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Foreign Nationality Acquisition in Late Imperial China

Change of Personal Status as Pathway to Opportunities and Personal Security

SAU KONG LEE

I. INTRODUCTION

NATIONALITY DENOTES A person's status as a 'belonger' to a state. International law treats nationality as a uniform concept. The international community assumes that nationality epitomises human dignity and declares aspiringly that everyone has the right to a nationality.¹ Yet the quality of nationality (and subcategories of nationality) varies greatly across states depending on the bundle of rights, opportunities, obligations and restrictions that come with that status. Despite the supposed equality of mankind, the assignment of nationality at birth is a random birthright lottery² casually doling out rights, opportunities, personal liberties and security underpinned by the rule of law, or the 'penal status of privation and exclusion from dignity'.³

Globalisation liberates information flow and lines up different nationalities for comparison in a beauty parade. This task is facilitated by ranking indices such as the Quality of Nationality Index developed by Christian Kälin and Dimitry Kochenov which measures the quality of nationality based on internal factors (economic strength, human development, peace and stability) and external ones (travel freedom, settlement freedom);⁴ the Henley Passport Index that measures the travel freedom of nationalities based on visa-free access with passports;⁵ and the Citizenship Quality Index proposed by Yossi Harpaz that measures the value of citizenship (based on security, economic opportunity and civil and political rights) and mobility freedom (based on visa-free access of passport).⁶ For persons born of an 'inferior' nationality,

¹ Art 15 of Universal Declaration of Human Rights 1948.

² Shachar, *The Birthright Lottery* (Harvard University Press 2009).

³ Kochenov, 'Victims of Citizenship' in Kochenov and Surak (eds), *Citizenship and Residence Sales* (Cambridge University Press 2023) 71; Kochenov, *Citizenship* (MIT Press 2019).

⁴ Kochenov and Lindeboom (eds), *Quality of Nationality Index* (Hart 2020).

⁵ 'Passport Index' (Henley & Partners) www.henleyglobal.com/passport-index.

⁶ Harpaz, *Citizenship 2.0* (Princeton University Press 2019) 20–22. Harpaz, 'Compensatory Citizenship' (2019) 45 *JEMS* 897.

the acquisition of foreign nationality or residence provides them with an alternative pathway to access rights and freedoms they do not otherwise enjoy or to ensure security of the person.⁷ This is aided by the trend towards toleration of dual nationality especially since 1990s, and at the height of globalisation, a forceful argument has been advanced that dual nationality should now be recognised as a human right.⁸ At the same time, the proliferation of ‘citizenship-by-investment’ and ‘residence-by-investment’ schemes has raised controversies over the morality and political implications of ‘citizenship sales’. Schemes that award ‘golden passports’ without requiring residence in the country have attracted the strongest criticisms, not in the least because of concerns about the abuse of citizenship by corrupt individuals to perpetrate crimes and escape justice.⁹

As home to the world’s second largest population,¹⁰ China has been producing some of the world’s wealthiest persons. In 2022, China came second only to the United States in the number of high net-worth individuals as well as ultra-high net-worth individuals.¹¹ Chinese nationals are also among the largest groups of clients of CBI and RBI schemes in the world, accounting for approximately 80 per cent of the world’s applicants of residence programmes.¹² Inevitably, some of them also become embroiled in allegations of ‘citizenship abuses’.¹³

Just as ‘citizenship sale’ has historical roots in the practices of urban centres in pre-modern Europe,¹⁴ Chinese practice of acquiring or changing nationality is not a recent phenomenon either, but dates back to the imperial period. This chapter seeks to provide historical context by examining the acquisition and use of foreign nationality by Chinese during China’s last imperial, Qing dynasty (1644–1912). It hopes to contribute to the existing scholarship on two fronts. It seeks to contribute to the literature on citizenship studies by exploring nationality’s ‘compensatory’, ‘opportunity-enhancing’ function¹⁵ from the individual’s standpoint and show that the acquisition of foreign nationality is not necessarily an ‘abusive’ practice. It also seeks to supplement an additional perspective on the discourse on the ‘unequal treaty system’ in late imperial China.

⁷ Harpaz, *Citizenship 2.0*, 20–22. Harpaz, ‘Compensatory Citizenship’, 897. Surak, *The Golden Passport* (Harvard University Press 2023) 211–15.

⁸ According to the Global Dual Citizenship Database, by 2020, 76 per cent of the countries in the world had come to allow their nationals to acquire another nationality without requiring compulsory expatriation, a remarkable jump from 1960 when 62 per cent of countries in the world did not allow dual nationality: Vink et al, ‘MACIMIDE Global Expatriate Dual Citizenship Dataset’ (Harvard Dataverse 2015) <https://dataverse.harvard.edu/citation?persistentId=doi:10.7910/DVN/TTMZ08>. As to the proposition that dual nationality should be regarded as a human right, see Spiro, *Beyond Citizenship* (Oxford University Press 2008); Spiro, *At Home in Two Countries* (NYU Press 2016) 111–30; Spiro, ‘Dual Citizenship as Human Right’ (2010) 8 *I&CON* 111.

⁹ See eg contributions from Shachar, Armstrong, Bauböck, Ochoa Espejo in Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018); ‘Misuse of Citizenship and Residency by Investment Programmes’ (FATF and OECD 2023) www.fatf-gafi.org/content/fatf-gafi/en/publications/Methodsandtrends/misuse-CBI-RBI-programmes.html.

¹⁰ ‘Population, total’ (World Bank 2022) <https://data.worldbank.org/indicator/SP.POP.TOTL>.

¹¹ Individuals with liquid assets of at least US\$1 million and those with a net worth of at least US\$30 million respectively: ‘Global Wealth Report 2023’ (Credit-Suisse 2023) 27–28, 31.

¹² ‘Investment Migration Yearbook 2021/2022’ (4th edn, IMC 2022) 6; Surak, *The Golden Passport* 17; Brillaud and Martini, ‘European Getaway’ (TI and Global Witness 2018) 15, 63.

¹³ eg Baruch et al, ‘Citizenship for Sale’ (*Le Monde*, 11 October 2023) www.lemonde.fr/en/les-decodeurs/article/2023/10/11/citizenship-for-sale-dominica-s-golden-passports-go-haywire_6163322_8.html.

¹⁴ Prak, *Citizens without Nations* (Cambridge University Press 2018) 251–73. Prak’s work also examined the practice of citizenship in imperial China through civic institutions in urban centres. This chapter on the other hand examines how Chinese subjects make use of the *legal* institution of nationality (subject status) to overcome discrimination and become ‘equal’ citizens.

¹⁵ eg Shachar, *The Birthright Lottery*; Harpaz, *Citizenship 2.0*; Harpaz, ‘Compensatory Citizenship’; Harpaz, ‘Ancestry into Opportunity’ (2015) 41 *JEMS* 2081.

The Qing dynasty is a crucial period of study because China's understanding of 'nationality' went through a fundamental shift during this period. From the 1840s onwards, China progressively opened its door to foreign trade and activities pursuant to treaties concluded with foreign states, primarily those in Europe and the Americas. This new wave of 'internationalism' led to a change in the conception and practice of 'nationality' in China: moving beyond an inward-looking focus on Chinese 'subjecthood' and interactions between the different categories of Chinese subjects, to focusing on the external aspect of 'nationality' which distinguished between Chinese subjects and foreign nationals. This resulted in Chinese subjects acquiring foreign nationality for use in China. Some foreign consulates even connived in the process by selling 'naturalisation certificates' to these persons.

This change in nationality practice took place at a time when China's state power suffered a sharp decline. As the Qing government struggled to cope with internal turmoil and external military threats, it conceded territory and signed off valuable rights in the process. By the late 1890s, Qing officials and scholars had become concerned that China was treated as an 'inferior' state by the foreign powers and that the treaty terms were highly unfavourable to China.¹⁶ Against this background, Chinese who acquired foreign nationality were often seen by their contemporaries as self-seekers who would betray their own people and 'pretend' to be foreigners in order to enjoy treaty benefits.

By the 1920s, a coherent narrative of China's 'unequal treaties' emerged, emphasising that the Sino-foreign treaties were unfair and unequal to China by pointing out the harshness of the treaty terms, the lack of reciprocity as well as the circumstances in which they were concluded (i.e. under duress), so that Chinese sovereignty was jeopardised.¹⁷ This narrative focuses on inequality as between the treaty states and attributes the unequal treatment between foreigners and Chinese to the treaties. However, the treaties conferred rights and privileges on foreigners in China but did not dictate how Chinese subjects should be treated. Further, the treaties were not only international agreements operating at the international level but had to be operationalised within the domestic context. This gives rise to a further dimension which was not addressed by the 'unequal treaties' narrative, namely, the Qing government's latitude as policymakers to adjust the Qing domestic regimes which applied to Chinese subjects in order to mitigate the unequal treatment between foreigners and Chinese. It was the gap between treaty treatment and treatment under Qing domestic law that drove Chinese subjects to acquire foreign nationality and obtain more favourable treatment.

This chapter thus examines how Qing Chinese made use of the legal institution of nationality to respond to inequalities. It focuses on the acquisition and use of foreign nationality by Chinese subjects *within* China rather than in the country of naturalisation or other countries.¹⁸

¹⁶ Wang, *China's Unequal Treaties* (Lexington Books 2005) 24–27; Chiu, 'Comparison of the Nationalist and Communist Chinese Views of Unequal Treaties' in Cohen (ed), *China's Practice of International Law* (Vol 2, Harvard University Press 1972) 243–44.

¹⁷ eg the Nationalist Party's two declarations of 23, 28 June 1925 calling for the repeal of the unequal treaties (1925) 14 *Generalissimo Government Gazette* 197–200. See also Wang, *China's Unequal Treaties*, 64–66. Chiu, 'Comparison of the Nationalist and Communist Chinese Views', 245–48. For a discussion of how the treaty terms undermined different aspects of Chinese sovereignty, see Tung, *China and the Foreign Powers* (Ocean 1970) 107–27.

¹⁸ There is a rich body of literature on how overseas Chinese merchants made use of multiple nationalities to secure more favourable business treatment in different jurisdictions, hedge against business risks and expand their local and international business empires. eg Lin, 'Overseas Chinese Merchants and Multiple Nationality' (2001) 35 *Modern Asian Studies* 985; Zhu, *Changqi huashang: Taichanghao, Taiyihao maoyi shi (1862–1940)* [The Chinese Merchants of Nagasaki: A Business History of Taichanghao and Taiyihao (1862–1940)] (Xiamen University Press 2016); Chung, 'Samuel Samuel & Co Ltd and Industrial Development in Early Japanese Colonial Taiwan' (2018) 25 *Taiwan Historical Research* 97.

It makes two assertions. First, foreign nationality was not only acquired by Chinese for corrupt or abusive purposes. It was an important means for ordinary subjects to access opportunities and ensure personal security when faced with inequalities in Qing society. Second, while the Sino-foreign treaty system was a major source of inequality in late Qing China, this chapter moves away from the traditional narrative which focuses on the unfairness of the Sino-foreign treaties on China and examines the Qing government's role in exacerbating the inequality between Chinese subjects and foreigners during treaty implementation. Specifically, the government rigidly insisted on treating the two differently and failed to adapt the domestic regimes for Chinese subjects or address their inadequacies. This turned Chinese nationality into part of the unequal institutions which treated Chinese subjects less unfavourably than foreigners in their own country. Overall, this chapter argues that due to Qing government failures, Chinese subjects acquired and made use of foreign nationality as a self-help measure to level the playing field. This debased Chinese nationality and eroded the foundation of Qing rule.

This chapter is divided into two parts. The first part examines nationality within the national setting. It focuses on Chinese subjecthood in Qing traditional society and examines Chinese subjects' practice of changing subject statuses to access opportunities. Chinese subject statuses were akin to 'quasi-nationalities' within a national setting, while Chinese subjects were engaging in acts that mirrored naturalisation, expatriation and nationality fraud in an international setting. The second part of the chapter focuses on the treaty port era from the 1840s. During this period, Chinese subjects adapted their practice and progressively made use of foreign nationality to enjoy the benefits of the treaty regime and to protect themselves from arbitrary treatment by Qing officials.

II. 'NATIONALITY' IN CHINA BEFORE THE TREATY SYSTEM

A. Overview: 'Nationality' in Qing China as an Inward-looking Concept

Before the onset of the treaty system in the 1840s, 'nationality' was largely an inward-looking concept in Qing China. The 'external' aspect of nationality: that is, interactions between Chinese subjects and non-subjects (foreigners), was under-developed. The Qing rulers, like their immediate predecessors, had sought to secure their empire from external threats and influence by generally prohibiting Chinese subjects from leaving the country.¹⁹ Foreign admission into China was also tightly controlled. Trade was the main activity between Chinese subjects and foreigners and took place in the specific context of 'tribute missions' or at specific locations in the empire's frontier regions.²⁰ The western population in China consisted mainly of maritime traders and was small.²¹ Since 1757, they could only trade at Guangzhou (Canton) and must leave China or retire to Macao after each trading season.²² As foreigners lived in their own communities separate from local inhabitants, the general Chinese population had limited interactions with them. China did not see the need to have a law on 'nationality' to address the status of Chinese subjects in a transnational context.

¹⁹ Art 225 of GQ Code.

²⁰ DQHDZL (QL), Scroll 94.

²¹ As of January 1837, there were 307 foreign residents in Guangzhou and Macao, excluding Portuguese and excluding family members stationed in Macao, see CR, vol 5, 427–29, 432.

²² van Dyke, *The Canton Trade* (HKU Press 2005) 16. By 1837, foreigners were allowed to stay in Guangzhou beyond the trading season, see CR, vol 5, 426.

In contrast to the external aspect of nationality, within the domestic context, the concept of Chinese subjecthood was highly developed. The imperial rulers of China had a long history of identifying subjects and formalising their status through registration. As early as the Shang dynasty (circa 1570–1045 BCE), when recorded history in China began, rulers were registering subjects for the purpose of raising a conscript army.²³ By the Qing dynasty, elaborate systems had evolved to classify subjects into different subject categories, entailing different treatment in law.

B. Chinese Subjecthood in Qing China: Pluralistic and Complex

Qing China was a multiethnic empire of conquest and the rulers governed their vast empire by applying different administrative-legal regimes to different territories and ‘peoples’. This pluralistic style of governance permeated into the classification and registration of subjects, adding complexity to the range of subject categories within China.

First, after the ethnic Manchu rulers from the State of Qing²⁴ invaded Ming China (1368–1644) and moved their political seat to the Ming capital of Beijing, ‘China’ now covers the entire Qing territory,²⁵ while the territory of former Ming China became the ‘regular provinces’ of the expanding Qing empire. Here, the Qing rulers largely adopted the Ming systems of subject classification and registration. Since the regular provinces were the most populous regions in Qing China, the standard systems prevailing there also became the mainstream systems of Qing China. Second, to reinforce the distinct identity of a core group of subjects who were the regime’s most reliable supporters, the Qing rulers continued to organise original Qing subjects and their descendants into military-administrative units (banners). These ‘Banner people’ were registered under Banner registers separate from other subjects.²⁶ Third, in the frontier regions of the empire such as Mongolia and Xinjiang, the local inhabitants were organised according to their tribes (banners) and were governed and registered by their local chiefs.²⁷

Apart from establishing different subject registration systems for different territories or ‘peoples’, multiple categories of subjects also existed *within* a system. Within the Banner system, Banner divisions and units were distinguished according to ethnicity and affinity to the Emperor, with implications on prestige and access to resources and promotion opportunities. Bondservants were hereditary servants (de facto ‘slaves’) attached to their masters’ households. They were not entitled to separate registration as independent subjects.²⁸ In the regular provinces, subjects were classified under various socio-occupational categories (‘households’). Most of them were ‘civilians’ (*min*) who, together with ‘military personnel’ and ‘salt-workers’,²⁹ were ordinary subjects. Within these broad categories were various

²³ Song, *Zhongguo huji zhidu shi* [The History of Household Registration in China] (Sanqin Chubanshe 2016) 23.

²⁴ Roughly corresponding to present-day Liaoning, Jilin, parts of Heilongjiang and east Mongolia.

²⁵ Manchu text of the Sino-Russian Treaty of Nerchinsk 1689, referred to in Zhao, ‘Reinventing China’ (2006) 32 *Modern China* 3, 8.

²⁶ DQHD (QL), Scroll 9; DQHDZL (QL), Scroll 32; Rhoads, *Manchus & Han* (University of Washington Press 2000) 19.

²⁷ Meng, *Yuan Qing Huzheng Kao* [A Study of Household Administration in the Period of Yuan and Qing] (China Social Sciences Press 2014) 121–22. See also the registration and resettlement of Russian Kazakhs under various tribes in Xinjiang in 1907–08, see DAAS, item 02-10-012-01-014.

²⁸ Elliott, *The Manchu Way* (Stanford University Press 2001) 79; Rhoads, *Manchus & Han*, 19, 24.

²⁹ DQHD (GX), Scroll 17. The household category of ‘builders and smiths’ was abolished in 1645, see QWT, Scroll 21.

sub-categories, such as ethnic *miao* and *hui* Muslims who were sub-categories of civilians.³⁰ In contrast to ordinary subjects, who were regarded as persons of 'good standing', persons in certain socio-occupational households were socially ostracised and were known as *jianmin* ('despicable subjects'). These not only included bondservants but also included other social outcasts such as prostitutes and fishermen in Guangdong and Zhejiang.³¹

C. Chinese Subjecthood: Misogynistic, Hierarchical, Restrictive and Rigid

Subject status was underpinned by registration³² and passed down through patrilineal descent. A primary distinction was drawn between male and female subjects. In the misogynistic Qing society, male subjects, or the head of 'households', were the primary subjects of registration. Female subjects were generally treated as dependants, subsumed under the registration of male subjects. Political and social opportunities in Qing society were likewise overwhelmingly reserved for male subjects.³³

Second, registered subject status not only conferred a public identity on the holder but it determined their treatment in law. In the hierarchical Qing society, extensive rights and privileges were enjoyed by an elitist minority. For example, Banner subjects enjoyed many privileges despite their small population (constituting slightly over 1 per cent of the Chinese population in the mid-nineteenth century).³⁴ They were disproportionately represented in senior positions in central government and in the provinces.³⁵ They enjoyed a higher rate of passing the imperial examinations and, until the early nineteenth century, had the option of sitting a different (and easier) examination.³⁶ They also enjoyed privileges and exemptions in the Qing justice system, including exemption from kneeling before the magistrate, and being given a lighter sentence if convicted.³⁷

Ordinary subjects in the regular provinces were commoners who bore the brunt of tax obligations and enjoyed few special rights. However, male ordinary subjects had access to one important facility that gave them opportunity for social advancement. Tax-paying ordinary subjects were allowed to sit the imperial examinations. Candidates who passed the primary level examination were formally admitted to the elite gentry class, opening the door to legal privileges and social status. Depending on the level of examination achievements, they could become government officials, the ultimate career aspiration. As one worked his way up the examination or career ladder, he would increasingly access exclusive rights and privileges such as reduced crop tax rates, privileges and exemptions in the justice system, free access to the magistrate and miscellaneous privileges relating to dress code and ceremonial matters and so on.³⁸

³⁰ DQHD (GX), Scroll 17.

³¹ DQHD (GX), Scroll 17; Art 76 of GQ Code.

³² Art 76 of GQ Code.

³³ The nationality practices discussed in this chapter largely relate to male subjects. The nationality practices of female subjects is an unexplored topic. It is beyond the scope of this chapter to consider this topic in detail, which may form the focus of a separate study in future.

³⁴ Rhoads, *Manchus & Han*, 34, 45.

³⁵ *ibid* 45–46, 48.

³⁶ Exam Regs, Scroll 19; Rhoads, *Manchus & Han*, 43–44; imperial clansmen enjoyed further privileges: Ho, *The Ladder of Success in Imperial China* (Columbia University Press 1967) 23.

³⁷ Art 9 of GQ Code; Rhoads, *Manchus & Han*, 42.

³⁸ Ho, *The Ladder of Success in Imperial China*, 18; Chü, *Local Government in China and the Ch'ing* (Harvard University Press 1962) 173–75, 185–87.

In contrast to gentry and ordinary subjects, *jianmin* were at the bottom of the social hierarchy, taking up jobs regarded as too demeaning for ordinary subjects.³⁹ This small population⁴⁰ of *jianmin* suffered not only social prejudices but systemic discrimination under Qing law. They were denied civilian registration and precluded from the imperial examinations. They were banned from marrying ordinary subjects.⁴¹ If a *jianmin* assaulted an ordinary person they would receive an aggravated sentence. Conversely, an ordinary subject who assaulted a *jianmin* would receive a mitigated sentence.⁴² Like other Chinese subjects, *jianmin* had to abide by dress code which marked them out as visible targets for discrimination.⁴³ Since *jianmin* was not exhaustively defined in the laws, the status also came to be arbitrarily ascribed to other vulnerable members of society such as those undertaking jobs of low social status, or persons who somehow fell out of the subject registration system and became undocumented persons.⁴⁴

Subject status came not only with rights and privileges but could also impose restrictions on the holder. For example, Banner subjects were subject to severe occupational constraints to keep them as the state's military reserves. They could only join the army or the civil administration or engage in farming, and were expressly prohibited from entering into business.⁴⁵ They lived in quarters separate from the local inhabitants and could not leave their garrison area without the approval of their commanders.⁴⁶ Given the scarcity of military posts, these restrictions pushed many lower Bannermen into poverty, a problem continuing to the last days of the dynasty.⁴⁷ Subject status could be restrictive even for the majority of the population who were civilians in the regular provinces and not subject to specific occupation constraints. For them, restriction took the form of geographical constraint of their subject registration. Civilians were organised into decimal household formations of *jia* and *li* and registered under local *lijia* tax registers.⁴⁸ The locality of *lijia* registration became the civilian's official 'hometown', akin to legal domicile, forming part of the person's hereditary subject status.

Subject status was particularly restrictive because subject category and locality of subject registration were difficult to change.⁴⁹ For example, after moving to another locality, the civilian family would have to acquire land and pay taxes continuously for 20 years, and establish ancestral graves in the locality, before they could apply for admission to the local *lijia* register and be treated as a native inhabitant.⁵⁰ This stringent threshold for change affected social

³⁹ Jing, *Qing dai shehui de jianmin dengji* [The Status of Despicable Subjects in Qing Society] (China Renmin University Press 2009) 32–33.

⁴⁰ Ho estimates that *jianmin* constituted 'a small fraction of 1%' of the total population of China: Ho, *The Ladder of Success in Imperial China*, 19.

⁴¹ Arts 76(16), 115 of GQ Code.

⁴² Arts 313, 373 of GQ Code.

⁴³ Jing, *Qing dai shehui de jianmin dengji*, 35.

⁴⁴ Kisimoto, 'Mao juan maokao susong yu Qing dai difang shehui [Litigation concerning the Use of False Registration in Title Purchases and Examination Candidature in Qing Local Society]' (Conference on the Power and Culture in the Practice of Ming-Qing Law, Taipei, 2005) 11–13.

⁴⁵ Rhoads, *Manchus & Han*, 38.

⁴⁶ *ibid* 36–38, 40.

⁴⁷ 'Qi ji (Banner registration)' in Zheng Guanying (ed), *Shengshi weiyao zengding xinbian* [Revised Edition of the Words of Warning in a Prosperous Age], Scroll 13; Zhao Erxun, *Qing shi gao* [Draft History of Qing], Scroll 120, 'Shi huo 1'.

⁴⁸ DQHDZL (QL), Scroll 33.

⁴⁹ Ho considers that since the regulations on subject statuses were not effectively enforced, there was considerable mobility across different subject statuses in practice, see Ho, *The Ladder of Success in Imperial China*, 54. However, the numerous examples of circumvention show all the more that the institutions were overly rigid and that there were few lawful means to change status.

⁵⁰ Exam Regs, Scroll 35.

advancement: as discussed below, the location of *lijia* registration affected a candidate's chances of succeeding in the imperial examinations. More immediately, the stringent threshold reinforced localism and xenophobia, pitching native inhabitants against migrants and hindering the latter's assimilation into local society.⁵¹

Of all subjects, *jianmin* had the worst deal by far. The strict prohibitions imposed on them meant they had few prospects for upward mobility under the law unless they were released from the *jianmin* status. One notable class of *jianmin* were the bondservants, the de facto 'slaves' in Qing society. These persons or their ancestors might have been ordinary subjects who became war captives of the Qing invaders and were forced into hereditary servitude, or they might have been sold into servitude by destitute families or sentenced to this status by the State as punishment. Some were even orphans sold into gentry families out of 'charity' for their 'protection'.⁵² Locked into a hereditary low status, *jianmin* could only hope to be emancipated from their grim fate by their masters (in the case of bondservants) or by an act of imperial grace. For example, the Emperor Yongzheng (1723–35) was known for taking strides in abolishing many *jianmin* categories.⁵³ Despite this, ex-*jianmin* continued to suffer discrimination after becoming civilians. For example, their descendants had to meet more stringent conditions before being allowed to sit the imperial examinations. Social prejudices against ex-*jianmin* lasted up to the late Qing period.⁵⁴

D. Overcoming the Handicap of Birth Status: Change of Subject Status

The multiplicity of Chinese subjecthood served the interests of imperial rulers: to reward the regime's elites and loyalists and ensure their staunch support; maintain a stable workforce supply in critical sectors; keep everyone in their rightful place according to Confucian ideals of a hierarchical and harmonious society; and protect the general populace from 'contamination' by perceived bad elements of society. However, institutional rigidity resulted in hardship and injustices in individual cases which were often overlooked by bureaucrats taking a top-down approach in administering a vast empire. As a result, subject status became an arbitrary legal institution. It could facilitate the holder to participate meaningfully in public life, resulting in a successful and enriching life experience. It could also be obstructive and lead to disappointment and even humiliation and suffering.

In face of inhibitions, resourceful subjects sought to overcome the constraints of birth status by acquiring another subject status, such as through adoption.⁵⁵ As it was difficult to change subject registration under the law, subjects even resorted to means that were legally dubious, if not plainly illegal. For example, in 1708, the Lans of Wangchun, Fujian province obtained the coveted civilian subject status by 'purchasing' a registered 'household' on the local *lijia* register.⁵⁶ Lower Bannermen were known to adopt fake Han names to pass off as civilians in order to take up jobs in other parts of China.⁵⁷

⁵¹ For an example of the clashes between migrant descendants and native inhabitants over imperial examinations, see Zheng, *Yimin, huji yu zongzu* [Migrants, Household Registration and Clans] (SDX Joint Publishing Company 2009) 64–84.

⁵² Jing, *Qing dai shehui de jianmin dengji*, 55–71, 115–18.

⁵³ *ibid* 131–33, 136, 174, 176, 184–85; compare Ho, *The Ladder of Success in Imperial China*, 19.

⁵⁴ QWT, Scroll 19; Jing, *Qing dai shehui de jianmin dengji*, 184–85, 190–91.

⁵⁵ eg Exam Regs, Scroll 35; Lai, 'Cong falü kan Qing chao de qi-ji zhengce [Exploring the Banner People Register Policy from the Law of Qing Dynasty]' [2011] *Qing History Journal* 39.

⁵⁶ Szonyi, *Practicing Kinship* (Stanford University Press 2002) 76–78.

⁵⁷ Zheng Guanying, 'Qi ji'.

The imperial examination system provides unique insights into the practice of acquiring subject status because of its political and social importance. It was (male) ordinary subjects' main avenue for upward mobility, giving them an opportunity to join the government and move up the social and political ladder. A candidate's subject status could greatly affect his chances of passing the examinations. Candidates were divided into examination constituencies according to their place of *lijia* registration or their special household category (where applicable). Each constituency was allocated a pass quota capping the maximum number of passes (eg 45) in that constituency. Some constituencies were allocated a pass *ratio* (eg 5 per cent) in addition or instead.⁵⁸ Candidates competed against other candidates in the same constituency to pass the examination within these parameters. The combined effect is that the examination was easier to pass in some constituencies while excessively competitive in others. For example, in the early eighteenth century, the success rate of provincial examination was less than 1 per cent in the provinces of Zhejiang, Anhui and Jiangsu, but about 5 per cent in the metropolitan area.⁵⁹ In 1850, the *per capita* pass quota for provincial examination in Zhili (ie Hebei) province was almost four times that of populous Anhui.⁶⁰ Pass quota and ratio aside, since candidates must take all examinations except the final levels in their home county or province, migrant descendants suffered the additional hurdle of having to travel to their distant 'hometown' to sit the examinations, which could be prohibitive for indigent candidates.

Uneven distribution of opportunities across constituencies incentivised candidates to acquire subject registration in localities or subject categories with a higher examination success rate. Some candidates went to stay with relatives, clan members or family friends, and some were even formally adopted by them or by unrelated persons for money. Others simply claimed to be descendants or household members of registrants in the desired locality/subject category. Some candidates even went as far as to assume the identity of another person.⁶¹

The metropolitan area traditionally enjoyed a high success rate and by the beginning of the eighteenth century, the two metropolitan counties of Wanping and Daxing had become popular localities for 'subject registration fraud'.⁶² Other popular constituencies included Sichuan, Yunnan, Guangxi and Hunan and Taiwan. Some of them enjoyed a more generous pass quota aimed to benefit local ethnic minority communities while others were less competitive due to their sparse population.⁶³ Some candidates paid to be adopted by Banner subjects so they could sit the examination as one.⁶⁴ Salt-merchant registration was another sought-after commodity. Special registers were created in major salt trade centres so that salt-merchants and descendants could take the examinations in their place of trade.⁶⁵ Candidates in this constituency enjoyed a more generous pass ratio (2 per cent) compared

⁵⁸ Exam Regs, Scrolls 19, 20, 21.

⁵⁹ Xia, 'Lun Qing dai fen sheng qu shi zhi [Selecting Officials by Provinces in the Qing Dynasty]' (2002) 3 *Historical Review* 47, 50.

⁶⁰ Based on a comparison of the provincial pass quotas in the Examination Regulations against the official provincial population recorded by Ping-ti Ho: 106 passes for a population of 23.4 million in Zhili; 45 for 37.6 million population in Anhui, see Exam Regs, Scroll 19; Ho, *The Ladder of Success in Imperial China*, 223.

⁶¹ Exam Regs, Scroll 35.

⁶² *ibid.*

⁶³ Memorial dated 6 March 1736 from Xie Jishi, Jiangnan Circuit Intendant; memorial dated 8 June 1760 from Qu Kai, Guangxi Commissioner of Education; memorial dated 11 June 1761 from Chen Quan, Sichuan Commissioner of Education; memorial dated 2 October 1771 from Li Shiyao, Governor General of Liangguang; memorial dated 20 March 1810 from Zhu Shaozeng, Treasurer of Hunan, see QJ, 13–14, 17–19, 22, 27.

⁶⁴ Exam Regs, Scroll 35.

⁶⁵ Eg Zhili (Hebei), Shandong, Guangdong, see Exam Regs, Scroll 20.

to candidates in other constituencies.⁶⁶ In 1760, the Zhejiang Commissioner of Education concluded following investigation that some 70 per cent of over 1,000 candidates on the Hangzhou salt-merchant register were not entitled to be so registered.⁶⁷

The Qing government undertook a range of measures to combat 'subject registration fraud'. This ranged from leniency (such as permitting candidates who had confessed to their wrongdoing to re-sit the examination in future) to punishing the offenders severely (such as disqualifying them from the next examination sitting or for life; removal from office and even sentencing those involved to caning and penal servitude).⁶⁸ These measures did not stop the practice. In fact, procedural requirements introduced by the Qing government to combat fraud were themselves used to facilitate fraud. For example, a candidate's subject registration was required to be authenticated by designated personnel. Corrupt officials and salt-merchants turned this into a business opportunity and offered to certify 'fake' subject registration for candidates.⁶⁹ In 1774, 14 years after the Zhejiang Commissioner of Education's purge of the Hangzhou salt-merchant register, 'some seven or eight out of every ten candidates' on the salt-merchant register were still said to be native inhabitants rather than genuine salt-merchants.⁷⁰

The rampancy of contravention went beyond isolated instances of violation of laws and points to the existence of more fundamental problems: that opportunities for upward mobility in Qing society fell excessively short of meeting the aspirations of a growing population of intelligent subjects. Although the pass quota system sought to ensure that government career opportunities could be shared across the country, this system became unfair and arbitrary when pass quotas failed to be updated to reflect population growth and economic and cultural development in different provinces.⁷¹ Inequality was further exacerbated by the designs of the examination system which clearly favoured the social and political elites. Competition became so fierce that ordinary subjects exploited affirmative policies aimed at benefitting underprivileged communities. The draconian residence requirements, coupled with abuses at the local level, meant that migrant families often struggled to obtain local registration decades and generations after resettlement. This motivated subjects to twitch their subject status to gain entry to the examination system.⁷² Ultimately, over-reliance on using subject status to allocate social opportunities, together with a high threshold for changing subject status, left subjects few legitimate ways to redress their grievances. Once subject status was illegally changed, the status passed through patrilineal descent, magnifying the number of persons with 'wrongful' registration over time.

Qing officials would have understood the root causes of the problems as they had gone through the examination system themselves, and some would have acquired or inherited wrongful subject registration.⁷³ Nonetheless, the government, taking a regulator's perspective, had focused on law-enforcement options to combat abuses instead of introducing fundamental

⁶⁶ Lü, 'Qing Qianlong shang-ji gaige dui keju gongpingxing de zhuiqiu ji qi xiandu [Merchant Registration Reforms in the Qing Dynasty during the Reign of Qianlong: Furthering Fairness in the Imperial Examination and their Limitations]' (2013) 6 *Journal of Ancient Books Collation and Studies* 70, 71.

⁶⁷ Memorial dated 2 August 1760 from Li Pei'en, Zhejiang Commissioner of Education, see QJ, 18.

⁶⁸ QJ, 17, 19–20, 22; Exam Regs, Scroll 35.

⁶⁹ Memorial dated 13 July 1761 from Zheng Huwen, Guangdong Commissioner of Education, see QJ, 19; Exam Regs, Scroll 35.

⁷⁰ Lü, 'Qing Qianlong shang-ji gaige dui keju gongpingxing de zhuiqiu ji qi xiandu' 71.

⁷¹ Ho, *The Ladder of Success in Imperial China*, 233–37.

⁷² Exam Regs, Scroll 35; memorial dated 4 January 1744 from Yin Jishan, Acting Governor General of Liangjiang, see QJ, 14.

⁷³ eg many candidates registered in the metropolitan counties of Daxing and Wanping as at 1777 were said to be from families of officials all over the country, see Exam Regs, Scroll 35.

institutional reforms to tackle systemic problems such as extreme competition, inequalities and arbitrary administration. As a result, ‘subject registration fraud’ continued. As of 1850, some 80–90 per cent of candidates registered in the metropolitan counties of Daxing and Wanping were found to be non-natives who should have been registered elsewhere.⁷⁴

E. Summary: Chinese Subject Statuses as ‘Quasi-nationalities’ Providing Access to Opportunities

Subject status in Qing China was critically important in determining a person’s prospects in life. Enterprising individuals sought to transcend the constraints of an unequal society by acquiring a different subject status, turning Chinese subject status into a ‘tradable commodity’ in the process.⁷⁵ Although the general public had limited experience with foreign ‘nationality’ in a transnational context, within the domestic context, the different types of Chinese subject statuses functioned like ‘quasi-nationalities’. When Chinese subjects changed subject status, they engaged in acts mirroring naturalisation, expatriation or nationality fraud in an international setting. This experience prepared Chinese subjects for the treaty port era when they adapted their practice and made use of foreign nationality to access facilities.

III. FOREIGN NATIONALITY IN THE TREATY PORT ERA

A. The Treaty System as an Entrenched Administrative-legal System in China

The 1840s marked a watershed in Sino-foreign relations. After China signed the Treaty of Nanjing and related agreements with Britain in 1842–43, other countries soon approached the Qing government to establish treaty relations. Within a decade, China had concluded treaties of ‘peace, friendship and commerce’ with the United States, France and the United Kingdoms of Sweden and Norway, confirmed bilateral trade with Belgium and expanded its trade arrangement with Russia.⁷⁶ These treaties opened four ports to foreign trade in addition to Guangzhou.⁷⁷ They fixed the import and export tariffs on a schedule of goods and capped the transit duty on foreign goods and the purchases of foreign traders.⁷⁸ Foreigners could now reside at the treaty ports with their families indefinitely, while the jurisdiction of consuls was enlarged to cover all disputes where the defendant was a national, including homicide and grave crimes involving Chinese victims.⁷⁹ International treaties between governments had replaced Qing government prerogative as the primary source of law for regulating foreign trade and activities in China.

⁷⁴ *ibid.*

⁷⁵ Compare the view that citizenship-by-investment schemes turn citizenship into a tradable or global commodity: Surak, *The Golden Passport*, 21, 24–25; Bauböck, ‘What is Wrong with Selling Citizenship?’ in Bauböck (ed), *Debating Transformations of National Citizenship* (Springer 2018).

⁷⁶ Treaty of Wangxia (Wang-Hea) July 1844 (US); Treaty of Huangpu (Whampoa) October 1844 (France); Treaty of Guangzhou (Canton) March 1847 (Sweden-Norway); imperial letter issued to Belgium in July 1845; Treaty of Kuldja July 1851 (Russia).

⁷⁷ Fuzhou (Foochow) and Xiamen (Amoy) in Fujian; Ningbo in Zhejiang; Shanghai in Jiangsu.

⁷⁸ eg Art X of Treaty of Nanjing 1842; Declaration Respecting Transit Duties 1843 (UK). The cap on inland transit duty was only agreed in 1858: Art XXVIII of Treaty of Tianjin (Tientsin) 1858 (UK).

⁷⁹ eg Art II of Treaty of Nanjing 1842; Art XIII of General Regulations of Trade and Tariff.

The treaties with Britain were a necessary evil to end the war.⁸⁰ The treaties granted certain 'concessions' to nationals of the treaty states ('treaty foreigners') but the Qing government had no intention to extend treaty treatment to Chinese subjects. Nationality thus stood at the centre of the treaty system as the key criterion for determining the treatment to be accorded to a person in China: treaty foreigners would enjoy rights and benefits to the extent conceded by the treaties. By default, Chinese subjects would receive treatment under Qing laws according to their subject status. The external dimension of nationality – the distinction between Chinese subjects and non-subjects, now assumed legal prominence in China.

The Qing government had reasons to view the treaties as creating small exceptions for an exclusive population. After all, the scope of the treaties was specific, mainly relating to foreign trade. The foreign population in China was also small.⁸¹ The government expected the existing regimes to continue to apply to Chinese subjects and did not see the need to adjust their treatment in view of rights granted to treaty foreigners. Rather, it confined foreign activities to the treaty ports and designated remote locations for foreign settlement to contain foreign presence and segregate the Chinese and foreign communities as far as possible.

Over the next few decades, the Qing government's bifurcated approach became increasingly at odds with changes ongoing in China. Sino-foreign economic interactions grew after the 1840s treaties. With the abolition of the Co-hong monopoly over foreign trade,⁸² foreign merchants could now trade directly with a wider group of Chinese merchants. This led to the rise of compradors as a new class of Chinese merchants expert at mediating between Chinese and foreign businesses.⁸³ The opening of the treaty ports also brought a steady flow of Anglo-Chinese (ethnic Chinese born in British territory) into China, especially from the Straits Settlements.⁸⁴ Their assertion of British nationality in China challenged the Qing government's definition of Chinese subjects by perpetual patrilineal descent.⁸⁵ Physical segregation of foreign and Chinese settlements had been breached since the 1850s when Chinese subjects fleeing rebels of the Small Swords Society and then the Taiping Army took refuge in the international settlement in Shanghai.⁸⁶

The biggest challenge to the logic of the dual-track approach came from the progressive expansion of the treaty regime over the next few decades, so that it could no longer be regarded as a regime of minor importance. In the 1840s, there were only five treaty states. By 1907 there were 20.⁸⁷ The number of treaty ports also increased from five originally to a total of 86 ports throughout China open or committed to be open to foreign trade in 1907.⁸⁸ Initially the

⁸⁰ Wang, *China's Unequal Treaties*, 11–12.

⁸¹ As at January 1844, there were only around 550 foreign residents at the five treaty ports, Macao and Hong Kong (excluding military and government personnel but including those temporarily absent). Only 39 of them had brought their family with them, see 13 CR, vol XIII, 3–7.

⁸² Art V of Treaty of Nanjing.

⁸³ For a study on the rise of Chinese compradors, see Hao, *The Comprador in Nineteenth Century China* (Harvard University Press 1970).

⁸⁴ For a study on the activities of Anglo-Chinese in the nineteenth century China: Murakami, 'Qing mo Xiamen Ying-ji huaren wenti [Anglo-Chinese in Xiamen During the Late Qing Period]' in Mori (ed), *Ershi shiji de Zhongguo shehui* [Chinese Society in the Twentieth Century] (Vol 1, Social Sciences Academic Press 2011).

⁸⁵ Qing officials found the use of birthplace as the basis for conferring British nationality extremely lax and arbitrary compared to the stringent standards for changing subject registration under Qing laws. Hence, they had difficulty accepting Anglo-Chinese's assertion of British nationality in China, see DAAS, item 01-02-001-02-023.

⁸⁶ Pott, *A Short History of Shanghai* (Kelly & Walsh 1928) 37, 39, 50–51.

⁸⁷ 'Guanyu chuanjiao tiaoyue zhi yanjiu [A Study on Treaties concerning Missionary activities]' (1908) 5(2) *Eastern Miscellany* 1. Norway and Sweden are counted separately after dissolution of their union in 1905. Japan and Korea (Choson) are counted separately (the latter was annexed by Japan in 1910).

⁸⁸ 'Zhongguo shangbu jilue [A Concise Account of the Trading Ports of China]' (1907) 186 *Diplomatic Review* 167. Only four provinces in China had no such port: Shanxi, Shaanxi, Henan and Guizhou. Another list prepared by the

treaties mainly concerned foreign trade, including fixing or capping taxes and duties at favourable rates.⁸⁹ From the 'second treaty settlement' of 1858–60 onwards, the treaties progressively struck at China's core economic interests, eventually giving foreign states the right to navigate and trade along main inland waterways,⁹⁰ the right to set up manufacturing industries at the trading ports⁹¹ and valuable mining and railway rights.⁹² Importantly, 'most-favoured-nation' ('MFN') provisions weaved bilaterally negotiated terms into a *network* of binding commitments enjoyed by all MFN states, albeit to varying extent depending on the breadth of the clause.⁹³ Once locked into the MFN system, the commitments became difficult for China to negotiate down or away. Instead of being a minor regime for a fringe community in China, the trade treaties had evolved into a major administrative-legal system of its own.

As the treaty system expanded, treaty foreigners progressively accessed rights originally enjoyed only by Chinese subjects. Conversely, Chinese subjects were not given access to the more favourable treatment under the treaties. Since the Qing government's long-term goal was to scale back on the special rights for foreigners through negotiations,⁹⁴ *extending* those rights to Chinese subjects was beyond their contemplation. However, the practical effect of the government's dual-track regulatory approach was that Chinese subjects were treated less favourably in some cases. The gap in treatment also widened over time. Of course, Chinese subjects still enjoyed some important, exclusive rights such as the right to reside, set up businesses and acquire property in inland China, not to mention the opportunity to enter officialdom through the imperial examination route.⁹⁵ However, juxtaposition of the treaty regime alongside the domestic regimes made the differences in treatment plainly visible to Chinese subjects. Where the advantage gap was significant, Chinese subjects tried to find ways to access treaty treatment. The old practice of 'upgrading' their subject status became useful, only that foreign nationality now offered an alternative pathway to success.

B. Assertion of Foreign Nationality: From Indirect Use to Direct Acquisition

Soon after the opening of the treaty ports, the Qing authorities became aware of instances of ethnic Chinese seeking to enjoy treaty treatment. Murakami has illustrated how Anglo-Chinese in Xiamen asserted British nationality to enjoy treaty treatment and obtain consular assistance in disputes, much to the annoyance of Qing officials who considered them to be Chinese subjects.⁹⁶ Apart from these individuals who were born with dual nationality, local Chinese merchants also started to access treaty treatment by making use of foreign businesses. Initially,

British legation in Beijing counts 25 ports of call plus 68 ports open to foreign trade as at April 1911: Wellington Koo, *The Status of Aliens in China* (Longmans 1912) 265.

⁸⁹ Above note 78.

⁹⁰ eg Art X Treaty of Tianjin 1858 (UK), which allows British vessels to trade along the Changjiang, expanding to all inland waterways under Art IX of Mackay Treaty 1902 (UK).

⁹¹ Art VI(4) of Treaty of Shimonoseki 1895 (JPN); Art IV of Treaty of Commerce and Navigation 1896 (JPN).

⁹² eg mining rights in Shanxi granted to the (British) Peking Syndicate in 1898; railway rights granted to Germany, France, Belgium, Britain, Russia under various agreements in 1898–1900.

⁹³ For a survey of the MFN clauses in China's treaties, see Liang Qichao, 'Zhong-Ri gai yue wenti yu zuihuiguo tiaokuan [Treaty Re-negotiation between China and Japan, and the Most-favoured-nation Clause]' (1907) 4(2) *Eastern Miscellany* 1.

⁹⁴ Wright, *The Last Stand of Chinese Conservatism* (Stanford University Press 1957) 232, 251.

⁹⁵ Although foreigners could not sit the imperial examinations, they could be recruited directly into government service.

⁹⁶ Murakami, 'Qing mo Xiamen Ying-ji huaren wenti'.

Chinese merchants resorted to simple smuggling – mixing their goods and purchases among those of a foreign firm in order to take benefit of the favourable tax treatment enjoyed by foreign goods and purchases. Chinese compradors, as purchasing agents of foreign firms, were conveniently placed to resort to such arrangement.⁹⁷ Some foreign firms then turned this into a *business* of lending their firm's name to Chinese merchants for customs clearance.⁹⁸ Some of these 'foreign' firms were in fact beneficially owned by Chinese subjects.⁹⁹

The smuggling of goods continued to the last days of the Qing dynasty.¹⁰⁰ However, as treaty port activities grew after the second treaty settlement of 1858–60, new forms of Sino-foreign business collaborations emerged. When American firm Russell & Co started a steam navigation business in China in 1861–62, the bulk of the capital was raised locally from Chinese and British merchants. Amongst the investors were some 'old Chinese friends', including the firm's Chinese compradors and a leading silk merchant in Shanghai.¹⁰¹ Apart from investing in foreign enterprises and projects, Chinese merchants also sought to form partnerships with treaty foreigners or set up foreign companies or firms with their own capital.¹⁰² These merchants saw commercial opportunities in foreign commerce and made use of business models that were commonplace in the West and which did not categorically reject investments in commercial enterprises based on the nationality of the investors. However, the Qing government was not concerned with business facilitation but with treaty administration. To the government bureaucrats, Sino-foreign business models were inherently suspect and should be banned in order to preserve the bright line between treaty and domestic regimes and preclude 'free-riders' of either regime.¹⁰³ Their regulator's mindset also reflected traditional Confucian economic values which exalted agriculture and deprecated commerce, and it was Confucian philosophy which guided the 'self-strengthening' reforms of 1861–95.¹⁰⁴ The government's restrictive policy did not stop Sino-foreign joint ventures completely. For example, Faure estimates that some 70 per cent of all 'Western' shipping operating in China was funded by Chinese capital.¹⁰⁵ However, it prevented Chinese businesses from making the most of the commercial opportunities under the treaties. Thus, the Qing government lost an opportunity to share the benefits of foreign trade with local businesses at large thereby 'neutralising' the unequal effects of the treaty system at a time when it still had policy space to do so.¹⁰⁶ From the 1890s onwards, successive new treaties extracted hefty indemnity and expansive economic rights from the Qing government, notably the Treaty of Shimonoseki 1895 and the Boxer

⁹⁷ Hao, *The Comprador in Nineteenth Century China*, 98–99.

⁹⁸ eg, in Xinjiang, Russians were selling 'road permits' to Chinese traders to facilitate the passage of their goods through customs barriers: DAAS, item 01-17-042-09-001.

⁹⁹ eg, the case of Xie Xiaoyuan, arrested in 1880, see DAAS, items 01-31-007-02-001 to 004.

¹⁰⁰ See for example the telegram dated 25 June 1907 from the Governor of Jiangxi to the Foreign Ministry, see GC Telegrams, vol 33, item 446.

¹⁰¹ Liu, 'Financing a Steam-Navigation Company in China, 1861-62' (1954) 28 *Business History Review* 154, 162, 169–70.

¹⁰² eg, American firm Holmes & Co in Shanghai was set up in 1868 by Chinese merchants Gao Jiushan and Li Jinyu and American Matthew Holmes. Gao was said to have contributed the bulk of the capital, see DAAS, item 01-20-009-07-002; *Zhong-Mei Waijia shiliao: Tongzhi II* [Academia Sinica, Historical Materials on Sino-American Relation: Tongzhi, Part II], item 914.

¹⁰³ Correspondence in July to November 1875 between Li Hongzhang, Superintendent for Northern Trade and the Chinese foreign office (*zongli yamen*), see DAAS, items 01-20-009-07-001 to 003; See also Fairbank (ed), *Cambridge History of China* [Late Ch'ing Part I] (Vol 10, Cambridge University Press 1978) 513.

¹⁰⁴ Wright, *The Last Stand of Chinese Conservatism*, 148–50.

¹⁰⁵ Faure, *China and Capitalism* (HKU Press 2006) 51.

¹⁰⁶ The legality of Sino-foreign cross-investments was finally recognised by the Qing government in 1902: Art IV. of Mackay Treaty 1902 (UK).

Protocol 1901. This severely strained Qing treasury and constrained the government's ability to fund reforms to close the competition gap between local and foreign businesses.

Up to the early 1890s, apart from Anglo-Chinese, most Chinese sought to access treaty treatment by *indirectly* relying on foreign nationality: through foreign business vehicles or business arrangements with foreign entities. The major turning point came in the late 1890s. From then onwards, Qing government records frequently feature cases of ethnic Chinese directly asserting foreign nationality in China.¹⁰⁷ A major cause was China's cession of Taiwan to Japan following the Sino-Japanese War 1894–95. Taiwan residents were given a period of two years to relocate to China and retain their Chinese nationality. Unsurprisingly, only a handful of residents (5,460 persons, constituting about 0.21 per cent of the population) chose to migrate by the deadline while the vast majority, some 2.6 million residents, became Japanese subjects on 8 May 1897.¹⁰⁸ At the time, around 80–90 per cent of Taiwan businesses had branches or agencies in the Chinese mainland.¹⁰⁹ These now counted as foreign businesses in China. Taiwan residents aside, this period also saw the return of overseas Chinese into China, whether to seek out business opportunities, to retire in their hometowns, or because they were chased out of their host countries by hostile legislation.¹¹⁰ Many overseas Chinese had also acquired the nationality of their host countries through naturalisation,¹¹¹ adding to the pool of 'foreign nationals' when they returned to China.

These individuals had acquired foreign nationality by operation of law (treaty), by birth or by naturalisation after an extended period of residence overseas. However, foreign nationality was also popular among local Chinese. China's defeat in the Sino-Japanese War had ushered in the Scramble for Concessions whereby the Qing government was forced to make major economic concessions to foreign states, including the right to set up industries at treaty ports and important mining and railway rights.¹¹² Just as the rise of steam navigation business in the 1860s attracted Chinese investments into the sector,¹¹³ these treaty concessions translated into lucrative commercial opportunities which Chinese merchants also wanted to utilise. Meanwhile, after the Qing government's disastrous handling of the Boxer Rebellion 1900–01, foreign states became more aggressively resolute in protecting the interests of their nationals. Some Chinese subjects acquired foreign nationality so that they could invoke consular assistance in legal disputes and even avoid Qing law and jurisdiction altogether.

By 1898, agencies in Shanghai were already offering to help Chinese subjects acquire foreign nationality.¹¹⁴ The demand for foreign nationality continued to grow in the next decade. Even consulates in China were involved in nationality sales. By 1906, the Spanish Consulate in Shanghai had become infamous for granting naturalisation certificates to Chinese subjects in China and providing consular assistance to these nationals in legal disputes.¹¹⁵ This practice was finally stopped in August 1908 when Fernandez Arias, the incoming Spanish Consul

¹⁰⁷ Based on a survey of archival materials in DAAS and GC Telegrams.

¹⁰⁸ Art V of Treaty of Shimonoseki 1895. Within three years, about 360 persons also returned and re-registered themselves in Taiwan, see TWHM, 38, 48–68.

¹⁰⁹ Report dated 8 August 1896 by Sawamura Shigetarō of the Civil Department, dispatched to Xiamen, see TWHM, 159.

¹¹⁰ eg the Chinese Exclusion Act 1882 (US) amended in 1884 and renewed by the Geary Acts of 1892 and 1902 until made permanent in 1904.

¹¹¹ Correspondence from Deshou, Acting Governor General of Liangguang to the Foreign Ministry, received on 7 July 1903, see DAAS, item 02-13-020-02-006.

¹¹² Above notes 91 and 92.

¹¹³ Liu, 'Financing a Steam-Navigation Company in China, 1861–62'.

¹¹⁴ 'Q&A: Question no. 178 and Answer' (1898) 14 *Scientific Review (China)* 14.

¹¹⁵ Chinese Mail (Hong Kong, 15 June 1906) 4; Shun Pao (Shanghai, 18 May 1906) 4.

in Shanghai, revoked the naturalisation certificates of some 100 ethnic Chinese, much to the Qing authorities' approval.¹¹⁶ Taiwan registration status was another popular choice due to its accessibility. Given the strong family and business ties between the residents in Taiwan and Fujian, it was not difficult for Fujianese to find someone in their extended family or clan willing to certify (fake) their Taiwan connections in support of their application. As at 1905, Taiwan residents were helping Chinese subjects to acquire registration certificates for around \$200–300 to \$500–600 silver dollars.¹¹⁷ By 1907, ethnic Chinese holding Japanese nationality (Taiwan registration status) could be found 'everywhere' throughout Fujian.¹¹⁸ Alarmed that local staffers at Japanese consulates in China had colluded with Chinese subjects in perpetrating nationality fraud, the Taiwanese government ordered rigorous background checks to be conducted on all applicants for Taiwanese registration.¹¹⁹ Spain and colonial Taiwan aside, Portugal, Italy and Russia were also known for granting 'naturalisation certificates' to Chinese subjects liberally.¹²⁰

Unlike 'long-distance citizens' who make use of foreign nationality to access facilities *outside* their country of original nationality, the 'naturalisation certificates' obtained by local Chinese were primarily used by them *within* China. In the absence of a law on 'nationality' it was unclear how nationality could be changed. This gave rise to procedural irregularities. Many Chinese subjects acquired foreign nationality without informing the Qing government and hence were not officially 'expatriated'. Yet these 'dual nationals' then purported to assert their foreign nationality in or against China, their state of nationality.

C. Chinese-Foreigners: Unprincipled Villains or Victims of Inequality?

Qing officials were scandalised by ethnic Chinese attempting to assert foreign nationality in China. They considered two types of conduct especially abusive. One was 'double-dipping' – the selective assertion of Chinese and foreign nationalities at different times to enjoy domestic as well as treaty treatment. Second, the acquisition of foreign nationality by an individual *after* becoming involved in a dispute, for the sole purpose of obtaining consular assistance, and even avoiding Qing law and jurisdiction altogether.¹²¹

While there were clearly cases of abuses, a closer examination of the foreign nationality cases gives a more nuanced picture. In the context of trade, not only were Chinese businesses required to pay taxes on goods at the full rates, but they were vulnerable to arbitrary taxation by local officials. The *likin*, an additional transit duty introduced from the late 1850s, was particularly problematic. The tax rates varied widely across provinces and goods types and were liable to random determinations by officials and negotiation with tax collectors.¹²²

¹¹⁶ *Qing dai Waiwubu Zhong-wai guanxi dang'an shiliao congbian, Zhong-Xi guanxi juan* [Archival Materials on Sino-foreign Relations in the Qing Period: Sino-Spanish Relations], vol 3, items 347, 361.

¹¹⁷ Chinese Mail (Hong Kong, 9 November 1905) 4.

¹¹⁸ Correspondence dated 22 November 1907 from Governor General of Minzhe to the Chinese Foreign Ministry, see DAAS, item 02-21-015-02-010.

¹¹⁹ Internal circular issued by the Civil Department of Taiwan on 24 May 1906, TWHM, 121–22.

¹²⁰ See for example correspondence from Duanfang, Governor General of Liangjiang received by the Chinese Foreign Ministry on 30 September 1908, see DAAS, item 02-10-012-02-009; 'Zicha ru E-ji Mengmin [Investigation into Mongolian Subjects who had Acquired Russian Nationality]' (1909) 248 *Diplomatic Review* 17.

¹²¹ Correspondence within the Qing government in 1903, see DAAS, items 02-13-020-02-006, 02-13-020-02-012; memorial from Liu Shixun, Chinese Minister to France, Spain and Portugal in 1908, see DAAS, item 02-21-015-03-001; see also the Case of Wang Zhou Lizhen (1908-9), concubine of the Late Wang Yifu, widely reported in the newspapers in Shanghai, including Shun Pao and the North China Herald.

¹²² Williams, 'Taxation in China' (1912) 26 *Quarterly Journal of Economics* 482, 499.

In day-to-day operations, Chinese businesses were also vulnerable to harassment and extortion by petty officers and local thugs. An investigation report by the Civil Department of Taiwan in 1896 found that Chinese businesses in Xiamen used to 'borrow' foreign business registration from Anglo-Chinese firms to forestall harassment and avoid incessant demands of 'miscellaneous fees'.¹²³ In Shanghai, some Chinese merchants moved to the international settlements so that they could conduct business without government interference.¹²⁴ In other words, Chinese traders sought foreign nationality for equal treatment, business certainty and protection from administrative arbitrariness.

Whereas there is considerable scholarship on the inadequacies and abuses of treaty states' extraterritorial justice in China,¹²⁵ the case of Taiwanese merchant Lin Mouchang in 1905–06 provides a glimpse into the use of foreign nationality in legal disputes as between ethnic Chinese before the Chinese court.¹²⁶ Lin Mouchang's father, Lin Dunyan, owned a successful tea business in Xiamen. In 1905, a dispute arose between the firm and its business partner Wanbaoyuan over the settlement of accounts. Each firm claimed that the other owed money to it. Wanbaoyuan had powerful backing: two of its three partners were prominent merchants holding Qing office titles. One of them, Guangzhou Prefect Chen Binghuang, worked behind the scene to ensure Wanbaoyuan's success in the litigation. Chen used his brother, a French national, as Wanbaoyuan's 'representative' in the litigation even though the brother otherwise had no connection with the business. The Chens then secured French Consul AJM Fanque's support in raising the matter with the Assistant Prefect of Xiamen. The judge cowered under pressure from the French Consul intervening on behalf of a business backed by two officials of more senior rank. He ordered his men to suspend Lin's business operations and restrain his goods.

Lin Duanyan petitioned the Ministry of Commerce in Beijing but passed away before the matter was fully resolved. Thereafter, his son Mouchang took over the business and lawsuit. Lin Mouchang obtained Taiwan registration status in September 1903.¹²⁷ However, since his father was a Chinese subject, he continued with the proceedings without invoking his Japanese nationality. As it turns out, Wanbaoyuan's claim had been grossly exaggerated. In February 1906, the Xiamen Chamber of Commerce determined that after set-off Wanbaoyuan still owed sums to Lin's business.¹²⁸ Contrary to customary practice, the court did not defer to the Chamber's determination. Rather, the litigation dragged on in court.

The matter took a drastic turn on 1 July 1906 when Lin Mouchang was suddenly arrested by the Xiamen Circuit Intendant,¹²⁹ probably out of vengeance to punish the Lins for petitioning the ministries in Beijing directly. The Japanese Consulate in Xiamen asked the local authorities to hand over Lin for investigation and trial pursuant to the treaty arrangement¹³⁰ but the authorities refused, claiming that the arrested person was not Japanese but a Chinese

¹²³ Report dated 8 August 1896 by Sawamura Shigetarō of the Civil Department, dispatched to Xiamen, see TWHM, 159–60.

¹²⁴ Pott, *A Short History of Shanghai*, 67.

¹²⁵ eg Scully, *Bargaining with the State from Afar* (Columbia University Press 2001); Ruskola, *Legal Orientalism* (Harvard University Press 2013); Cassel, *Grounds of Judgment* (Oxford University Press 2012).

¹²⁶ Except where stated, the description of this case is based on the petition of Lin Mouchang received by the Chinese Foreign Ministry on 12 February 1906, see DAAS, item 02-09-006-06-001, supplemented by Hsieh, 'Nationality Choices and Commercial Disputes between Taiwanese and Fujianese Merchants in Early 20th Century: The Case of Lin Mou-chang' (2017) 24 *Taiwan Historical Research* 83.

¹²⁷ Report no. 12985 dated 27 October 1906 of the Taipei Police, see TWHM, 384.

¹²⁸ Internal notes of the Taiwanese authorities dated November 1906, see TWHM, 366.

¹²⁹ Report dated 21 November 1906 by Taketomi Kunikane, Commander of the South China Fleet of Japan, see JACAR, item C06091840800.

¹³⁰ Arts XXII, XXIV of Treaty of Commerce and Navigation 1896.

subject called 'Lin Jiangshu'.¹³¹ In the next five months, the Qing and Japanese authorities were at loggerheads over the transfer of Lin. They argued over the true identity and nationality of the arrested person, including whether 'Lin Jiangshu' and 'Lin Mouchang' were two different persons or two names of the same person, whether Chinese subject 'Lin Jiangshu' was fraudulently using the identity of Taiwan registrant 'Lin Mouchang', and whether there were in fact two different persons named 'Lin Mouchang'.¹³² The Qing authorities shifted their reasons for arresting Lin and their version of facts, and were self-conflicting at times.¹³³ Following months of impasse, in November 1906, Japanese Minister to China Hayashi Gonsuke delayed the departure of Japanese warship *Takachiho* from Xiamen and instructed the commander to help secure Lin Mouchang's transfer. Lin was finally handed over to the Japanese authorities on 20 November 1906. Due to his 'tired state' he was allowed to remain at home under caution pending investigation.¹³⁴

This case illustrates how, under the treaty system, foreign nationality could be used by parties to a dispute to increase their chances of success in litigation, thereby turning a dispute between ethnic Chinese into a Sino-foreign dispute and even one between foreign nationals. Further, foreign nationality could function as a 'sword' or a 'shield', causing, amplifying or reducing inequality of arms between the parties. For the Lins, the litigation was an unequal contest to start with. They were up against a business backed by powerful merchant-officials, adjudicated by a judge who was keen to show deference to his 'peers'. Despite the Qing government's distain for ethnic Chinese asserting foreign nationality in litigation, Chen Binghuang, a merchant-official, had bent the rules to invoke foreign nationality in order to crush his litigation opponent. It did not help that the French Consul had dived into the dispute to side with Wanbaoyuan, believed to be a French firm, without investigating the merits of its claim of French nationality or its monetary claim. By contrast, Japan, a colonial power new to the game, had proceeded more cautiously. Initially, the Japanese authorities stepped back from Lin Mouchang's litigation in China.¹³⁵ After receiving a complaint of Lin's alleged nationality fraud, the Taiwanese authorities conducted a detailed investigation into his Taiwan registration application.¹³⁶ At the same time, after Lin Mouchang's arrest, they actively intervened to procure his transfer, holding their grounds based on the treaty terms and mindful of the need to meet 'the expectations of the 1,000 or so Japanese residents in Xiamen'.¹³⁷ Unhappily for China, Qing government maladministration caused the Japanese Minister to China, Hayashi Gonsuke to resort to a veiled military threat to procure Lin's early release. The apparent 'effectiveness' of this strategy set an ominous precedent for Sino-Japanese relations, emboldening Japan to resort to military threats when the two countries clashed again shortly afterwards over the *Tatsumaru* incident.¹³⁸

As to Lin Mouchang, just like the Chinese merchants who 'borrowed' foreign business registration from Anglo-Chinese to avoid harassment by local officials, Lin could not simply

¹³¹ Report dated 18 July 1906 from Ueno Senichi, Japanese Consul in Xiamen to Hayashi Gonsuke, Japanese Minister to China, see JACAR, item C06091840800.

¹³² TWHM, 367–69.

¹³³ Above note 129.

¹³⁴ Confidential report no. 40 dated 28 November 1906 from consular officer Yoshida in Xiamen to Hayashi Gonsuke, Japanese Minister to China, see TWHM, 324.

¹³⁵ Above note 128.

¹³⁶ TWHM, 318–71.

¹³⁷ Confidential report no. 23 dated November 1906 from Yoshida in Xiamen to Hayashi, see TWHM, 323.

¹³⁸ Telegram dated 11 March 1908 from the Foreign Ministry to the Governor General of Guangdong, see GC Telegrams, vol 24, item 55; Hsu, '1908 nian Zhong-Ri Erchenwan an jiaoshe shimo [Negotiations of the Tatsu Maru Event between China and Japan 1908]' (2009) 22 *Soochow Journal of History* 131, 152.

be dismissed as an unprincipled ‘double-dipper’ who switched between Chinese and foreign nationalities for self-serving ends. Lin obtained Taiwan registration because his business was based in Taiwan. However, Lin had been trading in China and also identified himself as Chinese. Initially, the Lin father and son had tried to resolve the business dispute with Wanbaoyuan under the Qing justice system but they faced an uphill battle. Lin Mouchang’s life was even placed in peril. It was not that Lin Mouchang particularly preferred Japanese to Chinese nationality but that the Qing justice system had failed him and his father. Ironically, it was his colonial nationality that helped secure his release.

IV. CONCLUSION

After the opening of the treaty ports in the mid-nineteenth century, Chinese subjects adapted their practice of changing subject statuses and started to acquire and assert foreign nationality, first indirectly, then directly. This practice was controversial. From the Qing government’s perspective, these individuals were self-seekers who made use of foreign nationality for personal gain, relying on foreign help to oppress compatriots and evade Qing law and jurisdiction.¹³⁹ Historical records reveal a more complex position. Foreign nationality was not only manipulated by scoundrels for corrupt and abusive ends. It also protected ordinary subjects from administrative abuses and arbitrary rule. Chinese businesses that used foreign nationality to access treaty treatment might be profit-chasers, but in so doing, they also became more competitive.

If inequalities and injustices faced by Chinese subjects stemmed from the treaty system, Qing government policies exacerbated the problem. From the outset, the Qing government had set its mind on subjecting foreigners and Chinese to different regulatory regimes. This inflexible mindset made the government oblivious to the need to enhance the treatment of Chinese subjects to a comparable level. Abuses by Qing officials added to the woes of Chinese subjects. Chinese nationality thus became part of the unequal legal institutions whereby Chinese subjects were treated less favourably than treaty foreigners in their own country. Foreign nationality became a tool for equalising rights and opportunities and ensuring personal security *within* China. However, the acquisition and use of foreign nationality in China inevitably undermined Qing law and institutions, debased Chinese nationality and eroded the foundation of Qing rule.

In March 1909, the throne finally approved China’s first piece of nationality enactment.¹⁴⁰ The primary aim of this law was to ‘preserve’ Chinese subjecthood, by encouraging overseas Chinese to retain Chinese nationality¹⁴¹ and by regulating expatriation from Chinese nationality. Importantly, Qing government approval was required for voluntary expatriation while ex-nationals were expressly prohibited from enjoying the rights of Chinese subjects.¹⁴²

¹³⁹ Above note 121.

¹⁴⁰ *Da Qing guoji tiaoli* (Great Qing Nationality Regulation), the related Implementation Rules as sanctioned by the throne on 28 March 1909. The texts of the instruments are set out in the Official Gazette version of the memorial from the Constitutional Investigation Board (*Xianzheng Biancha Guan*) dated 28 March 1909, as endorsed by the throne, see XZSL, 403; For an English translation of these instruments and contemporaneous commentary, see ‘Law on the Acquisition and Loss of Chinese Nationality’ (1910) 4 *AJIL* 160 and Tsai, ‘The Chinese Nationality Law 1909’ (1910) 4 *AJIL* 404.

¹⁴¹ Especially Chinese in the Dutch East Indies: see petition of the Nanyang Surabaya General Chamber of Commerce received by the Foreign Ministry on 25 February 1909, see DAAS, item 02-14-008-03-003; see also Chen, ‘The Evolution of Modern Chinese Nationality Law: A Historical Perspective’ (2023) 23 *China Review* 123, 128.

¹⁴² Arts 11, 12, 16 of Great Qing Nationality Regulation; Art 8 of Detailed Implementation Rules.

In other words, nationality law was the instrument whereby the Qing rulers reasserted their authority over Chinese subjects and reined in their behaviour. At the same time, the government had also come to realise the need to improve the 'citizenship package' for its people. It had embarked on a series of 'new policy reforms' and had also mapped out a constitutional and law reform roadmap that would enhance the rights of Chinese subjects, including giving them important constitutional rights.¹⁴³ Nonetheless, these reforms came too late and too slowly. In October 1911, the Xinhai Revolution broke out. With the abdication of the throne in February 1912, China became Asia's first modern republic.

¹⁴³ Memorial dated 27 August 1908 from the Constitutional Investigation Board and the National Assembly: *Qing mo choubei lixian dang'an shiliao* [Archival Materials relating to the Preparation of the Adoption of a Constitution in the Late Qing Period] (Vol 1, Wenhai Publishing Co Ltd 1987) 54–67.