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Qing China's Legal Reform Thought before 1895:
John Fryer and His "Western Learning" Dissemination in Shanghai
during the Self-Strengthening Movement

By

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Table of Content

I.	Introduction	3
A.	Definition of “Legal Reform”	4
B.	Mainstream Academic Opinion	6
C.	Supportive Evidence	7
1.	Implemented Measures	7
2.	Evidence in Thoughts	8
3.	The Translation Condition in the Self-Strengthening Movement	10
4.	The Mainstream Cognition of “Legal Reform” of Literati	13
II.	Encounter of Two Worlds	16
A.	The World before Young John Fryer	15
B.	The Dynamics of Qing after the Taiping Rebellion	18
C.	The Encounter	19
III.	Political Economy	21
A.	About the Book	21
1.	An Encyclopedic Introduction on Classical Liberalism	22
2.	Political Thoughts Concerned	25
B.	<i>Political Economy's</i> Contribution in China's Legal Reform	28
1.	Three Teachings by the Book	28
2.	Understanding Western Law in its Basic Outline and Context	30
C.	<i>Political Economy's</i> Fate and Influence	32
IV.	The Shanghai Polytechnic and the Prize Essay Game	33
A.	The “Original Purpose” of the Shanghai Polytechnic	35
1.	A Public Library for Chinese	35
2.	The Extention of the Plan	37
3.	The Nature of the School	41
B.	The “Prize Essay Scheme”	41
1.	Fryer's Successful Invention	41
2.	The 1893 Essay Contest about “Legal Reform”	42
C.	Why Are the Six Papers Significant	46
V.	Epilogue	48

I. Introduction

As they study the practice of law, Chinese lawyers and jurists face the reality that the legal system they now have does not evolve from their traditional pre-modern law but has grown out of a transplantation process of Western law dating back to the late Qing dynasty. Qing China's legal system was the climax of the so-called "Chinese legal tradition¹," (中華法系) which had successfully run for two millennia and greatly influenced its neighbors, characterized by the Tang code as its form basis, Confucianism as its principle, and "rationality" as it has been praised by some Western observers after the Qing Code was translated to them in the early nineteenth century², but by the demise of the dynasty this tradition had largely fallen apart and China's legal system had become close to what it looks like at present³. From which time point did Chinese realize that the law they reserved for thousands of years must be reformed and that Western law should be learned?

¹ Qu Tongzu, *Law and Society in Traditional China* (Paris: Mouton, 1961).

² See Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* (New York: Columbia University Press, 2016), 129. The most noteworthy characteristic of traditional Chinese law that 19th century Western observers saw as "rational" is its long history of codification. At that time legal confusion was plaguing both Continental Europe and England, which finally led to a great codification movement. Although we can by no means say the movement was a direct result of the translation of the Qing Code, it did inspire the Western reformers and served as a kind of model for the desirable legal reform in their expectation.

³ Now, one can find that today's Chinese civil law is very similar to its European counterpart. Actually, the civil law codes of France, Germany, Spain, Austria, Italy, Japan, Korea and China were all similar. They all belong to the so-called "civil law tradition" (usually compared with the "common law tradition," represented by Britain and the United States), a legal tradition starting from the ancient Rome and to be widely adopted around the world in the 19th century, especially countries being invaded and colonized by Continental European powers. About how non-Western countries adopted the "civil law tradition," see John Henry Merryman and Rogelio Perez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (Stanford University Press, 2007), 4-5. China's reception of "civil law tradition" officially started from the New Policy (see the next footnote for its meaning). Take civil law code as an example again, one will find Qing's civil law code draft (finished in 1911) very European, and thus close to what today's civil code looks like. See Huang Yuansheng, 黃源盛. *Wanqing minguo minfa shiliao jizhu 晚清民國民法史料輯註* [Notes on the historical materials of civil law in the late Qing Dynasty and the Republic of China] (Taipei: Lizhaishe, 2014), 1843-1850.

In this paper I will argue that legal reform as an agenda in Chinese modernization did not, as the mainstream opinion has believed, start from the 1901 policy reforms of the Qing Government, the so-called New Policy⁴ (清末新政), but rather from the Self-Strengthening Movement⁵ (洋務運動), which was encouraged by the translational work of John Fryer (Chinese name: 傅蘭雅), an English missionary-turned-activist in late 19th century China. To make this argument I will first define what I mean by “legal reform” in this paper, before examining the evidence supporting the mainstream opinion in current scholarship. Then I will give a very short biography of Fryer, and consider the ways in which Fryer’s translation of Western political economy, law and other subjects, as well as his engagement with intellectuals and members of the Qing government through his active participation in a Shanghai school (which will be elaborated in part IV). What Fryer has done prepared the soil not for the spread of Christianity, but rather the transplantation of the Western legal system.

A. *Definition of “Legal Reform”*

⁴ The New Policy may also be translated as the “Late Qing Reforms.” With the ending of the Boxer Rebellion, the Qing government initiated a new reform movement with a much larger scale of reform agenda, including economic, administrative and political institutions reform. It has been widely thought that the New Policy is also the starting point of China’s legal reform, as I will illustrate more later.

⁵ The Self-Strengthening Movement (also called “the Westernization movement”) was a period of institutional reforms initiated in China during the late Qing dynasty following the ending of the Second Opium Wars and the Taiping Rebellion, until China was defeated in the First Sino-Japanese War, that is, from 1860’s to 1890’s. During this movement China adopted Western-style troops and weapons, factories, and created several diplomatic and foreign language training schools.

The term “legal reform” seems to be clear, but actually it can be confounded with many other similar concepts. First, I want to distinguish “legal” affairs from “political” or “constitutional” affairs. It means I will focus on more juridical issues (e.g., attorneys) rather than arguments for political reform like Kang Youwei⁶’s constitution-making ideas or Guo Songtao⁷’s speeches about people’s sovereignty and congress. Secondly, I will focus on the domestic role law was expected to play in governance instead of its usefulness in diplomatic or international negotiation when two countries are at war or making peace. So, I will not involve international law, which dominated Qing China’s legal translation during the First Opium War and from 1860’s to the First Sino-Japanese War⁸, serving as a practical technology to handle “barbarians.” Finally, I want to exclude a typical traditional concern of law enforcement among Chinese intellectuals called “刑獄.” The lengthy confusing criminal justice process and the extortion of clerks have long been the target of Chinese literati in history. But if the discussion of this issue does not borrow inspirations from the West, I will not take into consideration. Therefore, my definition of “legal reform” is any kind of transformation on specific traditional domestic legal organs, in light of modern

⁶ Kang Youwei (1858-1927) was a political thinker and reformer in late Qing China. His ideas about China’s political reform towards constitutional monarchy were influential in the abortive Hundred Days’ Reform (in Chinese called 戊戌變法, lasting from June 11 to September 22, 1898).

⁷ Guo Songtao (1818-1891) was a Chinese diplomat and statesman during the Qing dynasty. As the first foreign emissaries to be sent abroad by the Qing government, he was famous for arguing that China should learn from the West. He was among the first generation of open-minded Chinese intellectuals claiming that China should also have a Congress.

⁸ About international law translation’s dominant position, see Li Guilian 李贵连. 1902: Zhongguofa de zhuanxing 1902: 中国法的转型 [1902: the transformation of Chinese law]. Guilin: Guangxi shifan daxue chubanshe, 2018, 126-133, and Deng Jianpeng 邓建鹏. Zhongguo fazhishi 中国法制史 [Chinese legal history]. Beijing: Beijing daxue chubanshe, 2011, 323-324.

Western laws.

B. Mainstream Academic Opinion

When talking about the history of legal reform that gave birth to today's Chinese legal system, modern Chinese legal historians have tended to start straightway from the New Policy. Li Guilian, a major scholar in this field, identifies the twenty-eighth lunar year of Guangxu (1902) as the starting point of China's legal reform⁹. His student Li Qicheng also starts the story of China's legal reform from the New Policy, and sees the Self-Strengthening Movement as merely a preparatory and transitional time plagued by extraterritoriality¹⁰. The law school professor at Minzu University of China Deng Jianpeng says "1840-1894 is the first stage of our reception of Western legal knowledge, that is, primarily international law¹¹." The Chinese legal history scholar at Fu-Jen University Huang Yuan-sheng identifies the period 1902 to 1911 as the period of "legal reform" (變法修律階段) while before 1902 as the "traditional law" period (固有法階段)¹².

Among the few who do pay attention to the decades before the New Policy, they can hardly tell more than how figures leading the Self-Strengthening Movement like Zhang Zhidong¹³

⁹ Li, 2.

¹⁰ Li Qicheng 李启成. Zhongguo falüshi jiangyi 中国法律史讲义[Lectures on Chinese legal history]. Beijing: Beijing daxue chubanshe, 2018, 274-277.

¹¹ Deng, 323-324.

¹² Huang Yuansheng 黄源盛. Zhongguo fashi daolun 中国法史导论[An introduction to Chinese legal history]. Guilin: Guangxi shifan daxue chubanshe, 2015, 325.

¹³ Zhang Zhidong (1837-1909) was a leading figure in the Self-Strengthening Movement. He was most well-known for his achievements and adoption of "Western Learning" when serving as the Governor-General of

have acted after the Movement ends. These figures are seen as the creator of the iconic doctrine “Chinese Learning as Substance, Western Learning for Application (中體西用).” Therefore, when the movement is still proceeding, although they did lots of work to improve China’s material productivity, they did not reform the extant legal system except for giving more weight to the way of Legalism (法家) when suppressing the remnants of the Taiping Rebellion. And it is said that they become increasingly reactionary after the New Policy began¹⁴.

C. Supportive Evidence

1. Implemented Measures

Are the arguments above well supported by historical facts? In terms of implemented reform measures the answer is yes. It is after 1902 that Shen Jiaben, the Vice Minister of the Board of Punishment then was ordered by an imperial decree to substantially revise the Qing Code. And the legal reform became increasingly radical in the following years as the Code’s status as permanent was canceled and downgraded as temporary. After 1906 intense

Hubei and Hunan provinces.

¹⁴ See Li, Qing 李青. “Zhongguo falü jindaihua de kaiduan: yangwupai de shaobian chengfa yinjin xifa” 中国法律近代化的开端：洋务派的“稍变成法”引进西法 [The beginning point of China’s legal modernization: The Westernization group’s ‘slightly reform the existing law’ and the introduction of Western law]. *Zhengfa luntan* 政法论坛 27:4 (2009). Jiang, Lixin 江立新. “Yangwu yundong yu wanqing falü jindaihua” 洋务运动与晚清法律近代化 [The Westernization Movement and the legal modernization of late Qing dynasty]. *Anhui jiaoyu xueyuan xuebao* 安徽教育学院学报 22:5 (2004). What they have found are that (1) the Movement prepares the material basis for the legal reform after the New Policy; (2) the leading figures of the Movement were also active in the legal reform; (3) the Movement prepares a number of foreign language translators for the legal reform; (4) the Movement coined the influential doctrine “Chinese Learning as Substance, Western Learning for Application” and started the change of Chinese people’s xenophobia thoughts. In short, they also implicitly admit that China’s legal reform starts from the New Policy.

efforts started to be made in preparation of a complete, new set of modern codes based on Western models including Civil Code, Business Code, Procedure Code and Penal Code. The unprecedented legislation storm was accompanied by the establishment of a new judicial system theoretically independent from the executive and flourishing modern professional law schools¹⁵ across the empire. Before 1902, during the Self-Strengthening Movement, in contrast, China's legislative and judicial institutions were basically unchanged.

Evidence in Thought

If we look beyond measures adopted and into the realm of thoughts (that is, the thoughts about what measures should be taken to save China), the landscape seems still bleak. Probably it is the intellectual atmosphere then that explains why reform of judicial system could not be adopted. In an article written in 1923 when commemorating the 70th anniversary of Shun Pao, Liang Qichao¹⁶ examined the continuum of China's reception of "Western Learning" and divided it into three stages: The first stage was to learn practical technology; the second was to learn political institutions; the last is to learn culture. The first stage mainly refers to the Self-Strengthening Movement. Basically, it is a period when Chinese began to accept Western military and manufacturing technology as superior to

¹⁵ There was no professional law school during the Self-Strengthening Movement. The first professional law school (法政學堂) was established in Beijing in 1905. Two year later, an imperial decree ordered that all provinces must have professional law schools.

¹⁶ Liang Qichao (1873-1929) was a Chinese politician, social and political activist, journalist, and intellectual. He is the student of Kang Youwei and also participated in the Hundred Days Reform. His thought had a significant influence on the political reformation of modern China. His translations of Western and Japanese books into Chinese further introduced new theories and ideas and inspired young activists.

China's but remained insistent on traditional governance Ways¹⁷. Although scholars like David Pong¹⁸ and Wang Erh-min¹⁹ argue that “some scholars of the early nineteenth century were quite receptive to Western scientific ideas, and a few even applauded Western political institutions,” they have to acknowledge that the “some scholars” they mention and their books (that is, Wei Yuan²⁰'s 《海國圖志》 in 1842, Liang Tingnan²¹'s 《海國四說》 in 1846, Xu Jishe²²'s 《瀛寰志略》 in 1848) were rare and being boycotted²³.

The condition was not much better after the Self-Strengthening Movement began. Wang Kaiyun, one of the most prestigious Confucian scholars at the time, wrote in his diary in 1876 how people were so angry over China's first ambassador to the UK, Guo Songtao, for his praising England's political, legal and prison institutions, that they even tried to burn down his house.²⁴ To sum up, the decades witnessed China successfully establish her first

¹⁷ About the general social mind at this time period, see Wright, Mary. *The Last Stand of Chinese Conservatism: The T'ung-Chih Restoration, 1862-1874* (Stanford University Press, 1957).

¹⁸ David Pong. *Shen Pao-chen and China's Modernization in The Nineteenth Century* (Cambridge University Press, 1994), 2.

¹⁹ Wang Erh-min 王爾敏. *Zhongguo Jindai Sixiang Shilun Xuji 中國近代思想史論續集* [A sequel to the history of modern Chinese thought]. (Beijing: shehui kexue wenxian chubanshe, 2005), 3-8.

²⁰ Wei Yuan (1794-1857) was a Chinese scholar. He was deeply concerned with the crisis facing China in the early 19th century; while he remained loyal to the Qing Dynasty, he also sketched a number of proposals for the improvement of the administration of the empire. He was among the first generation of Chinese intellectuals that advocated for learning from the West. He is mostly known for his 1844 work, *Illustrated Treatise on the Maritime Kingdoms* (海國圖志), which contains Western material collected during and after the First Opium War.

²¹ Liang Tingnan (1796-1861) was a member of the Coastal Defense Service in Guangdong.

²² Xu Jishe (1795-1873) was a high official of Qing government and served as the Governor-General of Fujian and Zhejiang provinces from 1846 to 1850.

²³ For example, Xu Jishe was impeached by censors two years after his book was published. But he was called back again in 1865.

²⁴ Wang Kaiyun 王闓運. *Xiangqilou Riji 湘綺樓日記* [the diary of Xiangqilou]. (Changsha: yuelu shushe, 1997), 243, 460, 643.

group of modern military factories, her first modern navy and her first generation of modern educational institutions for cultivating military and diplomatic talents, but her people were generally ignorant of and hostile to Western political and legal ideas and institutions until the humiliating defeat by Japan in 1895. Before that, those who advocated for learning Western political and legal things risked indirectly admitting that “barbarians” are not only good at war but also good at governance, which was politically sensitive.

2. *The Translation Condition in the Self-Strengthening Movement*

The atmosphere of exclusiveness is reflected by the translation condition at that time. Since China’s foreign language education was still in a fledgling stage at that time, there were almost no private translators and the “Western Learning” translation career was dominantly led by Christian missionaries inside and outside of mainland China, a noticeable number of whom were employed by the major two state-owned institutions: the Jiangnan Arsenal in Shanghai and the Interpreter’s College (Tongwenguan, 同文館) in Beijing. If we examine the types of books translated there, from 1868 to 1896, 178 “Western Learning” books were translated and published by the Jiangnan Arsenal and 162 of them were about natural science, applied science and military science, accounting for 91%. The Tongwenguan translated and published 35 books in sum²⁵. The focus was on practical knowledge like physics, mathematics and chemistry. Only international law was given equal attention, as I mentioned above, because it would not shake the assumption of the

²⁵ Su Jing 苏精. Qingji tongwenguan jiqi shisheng 清季同文館及其師生[tongwenguan in late Qing and its faculty and students].(Taipei: Shanghai yinshuachang, 1985), 158-161.

Self-Strengthening Movement to its foundations. Among the few “non-STEM” books (i.e. few books translated that were not about science and technology, the majority were about), most of them are about warcraft, history and commerce, and Western political concepts occasionally appear in inconspicuous way. Maybe the most popular one is “congress.” It has already been introduced in the three books I mentioned above published in the 1840’s, all of them indirectly from missionaries’ translation. When Kang Youwei and Liang Qichao started to advocate for parliamentary democracy after 1895, this Western concept was not quite new to those open-minded intellectuals. To sum up, during the Self-Strengthening Movement, in terms of Western learnings other than science and technology, Chinese knew only few.

The state of legal translation during the period was even worse. As far as scholars know, only two Western codes were introduced into China before 1895. 1880’s translation of the Napoleonic codes by Tongwenguan (Chinese name: 法國律例) is but a mass of articles, with no interpretation or theory at all, and not surprisingly, full of strange terms boldly invented by Anatolo Billequin, a chemistry professor at the Tongwenguan. Many intellectuals criticized the work as shoddy and complained that they could not understand it²⁶. This is the same problem of the Japanese criminal law (Chinese name: 《日本國志·刑法志》) privately translated by Huang Zunxian²⁷ (1848-1905) in 1890. Neither of the two

²⁶ Deng, 324.

²⁷ Huang was the counselor of Qing's ambassador to Japan from 1877 to 1882.

translations was out of any official plan. Although the translated Napoleonic codes were published in the name of Tongwenguan, the project was not required or ordered by Chinese government officials in charge, like those “STEM” books, many of which were bestowed with praise among literati for exceptional quality. Actually the translator of 《法國律例》 admitted that he did it in his spare time simply out of personal interest²⁸. It is not surprising that the two codes were not in the slightest influential or reputable at that time. Literati were hardly inspired by them.

The extreme poverty of legal translation may not be merely attributed to the overall social hostility. One can imagine that legal translation was more difficult than the translation of political thought because law is always secondary for a state. The correct cognitive order is from the structure and principles of a state to its accessory institutions. Before “checks and balances,” “democracy” and “rule of law” became familiar to Chinese, they inevitably imagined Western laws in Chinese context. That is, as William Alford points out, while law remains the most important part of governance, Confucianism have tended to depreciate its importance and regarded it as no more than punishment²⁹. In a word, the Self-Strengthening Movement is a time period very unfriendly for seriously thinking of legal reform in my definition. There was almost no inspiration from Western law or need among

²⁸ See Xu Biao 徐彪. “Lun qingmo xinshi faxue jiaoyu dui zhongguo jindai faxue de yingxiang” 论清末新式法学教育对中国近代法学的影响 [On the influence of new legal education in the late Qing Dynasty on modern Chinese legal science]. *Huanqiu falü pinglun* 环球法律评论 3(2005): 2.

²⁹ Alford, William. “Law, Law, What Law?: Why Western Scholars of Chinese History and Society Have Not Had More to Say about Its Law” *Modern China*, Vol. 23, No. 4 (Oct., 1997): 402.

literati that they wanted to be inspired.

3. *The Mainstream Cognition of “Legal Reform” of Literati*

Consequently, among those Chinese who were worried about and enthusiastically thinking of ways to improve China’s legal system, there is little evidence that they knew anything about Western law. For instance, Feng Guifen (1809-1874)’s 《校邠廬抗議》 was written after the Second Opium War. In 《校邠廬抗議》 there are two chapters talking about this issue: one called “simplifying regulations”省則例, the other titled “removing yamen runners and clerks”易胥吏³⁰. Unreasonably cumbersome regulations and insatiable clerks who have long been hated for extorting litigants and abusing inmates are stubborn problems plaguing China’s officialdom and people before the Qing dynasty. Feng Guifen complains that the tax rate in Suzhou and Songjiang is as high as 20 times that in other provinces, but its legal basis 《賦役全書》 is organized so haphazardly that no government official trained by Confucian classics rather than accounting could find his way in jungle of statutes. Even if he goes through the whole the book of laws he could not know which page stipulates the tax rate. Therefore, Feng appeals that all regulation codes should be dramatically revised and rewritten in a clear understandable way. As a result, formal officials’ ability to deal with daily administrative and trial issues could improve and the empire’s dependency on corrupt yamen clerks could be reduced. Feng is undoubtedly one of the greatest pioneers advocating for “Western Learning” in the “first stage,” but his problématique³¹ and

³⁰ 校邠廬抗議, 上海書店出版社, 2002, 14-17

³¹ That is, the consciousness about what should be a problem?

suggestions on legal reform are totally traditional. Likewise, Wei Yuan (1794-1857) 's attention to domestic legal system is limited to clarifying confusing statutes and rationalizing the intensity of penalties. Zheng Guanying (1842-1921) was also concerned about these problems in his earliest version of 《盛世危言》(finished in 1892 and published in 1894) with chapters titled “clerks”書吏, “prisoners”獄囚. But similarly, his concern and solution are traditional. Feng Guifen, Wei Yuan and Zheng Guanying are the earliest precursors of applauding Western political institutions in 19th century China, but they did not present noticeable understanding of Western legal system³².

Wu Tingfang (1842-1922) and Ma Jianzhong (1845-1900) are perhaps the main exceptions to China's scholars' ignorance of Western law. They are the rare cases of Chinese studying law in foreign countries (Wu at University College London and Lincoln's Inn in the UK from 1874 to 1877 and Ma at the Paris Institute of Political Studies in France from 1877 to 1879). However, Wu did not leave observations on China's legal reform until he was recommended to revise the Qing Code together with Shen Jiaben in 1902. It may be explained by the fact that in his only time in Mainland China before 1902, his job as Li Hongzhang's legal counsel from 1882 to 1896 is more closely connected with “barbarian affairs 洋務”--- international law and treaty negotiation---rather than giving any comments on Qing's domestic affairs. When he was recommended by Liu Kunyi³³, Zhang Zhidong

³² But after 1895 in the second version of 盛世危言 Zheng started to focus on Western law.

³³ Liu Kunyi (1839-1902) was a Chinese official who came to prominence during the government suppression of

and Yuan Shikai³⁴ to the throne in 1902, there is evidence showing that their major consideration is Wu can be complementary to Shen, who is an expert in Chinese law. Ma Jianzhong's 《法律探原》 (it should not be earlier than 1881 and is an unfinished draft³⁵) is of great importance, as scholars have found³⁶. But this is a highly lofty academic work. When Ma writes this draft, his main purpose seems to be exploring the possibility of bridging the gulf between Confucianism and Western natural law theory and substantive laws he has learned³⁷. This draft does not deal with how to reform Qing's legal system. Their failure to combine Western law and Chinese judicial problems could not be explained by a lack of translated materials because they could fluently read Western language, but their experience supports the conventional judgement that there was intellectual poverty about legal reform during the Self-Strengthening Movement. It seems that to omit the Self-Strengthening Movement in modern China's legal reform is fair and inevitable. There were no reform measures adopted, no comprehensible translations, and no active players.

This paper aims to redraw the intellectual landscape during the Self-Strengthening Movement and call the latter two judgements into question. Recognizing that legal adoption required both a body of translations and discussions, this essay will look beyond

the Taiping Rebellion and was active in the following Self-Strengthening Movement. He served as the Governor-General of Jiangsu, Anhui and Jiangxi provinces.

³⁴ Yuan Shikai (1859-1916) was the Governor-General of Hebei province.

³⁵ Yu, Jiang 俞江(2009). Fa lv: yu ci yi yuan hua yu gai nian wu yi yi “法律”: 语词一元化与概念无意义? [“law”: conceptual unification and meaninglessness?] *Tribune of Political Science and Law*, 27:5, 6.

³⁶ Ibid.

³⁷ Ibid, 7.

the central players of the Self Strengthening movement to consider others who were preparing the way for reform by building these dialogues in society. I will try to prove that, by the last a few years of the movement, the first generation of active thinkers on Western law and China's legal reform have appeared. An Englishman, John Fryer, will help us understand this phenomenon.

II. Encounter of Two Worlds

A. *The World before Young John Fryer*

Although the paper is not Fryer's biography, it is necessary to briefly introduce him. Fryer was born in 1839 in a poor family in Hythe, Kent county. He came to China in 1861 and became an American citizen in 1896. His father is a poor Methodist clergyman who was particularly interested in China's opening to the West, and his son dreamed his dreams. Fryer recalled that when he was a child, he was "apprenticed to a National School at Bristol which was attended only by the lowest of the low." He said this was the cause of his "shy and reserved" character. But it may also explain why his major motivation of coming to China seems to fulfill his personal ambition for fame and fortune. When young Fryer "was sent as an errand boy in the Brewery at Hythe to clean boots and shoes and knives," he admitted that "I resolved to work my way up in the world if it was within the range of possibility and... to make every position a steppingstone to something higher³⁸."

³⁸ The John Fryer Papers Volume 1, ed. Ferdinand Dagenais (Guilin: Guangxi Normal University Press, 2009), 2-6. The three-volume archive is published in China but in English. It will be the main source of my narration

For Westerners in the 19th century, the world was like an unfolding scroll, with all her mysterious lands becoming accessible, all ancient peoples and nations with glorious tradition surrendering themselves, and all secrets hidden under ground, in water or wind being lightened. The world is of specific chance for Christian missionaries, who were allowed to travel to foreign countries and participate in the affairs there with depth and scale unbelievable for their pioneers, for example the Jesuits in the 17th century. No matter it is the faithful Christians swearing to spread the gospel to all continents “in darkness” or the less faithful but no less ambitious, like Fryer, they were encouraged to leave their hometown and step into the broad open world which required no passport for citizens from its colonial masters. Many important Christian missionaries have left literature recalling why they departed for China. For Gilbert Reid (Chinese name: 李佳白) it is the Second Awakening Movement. For Young John Allen (Chinese name: 林樂知) it is the desire to escape from his boring life in the Old South. For Timothy Richard (Chinese name: 李提摩太) it is a total coincidence. For Fryer, when he accepted a job as headmaster of the Anglo-Chinese College in Hong Kong after graduating in 1860 from a normal college, he wanted to seek for fortune and fame.

China turned out to be a stepping-stone for Fryer through which he was able to climb the

about John Fryer's life and what he has done in Shanghai.

ladder of class, but life did not go well at the beginning. He spent his first seven years flitting between Hong Kong, the Beijing Interpreters' College, and an English-teaching school in Shanghai and had made little achievements. He felt his "China Dream" fell through. In 1867 he complained to his cousin Susy that "although I am only 28 I am as old as some men of 38" and "so much for seven years in this barbarous country!"³⁹ But in 1868 he received an invitation from the newly established translation department of the Jiangnan Arsenal (the very Jiangnan Arsenal that would go on to become a central publisher of English works translated into Chinese.) and it seemed like his fate took a favorable turn.

B. The Dynamics of Qing after the Taiping Rebellion

Turning from the uncertain world of Fryer to the world of Chinese politics in the late Qing dynasty, it is possible to see other dynamics of change stirring in the empire. These dynamics become most noticeable following the Taiping Rebellion (1850-1864). This unprecedented rebellion swept 18 provinces and killed more than 20 million people. As historians have found, the end of the war was followed by a growth of "regionalism"⁴⁰. It means, after successfully suppressing the rebels, the autonomy of the meritorious provincial governors and governors-general increased greatly. While still remaining loyal to the Manchurian court, these Han, Confucian, and reform-minded provincial officials

³⁹ Ibid, 254-255.

⁴⁰ David Pong, *Shen Pao-chen and China's Modernization in The Nineteenth Century* (Cambridge University Press, 1994), 4.

who had put provincial revenue and the commercial transit duties under their control, decided to bravely admit that China should learn something from the West to strengthen itself. They started to push forward careers according to their judgement of what reform China should take. Their actions mark the beginning of the Self-Strengthening Movement.

These local officials set up China's first modern navy, first modern educational institutions and first modern factories, including the well-known Jiangnan Arsenal. The translation bureau was originally not planned but was proposed by Xu Shou (1818-1884), the secretary of Zeng Guofan then and a "fanatic" of Western science. Zeng Guofan and the other two following Arsenal Directors found Xu's plan not only satisfying his personal interest but also promising in providing publications for all literati and potential textbooks for students in the new educational institutions they hoped to set up in the future, so Xu got their support and started to hunt for "foreign gentlemen" in Shanghai to be the translators of the new department⁴¹. In conclusion, Chinese reformists treated these missionaries as good and indispensable assistants for their own career.

⁴¹ This pattern was very typical during the movement. No matter it is Tongwenguan in Beijing set up in 1862, or Jiangnan Arsenal's subsidiary bodies, or Guangzhou Tongwenguan in 1864, their major objects were both Western languages and other "practical arts" involving mathematics, engineering, electrical science, mineralogy, chemistry, machine manufacturing et cetera. They were simultaneously teaching students with the "Western Learning" and translating and publishing it. They were all controlled by Chinese government officials but intellectually supported by missionaries. The purpose of establishing these institutions is to cultivate talents for "barbarian affairs." Students are expected to produce China's own steamers and weapons when the empire and the West are at war, and to negotiate on behalf of their motherland and translate treaties from Western language into Chinese when two parties are making peace.

C. The Encounter

John Fryer eventually decided that he might try his fortune in the Jiangnan Arsenal. Xu Shou and his sponsors were satisfied that they employed a really diligent translator. Fryer also felt that his horizons enclosed for so long by schoolroom doors were opened again. In 1868, also to his cousin Susy, he could not help writing that “now I have shaken off the yoke I feel like a bird out of a cage,” “I always love Science, but never had time or opportunity to cultivate it,” “I never was more happy in my life than I am in my new situation⁴².” To his father he wrote more boldly, “I hope to make it a stepping stone to a higher position in China⁴³.” He did not foresee that he would stay in this position for twenty-eight years and leave his Chinese name on more than one hundred books.

From 1868 to 1896 (the year Fryer moved to the United States and was appointed as the first Louis Agassiz Professor of Oriental Languages and Literature at the University of California, Berkeley), Fryer served as the Chief Translator of the Jiangnan Arsenal. Just like the Arsenal itself, he was also ordered by Chinese government to focus on “useful technology,” with natural science counting 24%, applied science counting 53%, and military science counting 14%. Fryer remains the most accomplished translator of scientific texts into Chinese. He translated more than 110 works, a number unrivaled even in the present. Not surprisingly, in both Chinese and Western scholarship, Fryer’s image

⁴² The John Fryer Papers Volume 1, 367-372.

⁴³ Ibid, 360.

has been “Promethean”---that is, he is primarily remembered as an advocator of modern science⁴⁴. However, among the few “non-STEM” books under his name, there is one that signals Fryer’s agency beyond Qing government’s expectation and marks his ambition to instill some thoughts on China’s potential reform beyond military and manufacturing level, including the legal level. The books is called 《佐治芻言》, or *Political Economy*.

III. Political Economy

A. About the Book

《佐治芻言》 was translated from an English school textbook called *Political Economy: for Use in Schools, and for Private Instruction*. The original book was written by a Scottish historian and economist called John Hill Burton⁴⁵ (1809-1881) and published in 1852 by William and Robert Chambers in Edinburgh. In light of the overall environment and the landscape of “Western Learning” translation by the few major institutions which characterize the Self-Strengthening Movement, the content of *Political Economy* seems anachronous. It has nothing to do with science, manufacture or military affairs. Nor does it contain any international law knowledge useful for negotiation. In a word, it does not provide instrumental knowledge Chinese can borrow in order to control “barbarians.” On

⁴⁴ For example, Adrian Arthur Bennett, *John Fryer: the introduction of Western science and technology into nineteenth-century China* (Cambridge: Harvard University Press, 1967), the authoritative work on Fryer study in the West, focuses on Fryer’s achievement in introducing modern science and technology to Chinese.

⁴⁵ Trescott, Paul. “Scottish political economy comes to the Far East: the Burton-Chambers Political economy and the introduction of Western economic ideas into Japan and China.” *History of Political Economy*, 1989, 21 :3, 482.

the contrary, it is a collection of “homely words” from “barbarians” as their suggestions on China’s governance⁴⁶.

So, what does the book talk about? The book can be divided into two parts. The last two thirds of the book is like a typical political economy textbook, as its title suggests, which talks about wage, capital, trade, monopoly, currency, money, bank and loan. This part is difficult for non-professionals. The most important thing is, if the book only contains the latter part, it is not different from other political economy and business studies books translated at that time. For example, Henry Fawcett’s *Manual of Political Economy*, published by Tongwenguan in 1880 with the Chinese title 《富國策》, is the first political economy book introduced into China and it covers similar content as Burton’s does. It is the former part of Burton’s book, which consists of only more than 40 pages of the book’s 154 pages, that makes Burton’s *Political Economy* particularly special and important.

1. An Encyclopedic Introduction on Classical Liberalism

This part is an extended “introduction,” serving as the theoretical background of all institutions (bank, loan...). This part systematically presents and advocates for basic classical liberal thoughts with Scottish enlightenment coloration. Based on “the purpose of life is to be rich, healthy and happy,” and “man is born free” and “man is born to compete

⁴⁶ It may be necessary to note here that most non-STEM “Western Learning” books published by Arsenal and Tongwenguan are about Western history, geography and business. *Political Economy* is the only that talks systematically about politics and inner governance.

freely” as metaphysical axioms, this part talks widely about political, legal, economic and social issues in a grand narrative, covering family, individual rights and duties, equality and inequality, the origins and interactions among nations, development of types of government, laws, government activities⁴⁷ and even up to the evolution of civilization. For example, in section nine Burton says:

“9. While God has given man the gift of life, he has also given him the capacity to support that life, provided he duly employs the means. This capacity for exertion, however, would be useless without liberty to use it. Accordingly, every human being, of whatever colour or country, has, by a law of nature, the property of his own person. He belongs to himself. In ordinary language, man is born free. This freedom he is not at liberty to sell or assign. Neither, in justice, can any one take away his personal freedom, so long as he conducts himself properly and does not injure his neighbours. A man may enter into a contract to serve another for a reasonable length of time, for hire; but in doing so he still retains the property of his own person, enjoys the fruits-of his own industry, and no one is entitled to intrude on his domestic arrangements. In law, this degree of freedom is called civil liberty-that is to say, liberty secured by the laws and subject to the regulations of the civil government⁴⁸.”

⁴⁷ Trescott, 482.

⁴⁸ Burton, John. *Political Economy: for Use in Schools, and for Private Instruction*. (Edinburgh: William and Robert Chambers, 1852), 3.

Also in section ten:

“10. In the formation of laws for the general good, all men are to be regarded as upon one level. The life of the youngest infant and the humblest beggar is alike sacred with that of the strongest and the richest man. The smallest piece of property of a poor man is not less entitled to protection than the estate of the noble⁴⁹.”

Section eleven:

“11. Along with the rights which each individual enjoys in society, are imposed the duties he owes to it. He has, in the first place, the duty of providing for his own wants, and for the wants of his family, so that he and they may not become a burden upon others⁵⁰.”

In section twenty Burton moans how tragical “idle” people are (in other sections he indicates that idleness is the greatest enemy of a “civilised” society, and that poorhouse as a government welfare institution should be “rather disagreeable than pleasant” so people can be incited to be hard-working⁵¹):

“20. in our country, which is called civilised, there are many things which belong properly to a low state of society... Some portions of the population in remote districts remain in

⁴⁹ Ibid, 4.

⁵⁰ Ibid, 4.

⁵¹ Ibid, 39.

the primitive idle habits of their early forefathers, and enjoy scarcely any of the blessings of civilisation⁵².”

Section twenty-eight he analyzes the merits of “compete.”

“28. The disinterested affection sacrifices for each other, which are the characteristics of the family circle, do not follow men beyond it into the ordinary intercourse of the world: there each pursues his own course, relies on his own efforts, and endeavours to accomplish his own objects. In doing so, all compete less or more with each other. Hence society at large is said to be formed on the competitive principle. It is much to the advantage of human nature that it should be so, since, were there not emulation among mankind, and motives for individual exertion, many valuable services would fail to be performed⁵³.”

Although all the contents above are clichéd and even reactionary by today’s Western standards, I am citing them to show what a general classical liberalism framework was in Burton’s book. One cannot find the introduction about this picture in any other book translated during the Self-Strengthening Movement. Only in this context can Western law be correctly understood.

2. *Political Thoughts Concerned*

Aside all the classical themes of a liberal free market above, Burton also writes ad hoc

⁵² Ibid, 7.

⁵³ Ibid, 10.

about political theories. From section seventy-three to eighty-two, the author first introduces three kinds of government: monarchy, aristocracy and democracy. Fryer, however, adds something. In section seventy-five he raises an extremely sensitive question that Burton does not explicitly asks: what kind of government should one country adopt⁵⁴? (“國政應用何法?”) Here the answer was a bit ambiguous. On one hand both Burton and Fryer want to avoid suggesting that any one of them is fundamentally better⁵⁵. The original text states “the principle of government... cannot be considered as sufficiently determined to allow of our laying down any regular system⁵⁶” “[p]olities being not yet in the condition of a science, it is not surprising that carefully-formed plans of government, and even those in which good working examples are followed, do not always succeed⁵⁷” and it was honestly translated. On the other hand, Fryer seems to believe that democracy is the future of human beings⁵⁸. However, the essential law he wants to call special attention to (and this is also Burton’s intent) is: “the good-will and support of a large majority of the people⁵⁹” should always be the most important criterion. Without supportive social environment, a monarchy trying to sustain itself may not do it, and a monarchy trying to transform into democracy may not successfully sustain its nascent democracy either. In section eighty-

⁵⁴ Zuo zhi chu yan 佐治芻言 [homely words to aid governance] (Jiangnan zhizaoju, 1885), 74.

⁵⁵ The Chinese version of section seventy-five is “國政應用何法尚難臆斷.” (It is hard to say which kind of government is the best)

⁵⁶ Burton, 33.

⁵⁷ *ibid.*, 35.

⁵⁸ Fryer in section eighty of the Chinese translation of *Political Economy* says that “(英國) 將來改為民主之國, 百姓自能照常辦事” (if the UK becomes a democracy in the future, it will not influence its governance), see *zuo zhi chu yan*, 80.

⁵⁹ Burton, 25.

one Fryer warns that “sudden and violent change of government” is not desirable. This inclination also extends to legal reform field. In section ninety Burton admires how the feudal rules concerning landed property are still followed in England and how the Napoleon codes are based mainly on Roman law⁶⁰. In section ninety-one he argues that “[w]e see in such instances how a system of law arises out of inveterate custom: it may be modified, or put in the right direction by legislators, but it is not easily superseded. It becomes of great importance that all men who have influence among a people should amend and improve what is old, instead of rashly abolishing it⁶¹.” This virtue also guides the action of Congress. On one hand, Burton argues that law must be discussed and repealed if being deemed objectionable.⁶² On the other hand, he warns that the legislator should be very careful when introducing new laws, and gradual reformation is appreciated as a better method than radical change. “[Law] is not easily superseded...all men who have influence among a people should amend what is old, instead of rashly abolishing it, and trusting to theoretical novelties⁶³”

In conclusion, to quote Burton’s passage, “[w]e thus see that the most valuable of our constitutional privileges have been acquired for us, not suddenly and by revolution, but by carefully preserving and improving old customs. ... The most valuable privileges have

⁶⁰ Ibid, 30.

⁶¹ Ibid, 30-31.

⁶² Ibid, 6.

⁶³ Ibid, 31.

been accomplished for us, not by sudden attempts at perfection, but by careful adjustment and amendment of old institutions⁶⁴.” In a word, *Political Economy* is an introduction of 19th century classical *laissez faire* doctrines and a statement of the staunch Victorian optimism for society’s agency to develop itself.

B. *Political Economy’s Contribution in China’s Legal Reform*

1. *Three Teachings by the Book*

Scholarship about Fryer has tended to focus on his incomparable science translation achievement. So far, the research with regard to *Political Economy* has been few and limited to his translation strategy and his status in the history of modern Chinese political and economic concepts formulation⁶⁵. In America, Paul Trescott has offered a convincing paper about how the book represented the Scottish “spontaneous order” ideology and how the ideology was then abandoned after the crisis of 1895⁶⁶. Besides all this, *Political Economy* 《佐治芻言》 deserves a more prominent place in China’s legal history. Although it is neither highly academic nor ad hoc about law, law is mentioned regularly in the first third of the text. However, what makes it so relevant to Chinese legal history is that Burton, through Fryer’s translation, delivers at least three mutually linked teachings about law to

⁶⁴ Ibid, 35.

⁶⁵ See Kong, Feiyan 孔飞燕. “Wanqing xifa dongjian zhong de quanli boyi” 晚清西法东渐中的权力博弈 [The power game during the Western law dissemination in late Qing dynasty]. *Keji xinxi* 科技信息 12 (2014). Wang, Lin 王林. “zuozhichuyan yu xifang ziyou zibenzhuyi sixiang de chuanru” 佐治芻言与西方自由资本主义思想的传入 [Political Economy and the introduction of Western liberal capitalism]. *Gansu shehui kexue* 甘肃社会科学 6 (2008).

⁶⁶ See footnote 44.

Chinese readers for the first time in history.

The first is, law serves the welfare of all aspects of human life. Fryer lives in an age when the career of translating “Western Learning” to Chinese just began and few things were settled, like how to translate “law.” When Yan Fu translated Montesquieu’s *the Spirit of Law* in 1909, he left an annotation saying that “four Chinese concepts (禮理法制) could serve as the translation of law, as an Western concept.” Yan Fu is right that there is no single Chinese concept that could cover all the meanings of law in English. Before Fryer decided to translate *Political Economy* into 《佐治芻言》, the Interpreter’s College’s employed missionary, William Marin (Chinese name: 丁韞良)’s works dominated Qing’s legal translation, and it is all about international law. Martin used the Chinese character “法” to translate the English word “law,” but Fryer did not accept it. In 《佐治芻言》 he used two words: “章程” to correspond to law in its “natural law” “higher law” sense, and “律例” in its positive law sense. Traditionally, “律例” only refers to criminal law and penalty, as all of Chinese law was criminal law. But now Fryer invites Chinese literati to shift the paradigm and imagine a 律例 that covers all aspects of human life.

Secondly, the book introduces a pragmatic view of law, as supposed to formalism. Law is justified not by building on any novel theory or its inner coherence, but by the merits it could provide. Law serves people’s welfare. If society finds a new regulation necessary, it

must be raised; on the contrary, once being regarded obstructing, it must be removed.

The final teaching is, law is from experience, to use the phrase of American Justice Oliver Wendell Holmes⁶⁷. Burton wishes to underline society's subjectivity and natural order in a common-law-judge-like way. The author asserts that society should be left free and active, rather than designed and restrained by the state such as in France. Any possibility that there is a universal legal pattern is denied; instead, the dynamic needs of a society is the basic standard. The book argues repeatedly that all European laws derive themselves from Rome, from middle-age customs, and from nations' life and experience over generations. Even Napoleon's unprecedented codification is described as "more than half based on ancient Roman norms." Consequently, the congress and all legal reformers of any nation should introduce new laws cautiously, and always avoid making radical decisions for society.

2. *Understanding Western Law in its Basic Outline and Context*

Legal historians have believed that the earliest legal theory book available for Chinese is Rudolf von Jhering's *the Battle for Rights* translated in 1902 by Zhang Zhaotong or Montesquieu's *the Spirit of Law* in 1903 (not by Yan Fu but by Zhang Xiangwen⁶⁸), but I have proved that it is *Political Economy* that for the first time puts "law" in a complete theoretical system. Although its discussion about law is very elementary (fairly speaking,

⁶⁷ The original phrase of Justice Holmes is, "the life of the law has not been logic: it has been experience."

⁶⁸ There is no material about who Zhang Zhaotong is. As to Zhang Xiangwen (1867-1933), he was a professor in Peking University and famous for his contribution in geography.

totally cliché for a Western reader), we should not underestimate the cognitive space it opens to Chinese. Theoretically, law is thus made understandable and is to be understood as beyond “punishment.”

Western law could be naturally misunderstood as mere “punishment” by traditional Chinese literati. One of the most prominent features of so-called modern codes is its being highly abstract and professional. A pile of legal articles cannot be correctly understood by people trained primarily in Confucian classics. This is exactly the dilemma of the Napoleonic Code, since 《法國律例》 was but a mass of articles with no theory or interpretation added. But if one reads 《佐治芻言》 carefully, he could get some rough outline of France’s law, and realize that it plays a very different function in French society than “律例” in China. He will be able to imagine a “law” beyond “punishment,” related to even the Way of statecraft. Again, take 《法國律例》 as an example, in 1896 Liang Qichao said in his 《西學書目表》, a bibliography of Western learning, that “the Napoleonic codes embodies the way he governs France. It should not be read as mere ‘punishment.’” (“治國之規模在焉，不得以刑書讀也”) If we consider what knowledge is needed to achieve such a cognitive shift from punishment to the Way of governance, we know the value of 《佐治芻言》 ---it provides a framework about what “law” in the West is (ought to be) like in its most basic manner. During the whole Self-Strengthening Movement, *Political Economy* is the only book providing this kind of framework.

C. *Political Economy's Fate and Influence*

Tragically, *Political Economy* was not widely noticed after being published. It was tolerated, but did not gain much influence. Kang Youwei immediately bought the book after it was published, but he was a rare case. His disciple Liang Qichao did not leave remark on this book until 1896. This year he listed it in his 《西學書目表》 and praised it as “the best book on politics,” while Fawcett’s *Manual of Political Economy* was listed into the category of “business studies” with no comments. When the famous philosopher Zhang Binglin (1869-1936) wrote that when he first read *Political Economy*, “I was stunned, like a puppet,” (“魂精瀉橫，恐然似非人⁶⁹”) it was 1897. In 1898, the syllabus of Shi Wu Xue Tang 時務學堂 in Changsha, where Liang Qichao served as the provost, listed *Political Economy* as must-read. Sun Baoxuan (1874-1924), from a prominent political family, was the most tasteful book review writer at the time. In his diary *Political Economy* did not appear until 1901. In a word, published in 1885, *Political Economy* remained obscure until the First Sino-Japanese War of 1894-95⁷⁰.

The outcome of the ten-year delay is neatly described by Trescott⁷¹. The Sino-Japanese

⁶⁹ See Zhang Binglin, “變法箴言.”

⁷⁰ For Liang Qichao, Zhang Binglin, Shi Wu Xue Tang and Sun Baoxuan, see Wang lin 王林, 196.

⁷¹ Paul Trescott is a professor at the Department of Economics, Southern Illinois University. In this paper when I mention Trescott, I refer to his article “Scottish political economy comes to the Far East: the Burton-Chambers Political economy and the introduction of Western economic ideas into Japan and China.” *History of Political Economy*, Volume 21, Issue 3 (1989).

War changed the social atmosphere of China, not only creating unparalleled need for “Western Learning” among Chinese intellectuals, but also rendering them more anxious. The former is good news for the Jiangnan Arsenal and Tongwenguan, because it means more political toleration and a larger market, but the latter brings unexpected results. If we could describe Chinese as still optimistic and even dreaming about the so-called “Restoration” during the Self-Strengthening Movement, the easiness was lost after 1895. The large empire was defeated by a small potato and was almost cared up by Western powers in the following years. In the face of profound national crisis, Chinese intellectuals could no longer wait for the solemn slow spontaneous social evolution John Burton praises. Rather, they “wanted a blueprint for action.” And this is exactly the limitation of the theory reflected in *Political Economy*, as has been expressed by Hamowy⁷²:

“The theory of spontaneous order... inevitably militates against any program of comprehensive reform. If the social arrangements we have inherited are the result of a slow evolutionary process brought about by trial and error and if the reason embedded in these arrangements is beyond our comprehension, then we must accept them despite our ignorance of their purpose or our inability to appreciate their value. Even institutions which appear to be socially injurious or patterns that initially seem undesirable are theoretically exempt from sudden and extensive change. Thus suttee in India, the binding of feet in

⁷² Trescott, 19.

China, slavery in the southern states, all could claim the protective shield of tradition.”

Therefore, ten years after its being published, although it finally became popular, *Political Economy* also became anachronous. It could not provide Chinese with a fighting creed⁷³. People started to desire for firmly united will and power, to act effectively, so they could save China and realize other goals, and minimize the time from taking action to making achievement. The contribution towards China’s legal reform by 《佐治芻言》 is as a theoretical pioneer rather than a practical effect.

IV. The Shanghai Polytechnic and the Prize Essay Game

John Fryer’s work, however, did not tolerate obscurity. As one of the most important employees of the Jiangnan Arsenal, Fryer made good use of his influence during his spare time to engage in careers that attracted more attention from Chinese literati. Among all his “side occupations,” to establish and administer the Chinese Polytechnic Institution and Reading Rooms in Shanghai, (Chinese name: 上海格致書院, hereinafter referred to as “the Shanghai Polytechnic,” 1876 to 1914) might be the most significant one. Historians have used science as the key word in describing the institution⁷⁴. But actually, this summary

⁷³ Ibid, 19.

⁷⁴ See Knight Biggerstaff, “Shanghai Polytechnic Institution and Reading Room: An Attempt to Introduce Western Science and Technology to the Chinese,” *Pacific Historical Review*, Vol. 25, No. 2 (May, 1956), in which the Shanghai Polytechnic was described as an “interesting, though not too successful, effort of well-disposed foreigners and progressive Chinese to bring Western scientific and technological knowledge to China.” And also David Wright, “John Fryer and the Shanghai Polytechnic: Making Space for Science in Nineteenth-Century China,” *The British Journal for the History of Science*, Vol. 29, No. 1 (March, 1996). Professor Wright says that “this paper explores the role John Fryer and his Polytechnic played in making space for science in late

is not very accurate. If we examine the second volume of the Fryer archive, which is preserved in Bancroft Library at Berkeley and has been published in three volumes, we will find that the school's purpose was still being hotly debated even decades after its establishment. In a newspaper clipping in 1895⁷⁵, the author complained that the Polytechnic had spent too much money on purchasing scientific apparatus and employing foreign teachers to explain its use, and thus forgotten the “point from which it set out:” to be a free, public library for Chinese. While in 1898, a report made by E. R. Layman, the chemistry teacher of the Polytechnic, said that “the original idea of the founders of the Institution” is to build a small-scale Royal Polytechnic Institution⁷⁶ (today's University of Westminster in London). I will take advantage of the archive and trace the history of the school back to the very beginning to see what its being founded was for. Then I will examine its connection with late Qing's legal reform.

A. *The “Original Purpose” of the Shanghai Polytechnic*

1. *A Public Library for Chinese*

The first material we will see is a letter from Walter Henry Medhurst⁷⁷ (Chinese name: 麥

nineteenth-century China.” In Chinese scholarship, Wang Er-min is the most prominent figure in the studies of the Shanghai Polytechnic. He also says the school is used to “見近代科學新知輸入中國之門徑與過程” (to see the method and process of modern science's being introduced into China). See Wang Er-min 王爾敏, *Gezhi shuyuan zhilue 格致書院志略* [A short history of the Shanghai Polytechnic] (Hong Kong: zhongwen daxue chubanshe, 1980). But I will prove that, the school was more than spreading science.

⁷⁵ The John Fryer papers, 151.

⁷⁶ Ibid, 193.

⁷⁷ Medhurst (1822-1885) was the British ~~Counsul~~ Consul in Shanghai from 1842 to 1856. He was one of the early translators of the Bible into Chinese language editions. He also produce a Chinese translation of the Book of Common Prayer, published in Hong Kong in 1855, and edited Chinese-English and English-Chinese dictionaries

華陀) to an editor of *the North China Herald* 北華捷報 thanking him for proposing building a reading room for Chinese in the Settlement of Shanghai. Medhurst also attached his prospectus of the project, which stipulated that “the object of the Institution is to extend the knowledge of the Chinese in regard to foreign countries and topics generally⁷⁸,” “the rooms... to be supplied with maps, philosophical instruments of various kinds, and any models of steam engines, locomotives, telegraphic apparatus⁷⁹” and “lectures on scientific objects of practical value or general topics to be delivered.⁸⁰” Only twenty-one days later, the most well-known Christian missionaries in Shanghai all gathered together in the Asiatic Society to discuss this project, including Macgowan⁸¹ (Chinese name: 瑪高濶), Ernest Major⁸² (Chinese name: 美查), Alexander Wylie⁸³ (Chinese name: 偉烈亞力) and John Fryer⁸⁴. In this meeting Medhurst reviewed the history of Chinese reception of Western things. He said with unhidden optimistic emotion that it was not long ago when Chinese would have hesitated to embark on a foreign vessel, but now “our steamers’ decks are crowded with a busy multitude of Chinese⁸⁵.” The same turn also happened in newspaper, carriage, sewing machines, lamps, glass windows, and hopefully gas in foreseeable

⁷⁸ Ibid, 34.

⁷⁹ Ibid, 34.

⁸⁰ Ibid, 35.

⁸¹ Daniel Jerome Macgowan (1814-1893) was the first person for the American Baptist Church to open up missionary business in China. In 1868 he joined the Jiangnan Arsenal as a translator.

⁸² Ernest Major (1830-1908) was a famous British businessman and newspaper capitalist. He was the main founder of Shun Pao. He was also an editor and ran a publishing company. Many of the books disseminating Western learning at the time were published by him.

⁸³ Alexander Wylie (1815-1887) was a missionary belong to the London Missionary Society. He participated in book translating in the Jiangnan Arsenal in 1867. He was also a founding trustee of the Shanghai Polytechnic. But he left China in 1877 because he lost sight of both eyes.

⁸⁴ Ibid, 36

⁸⁵ Ibid, 38

future.⁸⁶ Consequently, Medhurst argued that “from all these indications... the Chinese need only to see the practical benefits of any scheme, however novel, to give it their approval and in the end to accept it for themselves⁸⁷.” He also anticipated that “the Institution will find its best field of usefulness amongst the middle well-to-do classes⁸⁸.” Then the missionaries had a heated discussion about whether religious books should be excluded from the collection list. So far, the purpose was to build a public library (reading room), with emphasis on science and technology.

2. *The Extention of the Plan*

The first change happened in 1875. In a meeting of the committee, one of the committee members conveyed Li Hongzhang’s hopes of “establishing and maintaining a School of Science and Art⁸⁹,” as a condition for his increased support. According to Medhurst’s address in the opening ceremony of the Polytechnic in 1876, this is also what Fryer advocated⁹⁰. In any case, the goals of the Polytechnic were therefore extended. In this meeting a new prospectus was promulgated, in which it was made clear that the school was going to (1) exhibit machinery, apparatus, manufactured goods, etc.; (2) hold lectures for scientific instruction; (3) provide reading room; and (4) form classes if sufficient Chinese may desire to study science. It is also noticeable that the second version of prospectus said that “it is hoped that after this Institution has been a few years in operation, it will lead to

⁸⁶ Ibid, 39

⁸⁷ Ibid, 39

⁸⁸ Ibid, 39

⁸⁹ Ibid, 63

⁹⁰ Ibid, 89

the establishment of branch Institutions by the natives themselves, in different parts of the Empire⁹¹.” Six months later, the committee received a report from a Mr. H. Budler, the head of the Amoy Reading Room (廈門博文書院 or 博聞書院. It is a pure reading room, providing free science and literature books, newspapers and maps⁹²). In this report Budler asked the committee to regard his Reading Room as a branch institution of the Shanghai Polytechnic⁹³. The committee’s meeting called Budler’s school “kindred institution” and instructed Fryer to offer “all co-operation possible consistent with present plans⁹⁴.” In his “an Account of the Department for the Translation of Foreign Books at the Kiangnan Arsenal” (“江南製造局翻譯西書事略”) in 1880, Fryer said Shanghai, Amoy and Chefoo all had “reading rooms⁹⁵.” In the third report of the Polytechnic (1878-1883)⁹⁶ one could also find there was a “Chinese reading room, Chefoo” listed as a “corresponding member” of the Shanghai Polytechnic, which did not appear in the second report (1875-1878). We may guess that between 1878 and 1880 a Chefoo “Western Learning” institution was also merged into the Shanghai Polytechnic, although we could not identify which institution it exactly was. And we can see that the Shanghai Polytechnic was not just a school, but the center of a bigger network in plan.

⁹¹ Ibid, 64

⁹² Ibid, 97

⁹³ Ibid, 227

⁹⁴ Ibid, 71

⁹⁵ Ibid, 552

⁹⁶ Ibid, 276

However, the Shanghai Polytechnic did not function smoothly after its opening. For personal reasons of a committee member locked away many scientific instruments intended to be exhibited to broaden the horizon of Chinese visitors⁹⁷. There is evidence showing that the reading room was not built until 1907⁹⁸, and that the plan to set up a real Polytechnic and school of arts finally shrank into an English learning class⁹⁹. When Layman, the chemist mentioned previously, was employed by the Polytechnic in 1898, he could not help complaining that the Polytechnic was like an elementary school teaching all popular but simple sciences. He picked up the 1875 “school of arts” plan to attack the status quo and outcried that the Polytechnic should teach professional important sciences and “for advanced students only¹⁰⁰.” Despite all of the obstacles, failures and divergence of direction we can conclude that neither the 1895 newspaper clipping nor Layman has accurately described the nature of the school. From the very beginning its purpose has been to be both popular (exhibition, public library, lectures) and professional (a real Polytechnic), although most of the objects were seriously delayed or never achieved, and all the popular and professional measures are to stimulate Chinese’s interest in Western science, which served for a longer-term goal. Medhurst has indicated vividly and incisively in the 1875 Asiatic Society meeting to all the influential missionaries a promising landscape of Chinese willing to learn Western civilization. If Chinese have accepted Western steamers and weapons, it

⁹⁷ Ibid, 280

⁹⁸ Ibid, 208

⁹⁹ Ibid, 120

¹⁰⁰ Ibid, 184-185

is time to bring them gradually to science and mathematics as the second level. Liberal arts things should be the next level. And as missionaries, maybe they would agree that Christianity was the destination. The founders were very strategic and repeatedly emphasized that practical science and technology should be the “main purpose¹⁰¹,” given that Chinese did not accept “Western Learning” very quickly, but they never forgot it was a method rather than end. Since the first prospectus in 1874 Medhurst had insisted that those “non-STEM” contents should “take a subsidiary place” but would not be “lost sight of¹⁰².” He also said to all attendants in the 1875 Asiatic meeting that lectures on history and politics were also part of the plan. Actually, the weekly lecture on political economy conducted by Gilbert Reid is one of the few activities that the school has held successfully and consistently. Evidence¹⁰³ shows that the six subjects of 1896’s “magic lantern lectures” were “Mines and mining operations,” “Lady Brassey’s tour round the world in the Sunbeam,” “Physiology and Anatomy,” “The Viceroy’s new Road with other objects of interest at Nanking,” “the Chicago exposition,” and “Zoology.” A report in 1907 said that the reading room covered not only chemistry, physics, mathematics, geography, international law, but also history, political economy and government¹⁰⁴. In addition to all that, we may not forget its vision in the second prospectus and its absorption of two extant reading rooms as its branches. The Polytechnic itself was also part of a bigger plan, although it did not make

¹⁰¹ Ibid, 34

¹⁰² Ibid, 34

¹⁰³ Ibid, 158

¹⁰⁴ Ibid, 211

much progress.

3. *The Nature of the School*

Based on the above evidence, my conclusion is, the Shanghai Polytechnic was originally expected to be the center of a nation-wide “Western Learning” dissemination network plan. It was inspired by the heyday of the Self-Strengthening Movement and its aim was to further the movement and promote China’s reception of “Western Learning,” with science as short-term focus and the whole Christian civilization as termination. All the exhibitions, lectures, and formal and informal education thus should be seen as a kind of “pedagogy” so the final purpose may be realized gradually. Therefore, the “legal reform” agenda, as I will show later, is not a digression away from the purpose of the school, but exactly an understandable part of it.

B. *The “Prize Essay Scheme”*

1. *Fryer’s Successful Innovation*

As I have said, the Shanghai Polytechnic did not run very well and only had a few consistent activities. The “prize essay scheme” (Chinese name: 課藝) was probably the most successful and influential one of them. The form of this game is like a reward order. A subject is given, and any contribution is welcome to talk about this subject. Its purpose was perfectly reflected in an 1888 report¹⁰⁵ written by Fryer, the originator of the game¹⁰⁶.

¹⁰⁵ *ibid*, 125

¹⁰⁶ *ibid*, 14

It reads as “its general object is to try and induce the Chinese literati to investigate the various departments of Western knowledge with the view to their application in the Middle Kingdom.” In this report Fryer shows that he is extremely familiar with the habits of Chinese literati and the history of their traditional essay game. He said “this scheme is based upon the popular system of writing essays in a high style of composition, in which art the Chinese are known to excel in an extraordinary degree...To popularize Western knowledge among the literati it is necessary to take advantage of all such existing national characteristics; and hence it was conceived that in essay writing there existed a most powerful means for inducing the better classes of Chinese to read, think, and write on foreign subjects of practical utility, and thus carry out one of the main objects for which the Polytechnic Institution was founded.” His strategy turned out to be a great success. In the following years, Fryer gradually reduced the number of his own topics and invited more reform-oriented influential local government officials to give topics, who are the top of the Chinese literati circle and also the most important group targeted by missionaries. The “prize essay scheme” of the Shanghai Polytechnic gradually became a grand event of literature and ideas marketplace for both in-position government officials and common degree-holders around the Yangtze delta. The officials put their most worrying problems in the “prize essay” game as a platform and invited all literati to share their opinions.

2. *The 1893 Essay Contest about “Legal Reform”*

In 1893, two unusual topics were given by Wu Yinsun 吳引孫, a local official in Ningbo

and Shaoxing, and Liu Kunyi 劉坤一, the Governor-General of Jiangsu, Anhui and Jiangxi provinces. The first question was “please compare the punishment intensity of Chinese and Western criminal law.” The second question was “according to history records, the longest trial in Hun can last only for ten days, and inmates in the whole nation are only a few. How can it be so efficient and downsized? Deng Su (1091-1132)’s explanation is ‘because Hun’s paperwork is simpler than China’s.’ Is it convincing? In today’s Western countries an attorney’s power is almost as great as a judge. We China does not have attorneys. Please compare the advantages and disadvantages of Chinese and Western criminal law.” In other words, the two questions are inviting potential respondents to think of legal reform, even before the First Sino-Japanese War. It is not hard to imagine that, in Ningbo and Shanghai, as two of the first five treaty trading ports in China after the First Opium War, by 1890’s the extraterritoriality had caused countless serious problems that the local leaders could by no means ignore. They were thus motivated to use the 格致書院課藝 as a platform to ask for ideas from common literati, some of whom were greatly activated and handed in stunning papers.

For each question three papers from all contestants were selected and published. For Wu and Liu’s two questions there are six papers in total. Six papers can be too many to review one by one in detail and there are many repetitions in these articles. So, it is more appropriate to summarize them as a whole. The most salient feature of the six papers may

be that they all present an amazing command of Western law. A student named Li Jingbang 李經邦 (he is Li Hongzhang's nephew) compared English, American, Russian, Japanese, and Qing law, regarding crimes of assault and illegal gun possession. Xu Keqin 許克勤's answer was also uniquely specific and detailed, in citing not "German penal code" but "article 223 of the German Penal Code." At least three of them knew that Roman law was the historical origin of today's Western law. In general, all selected answers showed great familiarity with Euro-American and Japanese criminal law.

Secondly, they were all worried about the extraterritoriality enjoyed by Westerners, with many of them explicitly expressing the hope that extraterritoriality would be abolished. More than one of them mentioned a case in which a Western company (Chinese name 美生, English name unknown) did arms smuggling in China. Pan Dunxian 潘墩先 also mentioned two cases in which Westerners (one Japanese "尾本" and one French "亞沙尼") killed Chinese and were given very light sentence because they would not fall into the jurisdiction of the Qing Code but be sent to their respective judicial system, in which they were shielded by judges from their own country. I think this is exactly why Li Jingbang, Xu Keqin and many others were particularly concerned about Western countries' punishment for assaulting and arms smuggling instead of other crimes. Sun Zhaoxiong 孫兆熊 and Gu□Xin 顧□馨 (the middle character of this man's name is vague and unreadable) used Westerners injuring Chinese with carriages without paying any

compensation as examples. Although they did not say if they were implying any specific accident, one can imagine that this kind of accident were not rare in the treaty ports.

What's more, they were thinking of legal reform in light of their rich knowledge of Western law. Most of the model papers that won the prize criticized China's judicial process as inhumane. Low-level staff members of judicial offices routinely extorted money from both parties in a dispute. Once the legal procedures had begun, people were tortured to force them to plead guilty. From time to time prisoners died because of the inhumane environment. Their problems were identical with those of Feng Guifen, Wei Yuan and all traditional intellectuals concerned about judicial torture (刑獄) issues. But their solutions were revolutionary. They suggested that cost with certain calculation method was the best way to avoid extortion, and that attorney and jury institution might help avoid torture. Finally, almost every of them highly praised Westerner's prison system for its (1) humane, healthy and even a little bit aesthetical environment and (2) its labor-education system, which means inmates would be trained with practical skills and work while in jail. One can also find that three of them proposed that China should discuss with Western ambassadors and jurist to promulgate a new penal code, with a special jurisdiction applying to treaty ports concerning aliens, then hopefully Westerners might agree to revoke their extraterritoriality.

Last but not least, they still insisted that the Confucian social hierarchy must be valued. Two papers, for instance, mentioned the U.S. president James Garfield, whose assassination in 1881 seemed to shock the authors. They felt astonished that in America the penalty for killing a “king” was no different than killing an ordinary citizen. One student argued that extending different treatment to degree holders and commons, to the elder and the young, and to the higher hierarchy and the lower, was one of the advantages of Chinese law. Pan Dunxian also believed that the lack of heavier punishment for women is the reason why in Western countries there were more husband killing cases.¹⁰⁷

C. Why Are the Six Papers Significant

One must be curious now how these literati managed to have such a good command of Western law in book, in action and in history. After all, it is said that only two Western codes were introduced into China before 1895 and they were not influential at all. The six respondents must have been inspired by pioneers before them. The papers of Pan Dunxian and Gu□Xin cited a letter by Zhang Huanlun 張煥綸(1846-1904), called 救時芻言四則. Written in 1884¹⁰⁸, this letter has already advocated for promulgating a new penal code for foreign-related cases to end the extraterritoriality. Wang Tao also argued that China should

¹⁰⁷ All questions for contests and “model papers” that won the scholarship from 1886 to 1894 can be seen from *ge zhi shu yuan ke yi* 格致书院课艺 [essay contest in Shanghai Polytechnic] Shanghai scientific and technological literature press.

¹⁰⁸ Pan Guangzhe 潘光哲. *Wanqing shiren de xixue yuedushi* 晚清士人的西學閱讀史 [late qing literati's western learning reading history]. *Zhongyang yanjiuyuan jindaishi yanjiusuo*, 2014, 98.

introduce Western law in his own paper before 1882¹⁰⁹. But Zhang and Wang did not give any specific suggestion on what specific Western law should be borrowed but only a vague direction.

I judge that this unusual phenomenon had something to do with a series of books called “Collection of Materials on Foreign Affairs” 《洋務輯要》. In 1891, the distinguished reformist leader, Zhang Zhidong commissioned Wang Tao 王韜 to edit a series of books on “foreign affairs” on twelve subjects: territory, bureaucratic system, education, labor, business, tax, daily life, military, criminal law, diplomacy, religion, and customs. Wang Tao asked Fryer to help him, but the books in the end was never published.¹¹⁰ As a result, the books have been scarcely discussed by legal historians. But they would have known 《洋務輯要》 is very likely the first collection that attempted to provide a Chinese translation of Roman law and English law. If Fryer was unwilling to see the texts he engaged in being kept unknown, maybe he did something historian do not know.

In any case, the existence of the six papers itself is sufficient for one to argue that, the intellectual base of legal reform before 1895 should by no means be seen as empty. Actually, if one examines the legal reform suggestions proposed by 《江楚三折》 submitted by Liu

¹⁰⁹ 弢园文录外编, 变法自强<中>

¹¹⁰ See Zhou, Zhenhe_周振鹤 (2008), zhi zhe bu yan 知者不言[those who know do not speak] Joint Publishing. It might be the first and only book by now noticing the *Selected Works*.

Kunyi and Zhang Zhidong to the throne in 1901, which marks exactly the beginning of the New Policy (and also the beginning of China's legal reform, according to the mainstream academic opinion), none of the suggested measures goes beyond the scope of the six papers in this prize essay game. The core suggestions of 《江楚三折》 are but to reform China's criminal procedure, to forbid torture, to let inmates be trained and work, and to promulgate a criminal code applicable in treaty ports. In other words, if political conditions permit, all legal reform proposals of 《江楚三折》 could have been raised at least in 1893.

V. Epilogue

As a law student I was encouraged to look at John Fryer's work because my mentors in China told me that this figure had done extensive translation work in 19th century China but had not been well studied. At that time, I knew nothing about him, or the Jiangnan Arsenal, or the Western missionaries or Chinese reform-oriented government leaders in Shanghai during the Self-Strengthening Movement. To use E. P. Thompson's phrase, when he decided to study the Black Act of 18th century England, it is like parachuting in the center of a strange territory¹¹¹. First you camp in and get familiar with the small environment around you, then you gradually move outward, explore bigger areas and expand your knowledge map in a circle shape. This is why this thesis cannot stand without

¹¹¹ E.P. Thompson, *Whigs and Hunters* (the Penguin Group: 1975), 16. The original text is "I decided to work in a different way. I was like a parachutist coming down in unknown territory: at first knowing only a few yards of land around me, and gradually extending my explorations in each direction."

Fryer but is not a biography of him. Fryer is the place I parachuted and landed in. Starting from him I discovered things else, that is, the intellectual landscape during the Self-Strengthening Movement about legal reform, as one of the most prominent reform issues after the New Policy, the active thinkers then, and possible translations that have inspired and informed them, known and unknown by historians today. Legal history in the U.S. has long been the territory of history department faculty in the U.S. I hope this thesis could serve as an example that lawyers could provide unique perspective and problématique.

This thesis does not give many reasons for this. One may expect to see more elaboration on how could persons like Li Jingbang be so knowledgeable, or why *Political Economy* was allowed to be published by the Arsenal, but neither of the questions has a definitive answer. I mentioned 《洋務輯要》 because the 1893 prize essay game was so unbelievable and ahead of its time that I feel I have to provide at least a guess. I also have a possible explanation on the motivation behind the publication of *Political Economy*, but after all, like 《洋務輯要》, in Fryer's archive there is not a single word about this distinctive book. So this essay is more about a “what” than a “why.”

Finally it is worth reflecting on how Fryer and his colleague missionaries, just as the open-minded Chinese, would also find themselves being minority among all missionaries coming to China at the time. Most of them did not do any “Western Learning”

dissemination other than Christianity. Davelle Sheffield (1841-1913, Chinese name: 謝衛樓), an American Presbyterian missionary active in Tongzhou, Shandong, even argued that missionaries should not teach any science to Chinese, so their love to God would be simple and pure. Thanks to both the Chinese and the Western pioneers who were willing to think beyond their ordinary mode, we see the complexity and the hidden vitality when revisiting the decades before 1895, and happily learn that the pool was not completely static.