ninety days; bringing prizes into neutral ports; pursuing an enemy’s ship from a neutral harbor until 24 hours had elapsed since the departure of the ship, and so on.<sup>20</sup> Such a practice of neutrality would expand in subsequent decades, especially with the Spanish-American War in 1898 and the Russo-Japanese War in 1904.

### **3. Japanese Neutrality in the Franco-Prussian War**

Japan’s 1870 Proclamation of Neutrality was prepared by Vice-Minister for Foreign Affairs Terajima Munenori and his superior, Foreign Minister Sawa Nobuyoshi. They reportedly consulted with the French consul in Tokyo, Maxime Outrey, and the Prussian (or North German Confederation) consul Maximilian von Brandt, as well as a third person, the Dutch-American missionary Guido Verbeck, who taught English at the government’s institute for western learning, the Kaiseijo. Verbeck was asked to advise Japanese officials on the language of the proclamation because he was familiar with Wheaton’s international law and well connected to certain government officials who had been his students, particularly Terajima’s



assistant Soejima Taneomi. (Japanese historians have also reported that Terajima was strongly motivated in reaction to European condescension. Not only had the western powers been indifferent to Japan's neutrality during the earlier Crimean War, but more immediately, von Brandt had told Terajima that his government would presume to treat Japan as a neutral during the current conflict with France.) In keeping with Western practice of international law, Terajima informed the Prussian and French consuls that Japan intended to assert its right to declare neutrality in the current conflict.<sup>21</sup> Japan's Proclamation of Neutrality was issued on 24 September 1870, two months after that of Spain and two weeks before that of the United States.<sup>22</sup>

A reading of the proclamation demonstrates that it is the equivalent of comparable neutrality acts by other powers. In its clarity of word and intent, it should have accomplished precisely what it was intended to do: to restrict the behavior of belligerents in Japanese territory. But two problems intervened. One was an oversight on the part of Japanese officials and the foreigners whom they consulted: Article 3 specified only that, when warships of both belligerents entered the same Japanese harbor, the one belligerent warship would not be allowed to depart until 24 hours after the other had departed. The article neglected to include merchant vessels, and France would soon take advantage of that omission. The second problem was a conundrum produced by the regime of extraterritoriality written into the system of unequal treaties that Japan had signed with the western powers. Article 4 prohibited foreign warships, which might be stationed in Japanese harbors for the purposes of protecting foreign residents in Japan, from undertaking belligerent actions in foreign wars. But because Japan had so recently suspended by treaty its jurisdiction over foreigners within Japanese territorial waters, Japan appeared to have no remedy for violations of Article 4.<sup>23</sup>

Both problems surfaced in October 1870, as a result of what became known as the *Linois* affair. This grew out of a longstanding arrangement between France and the previous Tokugawa government of Japan to allow France to station warships in Japanese harbors.<sup>24</sup> On 8 October, the French warship *Linois*, stationed at Yokohama, observed the German merchant ship *Rhein* depart. Since the 24-hour rule did not apply to merchant ships, the *Linois* sped off in pursuit of the *Rhein*, which, in order to forestall capture, anchored immediately down the coast at Kawasaki, still in Japanese waters. The *Linois* continued to harass German merchant ships, restricting them to Japanese harbors and, eventually, forcing an end to German trade with Japan.<sup>25</sup>

Prussian consul von Brandt protested to the Japanese Foreign Ministry, and urged the government to revise Articles 3 and 4 of the Neutrality Proclamation.<sup>26</sup> Sawa and Terajima agreed with the Prussian consul and prepared amended Articles which would, respectively, specify that merchant ships were not to be pursued until after a 24-hour interval and prohibit the use of Japanese harbors and inland waters for military purposes.<sup>27</sup> Unfortunately for Japan, not only did French consul Outrey protest the changes to the original neutrality proclamation, but so did British Envoy Harry Parkes on behalf of all of the treaty powers in Japan. Drawing on the principle of “common interest” informed by the most-favored-nation clause attached to each of Japan’s treaties with the western powers, Parkes and Outrey argued that Japan could not unilaterally amend its neutrality proclamation in consultation with only one of the treaty powers. Only a conference of *all* the treaty powers could provide a legitimate solution to the Prussian protest.<sup>28</sup> Such a meeting never materialized, although Terajima and his assistant Soejima met independently with Outrey and von Brandt later in October.<sup>29</sup>

During the first months of 1871, France persisted with impunity in harassing German ships in Japanese waters.<sup>30</sup> In March, Outrey made a final statement on Japanese wishes to revise their neutrality proclamation; he simply ruled out any change to such a proclamation, once it had been issued. As for Prussian complaints about the behavior of French warships, Outrey acknowledged that Prussia was free to do the same as France in Japanese waters. With great pretension, he praised the Japanese government for its scrupulous respect for international law and its rigorous impartiality shown to both belligerents during the conflict.<sup>31</sup> Thus, no solution was achieved during the war, and only when Prussia became generous after its victory over France did it forgive Japan’s inability to force France to obey Japanese neutrality regulations. In November 1871, Prussia dropped its claim against Japan for damages resulting from the lost trade in Japan.<sup>32</sup>

Japan’s problematic neutrality in 1870 had a number of consequences. Most immediately, Japanese leaders realized the gravity of their position under the unequal treaties and the need to revise them as soon as possible. A precipitous attempt was undertaken by the Iwakura Mission to the United States and Europe, which departed in December 1871 and brought up treaty revision at its first stop, Washington, D.C. Unfortunately, as the United States Secretary of State pointed out, none of the Japanese diplomats had the credentials to negotiate new treaties.<sup>33</sup> The slow work of treaty revision would occupy Japanese diplomacy for the next twenty-some years.

Initially, however, the Japanese government blamed France for the problems of 1870 and 1871. Takahashi Sakue, one of Japan's leading international lawyers who subsequently served as legal advisor to the Japanese navy during the Sino-Japanese and Russo-Japanese Wars, argued that France had been at fault in every respect during the Franco-Prussian War. Takahashi judged that, given the widespread acceptance among civilized nations of the 24-hour rule, French behavior was simply cynical; and given the clarity of Japan's original neutrality proclamation, France had brazenly violated Japan's prohibition on turning vessels for the protection of French nationals into belligerents acting against German vessels. By any standard of international law, when French vessels were transformed into belligerent warships, they should have then been bound by the 24-hour rule that applied to belligerent warships.<sup>34</sup>

From this experience, Japan learned that rights of neutrality depended on the military power to force belligerents to acknowledge a neutral's rights. As neutrality came to mean impartiality, a position that granted an active role to both belligerent and neutral, the Japanese realized that the only way to maintain one's neutrality was to be ready and able to force others to maintain their own respective duties.

#### **4. Neutrality on Hold: The Sino-French Dispute of 1884-85**

Accordingly, the Japanese government was determined to revise its neutrality proclamation in accord with the precedents of the great powers. As tension grew between China and France in 1883 and 1884, Japanese international lawyers studied examples of neutrality proclamations and prepared a revised law for Japan. According to Takahashi Sakue, an added incentive was the French presumption that, in the event of war, Japan would abide by its 1870 neutrality proclamation. Working with their American advisors in the Foreign Ministry and the Austrian jurist Lorenz von Stein (an advisor to Japan's plans for a constitution), Japanese officials produced a new Proclamation of Neutrality on September 2, 1884.<sup>35</sup> Primary among these advisors was Henry Denison, whom the Foreign Ministry had employed to assist with Japan's treaty revisions. It is possible that Gustave Boissonade was also consulted; although his primary responsibility was the preparation of a revised civil code of law for Japan, he had provided legal advice during Japan's 1874 invasion of Taiwan.<sup>36</sup>

France had been expanding into Vietnam during the third quarter of the nineteenth century, giving China cause for anxiety, and went so far as to occupy Hanoi in April 1882. In a manner resembling Japanese action in Korea, France had insisted to China that Vietnam was an independent and sovereign state, free to become France's protectorate if she so wished. Several rounds of negotiations, beginning in late 1882, came to naught, so France increased the pressure on China by sending French troops to the Chinese-Vietnamese border in March 1883. French and Chinese troops clashed there in June and, in August, the French navy bombarded key ports in Taiwan and attacked the southern treaty port of Fuzhou. Negotiations continued in spite of these military actions, which created a truly anomalous situation, much to the displeasure of the states most involved in trade with China: Britain, the United States, Germany, and Japan.<sup>37</sup>

But neither China nor France officially declared war; both preferred to rely on the forbearance of would-be neutrals. France did not want an official war to close British or Japanese ports on the grounds of official neutrality; Hong Kong and Nagasaki were key coaling stations for French ships. Likewise, China hoped that the presence of the other powers along her coast and in her ports would help to mitigate French aggression. Although the United States immediately offered its good offices to undertake mediation between China and France, the French refused any involvement of a third party.<sup>38</sup> The situation dragged on through autumn and, by 1885, France was fighting an undeclared war by virtue of two actions: France first declared a pacific blockade of Taiwan in October 1884 and then, in order to increase pressure on Beijing, declared rice contraband in February 1885. These actions led the western powers and Japan to confer about whether or not to declare neutrality and, if not, how best to manage the awkward situation along China's coast.

Both China and France had already provoked Japan in August and September 1884 respectively. The Chinese government made three requests of Japan: to cease coaling French ships in its harbors, to stop transmitting French dispatches by undersea cable, and to prohibit the sale of horses destined for the French army. Since China had not declared war, Japan refused these requests, as did the other powers, which also declined to assist China in such a manner.<sup>39</sup> France, however, went further by suggesting to the Japanese government that coal might be considered contraband, in order to keep Japanese coal supplies from the Chinese fleet. An exchange of visits and diplomatic notes between French Ambassador to Japan, Joseph-Adam Sienkiewicz, and Foreign Minister Inoue Kaoru,

eventually clarified that coal would not be declared contraband, in keeping with France's longstanding commitment to coal as a free good, but Sienkiewicz did raise the prospect of fuel oil as contraband. Although neither article was declared contraband, the Japanese were peeved that France was meddling with Japanese trade and interfering with the otherwise good relations between France and Japan. As the Japanese noted, the best way to protect their trade would be a formal declaration of neutrality, but like Britain and the United States, they were hesitant to issue a formal declaration because neither France nor China had formally declared war.<sup>40</sup>

In the months that followed, Japan's official policy was to cooperate in solidarity with the British, United States, and German governments.<sup>41</sup> When France declared a pacific blockade of Taiwan in October 1884, the British government insisted that, categorically, a blockade is an act of war. Although the French disputed that judgment, they assured the British Foreign Office that France would not assume her belligerent right to search and seize goods on British ships. But the British government retaliated: it formally announced that it considered that France and China were in a state of war and it invoked the Foreign Enlistment Act of 1870, which prohibited French ships from coaling or making repairs in British ports. The French were particularly annoyed that they were denied access to Singapore and Hong Kong. But Britain still made no formal declaration of neutrality, as neither France nor China had yet declared war, and Britain could keep in reserve the additional threat of more stringent rights of neutrality that could follow from a formal declaration of neutrality. Although Japan agreed with the British judgment that a blockade is an act of war, Japan, like Britain, made no formal declaration of neutrality but, unlike Britain, chose to remain on good terms with both France and China by refusing neither access to Nagasaki's harbor.<sup>42</sup>

In February 1885, France declared rice contraband, intending to increase the pressure on China by preventing rice tribute from reaching the court in Beijing and thereby denying provisions to the north. This action provoked an outcry of protest among European states; Denmark, for example, condemned the action as a violation of Danish treaties with France. Even the French Navy was confused, asking how they could stop transports of rice if they had not yet declared war.<sup>43</sup> In the next weeks, a cordial row ensued between British Foreign Secretary Lord Granville and French Ambassador Waddington, as each invoked what his government felt were the principles of international law. The British eventually agreed with France that a belligerent had the right to declare as contraband

whatsoever it chose, and that the judgment regarding the appropriateness of an article as contraband was left to that belligerent's Prize Court. But the problem remained: this was an undeclared war, even if the British government had already acknowledged a state of war. As public pressure grew in London and as the French assumed a more belligerent tone, the British government at last warned France that any attempt to seize rice from a British ship would be considered a violation of the 1856 Declaration of Paris and would be countered by force.<sup>44</sup> The warning apparently served its purpose, for no apprehensions of British carriage were reported.

The ambiguities surrounding this undeclared war were never truly settled. On behalf of the international legal community, German jurist Heinrich Geffcken roundly condemned French actions. The French had created a "bizarre" state of affairs alien to international law and more reminiscent of older practices. Geffcken charged that France's putative blockade of Taiwan resembled a reprisal of earlier centuries, and that her assertion of the belligerent right to declare contraband resembled the eighteenth-century pretensions of Britain, all in the absence of a declaration of war. Worse, the abnormality of the situation was augmented by the peculiar assertion of a limited set of neutral rights on the part of states such as Britain that refused to declare themselves formally neutral.<sup>45</sup> Takahashi Sakue drew more pointed conclusions: since a declaration of war is not necessary for war, French actions against China constituted a *de facto* state of war, and third parties were accordingly obliged to declare and maintain their neutrality. Takahashi consequently disapproved of the informal agreements reached between France and Britain during the conflict: that the conflict could be construed as a simple problem confined to the navies of France and China. France's action was untenable, but so was the position taken by third parties. Although a formal declaration of neutrality, like a declaration of war, was not mandatory, Takahashi maintained that neutral parties could not stand by simply as observers but were obliged, in the face of a *de facto* war, to maintain strict neutrality. He thus encouraged the international community to take up these questions at a future convention.<sup>46</sup>

Nonetheless, the behavior of Britain and France in this Sino-French dispute taught the Japanese a valuable lesson: a state might manipulate international law to its own advantage. Whatever the judgment as to "who won the war," and China's proud claims of victory continue to be supported by recent scholarship—France had managed, by not declaring war, to both maintain a gentleman's agreement with Britain for peaceful relations and pressure Chinese shippers to cease transports of rice, a

measure that reportedly raised rice prices in northern ports near Beijing and encouraged the Chinese court to negotiate.<sup>47</sup> Through all this, Japan continued to treat both France and China impartially, as a friend to both. But behind the scenes, Japan took advantage of China's distraction in order to expand Japanese influence into Korea. Several foreign diplomats in China noted that the Chinese were increasingly willing to settle matters with France in order to devote their full attention to Japan and Japanese activity in Korea.<sup>48</sup>

## 5. Official Neutrality in 1898

The Sino-French conflict remained distressing to many in the international community, for the reasons outlined by Geffcken and Takahashi. Reforms regarding declarations of war and the laws of contraband were presented for discussion at the *Institut de droit international* and would inform actions taken at the Hague Peace Conferences in 1899 and 1907. More germane to this essay, however, is the fact that because the Sino-French conflict never became an official war, Japan's revised neutrality proclamation was not promulgated until the Spanish-American War in 1898. Recall from above the way in which neutrality developed in the nineteenth century: the international community interpreted neutrality as abstention and impartiality but, in 1907, determined that international law made a rule of impartiality only; abstention was left to national laws. Japan's revised neutrality proclamation, prepared in 1884 but not issued until 1898, seems to have settled with the majority on neutrality as impartiality. Or did it? Both the terminology and the practice of neutrality demonstrate a marked variability in the late nineteenth century, for these were transcultural phenomena under processes of construction.

Let us look at terminology first. In the 1884 and 1898 iterations of Japan's neutrality proclamation *kyokugai chūritsu* continued to serve as the translation word for neutrality. But by way of abbreviation, references to a "neutral power" dropped *kyokugai* from the compound term and expressed the term simply as *chūritsukoku* (中立国). Does this mean that *chūritsu* alone became a sufficient translation for neutrality? One might draw such a conclusion, since in the Japanese language today, *chūritsu* is the term for neutrality, while a *kyokugaisha* (局外者) is an outsider. But why then did the Japanese government persist in expressing neutrality as the compound term, *kyokugai chūritsu*? An explanation lies in its non-Japanese referent. While the Japanese term for formal neutrality remained constant, the official translations of Japan's neutrality proclamation

changed. In 1870, the official English and French versions rendered *kyokugai chūritsu* as “strict neutrality.” However, in 1884, the same term was translated as “strict and impartial neutrality.” In 1898, it was again “strict neutrality.”<sup>49</sup> The Japanese wording remained the same, while its French and English translations changed.

It turns out that these language differences are not significant. Or, to put the point more exactly, these terminological differences are variations in *parole*, speech performances directed at target audiences. A survey of neutrality proclamations in roughly the last third of the nineteenth century reveals a similar variation among those of other states. Consider the following list:

- “attitude . . . of strict neutrality” (Venezuela, 1898)
- “conserver la neutralité” (Haiti, 1854)
- “de maintenir une stricte neutralité” (France, 1861)
- “maintain the strictest neutrality” (Netherlands, 1877)
- “maintain full and strict neutrality” (Greece, 1898)
- “d’observer une stricte neutralité” (France, 1877, 1911)
- “d’observer scrupuleusement les devoirs de la neutralité” (Italy, 1870)
- “scrupulously observe the duties of neutrality” (Italy, 1877)
- “observe a strict neutrality” (France, 1898)
- “observe the most strict neutrality” (Haiti, 1898; Spain, 1877)
- “observe the most strict and absolute neutrality” (Portugal, 1866)
- “observe the strictest neutrality” (Netherlands, 1898, 1904, 1911)
- “the preservation of perfect neutrality” (Netherlands, 1866)
- “preserving the strictest neutrality” (Venezuela, 1917)
- “remain neutral” (Peru, 1870)<sup>50</sup>

From these examples we first observe that, in general, few countries issued declarations of neutrality that made a point of declaring neutrality *per se*. An equally common alternative was simply to issue regulations governing the behavior of subjects or belligerents during war. One variation of this alternative was the practice of Sweden, whose neutrality law demanded “the strict observance” of Royal ordinances concerning trade and navigation during war (1866, 1894). Venezuela did likewise in 1898, but many countries simply proclaimed laws that undertook to regulate behavior during war.<sup>51</sup>

Second, none of these countries is consistent with either the issuance of a neutrality proclamation or its phrasing. A state may issue a neutrality proclamation during one war but not the next; proximity to the theatre of



war was surely a factor in a government's decision whether or not to declare formal neutrality. Moreover, any given state's representation of neutrality is quite variable. "Strict" is the most common attribute of neutrality, but in practice, how does "strictest" or "full" or "perfect" or "absolute" compare to strict neutrality? These words qualify the announcement of a government's intentions to rest neutral, but they have no direct bearing on the content of neutrality regulations, which are generally identical. Perhaps the most unusual phrasing of neutrality was that of the United States neutrality proclamation in 1870, which demanded "the duty of an impartial neutrality" during the Franco-Prussian War and provided a set of laws that include both those respecting the abstention of United States citizens from the war and those impartially restricting the behavior of all belligerents in United States territory. It seems that in this United States case, "impartial" could encompass both abstention and impartiality.<sup>52</sup>

If we compare for a moment the development of translation words for neutrality in China, which had provided the sources for Japanese translation words, we see a similar indeterminacy of terminology. As noted above, the Chinese translators of international law who worked with W.A.P. Martin at the Tongwenguan in Beijing continued to use *juwai* (or *kyokugai* in Japanese) for neutrality. But in the late 1880s, a rival translator at a rival institution—John Fryer at the Jiangnan Arsenal in Shanghai—introduced terminology much more like that of the Japanese. Instead of *juwai* alone, Fryer started using the Japanese compound term, *juwai zhongli* (or *kyokugai chūritsu*), as well as its two components. It is not clear whether Fryer was specifically influenced by Japanese translations in his choice of Chinese translation words for neutrality, but Rune Svarverud has concluded that, apart from Fryer's use of the compound term, both *juwai* and *zhongli* served Fryer as "technical" translations for neutrality, and both appear as "stylistic variations" in Fryer's translations.<sup>53</sup> In spite of this variability, Chinese choices of translation terminology changed absolutely in 1902 because of Japanese preferences. In that year, three legal texts translated into Chinese from the Japanese produced a new standard for Chinese translation work based on Japanese precedents. Thenceforth, *juwai zhongli* was the translation word for neutrality, which could be shortened to *zhongli* alone.<sup>54</sup> Japan's successful westernization had become a model for a new generation of Chinese activists, whose borrowing of Japanese terms produced new norms for China in the first decade of the twentieth century.

In addition to these variations in the terminology of neutrality, the practice of announcing neutrality was equally unsettled. The large collection of neutrality statements issued at the start of the Spanish-American War in 1898 displays a wide range of possibilities.<sup>55</sup> Roughly half of the countries assured the United States of its neutrality during the conflict; four of these—Ecuador, Guatemala, Paraguay, and Peru—added that they were doing so in light of their responsibilities under international law. The other half issued formal declarations of neutrality accompanied by sets of laws. Of this half, only one country, China, issued laws that pertained to the behavior of belligerents alone. In this regard, China's first formal declaration of neutrality mimicked that of Japan in 1870. Likewise, only one country, Liberia, issued laws that pertained to Liberian citizens alone and demanded that they abstain from all interaction with belligerents. Mexico and Rumania declared their neutrality and added simple injunctions to their respective citizens to rest neutral and not to involve themselves in the war. The Dominican Republic was unique in issuing a lengthy statement that exhorted the belligerents to respect its freedom of commerce, since the Dominican Republic depended on United States shipments of grain, and encouraged its citizens to be productive so that there would be sufficient food in the country for the duration of the war. Two countries—Belgium and Russia—emphasized that their neutrality rested on the 1856 Declaration of Paris, which guaranteed the freedom of neutral goods, eliminated privateers, and specified conditions for a blockade.

The majority of the latter half of countries issued neutrality declarations such as those described earlier, a set of laws that commanded their neutral subjects to abstain from participation in the war, and a set of laws that restricted the behavior of belligerents in neutral ports and territory. Japan was among this most thorough and progressive group, alongside some European states (Denmark, France, Great Britain, Italy, the Netherlands, and Portugal) and some from the Americas (Brazil, Haiti, and Venezuela). By 1898, these general trends in the practice of neutrality arguably demonstrate a growing European and American acceptance of international law, which was also making inroads into Asia. In addition to Japanese and Chinese declarations of neutrality, Thailand and the Ottoman Empire also gave assurances of neutrality during the conflict.

A perhaps more profound indication of the transcultural development of international law in 1898 is the small group of states who noted the authority upon which their neutrality was grounded. In addition to the Belgian and Russian reiterations of the 1856 Declaration of Paris, a handful of states

made specific reference to international law as the ground of neutrality: China, Haiti, Italy, Japan, and Russia. In addition, both Great Britain and Haiti noted that their position of neutrality arose from respective treaties with the United States, which bound them to specific policies of neutrality in the event that the United States was a belligerent in a war. Three states, however, were especially astute in making clear that a declaration of neutrality followed from both international law and domestic law: Britain, Italy, and Japan. If the customs and agreements of international law gave a state its international responsibilities of neutrality, these three states also noted that their laws restricting both subjects and belligerents followed from a duly constituted domestic authority. The law of the land governs not only domestic subjects and citizens of foreign powers but also belligerents within its territory. As the Japanese had learned in 1870, the point of neutrality encompasses both the prohibitions on the behavior of subjects and belligerents, and the power to enforce those prohibitions. Japan was well on its way to achieving the neutrality that it had originally sought in 1870.

## 6. Conclusions

Japan was not alone in working out a position of neutrality in the nineteenth century. This essay has sought to demonstrate that even as the concept and practice of neutrality were introduced to Japan in the 1860s, the meaning and practice of neutrality among the Family of Nations in Europe and the Americas remained unsettled. Japan accordingly took its cues from its fellows in the international community. As neutrality evolved, states placed restrictions on their own subjects and the belligerents of a war; at the same time, the power to enforce those restrictions was given greater heed. But cultural variation in practice was the rule, and only with the 1907 Hague convention did the international community agree on a common concept and practice of neutrality.

What does this tell us about international law and the attempt to reform the laws of war as a transcultural process? One great source of uncertainty is the habit that Coleman Phillipson once noted: that a provisional action in war provides a precedent that will subsequently become understood as custom and thereby a principle of international law.<sup>56</sup> Neutrality, by comparison, was a concept recognized as necessary by the family of nations in the nineteenth century, and hence its history is cause for optimism. A majority of the powers supported and adopted progressive developments with neutrality and were willing, at the 1907 Hague Peace Conference, to

agree to several new international rules that would henceforth govern the relations between belligerents and neutrals in war. Such willingness on the part of the international community to compromise is remarkable, even if, within a decade, other matters on which compromise proved impossible gave rise to disputes that would tear the Family of Nations apart.

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- 1 Exceptions include Hanabusa Nagamichi, *Nihon gaikō shi* (Tokyo: Shibundo, 1960), 17-18; and Richard Sims, *French Policy Towards the Bakufu and Meiji Japan*, 1854-95 (Richmond: Japan Library, 1998), 111-113.
  - 2 Douglas Howland, *Translating the West: Language and Political Reason in Nineteenth-Century Japan* (Honolulu: University of Hawai'i Press, 2002), 5-6, 18-25.
  - 3 Roman Jakobson, “On Linguistic Aspects of Translation,” in *On Translation*, ed. Reuben Brower (Cambridge: Harvard University Press, 1959), 232-39; and Douglas Howland, *Personal Liberty and Public Good: The Introduction of John Stuart Mill to Japan and China* (Toronto: University of Toronto Press, 2005), 19-25.
  - 4 See Henry Wheaton, *Wanguo gongfa*, trans. W.A.P. Martin, reprinted as *Bankoku kōhō* (Edo: Kaiseijo, 1865); Tsutsumi Koshiji, *Bankoku kōhō yakugi* (n.p., 1868); Shigeno Yasutsugu, *Wayaku bankoku kōhō* (Kagoshima: n.p., 1870); and Nakamura Masanao and Takaya Tatsukuni, *Bankoku kōhō reikan* (Tokyo: n.p., 1876). On Martin's translation, see Rune Svarverud, *International Law as World Order in Late Imperial China: Translation, Reception, and Discourse, 1847-1911* (Leiden: Brill, 2007), 87-112 passim; and Wang Jian, *Goutong liangge shijie de falü yiyi* (Beijing: Zhongguo Zhengfa daxue chubanshe, 2001), 138-86 passim.
  - 5 W.A.P. Martin translated Wheaton's so-called sixth edition of 1855, annotated by W.B. Lawrence. But this and subsequent editions reproduced the final edition that Wheaton completed in his lifetime, the third edition of 1846. See Richard Dana's “Preface” to Henry Wheaton, *Elements of International Law*, 8th. ed., ed. Richard Dana ([1866] repr. Oxford: Clarendon, 1936), v-ix.
  - 6 See Morohashi Tetsuji, *Dai kanwa jiten* (Tokyo: Taishū kan, 1970), vol. 4: 136. In addition to terminology related to neutrality, Morohashi includes an interesting example from the Chinese vernacular novel *Hongloumeng: juwairan* (or *kyokugaijin*), a “third party.”
  - 7 Martin and his assistants used *juwai* to translate neutrality in their translations of Theodore Woolsey, *Gongfa bianlan* (Beijing: Tongwenguan, 1877) and Johann Kaspar Bluntschli, *Gongfa huitong* (Beijing: Tongwenguan, 1880). Also see Justice Doolittle, *A Vocabulary and Handbook of the Chinese Language Romanized in the Mandarin Dialect* (Fochow: Rozario, Marcal, & Co, 1872), vol. 2: 200.

- 8 Vissering (1818-1888) was primarily a political economist, author of a major handbook on practical economics, and Dutch Minister of Finance from 1879 to 1881; see Irene Hasenberg Butter, *Academic Economics in Holland, 1800-1870* (The Hague: Nijhoff, 1969), 50-57 passim, 122-26; Watanabe Yōgorō, *Shimon Fisseringu kenkyū* (Tokyo: Bunka shōbō hakubunsha, 1985). Watanabe includes a biography and an extensive bibliography of Vissering's writings.
- 9 See the *Chung yung*, trans. James Legge, *The Chinese Classics* (1935, repr. Taipei: SMC, 1991), vol. 1: 390; or *Sishu jizhu*, ann. Zhu Xi (Taipei: Xuehai chubanshe, 1979), 6.
- 10 Nishi Amane, *Fisuserinku-shi bankoku kōhō*, in *Nishi Amane zenshū*, ed. Ōkubo Toshiaki (Tokyo: Munetaka, 1962), vol. 2: 3-102. See also Satō Tōru, *Bakumatsu-Meiji shoki goi no kenkyū* (Tokyo: Ōfūsha, 1986), 165, 357-58; Ichimata Masao, *Nihon no kokusaihōgaku to kizuita hitobito* (Tokyo: Nihon kokusai mondai kenkyūjo, 1973), 7, 21; Taoka Ryōichi, "Nishi Shūsei *Bankoku kōhō*," *Kokusaihō gaikō zasshi* 71 (5/1972): 1-57 (esp. pp. 20-21); the important early dictionaries of Hori Tatsunosuke, *A Pocket Dictionary of the English and Japanese Language* (Edo: n.p., 1862), 530; James C. Hepburn, *A Japanese and English Dictionary with an English and Japanese Index* (Shanghai: n.p., 1867), "Appendix," 69; Inoue Tetsujirō, *Tetsugaku jii* (Tokyo: Tokyo daigaku sangakubu, 1881), 58.
- 11 See Wheaton, *Elements of International Law*, 8th. ed., 433 (§423) and 446 (§435).
- 12 Ernest Nys, "Notes sur la neutralité," *Revue de droit international et de législation comparée*, ser. II, vol. 2 (1900): 470-77, 479-87, 585-87. See also M. Morand, "Les origines de la neutralité perpétuelle," *Revue générale de droit international public* 1 (1894): 522-37.
- 13 See Thorvald Boye, "Quelques aspects du développement des règles de la neutralité," *Recueil des cours* 64 (1938, part 2): 157-231; Philip C. Jessup and Francis Deák, *Neutrality: Its History, Economics, and Law*, vol. 1, *The Origins* (New York: Columbia University Press, 1935), xi-xiv, 3-19; and John Macdonell, "Some Notes on Neutrality," *Journal of the Society of Comparative Legislation*, NS 1.1 (1899): 62-69.
- 14 Nys, "Notes sur la neutralité," 477-79, 585, 496-97; Philip C. Jessup and Francis Deák, "The Early Development of the Law of Neutral Rights," *Political Science Quarterly* 46.4 (1931): 481-508; and Emer de Vattel, *The Law of Nations*, ed. B. Kapossy and R. Whitmore (Indianapolis: Liberty Fund, 2008), 523-41.
- 15 See, for example, Henri de Kusserow, "Les devoirs d'un gouvernement neutre," *Revue de droit international et de législation comparée* 6 (1874): 59-88.
- 16 See Charles G. Fenwick, *The Neutrality Laws of the United States* (Washington, D.C.: Carnegie Endowment for International Peace, 1911), 1-14; Louis Féraud-Giraud, "De la neutralité," *Revue générale de droit international public* 2 (1895): 291-96; William Edward Hall, *A Treatise on International Law*, 8th ed. (Oxford: Clarendon Press, 1924), 92-102.
- 17 Louis Féraud-Giraud, "Des hostilités sans déclaration de guerre," *Revue de droit international et de législation comparée*, 17 (1885): 19-49; Rikard Kleen, "Le droit de la contrebande de guerre," *Revue de droit international et de législation comparée*, 25 (1893): 124-60.
- 18 See James Brown Scott, *The Hague Conventions and Declarations of 1899 and 1907*, 3d. ed. (New York: Oxford University Press, 1918), 134, 211; and A. Pearce Higgins, *The Hague Peace Conferences and other International Conferences Concerning the Laws and Usages of War* (Cambridge: Cambridge University Press, 1909), 457-83.
- 19 I thank my colleague Aims McGuinness for his help in identifying the war in South America.
- 20 Francis Deák and Philip C. Jessup, *A Collection of Neutrality Laws, Regulations, and Treaties of Various Countries* (Washington: Carnegie Endowment for International Peace, 1939), 736-37, 794-96, 934-35, 1189-1194; Fenwick, *The Neutrality Laws of the United States*, 23-28, 48-51; and *Neutralitätserlasse: 1854 bis 1904* (Berlin: Mittler, 1904). A quasi-precident for the Dutch action in 1866 was a prohibition in 1854, at the start of the Crimean War, against privateers or warships of any flag entering neutral harbors; states issuing such a decree included Brazil, Portugal, and the Netherlands. See Deák and Jessup, *idem.*, 97-98, 812-813, 902-903.; and *Neutralitätserlasse*, 216-217.

- 21 See Takahashi Sakue, "La neutralité du Japon pendant la guerre franco-allemande," *Revue de droit international et de législation comparée* 33 (1901): 255-268; Takahashi Sakue, "Historical Account of the Neutrality of Japan Since 1870," *Kokusaihō zasshi* 1 (1902), no. 2: 1-5, no. 4: 1-5, and no. 10: 1-6; Osatake Takeshi, "Fu-Futsu sensō to Nihon," *Rekishi chiri* 25 (1915): 107-116; and Sims, *French Policy*, 13, 16, 111-112. On Verbeck, see William Elliot Griffis, *Verbeck of Japan* (New York: Revell, 1900), 52-53, 125, 188, 225, 234-35; Hazel J. Jones, *Live Machines: Hired Foreigners and Meiji Japan* (Vancouver: University of British Columbia Press, 1980), 94-98; Umetani Noboru, *The Role of Foreign Employees in the Meiji Era in Japan* (Tokyo: Institute of Developing Economies, 1971), 30-34.
- 22 Japan's "Proclamation of Neutrality" and its official French and English versions are printed in *Nihon gaikō monjo*, ed. Gaimushō (Tokyo: Gaimushō, 1955), vol. 6 [1870]: 32-37. Hereafter *NGM*. A German translation is printed in *Neutralitätsverlesse*, 243-44.
- 23 See Douglas Howland, "The Foreign and the Sovereign: Extraterritoriality in East Asia," in *The State of Sovereignty: Territories, Laws, Populations*, ed. Douglas Howland and Luise White (Bloomington: Indiana University Press, 2009), 35-55.
- 24 On the background of French troops in Japan, see Hora Tomio, "Bakumatsu-Ishin ni okeru Ei-Futsu guntai no Yokohama chūton," in *Meiji seiken no kakuritsu katei*, ed. Meiji shiryō kenkyū renkakukai (Tokyo: Ochanomizu shobō, 1967), 166-269; Meron Medzini, *French Policy in Japan during the Closing Years of the Tokugawa Regime* (Cambridge: East Asia Research Center, Harvard University, 1971); and Sims, *French Policy*, 94-96.
- 25 Osatake, "Fu-Futsu sensō to Nihon," 114; Takahashi, "La neutralité du Japon pendant la guerre franco-allemande," 261-63; and Takahashi, "Historical Account of the Neutrality of Japan Since 1870," 1, no. 4: 1-5.
- 26 Von Brandt to Sawa and Terajima, 11 October 1870, in *NGM*, 6: 37-40.
- 27 The revised articles are reprinted in *NGM*, 6: 40; for an English translation, see Deák and Jessup, *A Collection of Neutrality Laws, Regulations, and Treaties of Various Countries*, 737.
- 28 Parkes to Sawa and Terajima, 14 October 1870, in *NGM*, 6: 44-46; and Sims, *French Policy*, 112.
- 29 Summaries of the meetings with Outrey and von Brandt on 24 October 1870 are printed in *NGM*, 6: 48-57. These include surprising discussions of the independence of mail steamers and care for the sick.
- 30 See the series of letters from von Brandt to the Japanese Foreign Ministry, in *NGM*, 6 [1870]: 60-66, and 7 [1871]: 393-97.
- 31 Outrey to Sawa and Terajima, 5 March 1871, in *NGM*, 7: 397-405.
- 32 Arnim to the Japanese Minister in Paris, 13 November 1871, in *NGM*, 7: 432-33.
- 33 Marlene J. Mayo, "A Catechism of Western Diplomacy: The Japanese and Hamilton Fish, 1872," *Journal of Asian Studies* 26.3 (1967): 389-410; John Peter Stern, *The Japanese Interpretation of the 'Law of Nations,' 1854-1874* (Princeton: Princeton University Press, 1979), 84-87.
- 34 Takahashi, "La neutralité du Japon pendant la guerre franco-allemande," 264-68.
- 35 Takahashi Sakue, "Hostilités entre la France et la Chine en 1884-1885 et étude des lois de neutralité au Japon pendant ces hostilités," *Revue de droit international et de législation comparée* 33 (1901): 489-506, 631-654.
- 36 Denison served in Japan from 1880 to 1914. See Imai Shōji, *Oyatōi gaikokujin*, vol. 12, *Gaikō* (Tokyo: Kajima shuppankai, 1975), 159-202; Jones, *Live Machines*, 98-103; Ōno Katsumi, "Meiji gaikō to Denison komon kenshin," *Bungei shunjū* (11/1966): 180-89; Umetani, *Role of Foreign Employees*, 45-48. Boissonade served the Justice Ministry from 1873 to 1895. See Jean-Pierre Lehmann, "Native Custom and Legal Codification: Boissonade's Introduction of Western Law to Japan," *Proceedings of the British Association for Japanese Studies* 4.1 (1979): 33-72; Ōkubo Yasuo, *Bowasonaado* (Tokyo: Iwanami, 1977); Sims, *French Policy*, 266; Umetani, *Role of Foreign Employees*, 35-37.

- 37 H. Castonnet Desfosses, "Les rapports de la Chine et de l'Annam," *Revue de droit international et de législation comparée* 15 (1883): 321-39, 452-77, 587-96, and 16 (1884): 39-54; Lewis M. Chere, *The Diplomacy of the Sino-French War (1883-1885): Global Complications of an Undeclared War* (Notre Dame: Cross-Cultural Publications, 1988); Henri Cordier, *Histoire des relations de la Chine avec les puissances occidentales, 1860-1900*, vol. 2 (Paris: Félix Alcan, 1902); Lloyd Eastman, *Throne and Mandarins: China's Search for a Policy during the Sino-French Controversy, 1880-1885* (Cambridge: Harvard University Press, 1967); and Thomas F. Power, Jr., *Jules Ferry and the Renaissance of French Imperialism* (1944, repr. New York: Octagon, 1966), 154-93.
- 38 Young to Frelinghuysen, January 4, 1884 and enclosures, in *Foreign Relations of the U.S.: 1884* (Washington: GPO, 1885), 69-78. Hereafter *FRUS*. See also several notes from Young to the Zongli yamen, as reported to the French foreign ministry in July and August 1884, in Ministère des affaires étrangères, *Documents diplomatiques: Affaires de Chine et du Tonkin, 1884-1885* (Paris: Imprimerie nationale, 1885), 55-66 (hereafter *DDACT*); Young to Frelinghuysen, September 16, 1884, *FRUS: 1884*, 103-104; and Takahashi, "Hostilités entre la France et la Chine," 494. In spite of the official French disinclination to rely on third parties, several U.S., British, and German officials acted as conduits for negotiations.
- 39 Takahashi, "Hostilités entre la France et la Chine," 631-33; and Young to Frelinghuysen, September 16, 1884, in *FRUS: 1884*, 104. See also Chere, *Diplomacy of the Sino-French War*, 117.
- 40 Japanese Foreign Ministry to Sienkiewicz, undated attachment to no. 255 of 1884.10.23, in *NGM*, 22 (1884): 573-74; Sienkiewicz to Ferry, 1884.9.13, in *DDACT*, 104. See also Courbet to Peyron, 1884.9.13, in *DDACT*, 105; Ferry to Peyron, 1884.9.13, in *DDACT*, 105-106. Sims recounts the fitful efforts of both Japan and France to create a bilateral alliance during this period, based on the interests shared by France (in Vietnam) and Japan (in Korea) against Chinese claims of suzerainty. See *French Policy*, 119-42.
- 41 Takahashi, "Hostilités entre la France et la Chine," 497-98.
- 42 See the correspondence between Waddington and Granville, October 23, 1884 through February 11, 1885, in House of Commons, *France, no. 1* (1885) (London: Harrison and Sons, 1885), 1-13; Enomoto to Inoue, 1884.10.22 and 1884.11.12, in *NGM*, 22: 571-72 and 578-81; and Takahashi, "Hostilités entre la France et la Chine," 502-506. See also Chere, *Diplomacy of the Sino-French War*, 118-19.
- 43 Sienkiewicz to Inoue, 7 February 1885, in *NGM*, 23 (1885): 550-51.; Waddington to Granville, 20 February 1885, in House of Commons, *France, no. 1* (1885), 14; Patenôte to Ferry, 30 January 1885, in *DDACT*, 185-86; and Rosenörn-Lehn to de Croy, 16 March 1885, in Ministère des affaires étrangères, *Documents diplomatiques: Affaires de Chine [1885]* (Paris: Imprimerie nationale, 1885), 43-44 (Hereafter *DDAC*.) See also Chere, *Diplomacy of the Sino-French War*, 126-29; and Hosea Ballou Morse, *The International Relations of the Chinese Empire* (New York: Longmans, Green, & Co., 1910-1918), vol. 2: 362-63.
- 44 See the correspondence between Waddington and Granville, February 27 through April 4, 1885, in House of Commons, *France, no. 1* (1885), 15-21; "France and China," *Times*, 24 February, 1885, 5; and Takahashi, "Hostilités entre la France et la Chine," 636-47.
- 45 [Friedrich] Heinrich Geffcken, "La France en Chine et le droit international," *Revue de droit international et de législation comparée* 17 (1885): 145-51. Also see the comments of French minister to Germany, Baron de Courcel, to Ferry, February 22 and 24, 1885, and the extract translated from the *Journal officiel de l'empire allemand*, in *DDAC*, 26-28; these present a less indulgent German attitude toward France than offered by Chere, *Diplomacy of the Sino-French War*, 64-73.
- 46 Takahashi, "Hostilités entre la France et la Chine," 647-54.
- 47 Patenôte to Ferry, 2 March 1885, in *DDACT*, 197-98. For the Chinese interpretation, see David Scott, *China and the International System, 1840-1949* (Albany: SUNY Press, 2008), 82-84; and Marquis Tseng [Zeng Jize], "China—the Sleep and the Awakening," *The Asiatic Quarterly Review* (January 1887): 2-10.

- 48 Patenôtre to Ferry, 16 March and 28 March 1885, in *DDACT*, 205-209 and 217-18. The Chinese foreign affairs archive marks a sudden number of reports about Japanese actions in Korea beginning in October 1884; see *Qingji wajijiao shiliao*, ed. Wang Yanwei (Beiping: n.p., 1932-35), *juan* 49: 920-23. See also Chere, *Diplomacy of the Sino-French War*, 58-59; Eastman, *Throne and Mandarins*, 185-186, 196-98; and E.V.G. Kiernan, *British Diplomacy in China, 1880-1885* (Cambridge: Cambridge University Press, 1939), 160-71.
- 49 Compare *NGM* 6 (1870): 32-37; Takahashi, "Hostilités entre la France et la Chine," 498-99; and *NGM* 37 (1898): 279-85. A partial English translation of the 1898 proclamation is available in *FRUS*: 1898 (Washington, DC: GPO, 1901): 878-81.
- 50 Deák and Jessup, *A Collection of Neutrality Laws, Regulations, and Treaties of Various Countries*, 590-94 (France), 669 (Greece), 682-84 (Haiti), 731-32 (Italy), 795-98 (Netherlands), 872-73 (Peru), 904 (Portugal), 936 (Spain), 1294-95. (Venezuela). The collection included in *Neutralitätserlasse: 1854 bis 1904* is much more limited.
- 51 *Ibid.*, 972 (Sweden), 1293 (Venezuela).
- 52 *Ibid.*, 1189.
- 53 Svarverud, *International Law as World Order in Late Imperial China*, 119-27. Svarverud points to Fryer's translation of Edmund Robertson's essay on "international law," in the ninth edition of the *Encyclopedia Britannica*, as a turning point; it was titled *Gongfa zonglun* and completed sometime between 1886 and 1894. See also Wang Jian, *Goutong liangge shijie de falü yiyi*, 158-59.
- 54 Svarverud, *International Law as World Order in Late Imperial China*, 178-79. Svarverud notes that, after 1902, an expression such as *juwaizhe* ("a neutral") or *juwai zhi bang* ("a neutral power"), which we find in Martin's translations and Doolittle's *Vocabulary*, was no longer possible; the appropriate term became *zhongliguo*, after the Japanese *chūritsukoku*. Chinese documents of the Sino-Japanese War in 1895 — in *Qingji Zhong-Ri-Han guanxi shiliao* ed. Zhongguo jindaishi ziliao hui (Taipei: Zhongyang yanjiuyuan, Jindaishi yanjiusuo, 1972) — include *juwai bing chuan*, for "third-party" troops and ships (pp. 4225, 4233-34), *juwai* for neutrality (pp. 3594, 3660), and *juwai zhongli* for neutrality (pp. 3574, 3655, 3754, 3984).
- 55 This discussion is based on the collection assembled by the U.S. State Department and reprinted in *FRUS*: 1898: 841-904.
- 56 Coleman Phillipson, *International Law and the Great War* (London: T. Fisher Unwin, 1915), 339.